Council of Europe

Committee of Ministers

Supervision of the execution of judgments

of the European Court of Human Rights

4th annual report

2010

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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COMMITTEE OF MINISTERS

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Annual report, 2010

Council of Europe
April 2011

Édition française : *Conseil de l'Europe : Comité des Ministres. Surveillance de l'exécution des arrêts de la Cour européenne des droits de l'homme. Rapport annuel, 2010*

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F-67075 Strasbourg Cedex

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Printed at the Council of Europe

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I. Foreword by the 2010 Chairs of the "Human Rights" meetings

2010 has been marked by a series of important events.

On 18 February, Russian Federation thus ratified Protocol No. 14 paving the way for the long awaited entry into force of the Protocol on 1 June 2010. At the same time, High Representatives of the European Governments met up in Interlaken, at the invitation of the Swiss Chairmanship, to establish a roadmap for the reform process towards long-term effectiveness of the Convention system.

Important work rapidly started both in the Committee of Ministers and the European Court of Human Rights (the Court). At the opening of the judicial year end of January 2011, the President of the Court, Jean-Paul Costa, gave a number of hints with respect to the work carried out at the level of the Court: the further development of pilot judgments; the adoption of a priority policy for the handling of applications, new criteria and scales for the calculation of just satisfaction awards under Article 41 of the European Convention on Human Rights (the Convention), the adoption of a Practical Guide on Admissibility Criteria, the enhancement of other tools required for productivity, consistency of case-law and information sharing with practitioners and national authorities, in particular the HUDOC database.

The Committee of Ministers for its part endorsed the reform proposals made at Interlaken at the Ministerial session in May 2010. In their decision, the Ministers notably reaffirmed that prompt and effective execution of the judgments and decisions delivered by the Court is essential for the credibility and effectiveness of the Convention system and a determining factor in reducing the pressure on the Court. They underlined that this requires the joint efforts of member states and the Committee of Ministers. The latter thus instructed its Deputies to step up their efforts to make execution supervision more effective and transparent and to bring this work to a conclusion by December 2010.

Work immediately started to revise the modalities of the Committee of Ministers' supervision procedure in line with the indications given. Special concern was given to reflect the States' strong commitment to the Convention and their attachment to the fundamental principle of subsidiarity. This latter principle has been the cornerstone in all the Committee of Ministers' activities under the Convention over the last decade, as notably manifested through the seven recommendations adopted by the Committee of Ministers to the States to improve both the implementation of the Convention at national level and the execution of the judgments of the Court.

The new working methods adopted in December 2010 build on the progress achieved. However, they draw more fully the conclusions of the States' commitments at Interlaken and the developments over the last decade, notably the improved domestic capacity for implementing the Convention and the judgments of the Court and the important increase in the Committee of Ministers' case-load. A major aim of the reform has thus been to ensure that the Committee of Ministers' attention can concentrate on those cases which really deserve special Committee of Ministers' attention – notably cases requiring urgent individual measures, pilot judgments and cases otherwise revealing major complex and/ or structural problems. Improved reactivity has also been underlined through better information exchanges and a principle of continuous supervision. Increased transparency should be ensured notably through the speedy publication of relevant execution information and improvements of existing databases.

As Chairs of the Human Rights meetings we wish to express our satisfaction with the conclusion of this important work within the deadline set by the

Ministers. It will be with great interest that we will follow the practical implementation of the new working methods in 2011 so as to allow a first stock-taking of results end 2011.

As regards the concrete supervision activity in 2010, the Court's interest in the application of Article 46 continued and numerous judgments contained valuable information with respect to structural problems revealed. Where appropriate, account was also taken of the results of the supervision process. This improved interaction between the Court and the Committee of Ministers is welcome and further initiatives to ensure all possible synergies between the two Convention organs must be encouraged.

Besides the above reform work, the Committee of Ministers' activities continued to develop along the different avenues outlined by the Director General in the 2009 report. Special mention should be made of the persistent efforts deployed to ensure the existence of effective domestic remedies and of the increasing importance attached to experience sharing among states, especially in the areas most concerned by clone and repetitive cases. In 2010, an important Round Table was thus organised in Strasbourg on effective remedies in case of excessively lengthy proceedings and non-execution of domestic judicial decisions. Several other events were also organised, notably to assist in the elaboration of action plans. A further important Round Table has recently taken place in Bucharest, in February 2011, this time on another frequently structural problem capable of creating big numbers of clone and repetitive cases "Property restitution/ compensation: general measures to comply with the Court's judgments". The continuation of these efforts is encouraged by all participants.

The support provided by the Human Rights Trust Fund for many of these activities has been an essential prerequisite for their success. It is thus with great satisfaction that we have noted that two additional countries, Switzerland and Finland, have decided to contribute to the Fund in 2010, thus joining themselves to the founding state, Norway, and to Germany and the Netherlands.

Of great importance is also the fact that the efforts under Article 46 have been supported by the Chairs of the Committee of Ministers which have ensured during their mandate that efficient execution and supervision thereof have been part of the general political priorities of the Council of Europe. The intention of the Turkish Chairmanship to continue this practice by organising at Izmir in April 2011 a follow up to the Interlaken Conference has thus been noted with great interest. As underlined by the Interlaken process and by the statistics, which notably continue to demonstrate a high level of clone and repetitive cases, further efforts are, nevertheless called for.

The efforts under way are, however, considerable: States have renewed their strong commitment to the Convention and to the principle of subsidiarity, the Committee of Ministers' seven recommendations to the States to promote the domestic implementation of the Convention in key areas and the execution of the judgments of the Court continue to be of the greatest relevance, important efforts are being undertaken by the Court and the Committee of Ministers and reflection on possible further reforms continue.

It is thus with considerable hope and confidence in the future that we close our introduction to the 2010 Annual report and also express our conviction that the reforms in the Committee of Ministers' supervision of the execution of the Court's judgments and decisions will efficiently contribute to guaranteeing the long term effectiveness of the Convention system.

The Chairs of the Committee of Ministers' Human Rights meetings in 2010

"The former Yugoslav Republic of Macedonia"	Turkey	Ukraine
Mr Vladimir Ristovski	**Mr Daryal Batıbay**	**Mr Mykola Tochytskyi**

II. Remarks by the Director General of Human Rights and Legal Affairs

Introduction

1. As the Chairs of the Human Rights meetings have noted in their introduction to this Annual report, 2010 has been a remarkable year. The Interlaken conference in February set a new agenda for the reform work required to guarantee the long term effectiveness of the Convention system. The results were endorsed by the Committee of Ministers at its 120th session in May 2010. In this context, the Committee of Ministers notably called for a stepping up of the efforts to make supervision of execution more effective and transparent. Shortly afterwards, on 1 June 2010, Protocol No. 14 entered into force, paving the way for important changes in the functioning of the control mechanism of the Convention. The entry into force of this Protocol also allowed the start of the discussions regarding the European Union's accession to this mechanism, including the Committee of Ministers' supervision of the execution of the judgments of the European Court of Human Rights (the Court). On 5 November, we celebrated the 60th anniversary of the Convention and, on 2 December, the Committee of Ministers adopted new working methods for its supervision function, considerably reviewed to reflect the directions given in the context of the "Interlaken process".

2. One of the main principles stressed at the Interlaken Conference was the principle of subsidiarity. The need to strengthen subsidiarity did not, however, take away the need to reinforce the supervision of the execution process. These conclusions also appear shared by PACE in its recent recommendation (1955)2011 to the Committee of Ministers.

3. The strengthening of subsidiarity is also very much at the heart of the new working methods adopted in response to the call made by the Committee of Ministers at its 120th session. I will revert to the working methods and to the different avenues pursued to ensure the efficiency of the execution process – which I outlined in some detail in last year's Annual report – below.

Comments on statistics

4. I will first address the present situation before the Committee of Ministers as it appears from the statistics, notably in the light of the changes which have intervened since the last review of working methods in 2004 and the entry into force of Protocol No. 14.

New cases – in particular new Protocol No. 14 cases

5. As regards the influx of new cases, I expressed last year certain concerns that the entry into force of Protocol No. 14 might bring with it a noticeable increase of the number of cases as a result, on the one hand, of the Committee of Ministers' new competence to supervise the respect of the terms of all friendly settlements (and not only those taking the form of a judgment) and, on the other hand, of the committees of three judges' new competence to pronounce judgments finding a violation of the Convention when the underlying question in the case, concerning the interpretation or the application of the Convention is already the subject of well-established case-law of the Court.

6. 2010 is indeed the year with the highest number of new cases ever, to be dealt with, many of which result from the entry into force of Protocol No. 14.

The Committee of Ministers was thus seized of the supervision of some 234 friendly settlements (against 211 for the whole period from 1999 to June 2010) and 116 cases with violations decided by committees of three judges, i.e. a total of 350 cases (none in 2009). This means that some 20 % of the total number of new cases in 2010 were linked with the entry into force of the Protocol. It should be borne in mind that this figure only covered the period June-December in 2010[1]. In view hereof, the figures may well increase further in 2011.

7. In 2010, as a result of the practices adopted so far, both by the states and by the Court, most of these new "Protocol No. 14 cases" were clone or repetitive cases requiring mainly the supervision of the payment of just satisfaction. As regards general measures, the cases simply joined the group of cases related to the structural problem at issue.

8. It's too early to know whether Protocol No. 14 will imply a continuing increase in the number of cases. Among the outstanding questions is whether the new procedure before the committees might be applicable to problems which may subsist in a specific state, notwithstanding the existence of a "well-established case-law of the Court" against other states. The approach that the Court will take on this issue is not without importance, in particular for for the Committee of Ministers' supervision activity, the more so since this situation is unfortunately not infrequent. The Action Plan adopted at Interlaken also specifically called upon the states to "*take into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system*".

The situation of the execution in general

9. The most striking element is the continuing important increase in the number of pending cases. The Committee of Ministers is presently confronted with the supervision of almost 10 000 cases (9 300 if cases awaiting a final resolution are excluded). When the Committee of Ministers last reviewed its working methods in 2004 the number was just short of 4 000, i.e.a 150 % increase since then. If one looks at leading cases, that is cases revealing general or even structural problems, the figure is almost 1 000. Even if figures were not prepared for 2004 (such were prepared only as from 2005, in the context of the Committee of Ministers' first Annual report 2007), the estimate is that around 300 such cases were pending at the time, which indicates a possible 330 % increase.

Consequences

10. These increases obviously bring with them important problems.

11. The first one is the important increase of the workload of the Secretariat and, in particular, of the Department for the execution of the Court's judgments which is responsible for following developments and providing different forms of assistance and advice both to the Committee of Ministers and to respondent states.

12. Another more pernicious problem relates to the sheer number of cases and the mastering of all the information involved in the supervision of the execution of the Court's judgments. The number of clone and repetitive cases (and indeed also friendly settlements and unilateral declarations), has made it more and more difficult to identify the truly important cases; those really deserving enhanced attention. Also the number of leading cases and the complexity of many of them, often revealing not only one, but indeed several structural problems, make it difficult to organise adequately the information flows required to follow up the different problems raised.

13. This situation obviously calls for recourse to efficient computerised databases to manage the wealth of information necessary for efficient execution and supervision of execution – this was indeed noted by the Committee of Ministers already in the context of the adoption of the 2004 working methods. Considerable efforts have been undertaken since then to ensure the existence and efficient functioning of such databases (in particular CMIS and the Execution Department's web site). I would like to express here my gratitude to all involved in these efforts, not least the governments which have supported our efforts with voluntary contributions. The new tools are very promising but additional resources are nevertheless needed to optimise their potential. Combined with the adoption of the new working methods, 2010 has thus seen significant steps forward to improve visibility of the Committee of Ministers' supervision of the execution of judgments.

1. Protocol No. 14 bis did allow judgments by committees of three judges already as from 1 November 2009. However, very few such decisions were given before the entry into force of Protocol No. 14, on 1 June 2010.

14. Besides these considerations, the developments of the case load since the last change of working methods in 2004 lead to certain additional conclusions.

15. A first one relates to the confirmed importance of clone and repetitive cases. The ratio of such cases has not really decreased since 2004 and remains at around 80-85 %. This fact demonstrates that certain major structural problems persist and, accordingly, that important efforts continue to be required at national level to remedy these problems, notably by ensuring effective domestic remedies in order better to relieve the Court of these type of cases.

16. Another relates to the constant increase in the number of new leading cases every year. In 2004, the estimate was that some 140 such cases were sent to the Committee of Ministers for supervision of their execution. In 2010 the figure is some 230, i.e. an increase of 60 %. No statistics are available as to the global number of pending leading cases in 2004. It is nevertheless noteworthy that the Committee of Ministers has presently over 1000 such cases on its agenda and that the number has increased with between 17 and 18 % a year over the last few years. The Committee od Ministers has, however, succeeded in closing some 540 leading cases since 2004. These figures attest the importance of the work carried out – and yet to be carried out – to support European states in their efforts to ensure the execution of the Court's judgments and, in general, to uphold, through constant surveillance of their laws and practices, the values which are at the heart of the Council of Europe – Human Rights, Rule of Law and Democracy.

17. This situation highlights the continuing importance of all the different recommendations adopted by the Committee of Ministers since 2000 to improve both the national implementation of the Convention and, in particular, the execution process. Indeed, the two aspects are intimately linked as was already indicated in the course of the adoption of these recommendations.

Nature of questions examined by the Committee of Ministers

18. Leaving the statistics and glancing at the nature of the questions examined – as apparent in the thematic overview – it is clear that most of the cases still concern a series of important structural problems, in particular : excessive length of judicial proceedings, including the excessive delays in implementing domestic judgments; problems relating to pre-trial detention and poor detention conditions; violations linked to security forces' actions; property issues, notably linked with the schemes adopted in numerous states to find just solutions to the problems caused by nationalisations under the former communist regimes.

19. A number of more specific issues have, however, attracted particular attention. Examples are: issues related to the expulsion of aliens; different discriminations, notably related to elections and vis-à-vis Roma; issues related to the freedom to broadcast and freedom of expression in the press.

20. The detailed examination of these issues and the concrete Committee of Ministers' reactions are well illustrated in the different decisions adopted by the Committee of Ministers. A number of examples are presented in the thematic overview.

The Interlaken process and the new working methods

21. The statistical data indicate that the Committee of Ministers is facing, just as the Court, a very difficult situation. The Interlaken process and the impetus it has given to improve the efficiency and transparency of the supervision process have thus been very welcome.

Meeting the challenges

22. The current situation of the Committee of Ministers was duly considered at Interlaken and the adoption of the new working methods in the wake of this conference represents a major contribution to address the current challenges. Combined with the other general efforts to improve the efficiency of the execution process – notably those outlined in my observations to the 2009 Annual report – the new working methods should help the Committee of Ministers to master the important case load implied by the process of supervision and in particular contribute to find a more efficient solution to the persisting problem of clone and repetitive cases.

23. The new working methods are described in more detail in section III of this report. I will accordingly limit myself here to some comments on the main improvements under way.

Standard supervision

24. All new cases are in principle automatically examined under a procedure known as "standard supervision procedure".

25. Under this procedure the Committee of Ministers formally intervenes mainly when action plans have been prepared and action reports lodged. The Committee of Ministers keeps, however, the cases under continuous supervision as all cases are on the agenda of all meetings. Relevant state authorities are expected to be in regular contact with the Execution Department to ensure that any development in the execution process, possibly requiring the Committee of Ministers' intervention, is rapidly brought to the attention of the Committee of Ministers. It is hoped that such contacts will, in addition, allow to sort out rapidly and satisfactorily different questions relating to the progress of execution, without the Committee of Ministers' formal intervention being required. The Execution Department is thus prepared to provide, albeit exceptionally because of the limited resources available, different types of support also in the context of standard supervision (e.g. different forms of legal advice, practical assistance in drafting action plans, organisation of certain bilateral or multilateral activities).

26. The main idea underlying the standard supervision is that of subsidiarity. Accordingly, it is today reasonable to assume that action plans (provided for by the working methods of 2004) will be rapidly adopted and implemented wherever necessary without requiring special Committee of Ministers' support. This development appears notably to be due to the influence of the Committee of Ministers' different recommendations as well as the Court's insistence on effective remedies and growing interest for different Article 46 issues. For the success of the new working methods it is, however, essential that the present developments of the national implementation of the Convention continue.

Enhanced supervision

27. The new working methods nevertheless suggest that certain cases merit specific – enhanced – supervision. They thus introduce a set of criteria to hierarchisise and prioritise cases already from the outset. The indicators applied to select the cases deserving enhanced superrvision are:

– judgments requiring urgent individual measures;

– pilot judgments;

– judgments disclosing major structural and/or complex problems as identified by the Court and/or by the Committee of Ministers;

– interstate cases.

28. In addition, the Committee of Ministers may decide to examine any case under the enhanced procedure following an initiative of a member state or the Secretariat. The request may be made at any stage of the supervision procedure, notably in response to a development noted in the course of the standard execution supervision procedure (see above §§24-26). Member states and the Secretariat should however be mindful of the selected indicators when requesting that a case be examined under the enhanced procedure.

29. For cases under enhanced supervision, the Committee of Ministers' support and the whole array of cooperation tools and legal expertise at the states' disposal can be used to help secure rapid and efficient execution.

30. It should be emphasised that the enhanced procedure has been designed to support the execution process and that the first selection of cases takes place at the very outset of the supervision process on objective criteria – mainly related to the importance of the execution process for the individual(s) concerned and for the good functioning of the Convention supervision system (notably the importance and complexity of the structural problem revealed and the risk of clone and repetitive cases).

31. This new enhanced procedure is based on the experience gained under the earlier working methods, i.e. that hierarchisation of cases is important and that close Committee of Ministers' examination is beneficial to the progress of more important and/or complex structural problems. The decisions adopted by the Committee of Ministers in earlier examinations reveal that the encouragements and recommendations given, often allow the Committee of Ministers to record with satisfaction rapid progress in the pursuit of the reform work engaged. It is more rare that the Committee of Ministers is compelled to express regrets about the progress expected. One can note in this context that the Court is more and more frequently assisting the process by giving itself in the judgments, on the basis of the information available to it, certain suggestions and recommendations, where appropriate.

Improved interaction with the Court

32. The signals sent by the Committee of Ministers during its supervision of execution of the judg-

ments are also more and more frequently used by other bodies, including notably the Court when evaluating the need for additional support to ongoing execution processes through pilot procedures or otherwise (e.g. giving priority to cases capable of solving more intricate problems regarding the interpretation of certain questions related to execution). It is interesting to note that most of the six "pilot"[2] judgments rendered inscribed themselves in ongoing supervision procedures, while also explaining the interaction with the Committee of Ministers.

33. The new working methods should help to develop further the fruitful interaction between the two Convention organs in the spirit of the Interlaken process.

The importance of recommendation (2008)2 of the Committee of Ministers

34. From the perspective of ensuring the success of the new working methods and of execution in general, the particular importance of recommendation CM/Rec(2008)2, on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights deserves to be underlined. Indeed, the implementation of this recommendation appears essential for the success of the new working methods. In order to facilitate access to this text, as well as to other relevant recommendations of the Committee of Ministers, they have all recently been put on the Execution Service's web site.

Improved transparency

35. A last feature deserves special comment : the introduction of improved transparency. When introducing the new working methods the Deputies decided to fully implement the rule on publicity of information submitted in the execution process, in principle introduced already in the 2001 Rules. Henceforth all relevant execution information submitted to the Committee of Ministers will be promptly published, unless a reasoned request for confidentiality is made when the information is submitted. The new practice has already opened up interesting avenues for improving existing databases and web sites. The full exploitation of these new possibilities requires, however, important resources which are not guaranteed today. It would, however, appear clear that besides allowing easier diffusion in many countries of information on the advancement of the execution requirements to judges, prosecutors and other law officials, it will also contribute to the possibilities of civil society to better follow the execution process.

Protocol No. 14 and the new action possibilities offered to the Committee of Ministers

36. Before concluding, mention must be made of the new possibilities given the Committee of Ministers through Protocol No. 14 : on the one hand, the possibility to request an interpretation from the Court if the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, and on the other hand, the possibility to engage "infringement" proceedings before the Court if the Committee of Ministers considers that a state persists in its refusal to abide by a final judgment in a case to which it is a party.

37. The exercise of the new powers is descriibed with more precision in the Rules of the Court and of the Committee of Ministers. It is, however, too early to provide any more detailed comments as regards their use. I simply note with satisfaction that these two new possibilities are today part of the means at the Committee of Ministers' disposal to support execution, it being clear, however that they should be used only in very exceptional circumstances.

Final remarks

38. The entry into force of Protocol No. 14 and the Interlaken process have set in motion an important reform and reflection process, conducted by a number of different actors. As far as the Committee of Ministers is concerned, 2010 has seen one major step forward in the form of the new working methods. A number of further reflections of relevance for execution supervision are, however, in progress and it is important to ensure that the execution stakes are duly taken into account.

39. Among these reflections figure the further improvement of the implementation of the

2. *Yuriy Nikolayevich Ivanov v. Ukraine*, judgment of 15/01/2010; *Suljagic v. Bosnia and Herzegovina*, judgment of 03/02/2010; *Rumpf v. Germany*, judgment of 02/09/2010; *Vassilios Athanasiou and Others v. Greece*, judgment of 21/12/2010; *Maria Atanasiu and Others v. Romania*, judgment of 12/10/2010; *Greens v. the United Kingdom*, judgment of 23/11/2010 (request for referral to the Grand Chamber under examination).

Convention at domestic level, including notably awareness raising activities, the setting up of effective remedies, the implementation of the different recommendations adopted by the Committee of Ministers, and targeting and co-ordination with other mechanisms activities and programmes of the Council of Europe. Another reflection of great importance relates to the handling of many clone and repetitive cases which follow major structural problems. Among measures discussed figure the conclusion of friendly settlements and unilateral declarations (including submitting the latter on a regular basis to execution supervision), improved interaction between the Court and the Committee of Ministers and a more co-operative approach to the execution process including all relevant parts of the Council of Europe. A final reflection relates to the Court's continued efforts to identify priorities for the dealing with cases (for example the priority given to a second complaint alleging disrespect of Article 46) and to identify structural problems in the judgments.

40. 2010 is thus a year which has opened up new promising prospects in several fields of great interest for the execution of judgments. The immediate priority is, however, to ensure the successful implementation of the new working methods.

41. Action in the different priority areas identified over the last years, along the lines developed over the same period, continues nevertheless to be of the greatest importance: ensuring after each violation that effective domestic remedies are in place to care for possible clone and repetitive cases; providing, whenever requested, advice or other forms of cooperation needed to ensure the effectiveness of action plans; organising, in this same spirit, different support activities to allow the domestic authorities involved in the solution of complex structural problems to exchange on a bilateral or multilateral level their good practices and experiences so as to facilitate and speed up necessary reform work (and including in such work also other Council of Europe expert bodies).

42. This latter activity, largely supported by the Human Rights Trust Fund, has been very well received and has yielded important results. For example, an important multilateral round table with high level participation on "Effective remedies against non-execution or delayed execution of domestic court decisions" was held in Strasbourg in March 2010. It is indeed a very topical problem continuously generating numerous applications to the Court. A further similar activity took place in Bucharest in February 2011 dealing with the complex problems raised for certain members of the Council of Europe by the nationalisations carried out by former communist regimes. The possibilities of exchanging good practices and experiences during these round tables have been unanimously welcomed by the participants.

43. On these positive notes I would like to warmly thank all those involved in the execution process 2010 for their contributions. Much has been achieved. Much remains to be done. The Director General for Human Rights and Legal Affairs relies on the co-operation of all involved to bring this undertaking to a successful end.

III. The Committee of Ministers' supervision of the execution of judgments

A. The implementation machinery of the Convention

1. The machinery for the implementation of the Convention has considerably developed over the years, most recently through the entry into force of Protocol No. 14 on 1 June 2010. A brief description of the earlier developments is found in previous Annual reports.

2. Protocol No.14 is part of the reforms aimed at guaranteeing the long term effectiveness of the system set up. The other main part of the reforms relates to the measures aimed at improving the domestic implementation of the Convention, notably through a number of recommendations to the member states. Further details regarding these developments, as well as regarding the ongoing "Interlaken process", are found in Chapter IV "Improving the execution procedure: a permanent reform work".

3. The new Protocol introduces a number of reforms affecting both the Court and the Committee of Ministers. The basic provisions governing the supervision by the Committee of Ministers of execution are now two : Article 46 which provides for the supervision of the judgments of the Court and Article 39 which provides for the supervision of the terms of friendly settlements.

4. An outline of the major consequences of the entry into force of Protocol No. 14 for the Committee of Ministers is found in document DGHL-Exec/Inf (2010)1, see appendix 13. In short, a first reform has been to extend the Committee of Ministers' supervision to all friendly settlements (earlier the Committee of Ministers only supervised those enshrined in judgments, i.e. adopted after an admissibility decision had been rendered). A second one has been to allow the Committee of Ministers to refer to the Court a question relating to the interpretation of a judgment in case the Committee of Ministers considers that execution supervision is hindered by the problem. A third has been the introduction of a possibility for the Committee of Ministers, in exceptional circumstances, to refer to the Court also cases where the Committee of Ministers considers that a state refuses to abide by a final judgment in a case to which it is a party, to have a decision from the Court on the question whether the state has failed to fulfil its obligation to abide by the judgment.

B. The obligation to abide by the judgments

5. The content of contracting states' undertaking "to abide by the final judgment of the Court in any case to which they are parties" is summarised in the Committee of Ministers' Rules of Procedure[3] – see Rule 6.2. This undertaking, which has received considerable precision through the development of states and Committee of Ministers practice and the case-law of the Court, has not been affected by Protocol No. 14. The measures to be taken are of two types.

6. The first type of measures – **individual measures** – concern the applicants. They relate to the obliga-

3. Currently called, in their 2006 version, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements".

tion to erase the consequences suffered by them because of the violations established so as to achieve, as far as possible, "*restitutio in integrum*".

7. The second type of measures – **general measures** – relate to the obligation to prevent similar violations similar to that or those found or putting an end to continuing violations. In certain circumstances they may also concern the setting up of remedies to deal with violations already committed.

8. The obligation to take individual measures and provide redress to the applicant has two aspects. The first is to provide the just satisfaction (normally a sum of money) which the Court may have awarded the applicant under Article 41 of the Convention.

9. The consequences of the violation for the applicants are, however, not always adequately remedied by the Court's just satisfaction award. It is here that a further aspect of individual measures intervenes. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions involving for example the re-opening of unfair criminal proceedings, the destruction of information gathered in breach of the right to privacy, the enforcement of an unenforced domestic judgment or the revocation of a deportation order issued despite a real risk of torture or other forms of ill-treatment in the country of destination. The Committee of Ministers issued a specific recommendation to member states in 2000 inviting them *"to ensure that there exist at national level adequate possibilities to achieve, as far as possible, "restitutio in integrum"* and, in particular, *"adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention"* (Recommendation No. R (2000) 2)[4].

10. The obligation to take general measures may, depending on the circumstances, imply a review of legislation, regulations and/or judicial practice to prevent similar violations. Some cases may even involve constitutional changes. In addition, other kinds of measures may be required such as the refurbishing of a prison, increase in the number of judges or prison personnel or improvements of administrative arrangements or procedures.

11. In this context, the Committee of Ministers today pays particular attention to the efficiency of domestic remedies, in particular where the judgment reveals[5] important structural problems. The Committee of Ministers also expects competent authorities to take different interim measures, notably to find solutions to possible other cases pending before the Court and to limit the consequences of violations as regards individual applicants and, more generally, to prevent new similar violations, pending the adoption of more comprehensive or definitive reforms.

12. These developments are intimately linked with Recommendation Rec(2004)6 on the improvement of domestic remedies and the recent developments of the Court's case-law as regards the requirements of Article 46, notably in different "pilot judgments".

13. The direct effect more and more frequently accorded the judgments of the Court by domestic courts and authorities largely facilitates both providing adequate individual redress and the necessary development of domestic law and practices to prevent similar violations. Where execution through such direct effect is not possible, other avenues will have to be pursued, most frequently legislative or regulatory.

C. The scope of the execution measures required

14. The scope of the execution measures required is defined in each case on the basis of the conclusions of the Court in its judgment, considered in the light of the Court's case-law and Committee of Ministers practice, and relevant information about the domestic situation. In certain situations, it may be necessary to await further decisions by the Court clarifying outstanding issues (e.g. decisions declaring new, similar complaints inadmissible as general reforms adopted are found to be effective or decisions concluding that the applicant continues to suffer the violation established or its consequences).

15. As regards the payment of monetary just satisfaction, the execution conditions are usually laid down with considerable detail in the Court's judgments (deadline, recipient, currency, default interest, etc.). Payment may nevertheless raise complex issues, e.g.

4. Cf. Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum.

5. Whether as a result of the Court's findings in the judgment itself or of other information brought forward during the Committee of Ministers' examination of the case, *inter alia* by the respondent state itself.

as regards the validity of powers of attorney, the acceptability of the exchange rate used, the incidence of important devaluations of the currency of payment, the acceptability of seizure and taxation of the sums awarded etc. Existing Committee of Ministers practice on these and other frequent issues is detailed in a Secretariat memorandum (document CM/Inf/DH(2008)7final).

16. As regards the nature and scope of other execution measures, whether individual or general, these have in principle, as has been stressed also by the Court on numerous occasions, to be identified by the state itself under the supervision of the Committee of Ministers. Besides the different considerations enumerated in the preceding paragraph, national authorities may find additional guidance *inter alia* in the rich practice of other states as developed over the years, and in relevant Committee of Ministers recommendations (e.g. Recommendation R (2000) 2 on the re-examination or reopening or Recommendation Rec(2004)6 on the improvement of domestic remedies).

17. This situation is explained by the principle of subsidiarity, by virtue of which respondent states have freedom of choice as regards the means to be employed in order to meet their obligations under the Convention. However this freedom goes hand-in-hand with the Committee of Ministers' control so that in the course of its supervision of execution the Committee of Ministers may also, where appropriate, adopt decisions or Interim Resolutions to express satisfaction, concern, encouragement and/or to make suggestions with respect to the execution measures required.

18. In addition, the Court's practices under Article 46 are in constant evolution. Since a number of years it has thus more and more frequently started to provide guidance itself as to relevant execution measures in its judgments.

19. The Court today provides such recommendations in respect of individual measures in a growing number of cases. It may also, in certain circumstances, where the State does not have any real choice as to the execution measures required, directly itself order the taking of the relevant measure. For example in case of arbitrary detention, restitutio in integrum will necessarily require, among other things, release from detention and in several cases the Court has also ordered such release[6]. Moreover, in the context of general measures, notably in the new "pilot" judgment procedure, the Court also today frequently examines more in detail the causes of structural problems and, if appropriate, provide certain recommendations as to general measures.The Court has in certain "pilot" judgments[7] ordered that effective remedies be set up within a certain time limit[8]. In situations involving important risks of clone or repetitive cases, the Court can also "freeze" its examination of all pending applications while waiting that the remedies start to function.

20. The Directorate General of Human Rights and Legal Affairs, represented by the Department for the Execution of Judgments of the Court[9], assists the Committee of Ministers with the supervision of the measures taken by the states in the execution of the Court's judgments. The states can, in the context of their examination of the necessary execution measures, request support from the Department for the Execution of Judgments of the Court (advice, legal expertises, round tables and other targeted cooperation activities).

D. The present arrangements for the Committee of Ministers' supervision of execution of judgments

21. The practical arrangements for execution supervision are governed by the Rules adopted by the Committee of Ministers for the purpose[10] (reproduced in Appendix 8). Guidance is also given

6. See *Assanidze v. Georgia*, judgment of 08/04/2004, *Ilascu v. Moldova and the Russian Federation*, judgment of 13/05/2005 and *Fatullayev v. Azerbaijan*, judgment of 22/04/2010. The Court had previously developed some practice in this direction in certain property cases by indicating in the operative provisions that states could choose between restitution and compensation – see e.g. the *Papamichalopoulos and others v. Greece* judgment of 31/10/1995 (Article 50).

7. See for instance *Broniowski v. Poland* (application No. 31443/96; Grand Chamber judgment of 22/06/2004 – pilot judgment procedure brought to an end on 06/10/2008); *Hutten-Czapska v. Poland* (application no. 35014/97, Grand Chamber judgment of 19/06/2006 and Grand Chamber friendly settlement of 28/04/2008).

8. See e.g. *Xenides-Arestis v. Turkey,* judgment of 22/12/2005 ; *Burdov No. 2 v. Russia*, judgment of 15/01/2009 ; *Olaru v. Moldova*, judgment of 28/07/2009 and *Yuriy Nikolayevich Ivanov v. Ukraine,* judgment of 15/10/2009.

9. In so doing the Directorate continues a tradition which has existed ever since the creation of the Convention system. By providing advice based on its knowledge of execution practice over the years and of the Convention requirements in general, the Directorate in particular contributes to the consistency and coherence of state practice in execution matters and of the Committee of Ministers supervision of execution.

through the Committee of Ministers' decisions regarding its working methods. The latter have been reconsidered in depth in 2010 and the ones defined in 2004 (the 2004 working methods, see in particular CM/Inf(2004)008final, available on the Committee of Ministers website) have been replaced by new ones as from 1 January 2011 (the 2011 working methods).

22. The decision to review the working methods inscribed itself in the so called "Interlaken process". At the High level conference in Interlaken in February 2010 the participants adopted an action plan whereby they stressed the urgent need for the Committee of Ministers to:

a) develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, they invited the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;

b) review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

The Committee of Ministers integrated these concerns in the decision adopted at its 120th session in May 2010. The Committee of Ministers here instructed its Deputies to step up their efforts to make execution supervision more effective and transparent and to bring this work to a conclusion by December 2010. The new 2011 working methods, adopted at the last HR meeting in December 2010, are the Deputies' response hereto. The documents which explain the reform more in depth are presented on the Committee of Ministers web site and on the web site of the Execution Department (see notably CM/Inf/DH(2010)37 and CM/Inf/DH(2010)45 final). Further details are also given in Chapter IV "Improving the execution procedure : a permanent reform work".

23. The 2011 working methods take as a point of departure the subsidiary nature of the supervisory mechanism established by the Convention, much underlined by the Interlaken process, and the fundamental role which national authorities, i.e. governments, courts and parliaments, thus must play in guaranteeing and protecting human rights at the national level, in line also with the different recommendations adopted by the Committee of Ministers since 2000 with a view to improve the national implementation of the Convention.

24. A major development to meet the call for improved efficiency is the introduction of a new twin track supervision system the base of which is a new "standard supervision" procedure. Only deserving cases will be subject to what is called "enhanced supervision". This new prioritisation and hierarchisation also gives more concrete effect to the existing priority requirement in the Rules (Rule 4).

25. The cases where the 2011 working methods foresee from the outset "enhanced supervision" are the following:

– judgments requiring urgent individual measures;
– pilot judgments;
– judgments disclosing major structural and/or complex problems as identified by the Court and/or by the Committee of Ministers;
– interstate cases;

In addition, the Committee of Ministers may decide to examine any case under the enhanced procedure following an initiative of a member state or the Secretariat. The request may be made at any stage of the supervision procedure. Both member states and the Secretariat should be mindful of the selected indicators when requesting that a case be examined under the enhanced procedure.

26. The new 2011 working methods continue to be based on the rule that all new judgments and decisions requiring execution supervision are inscribed without delay on the Committee of Ministers' agenda and that supervision mainly takes place at the Committee of Ministers special HR meetings (Rules 2 and 3).

27. They introduce, however, a more continuous supervision of the further execution process. Indeed, all cases shall henceforth be considered inscribed on the agenda of all HR meetings (cf Rule 7). This allows the Committee of Ministers to respond more easily and rapidly to different national developments and encourages improved

10. The currently applicable Rules were adopted on 10/05/2006 (964th meeting of the Ministers' Deputies). On this occasion the Deputies also decided *"bearing in mind their wish that these rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these rules shall take effect as from the date of their adoption, as necessary by applying them mutatis mutandis to the existing provisions of the Convention, with the exception of Rules 10 and 11"*. As a result of the recent Russian ratification of Protocol No. 14, the rules in their entirety entered into force on 1 June 2010.

information exchanges and consultations between states and the Execution Department.

28. In addition, in response to the call for increased transparency, the Committee of Ministers has decided that all execution information received shall be published promptly, unless a request for confidentiality is made at the same time as the information is lodged, in which case it may be necessary to await the next HR meeting to allow the Committee of Ministers to decide the matter (cf Rule 8). This rule thus applies to action plans/reports, communications from applicants and observations submitted by NGOs and NHRI's – see more below.

29. Under the "standard supervision" procedure, intervention by the Committee of Ministers is limited. Such intervention is foreseen only in order to confirm, when the case is first put on the agenda, that it is to be dealt with under this procedure, and subsequently to approve action plans/reports. The Committee of Ministers can, however, rapidly intervene in case of need in order transfer the case to the "enhanced supervision" procedure and define appropriate Committee of Ministers responses to intervening developments.

30. Under the "enhanced supervision" procedure, the progress of execution is regularly followed and appropriate decisions/resolutions adopted, where necessary after debate, notably to express satisfaction, encouragement or concern, or to provide suggestions and recommendations as to appropriate execution measures (see Rule 17). Such interventions may, depending on the circumstances, take different forms, such as declarations by the Chair, press releases, high-level meetings, decisions or Interim Resolutions (see e.g. Rule 16). To be effective such texts may require translation into the language(s) of the state concerned and adequate and sufficiently wide distribution (cf Recommendation CM/Rec(2008)2).

31. Under both supervision procedures, the examination of the advancement of the execution process is based primarily on the information submitted by the respondent government (Rule 6). This information should, however, now be more standardised and follow the scheme of action plans and reports proposed already in the context of the 2004 working methods and further developed thereafter (see notably the Committee of Ministers decision at its HR meeting in June 2009[11]). Such action plans/reports should be submitted at the latest within 6 months from the date a certain judgment becomes final[12]. Further details of the kind of information today expected to be contained therein have been provided in the documentation underlying the 2011 working methods (see para. 22 above).

32. The Committee of Ministers also takes into account communications made by the applicant as regards the question of individual measures and by non-governmental organisations and national institutions for the promotion and protection of human rights with respect to both individual and general measures (see Rule 9). Such communications, which are more and more frequent, as well as the respondent state's reply, if any, should be addressed to the Committee of Ministers through the Department for the Execution of Judgments of the Court[13].

33. As regards the payment of just satisfaction, supervision has been simplified under the 2011 working methods. Applicants are informed in the letters accompanying the judgments from the Court that it is henceforth their responsibility to rapidly react to any apparent shortcoming in the payment by rapidly informing the Department for the execution of judgments of the Court. If no complaint has been received within two months from the date the payment information provided by the government has been lodged with the Department for the Execution of Judgments of the Court and registered, the payment issue is considered closed. To help applicants and governments to keep track of the payment information submitted, all registered payments are published weekly on the Department for the Execution of Judgments of the Court's web site (www.coe.int/execution).

34. Once the Committee of Ministers has established, on the basis of the final action report received, that the state concerned has taken all the measures necessary to abide by the judgment, it closes its examination of the case by adopting a final resolution (see Rule 17). Final resolutions should, under the 2011 working methods, be presented at the latest within 6 months from the Committee of Ministers' acceptance of the final action report.

11. In this decision the Committee of Ministers formally invited States to provide, within six months of a judgment becoming final, an action plan and/or an action report as defined in document CM/Inf/DH(2009)29rev.

12. Unless they raise a specific issue under individual or general measures clone and repetitive case are dealt with in the action plan report of the leading case.

13. Council of Europe, 67075 Strasbourg Cedex, France; Fax No.: (33) (0)3 88 41 27 93; e-mail: DGHL.execution@coe.int.

35. It should be mentioned that the practical modalities of supervision of the execution of European Court's judgments and decisions under the twin-track approach would be evaluated specifically at the DH December meeting in 2011.

E. Friendly settlements

36. The supervision of the respect of undertakings made by states in friendly settlements accepted by the Court follows in principle the same procedure as the one outlined above.

IV. Improving the execution procedure: a permanent reform work

A. Guaranteeing long term effectiveness : main trends

1. The main European Convention on Human Rights (the Convention) developments leading to the present system, put in place by Protocol No. 11 in 1998, have been briefly described in previous Annual reports.

2. The increasing pressure on the Convention system led, however, to further efforts to ensure the long-term effectiveness of the system. The starting point for these new efforts was the Ministerial Conference in Rome in November 2000 which celebrated the 50th anniversary of the Convention. The three main avenues followed since then have been to improve:

- the efficiency of the procedures before the European Court of Human Rights (the Court);
- the domestic implementation of the Convention in general;
- the execution of the Court's judgments.

3. The importance of these three lines of action has been regularly emphasised at ministerial meetings and also at the Council of Europe's 3rd Summit in Warsaw in 2005 and in the ensuing plan of action. A big part of the implementing work was entrusted to the steering committee on Human Rights (CDDH). Since 2000 the CDDH has presented a number of different proposals. These in particular led the Committee of Ministers to adopt:

- seven recommendations to states on various measures to improve the national implementation of the Convention[14], including in the context of execution of judgments of the Court[15];
- Protocol No. 14[16], both improving the procedures before the Court and providing the Committee of Ministers with certain new powers

14. Recommendation No. R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

– Recommendation Rec(2002)13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;

– Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training;

– Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;

– Recommendation Rec(2004)6 on the improvement of domestic remedies.

The status of implementation of these five recommendations has been evaluated with the assistance of the CDDH. Civil society was invited to assist the governmental experts in this evaluation (see doc. CDDH (2006)008 Add.1). A certain follow-up also takes place in the context of the supervision of the execution of the Court's judgments. Subsequently the Committee of Ministers has adopted a special recommendation regarding the improvement of execution:

– Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

- Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings – adopted on 24/02/2010.

In addition to these recommendations to member states, the Committee of Ministers has also adopted a number of resolutions addressed to the Court:

– Resolution Res(2002)58 on the publication and dissemination of the case-law of the European Court of Human Rights;

– Resolution Res(2002)59 concerning the practice in respect of friendly settlements;

– Resolution Res(2004)3 on judgments revealing an underlying systemic problem.

for the supervision of execution (in particular the possibility to lodge with the Court requests for the interpretation of judgments and to bring infringement proceedings in case of refusal to abide by a judgment) and

- new rules for the supervision of the execution of judgments and of the terms of friendly settlements in 2000, with further important amendments in 2006 and, in parallel, the development of the Committee of Ministers' working methods.

4. Relevant texts are notably published on the Department for the Execution of Judgments of the Court's web site. Further details with respect to the developments of the Rules and working methods are found in Chapter III and also in previous Annual reports.

B. The new Interlaken process

5. The above efforts to guarantee the long term effectiveness of the system have received an important impetus as a result of the High Level Conference in Interlaken on the future of the Court, organised by the Swiss Chair of the Committee of Ministers in February 2010. The full text of the Declaration and the Action Plan adopted is found in Appendix 11.

6. The new reform process set in motion covers a number of areas, also linked to the entry into force of Protocol No. 14 : the right to individual petition; the implementation of the Convention at domestic level (including notably awareness raising, effective remedies, the implementation of the different recommendations adopted by the Committee of Ministers and targeting and co-ordination of other mechanisms, activities and programmes of the Council of Europe), the filtering of applications to the Court; the handling of repetitive applications (including the facilitation of friendly settlements and unilateral declarations, co-operation with the Committee of Ministers in order to adopt the general measures required and ensuring a co-operative approach including all relevant parts of the Council of Europe); the functioning of the Court (notably the pursuit of the policy of identifying priorities for the dealing with cases and of identifying structural problems in the judgments); the supervision of the execution of judgments (making supervision more effective and transparent) and the possibilities of simplified procedures for amending the Convention. Many of the above themes are interlinked.

7. At its 120th session in May 2010, the Committee of Ministers endorsed the Interlaken Declaration and Action Plan and expressed its determination to implement the Interlaken outcome in a timely manner.

8. A first important result of relevance for the Committee of Ministers' execution supervision is the adoption of the 2011 working methods at the HR meeting in December 2010 – described in Chapter III.

9. In addition, the CDDH presented in December 2010 a report "on measures that result from the Interlaken Declaration that do not require amendment of the Convention"[17]. Among these figure the possibility of extending execution supervision also to cases closed by the Court with decisions on the basis of unilateral declarations by the government of the respondent state.

10. The implementation of the "Interlaken process" continues and further results are awaited in 2011. The Committee of Ministers has notably welcomed the intention of the Turkish Chairmanship of the Committee of Ministers to organise in April 2011 a further High-level Conference on the Future of the European Court of Human Rights to review the progress made in the follow-up to the Interlaken Declaration and, as appropriate, provide further guidance for its successful completion.

C. Specific issues

11. In the course of the work on the reform of the Convention system the issue of slowness and negligence in execution has attracted special attention.[18] The Committee of Ministers has also developed its responses to such situations, in particular by developing its practices as regards Interim Resolutions

15. The implementation of the first five recommendations was subject to special follow up, including civil society. The results were published by CDDH in April 2006 in document CDDH(2006)008. An additional follow up, in response to the Committee of Ministers 116th meeting in May 2006 (CM(2006)39), was published by the CDDH in 2008 in document CDDH(2008)008, Addendum 1.

16. This Protocol, now ratified by all contracting parties to the Convention, entered into force on 1 June 2010.

17. See document CDDH(2010)13 Addendum I.

and detailed decisions supporting the persuit of reforms or setting out the Committee of Ministers' concerns. The Committee of Ministers has furthermore, in line, *inter alia w*ith a number of proposals from the CDDH,[19] taken a number of preventive measures to ensure, to the extent possible, that such situations do not occur.

12. Among such measures are the rapid submission (at the latest six months after a certain judgment has become final) by the governments of action plans and/or action reports (covering both individual and general measures). These action plans and reports are today at the basis of the new 2011 woring methods. The latter also rely on further improvements of the on-line accessibility of execution information in pending cases. Work continues to develop additional parts of the vademecum (to supplement the practices as regards the payment of just satisfaction published in 2008).

13. Since 2006 the Committee of Ministers has furthermore encouraged the development of special targeted co-operation activities for the execution of judgments of the European Court of Human Rights (comprising for example legal expertise, round tables and training programmes) to assist respondent states in their efforts to adopt rapidly the measures required by the Court's judgments. On a more general level, national officials from different countries regularly come to Strasbourg for study visits, seminars or other events where the work of the Committee of Ministers on execution supervision is presented and special execution problems are discussed.

14. Such activities have also been strongly supported by the Human Rights Trust Fund set up in 2008 by the Council of Europe, the Council of Europe Development Bank and Norway, with contributions from Germany, the Netherlands, Finland and Switzerland. The fund supports in particular activities that aim to strengthen the sustainability of the European Court of Human Rights in the different areas covered by the Committee of Ministers' seven recommendations regarding the improvement of the national implementation of the European Convention on Human Rights and by ensuring the full and timely national execution of the judgments of the European Court of Human Rights. The first execution projects aimed at sharing experiences in certain areas of special interest started in 2009 (non-execution of domestic court decisions and actions of security forces). Activities were further developed in 2010, including the organisation in Strasbourg of a big round table "Effective remedies against non-execution or delayed execution of domestic court decisions". A special web site presenting the Fund in more detail is under elaboration.

15. A special mention should also be made of the Committee of Ministers' recommendation – Recommendation CM/Rec(2008)2 – to the member states on efficient domestic capacity for rapid execution of the European Court of Human Rights's judgments (reproduced in appendix 9) which has continued to be an important element of the Committee of Ministers' supervision and a constant source of inspiration in the bilateral relations established between different national authorities and the Department for the execution of judgments of the European Court of Human Rights.

18. In the context of this work the Secretariat has also presented several memoranda on the issue see notably CM/inf(2003)37, CM/Inf/DH(2006)18, CDDH(2008)14 Addendum II.

19. See for example the CDDH proposals in the above mentioned document CDDH(2006)008. The CDDH has also more recently presented additional proposals – see document CDDH(2008)014 relating notably to action plans and action reports.

Appendix 1: Initial explanations and list of abbreviations

The appendices below contain a number of overviews and statistics relating to the Committee of Ministers' supervision of execution of judgments of the European Court of Human Rights in 2010.
Some initial explanations may be useful in order to explain the information provided in the thematic overview (appendix 16) and the statistical part (appendix 2), in particular the references to the Committee of Ministers' meetings and to the sections on the agenda under which cases have been examined. Thus, when the thematic overview indicates "Last examination at the 1092-6.1 meeting", it means that the case was examined at the 1092nd "Human Rights" meeting of the Deputies held from 30/11/2010 to 03/12/2010 in section 6.1, i.e. the section where, until 31/12/2010, cases were placed with a view to a decision on the question whether or not it appeared possible on the basis of available information to close the examination of the case and request the Secretariat to present a draft final resolution.

A full list of "Human Rights" meetings and agenda sections appears below.

A. CM'S HR meetings in 2010

Meeting No.	Meeting Dates
1078	02-04/03/2010
1086	01-03/06/2010
1092	13-14/09/2010
1100	30/11/2010-03/12/2010

B. Sections used for the examination of cases at the Committee of Ministers' Human Rights meetings

Under the old working methods still in force in 2010, at each Human Rights meeting, cases were registered into different sections of the annotated agenda and order of business. These sections corresponded to the different stages of examination of the execution of each case, in the following way:

Section 1 – Final resolutions i.e. cases where a Final resolution, putting an end to the examination of the case, is proposed for adoption.

Sub-section 1.1 – Leading cases or pilot cases, i.e. cases evidencing a more structural problem requiring general measures.

Sub-section 1.2 – Cases concerning general problems already solved.

Sub-section 1.3 – Cases not involving general or individual measures.

Sub-section 1.4 – Friendly settlements.

Section 2 – New cases examined for the first time.

Sub-section 2.1 – Cases raising new problems.

Sub-section 2.2 – Cases raising issues already examined by the Committee of Ministers ("repetitive cases").

Section 3 – Just satisfaction i.e. cases where the CM has not received or verified yet the written confirmation of the full compliance with the payment obligations stemming from the judgment.

Sub-sections 3.A and 3.Aint – Supervision of the payment of the capital sum of the just satisfaction in cases where *the deadline for payment expired less than 6 months ago* (3.A), as well as, where due, of default interest (3.Aint).

Sub-section 3.B – Supervision of the payment of the capital sum of the just satisfaction in cases where *the deadline for payment expired more than 6 months ago*.

Section 4 – Cases raising special questions i.e. cases where the Committee of Ministers is examining questions of individual measures or questions relating to the scope, extent or efficiency of general measures.

Sub-section 4.1 – Supervision of individual measures only.

Sub-section 4.2 – Individual measures and/or general problems.

Sub-section 4.3 – Special problems.

Section 5 – Supervision of general measures already announced i.e. cases not raising any outstanding issue as regards individual measures and where the adoption of well identified general measures is under way.

Sub-section 5.1 – Legislative and/or regulatory changes.

Sub-section 5.2 – Changes of courts' case-law or of administrative practice.

Sub-section 5.3 – Publication / dissemination.

5.3.a – Cases in which supervision of measures concerning publication and dissemination has been taking place for less than a year.

5.3.b – Cases in which supervision of measures concerning publication and dissemination has been taking place for more than a year.

Sub-section 5.4 – Other measures.

Section 6 – Cases presented with a view to the preparation of a draft final resolution i.e. cases where information provided indicates that all required execution measures have been adopted and whose examination is therefore in principle ended, pending the preparation and adoption of a Final Resolution.

Sub-section 6.1 – Cases in which the new information available since the last examination appears to allow the preparation of a draft final resolution.

Sub-section 6.2 – Cases waiting for the presentation of a draft final resolution.

C. General abbreviations

AR 2007	Annual Report 2007
AR 2008	Annual Report 2008
AR 2009	Annual Report 2009
CDDH	Steering Committee for Human Rights
CM	Committee of Ministers
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
HRTF	Human Rights Trust Fund
GM	General Measures
HR	"Human Rights" meeting of the Ministers' Deputies
IM	Individual Measures
IR	Interim Resolution
NGO	Non-governmental organisation
Prot.	Protocol
Sec.	Section
Secretariat	The Secretariat of the Department for the Execution of Judgments of the European Court of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

D. Country codes[20]

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MLT	Malta
AUT	Austria	MDA	Moldova
AZE	Azerbaijan	MCO	Monaco
BEL	Belgium	MON	Montenegro
BIH	Bosnia and Herzegovina	NLD	Netherlands
BGR	Bulgaria	NOR	Norway
CRO	Croatia	POL	Poland
CYP	Cyprus	PRT	Portugal
CZE	Czech Republic	ROM	Romania
DNK	Denmark	RUS	Russian Federation
EST	Estonia	SMR	San Marino
FIN	Finland	SER	Serbia
FRA	France	SVK	Slovak Republic
GEO	Georgia	SVN	Slovenia
GER	Germany	ESP	Spain
GRC	Greece	SWE	Sweden
HUN	Hungary	SUI	Switzerland
ISL	Iceland	MKD	"The former Yugoslav Republic of Macedonia"
IRL	Ireland	TUR	Turkey
ITA	Italy	UKR	Ukraine
LVA	Latvia	UK.	United Kingdom
LIE	Liechtenstein		

20. These codes result from the CMIS database, used by the Registry of the European Court of Human Rights, and reproduce the ISO 3166 codes, with a few exceptions (namely: Croatia = HRV; Germany = DEU; Lithuania = LTU; Montenegro = MNE; Romania = ROU; Switzerland = CHE; United Kingdom = GBR).

Appendix 2: Statistics

A. Introduction

The data presented in this chapter are those of the calendar year, from 1 January to 31 December, and are based on the internal database of the Department for the Execution of Judgments of the European Court of Human Rights.

By the term **leading cases**, reference is made to cases which have been identified as revealing a new structural/general problem in a respondent state and which thus require the adoption of new general measures (although these may already have been taken by the time the judgment is given), more or less important according to the case(s). Leading cases include *a fortiori* pilot judgments delivered by the European Court of Human Rights.

In particular, the identification of leading cases allows some qualitative insight into the impact of the Court's judgments on domestic law as well as into the workload related to the supervision of their execution. The number of leading cases thus reflects that of structural problems dealt with by the Committee of Ministers, regardless of the number of single cases. Three elements should, however, be kept in mind:

- The distinction between leading and isolated cases can be difficult to establish when the case is examined for the first time, it can thus happen that a case initially qualified as "isolated" is subsequently re-qualified as "leading" in the light of new information attesting to the existence of a general problem;
- Leading cases have different levels of importance. While some of them imply important and complex reforms, others might refer to problems already solved or to specific sub-aspects of a more important problem already under consideration, yet others can be solved by a simple change of case-law or administrative practice;
- Leading cases refer to the general measures and do not, in principle, take into account individual measures issues.

Other cases include:

- "Clone" or "repetitive" cases, i.e. those relating to a structural or general problem already raised before the Committee of Ministers in one or several leading cases; these cases are usually grouped together – with the leading case as long as this is pending – for the purposes of the Committee's examination.
- "Isolated" cases, i.e. cases which do not fall within any of the above categories. In particular, the violations found in these cases appear linked only to the specific circumstances of each case.

Friendly settlements are included in one of the above-mentioned groups of cases depending on the nature of the undertakings agreed and on the specific character of the situation at issue.

It should be noted that, as from the entry into force of Protocol No. 14 on 1 June 2010, the new cases include decisions acknowledging friendly settlements concluded under Article 39 §4 of the European Convention on Human Rights as well as judgments rendered by committees of three judges under Article 28 (1) b.

In addition, certain decisions striking out cases from the Court's list as part of a pilot procedure may involve the Committee of Ministers' supervision of the respect of the undertakings contained therein if the European Court of Human Rights or the government concerned have transmitted the

case to the Committee of Ministers for such supervision.

Reference to the sections used for the presentation of cases to the Committee of Ministers in the annotated agenda in use until 1 January 2011 is made in several places. The sections are explained at the beginning of "Appendices", under "Initial explanations and list of abbreviations".

Owing to the developments in the cases brought before the Court and its jurisprudence, as well as the domestic developments, every year a number of cases need to be re-qualified (for example, a case initially appearing to be isolated can, in the light of the above-mentioned developments, later be found to be a leading case of a group revealing a structural problem). As a consequence, every year the figures of the previous years are subject to a certain review.[21]

The tables below present a historical overview of the number of cases under the supervision of the execution of judgments by the Committee of Ministers.

Figure 1. Development in the number of new cases that became final during the year from 1959 until today

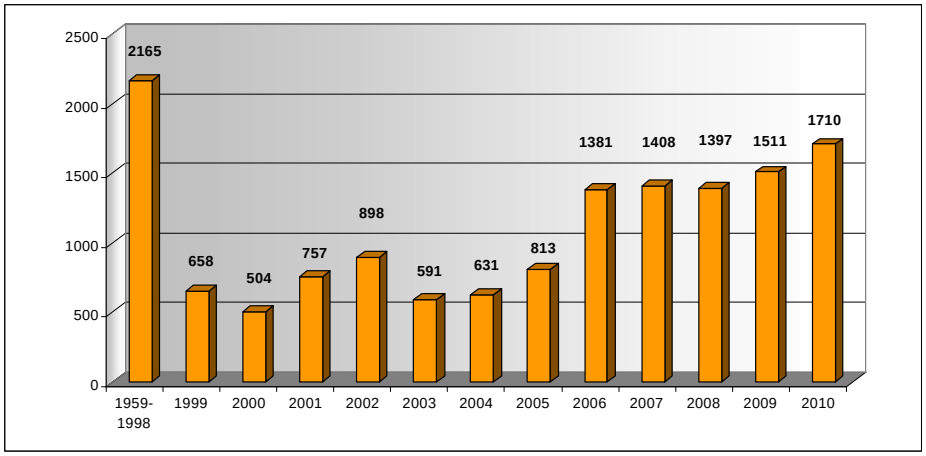
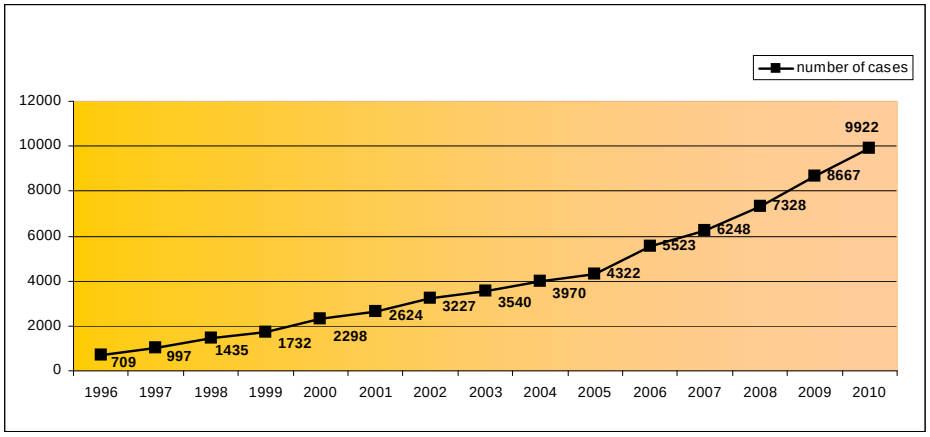


Figure 2. Development in the number of cases pending at the end of the year, from 1996 until today



21. It might be noted in this respect that the data on "leading cases" for 2009 had been under-evaluated, as indicated in the 2009 *Annual report* (p. 34) insofar as it was not possible to check the cases which had become final at the end of the year but had not been examined by the Committee of Ministers yet.

B. General statistics

In 2010 the number of cases pending before the Committee of Ministers (see below) has continued to increase, but less that in the previous two years, mainly because of the significant production of final resolutions in 2010.

The global increase is due to the fact that the total number of new cases continues to be more than three times higher than the number of cases closed by a final resolution.

It can be noted that the 2010 figures include an important number of new types of cases, almost exclusively clone or repetitive cases, linked to the entry into force of Protocol No. 14 on 1 June 2010. On the one hand, some 234 friendly settlement decisions under Article 39 §4 were transmitted by the European Court of Human Rights in the last six months of 2010, i.e. more than the 211 friendly settlement judgments transmitted to the Committee of Ministers from 1999 till end 2010, including friendly settlements on just satisfaction rendered after the finding of a violation. On the other hand, the Committee of Ministers was seized of the supervision of some 116 judgments rendered by committees of three judges under Article 28 §1.b, including six cases decided under Protocol No. 14 *bis* (no such decisions were rendered in 2009).

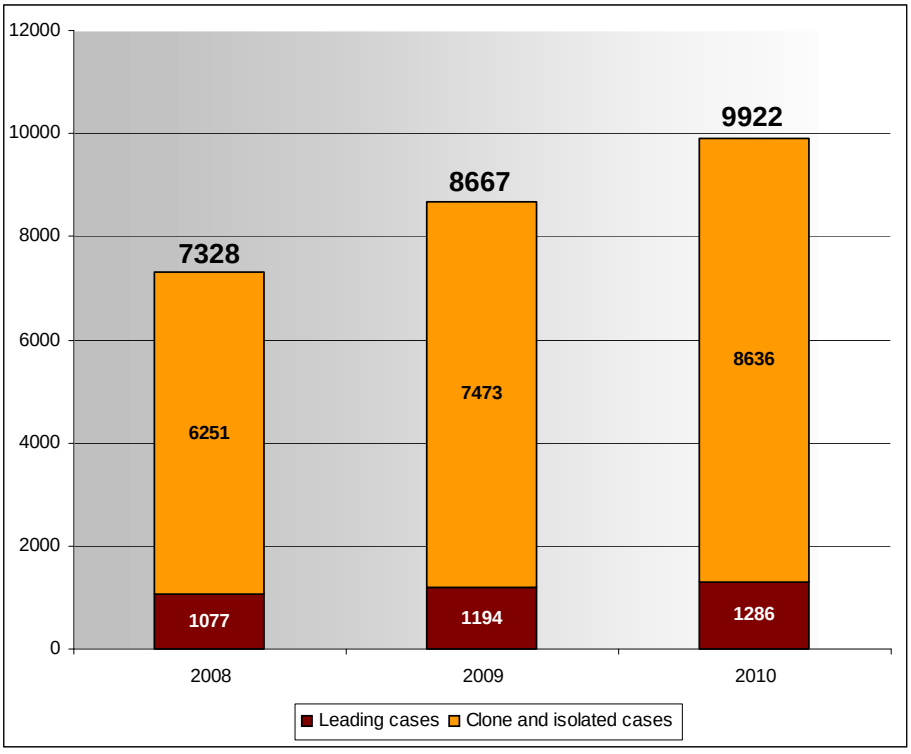
The number of new leading cases remained at the same level as in 2009. Considering the number of such cases closed (see Figures 6 and 7), the number of leading cases pending before the Committee of Ministers continued to increase.

B.1. Pending cases

The persistent trend of an increasing number of pending cases is confirmed. The total number of cases pending at 31 December, including cases pending for adoption of a final resolution, has increased by some 14% from 2009 to 2010, from 8 667 to 9 922, while they had increased respectively by 18% and 17% from 2008 to 2009 (from 7 328 to 8 667) and from 2007 to 2008 (from 6 248 to 7 328) (see below, Figure 3).

Within the pending cases, all sections included, the number of leading cases has increased slightly, by almost 8% from 2009 to 2010 (see below, Figure 3).

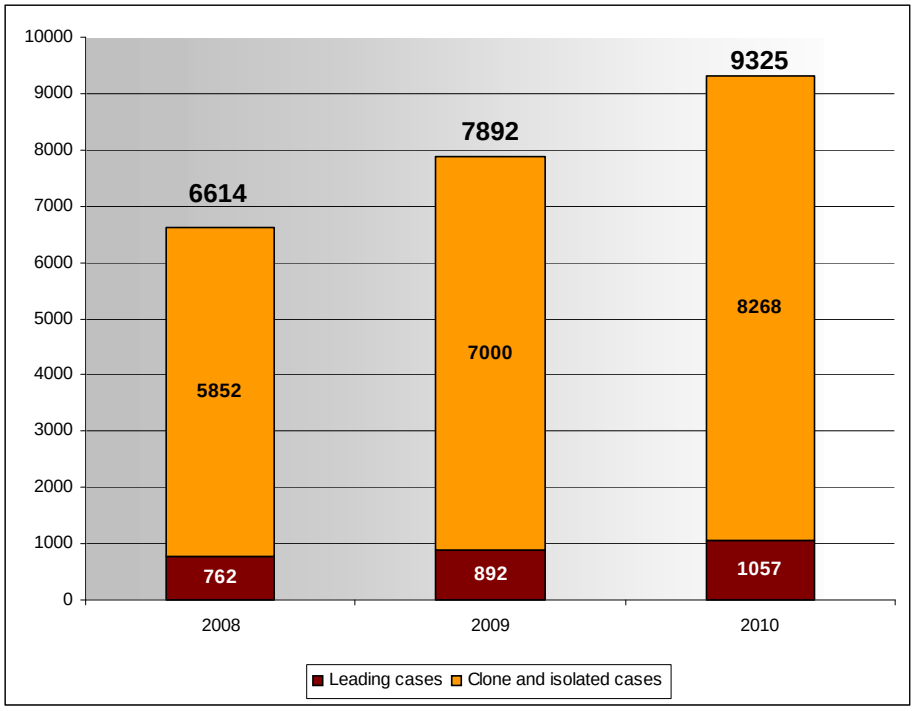
Figure 3. Evolution of pending cases at 31 December, all sections included



If the cases waiting for a final resolution under section 6.2 are excluded, the number of pending cases have increased by some 18% between 2009 and 2010, from 7 892 to 9 325, while the increase was of 19% from 2008 to 2009, i.e. from 6 614 to 7 892 (see below, Figure 4).

As regards leading cases, the progression was by 18% from 2009 to 2010, against 17% from 2008 to 2009 (see below, Figure 4).

Figure 4. Evolution of pending cases at 31 December, excluding cases for which examination has been closed (section 1 and 6.2)

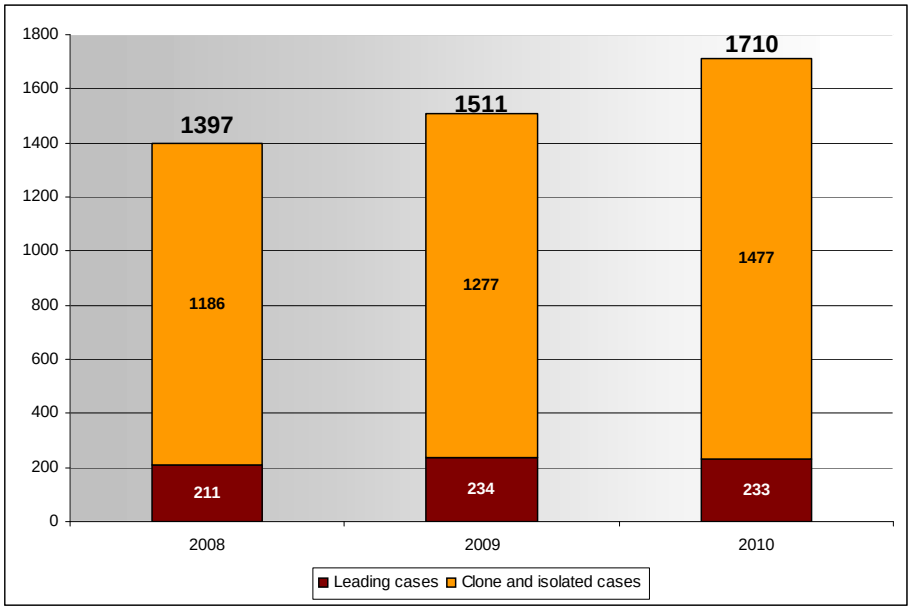


B.2. New cases

The input of new cases in which new cases became final during the calendar year (from 1 January to 31 December) increased by some 13% from 2009 to 2010. The increase had been of some 8% from 2008 to 2009, i.e. from 1 397 to 1 511 (see Figure 5 below). The new cases include henceforth, in accordance with Protocol No. 14, all the friendly settlements acknowledged by Court's decisions and violations found by three-judge committees under the simplified procedure described at Article 28 §1(b) of the Convention. The first group – 234 cases in 2010 – corresponds to a real extension of the Committee of Ministers' competence, while the second one – 116 cases in 2010 – mainly reflects the efforts aimed at streamlining the procedures before the Court. The cases at issue in both groups are either clone or isolated ones.

The proportion of leading cases, out of the new cases, has remained almost stable in 2010 compared to the data of 2009, while non-leading cases have increased by some 16% from 2009 to 2010 (see Figure 5).

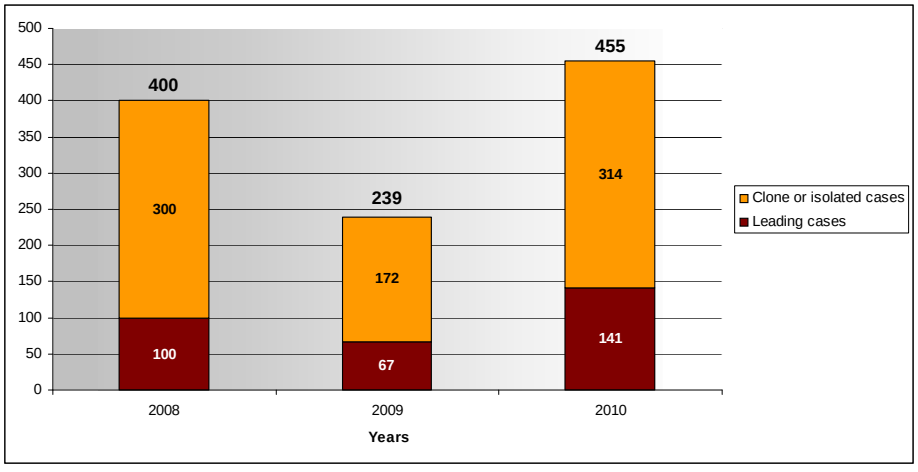
Figure 5. New cases which became final between 1 January and 31 December



B.3. **Cases closed**

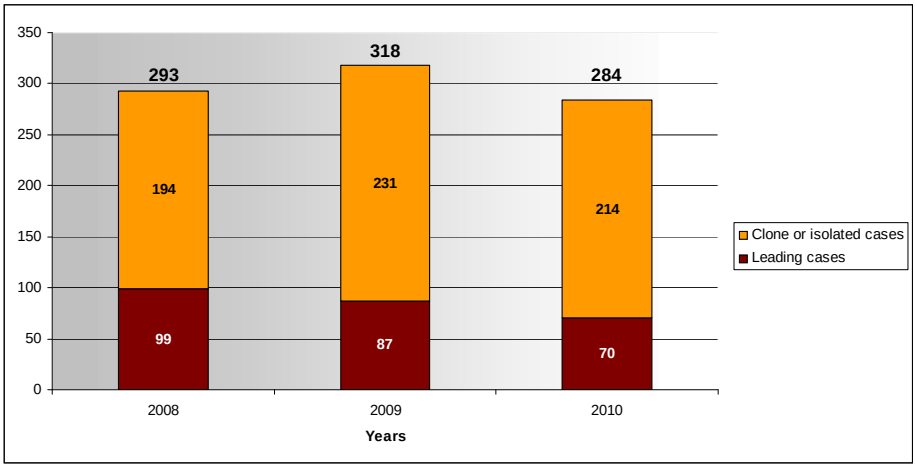
The number of cases closed by a final resolution increased by almost 90% in 2010 as compared to 2009 (see Figure 6 below). In particular, the number of leading cases closed was more than the double of that of 2009, with an increase of 107%. The other cases also increased by some 83%.

Figure 6. Cases closed by the adoption of a final resolution (section 1) during the year



The number of cases in which the Committee of Ministers has taken a decision in principle to close its examination (and in which only the preparation of a final resolution is awaited), which had increased in 2009, decreased in 2010 by some 11%. The decrease affected in particular leading cases (see Figure 7 below).

Figure 7. Cases in which the examination was in principle closed during the year whether or not they have led to the adoption of a final resolution during the same year



B.4. Cases examined at the HR meetings of the Committee of Ministers

The data concerning the number of new cases, pending cases and cases closed provide a global overview of the trends in the Committee of Ministers' supervision of execution.

This work continues for all cases all over the year, regardless of the HR meeting cycle. This ongoing supervision has been strengthened with the adoption by the Committee of Ministers, in December 2010, of new working methods, in force as of 1 January 2011, inasmuch as all cases are henceforth considered to be on the agenda of all the HR meetings – see also sections III and IV.

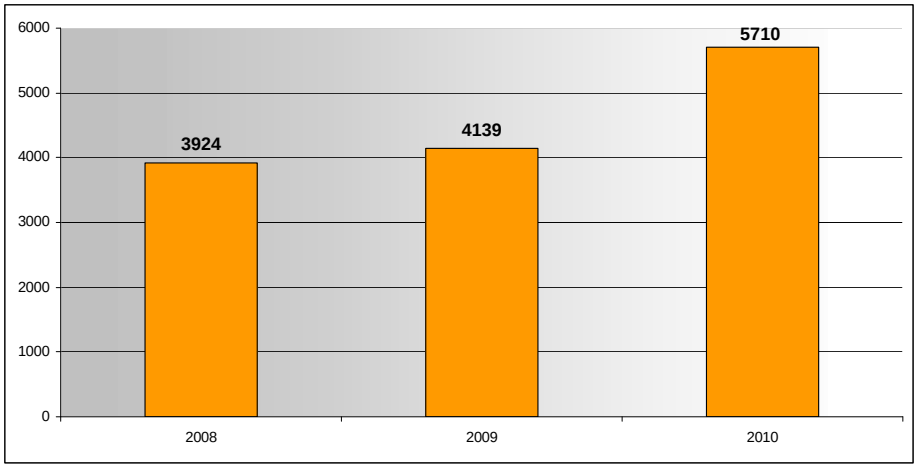
Some cases nevertheless require, depending on the urgency and seriousness of the issues they raise, to be examined at more regular and frequent intervals. It goes without saying that the frequency at which cases are examined has also an impact on the Committee of Ministers' workload, since all cases on the agenda of an HR meeting[22] imply both an administrative treatment and a special treatment on the merits in view of their collective examination.

The data relating to HR meetings – under the former working methods applied in 2010 – also show that the number of cases examined continues to increase.[23] Indeed, although from one meeting to the next the number of cases examined can be very different, and while this number reflects the presence on the agenda of certain groups of cases, on average the number of cases examined each meeting increased from 4139 in 2009 to 5710 in 2010, i.e. an increase of some 38%.

22. In certain cases, particularly urgent or serious, the examination can also continue, beyond the meetings specially dedicated to the supervision of execution of judgments, at the "regular" weekly meetings of the Committee of Ministers.

23. It should be noted that cases registered for control of payment of the just satisfaction, under section 3, can be registered at the same time under another section, in view of their being examined on the merits.

Figure 8. Average number of cases examined by meeting, on the basis of the HR meetings of the year, excluding cases whose examination has in principle been closed (under sections 1 and 6.2)



C. Detailed statistics for 2010

The data below present an overview of a number of execution issues related to the year 2010:

- Cases closed between 1 January and 31 December 2010 or awaiting a final resolution at 31 December 2010
- Cases pending before the Committee of Ministers at 31 December 2010
- New cases which became final between 1 January and 31 December 2010
- Respect of payment deadlines expiring in 2010
- Just satisfaction awarded in cases which became final between 1 January and 31 December 2010
- Length of execution of leading cases pending before the Committee of Ministers at 31 December 2010

C.1. Cases closed between 1 January and 31 December 2010 or awaiting a final resolution at 31 December 2010

When all the information which appears necessary for the closure of a case is available, the case is presented to the Committee of Ministers, which assesses whether a final resolution may be prepared. If the information is deemed satisfactory, the Committee of Ministers mandates the Secretariat to prepare a draft final resolution. Owing, in particular, to the time between meetings, a final resolution adopted in a certain year may relate to one or more cases in which the closure decision was taken before the year in question.

Under the procedure applied until the end of 2010, cases whose examination was proposed to be closed appeared under section 6.1 of the Agenda, and cases in which a decision to close the examination had already been taken appeared under section 6.2 of the Agenda, pending the formal preparation of a resolution.

Figures 9 and 10 provide an overview of, respectively, all the cases and the leading cases in which the information received during the year led the Committee of Ministers to conclude that all execution measures had been taken and only the preparation and adoption of a final resolution was required. In certain of these cases, a final resolution was already adopted before the end of the year.

Figure 9. Total cases in which examination was in principle closed in 2010, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2010[24]

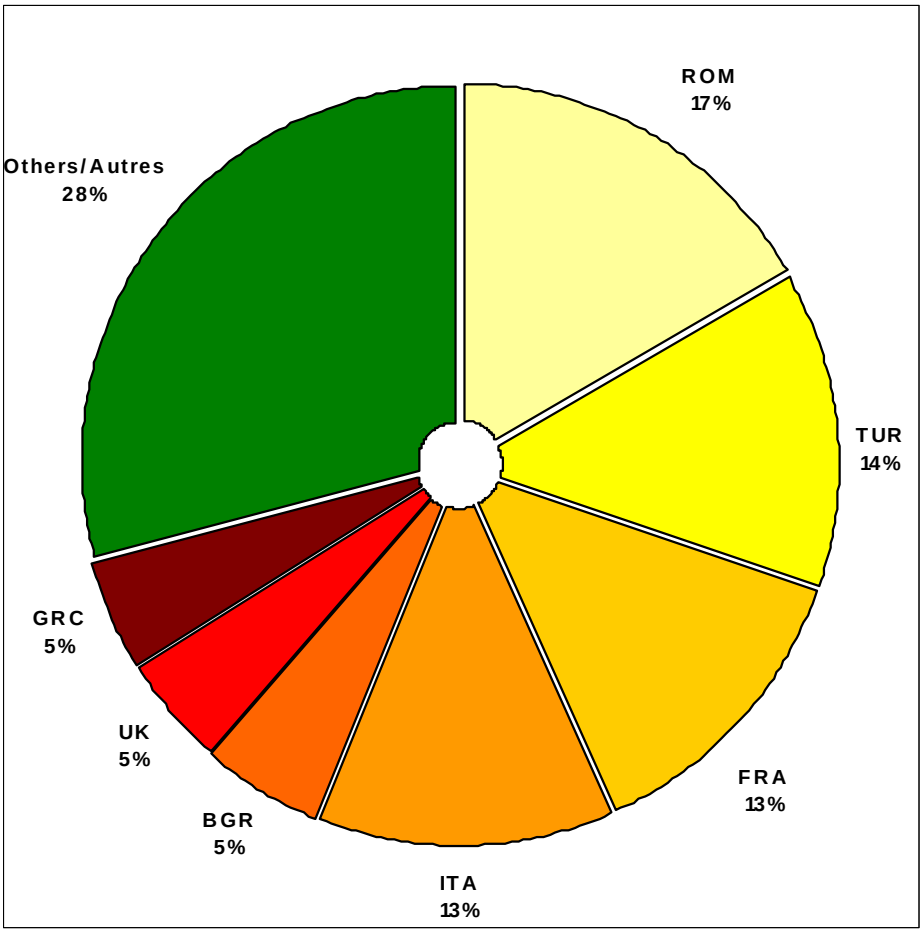


Table I, page 39, presents, state by state, the number of:

A. all cases – whether leading or not – closed by a final resolution between 1 January and 31 December 2010, irrespective of whether their examination was closed in 2010 or earlier;

B. all cases – whether leading or not – in which examination was closed between between 1 January and 31 December 2010 and the Committee of Ministers has requested the preparation of a final resolution. This list overlaps to a certain extent with the cases listed in column "A", insofar as cases whose examination was closed in 2010 may also have been the subject of a final resolution adopted the same year;

C. all cases awaiting the adoption of a final resolution at 31 December 2010. This list includes some of the cases listed in column "B" as well as cases where the decision to close the examination was taken before 2010.

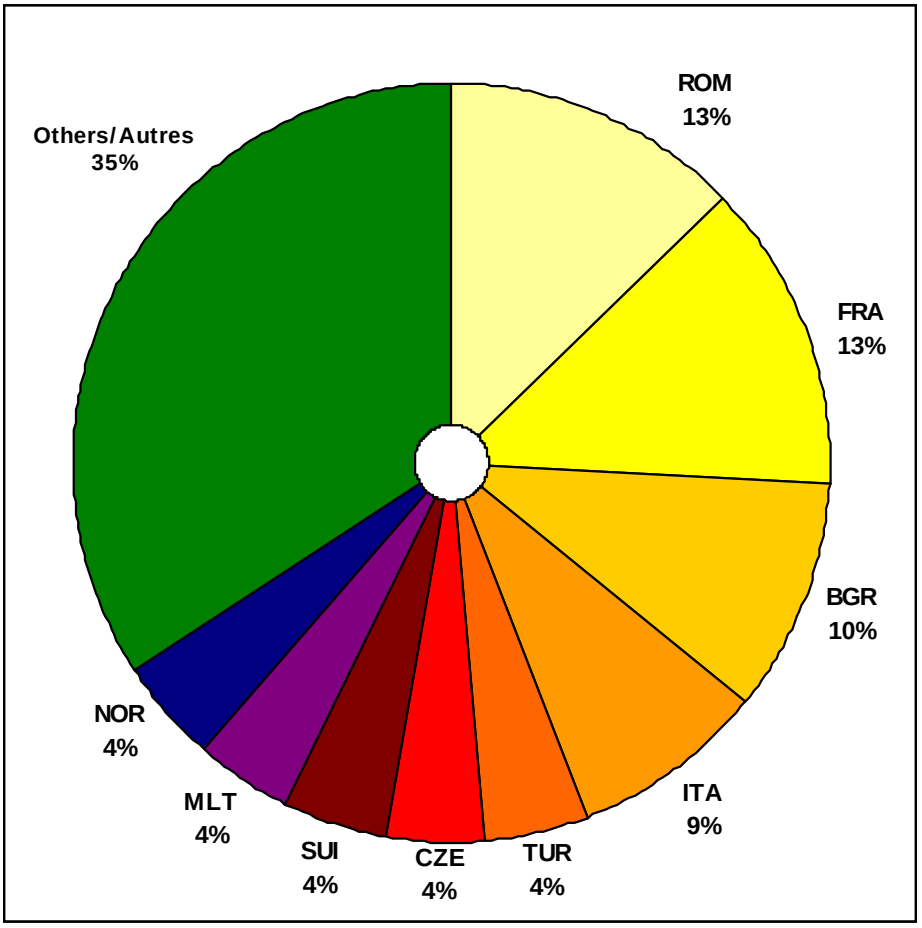
It should be noted that cases in principle closed, i.e. already examined under section 6 and awaiting only the presentation of a draft final resolution, are excluded from the statistics below relating to pending cases (Figures 11 to 13 and Table II) and to the length of execution of leading cases (Figures 22 to 24 and Table VI).

Owing to the important variations in data from one year to another, depending in particular on the nature and timetables of reforms adopted, the

24. For data see Table I, page 39.

tables under this section do not present a comparison between the data of 2010 and 2009. The latter can nevertheless be consulted in the 2009 *Annual report*.

Figure 10. Total leading cases in which examination was in principle closed in 2010, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2010[25]



C.2. Cases pending before the Committee of Ministers at 31 December 2010

As long as a final resolution has not been adopted, a case remains formally pending before the Committee of Ministers. The tables in this section, however, present only the cases where execution measures are still required, according to the information available at 31 December, or in which the measures taken are still under assessment. These statistics do not include, therefore, the cases in principle closed and awaiting a final resolution under sections 1 or 6. The data in Figures 11 and 12, outer rings, and also those in Figure 13, refer to the the situation at 31 December 2010, as reflected in the data of Table II.[26] The figures presented in the inner rings of Figures 11 and 12 refer to the data in the 2009 *Annual report*.

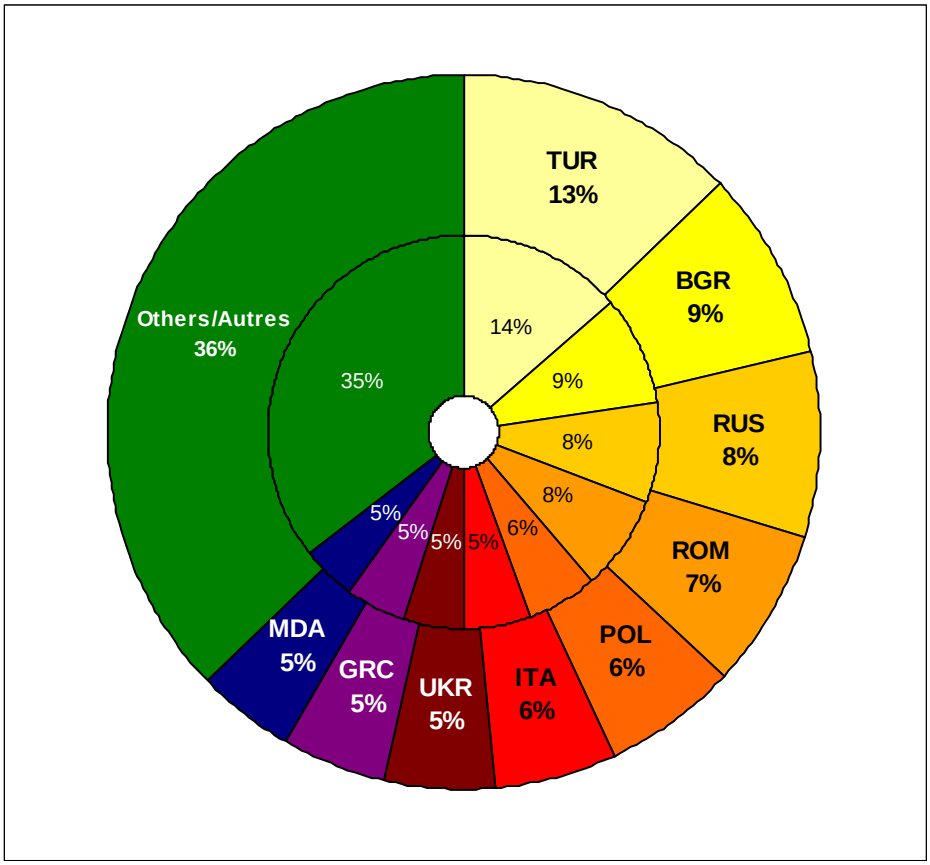
25. For data see Table I, page 39.

26. It should also be noted that the large number of cases concerning certain countries is mainly explained by the large number of clone cases. Thus, if Italy e.g. has a total of 2 481 cases, representing some 27% of the total of cases pending for execution, it has to be borne in mind that more than 2 000 of these cases relate to one single problem, the excessive length of judicial proceedings.

Table I. Leading cases/Other cases – by state

State	A. Cases closed by a final resolution in 2010		B. Cases in which examination ended in 2010 which are awaiting a final resolution		C. Cases awaiting a final resolution at 31 December 2010 (examination closed in 2010 or earlier)
	Leading cases	Other cases	Leading cases	Other cases	
ALB	0	0	1	0	1
AND	0	0	1	3	0
ARM	0	0	0	0	0
AUT	5	4	0	0	38
AZE	0	0	0	0	0
BEL	4	3	0	0	26
BIH	0	0	1	1	3
BGR	2	14	7	8	8
CRO	0	0	2	1	12
CYP	2	0	1	1	4
CZE	0	8	3	6	18
DNK	0	0	0	2	6
EST	3	3	1	1	0
FIN	2	2	2	3	15
FRA	29	65	9	28	34
GEO	2	0	2	0	
GER	2	2	2	0	18
GRC	7	16	2	11	18
HUN	1	0	0	1	10
ISL	0	0	0	0	1
IRL	0	0	0	0	0
ITA	16	40	6	30	24
LVA	1	0	0	0	6
LIE	0	0	0	0	0
LIT	0	4	0	2	19
LUX	1	0	0	2	7
MLT	0	1	3	1	3
MDA	2	3	0	1	2
MCO	0	0	0	0	0
MON	0	0	0	0	0
NLD	12	8	0	0	2
NOR	1	0	3	0	4
POL	1	4	2	2	41
PRT	2	6	1	3	7
ROM	3	29	9	38	52
RUS	0	0	0	0	6
RSM	0	0	0	0	
SER	0	0	1	1	2
SVK	2	3	2	3	27
SVN	0	0	0	0	2
ESP	2	0	1	0	2
SWE	2	2	0	1	3
SUI	2	0	3	2	15
MKD	0	0	0	11	14
TUR	8	46	3	36	95
UKR	2	0	0	3	11
UK	25	51	2	12	42
TOTAL	**141**	**314**	**70**	**214**	**598**

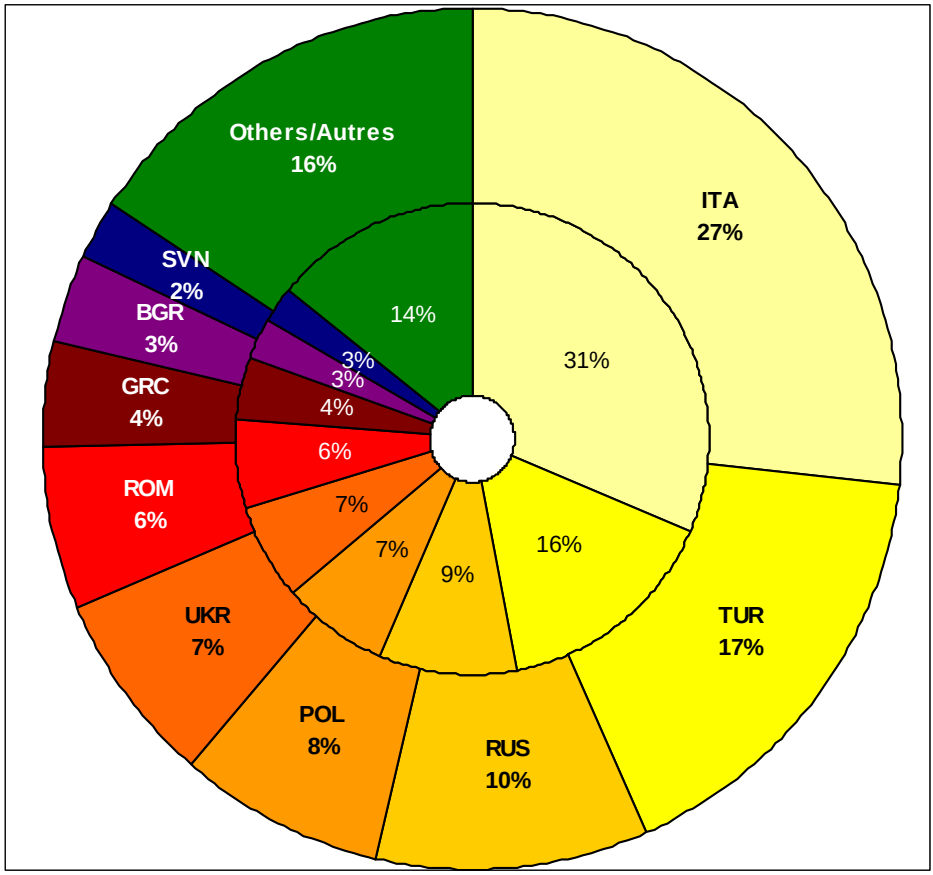
Figure 11. Pending leading cases by state at 31 December 2010 (outer ring) and at 31 December 2009 (inner ring) in relation to the total number of pending cases



The proportions of leading cases pending for execution before the Committee of Ministers in respect of the different contracting states have not much changed from 2009 to 2010.

Indeed, the states with the highest total of leading cases have remained the same ones during the last two years. With a few exceptions, in general the number of these cases has increased, although in different proportions (see Table II, page 42).

Figure 12. Total cases by state at 31 December 2010 (outer ring) and at 31 December 2009 (inner ring) in relation to the total number of pending cases at the same dates

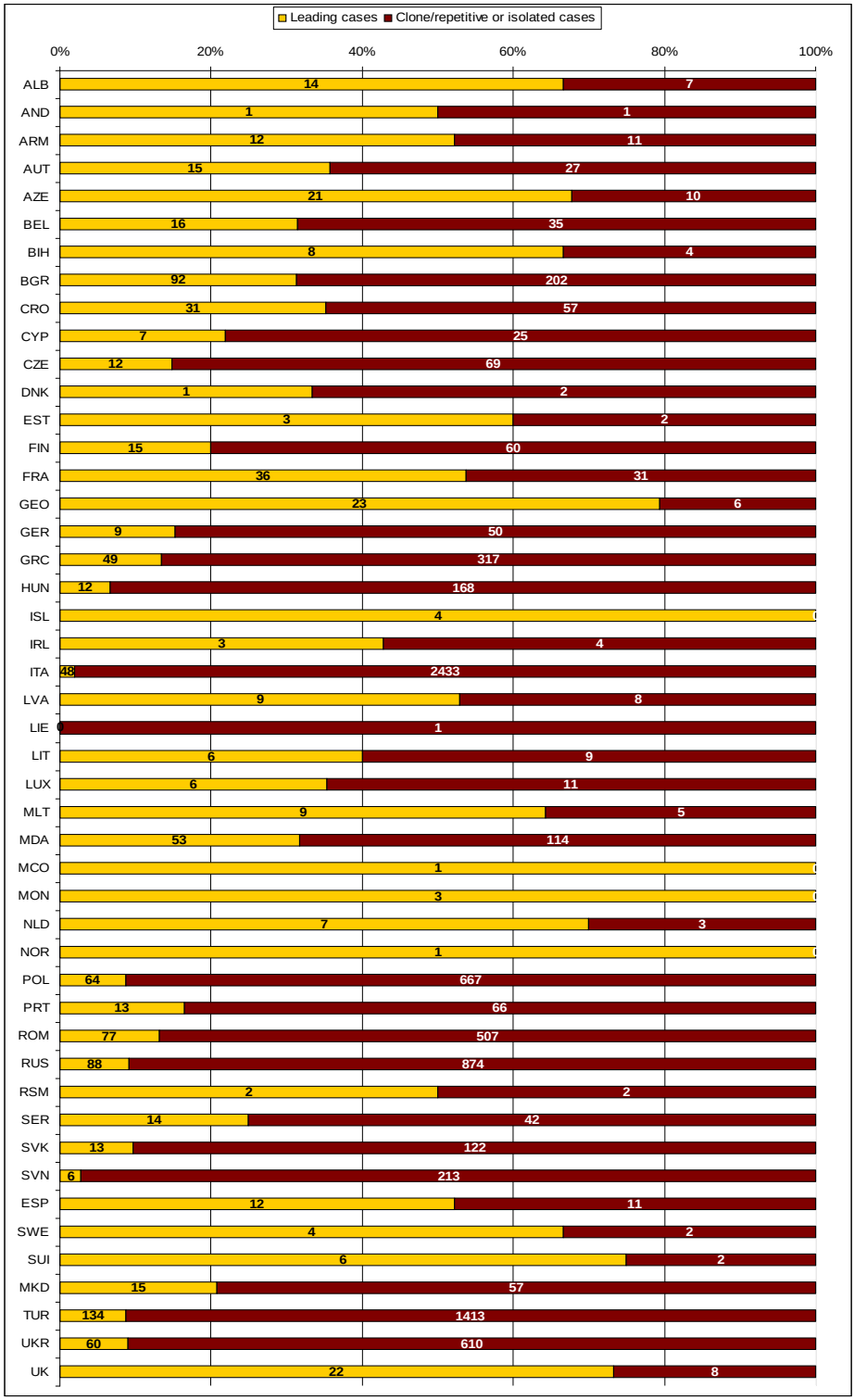


When considering the global number of leading, clone and isolated cases (see Figure 12 and Table II), some bigger difference can be noted. Cases against Italy represented 27% of the total number of pending cases in 2010, while they were 31% in 2009. This development does not, however, mean that the number of Italian cases has decreased, on the contrary these have even slightly increased in 2010. The same is true for example for Ukraine, although the percentage of cases for this state appears stable as compared to 2009.

Table II. Types of case pending before the Committee of Ministers at 31 December 2010 by state – details (except cases in principle closed, awaiting a final resolution)

State	Leading cases		Clone/repetitive or isolated cases		Cases by state	
	Number	% of all cases	Number	% of all cases	Number	% of all cases against all states
ALB	14	66.67%	7	33.33%	21	0.23%
AND	1	50.00%	1	50.00%	2	0.02%
ARM	12	52.17%	11	47.83%	23	0.25%
AUT	15	35.71%	27	64.29%	42	0.45%
AZE	21	67.74%	10	32.26%	31	0.33%
BEL	16	31.37%	35	68.63%	51	0.55%
BIH	8	66.67%	4	33.33%	12	0.13%
BGR	92	31.29%	202	68.71%	294	3.15%
CRO	31	35.23%	57	64.77%	88	0.94%
CYP	7	21.88%	25	78.13%	32	0.34%
CZE	12	14.81%	69	85.19%	81	0.87%
DNK	1	33.33%	2	66.67%	3	0.03%
EST	3	60.00%	2	40.00%	5	0.05%
FIN	15	20.00%	60	80.00%	75	0.80%
FRA	36	53.73%	31	46.27%	67	0.72%
GEO	23	79.31%	6	20.69%	29	0.31%
GER	9	15.25%	50	84.75%	59	0.63%
GRC	49	13.39%	317	86.61%	366	3.92%
HUN	12	6.67%	168	93.33%	180	1.93%
ISL	4	100.00%	0		4	0.04%
IRL	3	42.86%	4	57.14%	7	0.08%
ITA	48	1.93%	2433	98.07%	2 481	26.61%
LVA	9	52.94%	8	47.06%	17	0.18%
LIE	0		1		1	0.01%
LIT	6	40.00%	9	60.00%	15	0.16%
LUX	6	35.29%	11	64.71%	17	0.18%
MLT	9	64.29%	5	35.71%	14	0.15%
MDA	53	31.74%	114	68.26%	167	1.79%
MCO	1	100.00%	0		1	0.01%
MON	3	100.00%	0		3	0.03%
NLD	7	70.00%	3	30.00%	10	0.11%
NOR	1	100.00%	0	0.00%	1	0.01%
POL	64	8.76%	667	91.24%	731	7.84%
PRT	13	16.46%	66	83.54%	79	0.85%
ROM	77	13.18%	507	86.82%	584	6.26%
RUS	88	9.15%	874	90.85%	962	10.32%
RSM	2	50.00%	2	50.00%	4	0.04%
SER	14	25.00%	42	75.00%	56	0.60%
SVK	13	9.63%	122	90.37%	135	1.45%
SVN	6	2.74%	213	97.26%	219	2.35%
ESP	12	52.17%	11	47.83%	23	0.25%
SWE	4	66.67%	2	33.33%	6	0.06%
SUI	6	75.00%	2	25.00%	8	0.09%
MKD	15	20.83%	57	79.17%	72	0.77%
TUR	134	8.66%	1413	91.34%	1 547	16.59%
UKR	60	8.96%	610	91.04%	670	7.18%
UK	21	70.00%	9	30.00%	30	0.32%
TOTAL	1056	11%	8269	89%	9 325	100.00%

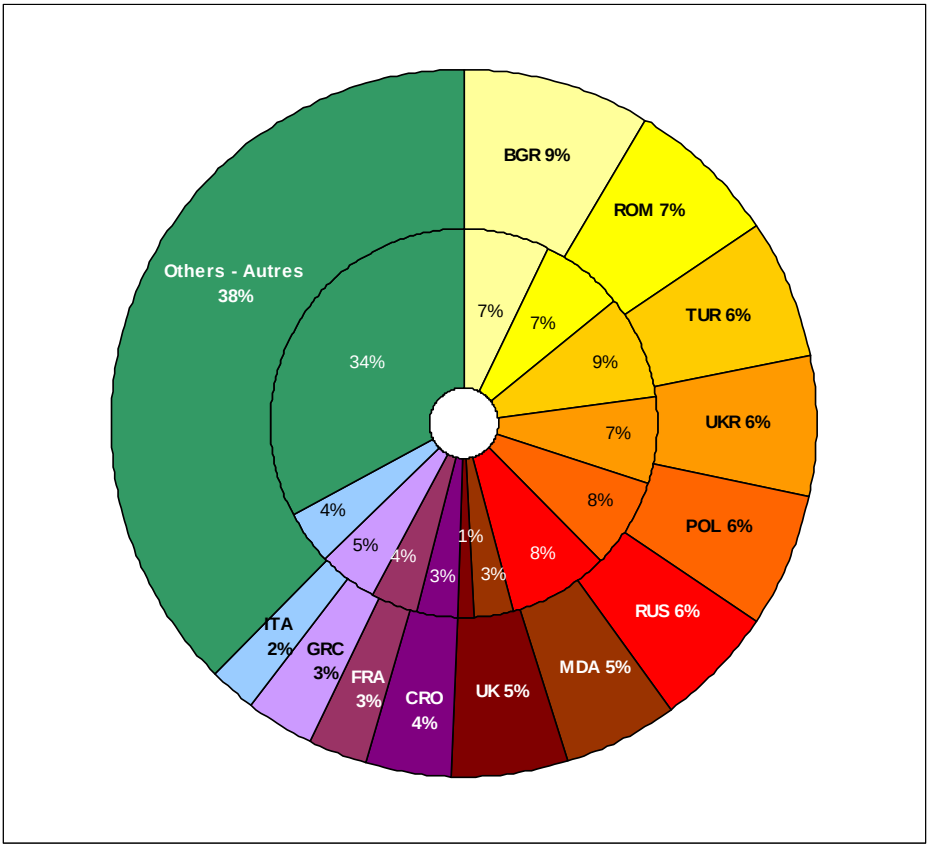
Figure 13. Types of case pending before the Committee of Ministers at 31 December 2010 by state



C.3. New cases which became final between 1 January and 31 December 2010

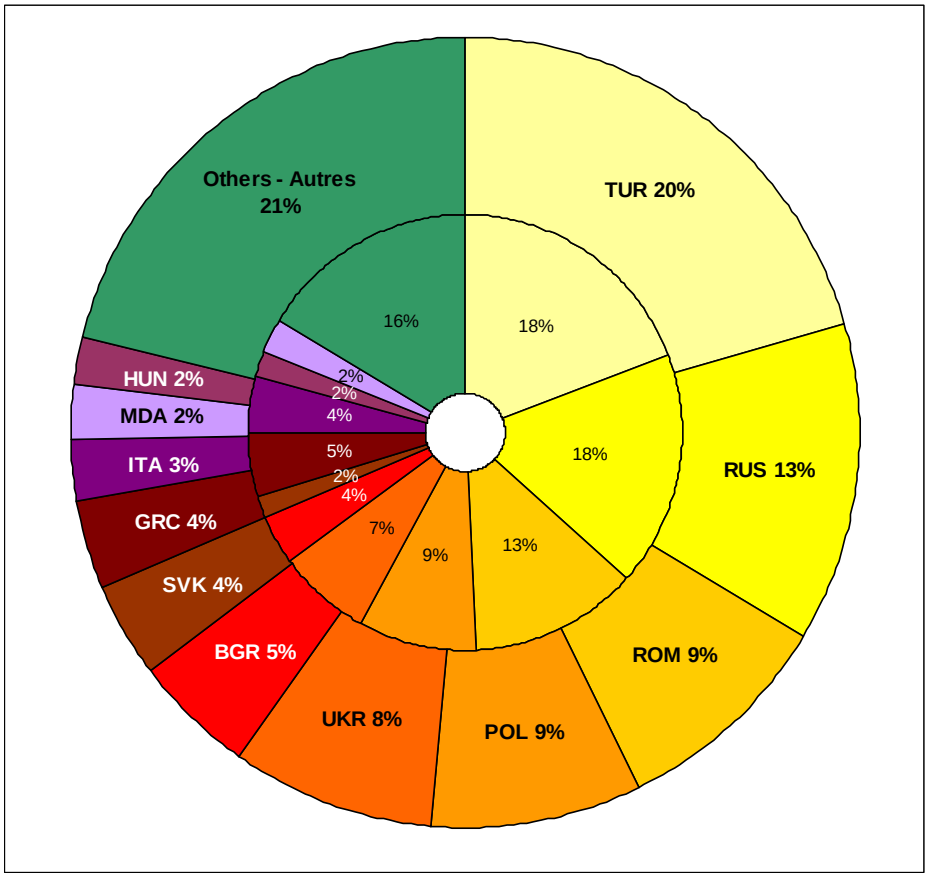
The data in Figures 14 and 15 (outer rings), and also those in Figure 16 refer to Table III. The figures presented in the inner rings of Figures 14 and 15 refer to 2009 data.

Figure 14. New leading cases per state in 2010 (outer ring) and in 2009 (inner ring) in relation to the total number of new leading cases which became final between 1 January and 31 December



The proportion of new leading cases increased in 2010 for Bulgaria, Croatia, Moldova and United Kingdom. It decreased for France, Greece, Italy Poland, the Russian Federation, Turkey and Ukraine and has remained stable for Romania.

Figure 15. Total of new cases per state which became final in 2010 (outer ring) and in 2009 (inner ring) in relation to the total number of new cases

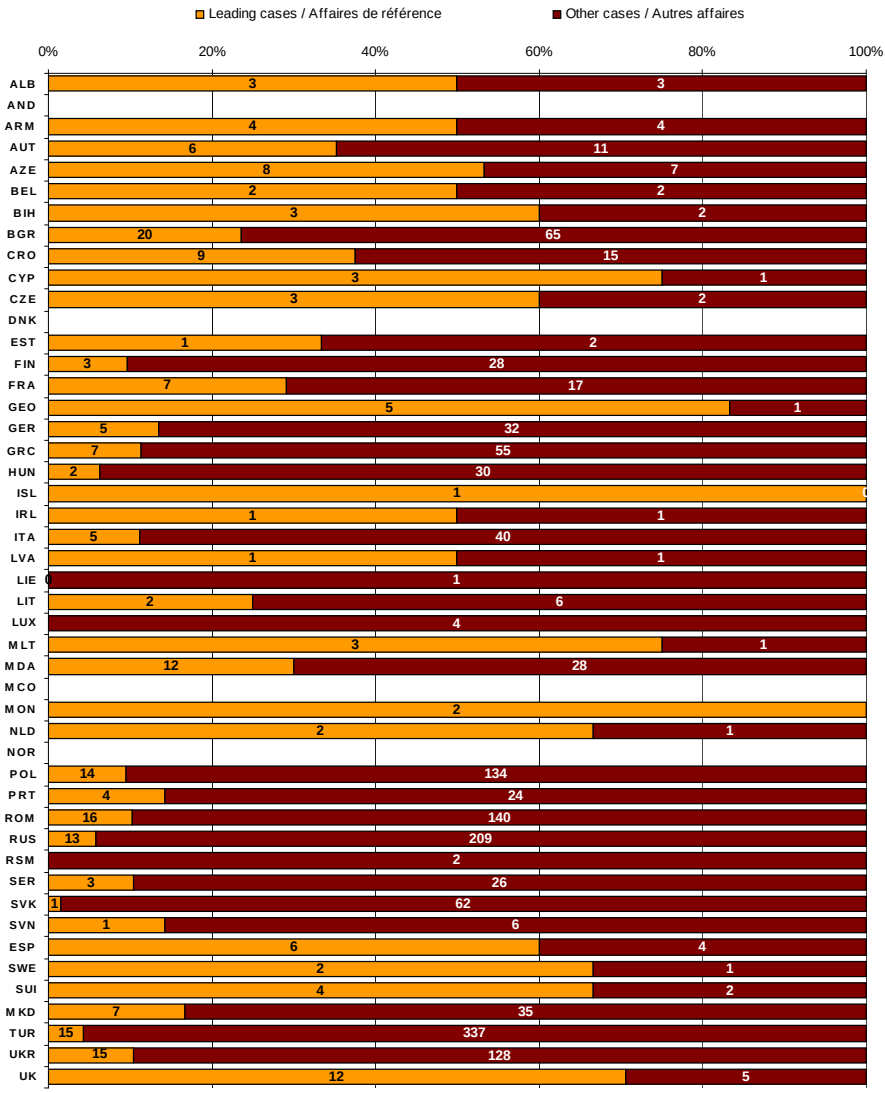


When considering all new cases which became final in 2010, without any distinction between leading and other types of cases, the states with an increased proportion of new cases, as compared to 2009, were in particular Turkey, Ukraine, Bulgaria, Slovak Republic. The proportion of new cases decreased for the Russian Federation, Romania, Greece, Italy, with Poland, Moldova and Hungary keeping in 2010 the same proportion of new cases as in 2009.

Table III. Types of new judments (or decisions) which became final in 2010 – by state – details

State	Leading cases		Clone/repetitive or isolated cases		Cases by state in relation to the global number of cases	
	Number	% of the total of cases by state	Number	% of the total of cases by state	Number	% of the total of cases for all states
ALB	3	50.00%	3	50.00%	6	0.35%
AND					0	0.00%
ARM	4	50.00%	4	50.00%	8	0.47%
AUT	6	35.29%	11	64.71%	17	0.99%
AZE	8	53.33%	7	46.67%	15	0.88%
BEL	2	50.00%	2	50.00%	4	0.23%
BIH	3	60.00%	2	40.00%	5	0.29%
BGR	20	23.53%	65	76.47%	85	4.97%
CRO	9	37.50%	15	62.50%	24	1.40%
CYP	3	75.00%	1	25.00%	4	0.23%
CZE	3	60.00%	2	40.00%	5	0.29%
DNK						0.00%
EST	1	33.33%	2	66.67%	3	0.18%
FIN	3	9.68%	28	90.32%	31	1.81%
FRA	7	29.17%	17	70.83%	24	1.40%
GEO	5	83.33%	1	16.67%	6	0.35%
GER	5	13.51%	32	86.49%	37	2.16%
GRC	7	11.29%	55	88.71%	62	3.63%
HUN	2	6.25%	30	93.75%	32	1.87%
ISL	1	100.00%	0	0.00%	1	0.06%
IRL	1	50.00%	1	50.00%	2	0.12%
ITA	5	11.11%	40	88.89%	45	2.63%
LVA	1	50.00%	1	50.00%	2	0.12%
LIE	0	0.00%	1	100.00%	1	0.06%
LIT	2	25.00%	6	75.00%	8	0.47%
LUX			4	100.00%	4	0.23%
MLT	3	75.00%	1	25.00%	4	0.23%
MDA	12	30.00%	28	70.00%	40	2.34%
MCO					0	0.00%
MON	2	100.00%			2	0.12%
NLD	2	66.67%	1		3	0.18%
NOR					0	0.00%
POL	14	9.46%	134	90.54%	148	8.65%
PRT	4	14.29%	24	85.71%	28	1.64%
ROM	16	10.26%	140	89.74%	156	9.12%
RUS	13	5.86%	209	94.14%	222	12.98%
RSM			2	100.00%	2	0.12%
SER	3	10.34%	26	89.66%	29	1.70%
SVK	1	1.59%	62	98.41%	63	3.68%
SVN	1	14.29%	6	85.71%	7	0.41%
ESP	6	60.00%	4	40.00%	10	0.58%
SWE	2	66.67%	1	33.33%	3	0.18%
SUI	4	66.67%	2	33.33%	6	0.35%
MKD	7	16.67%	35	83.33%	42	2.46%
TUR	15	4.26%	337	95.74%	352	20.58%
UKR	15	10.34%	130	89.66%	145	8.48%
UK	12	70.59%	5	29.41%	17	0.99%
TOTAL	**233**	**14%**	**1477**	**86%**	**1710**	**100.00%**

Figure 16. Types of new judgments (or decisions) which became final in 2010 by state (leading, clone/repetitive, isolated cases)



C.4. Respect of payment deadlines expiring in 2010

If the European Court of Human Rights finds that there has been a violation of the European Convention on Human Rights, it can afford just satisfaction to the injured party.

The payment of certain sums can also be provided for by a judgment or, since 1 June 2010, a decision taking note of a friendly settlement between the parties. In both cases, payment is usually expected within three months after the judgment has become final and default interest can be imposed in case of late payment.

In certain cases, the European Court of Human Rights reserves the issue of just satisfaction and delivers a judgment on this matter at a subsequent date. The statistics presented in this section include the judgments on just satisfaction which became final during the year.[27]

The data on respect of payment deadlines concern all cases in respect of which just satisfaction awards became due for payment in 2010. Cases where no award was made, as well as cases where the deadline expired before 1 January 2010 or after 31 December 2010, are excluded. Figures 17 and 18 refer to the data in Table IV, page 54, as regards 2010 (outer ring); for the data concerning 2009 (inner ring) see the 2009 *Annual report*.

It should be noted that the data presented reflect only the information received *and assessed* up to 31 December.

Accordingly, where confirmation of payment has been received and the terms of the judgment regarding just satisfaction appear to have been respected, the case is identified as "paid within the deadlines".

Cases are classified as "paid after the deadline" where the confirmation of payment received shows that the payment was made after the deadline for payment set by the judgment. It can be noted that the payments made after the deadlines are the exception: 11% in 2009 and 13% in 2010. Cases are classified as "paid after the deadline" where the confirmation of payment received shows that the payment was made after the deadline for payment set by the judgment. Payments made after the deadlines are the exception: 11% in 2009 and 13% in 2010. It should be noted that late payments may be due to special requests from applicants or to the submission of incomplete payment documentation (bank references, powers of attorneys etc…) to responsible government bodies.

All other cases, where no information has been received or is incomplete are shown as "pending for control of payment" according to the data available at 31 December.

The cases where the lack of information on the payment can be explained by the recent expiry of the payment deadlines, are identified in Figures 17 and 18 and Table IV as "cases pending for control of payment for less than six months". They correspond to cases which at 31 December were registered under former section 3.a.

Cases in which at 31 December more than six months had elapsed since the expiry of the payment deadlines, without confirmation of full payment are presented in the tables as "cases pending for control of payment for more than six months" and correspond to cases which at 31 December were registered under former section 3.b.

It is interesting to note that the percentage of cases without full confirmation of payment and thus presented as "pending for control of payment" remained almost stable between from 2009 to 2010: it was 61% in 2009 and 60% in 2010. However, it should be noted that in 2010 there was an increase in the percentage of cases where full payment remained to be confirmed more than six months after the expiry of the deadlines (these cases increased from 29% to 35%).

27. These judgments are not included in the statistics concerning new cases. The latter only take into account judgments on the merits having become final in the course of the year.

Figure 17. Respect of payment deadlines: situation at 31 December 2010 (outer ring) and at 31 December 2009 (inner ring)

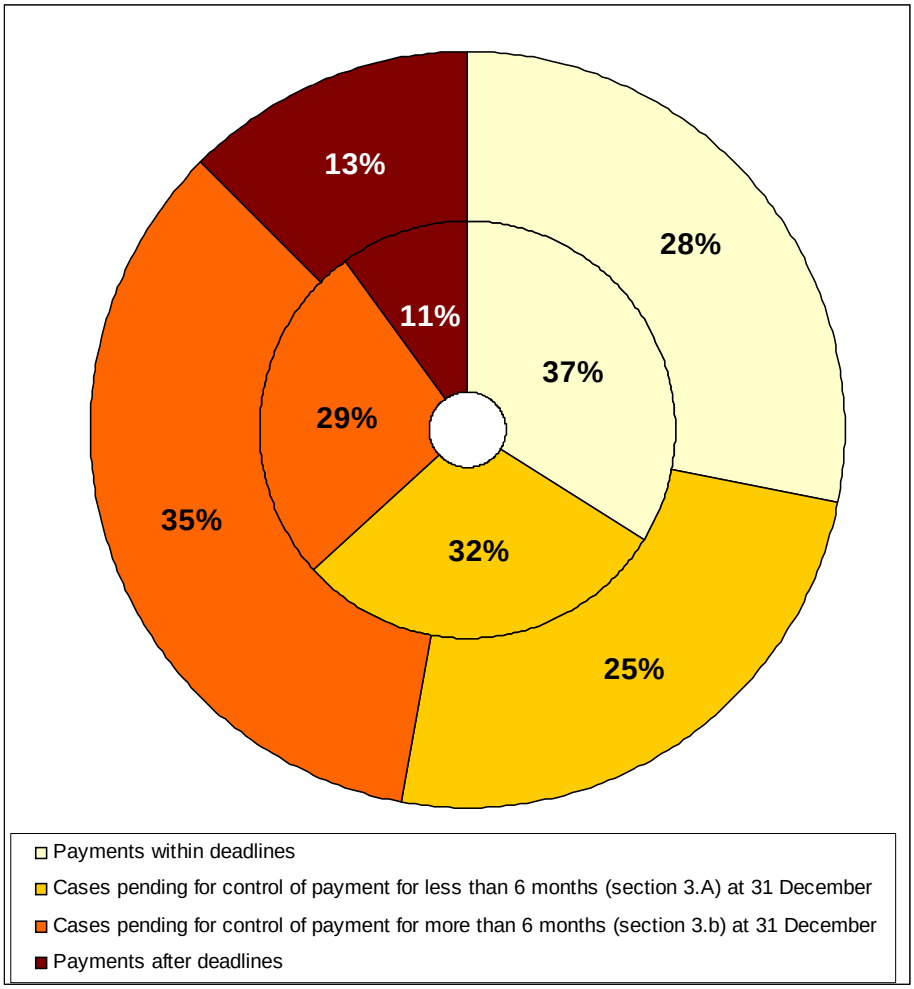
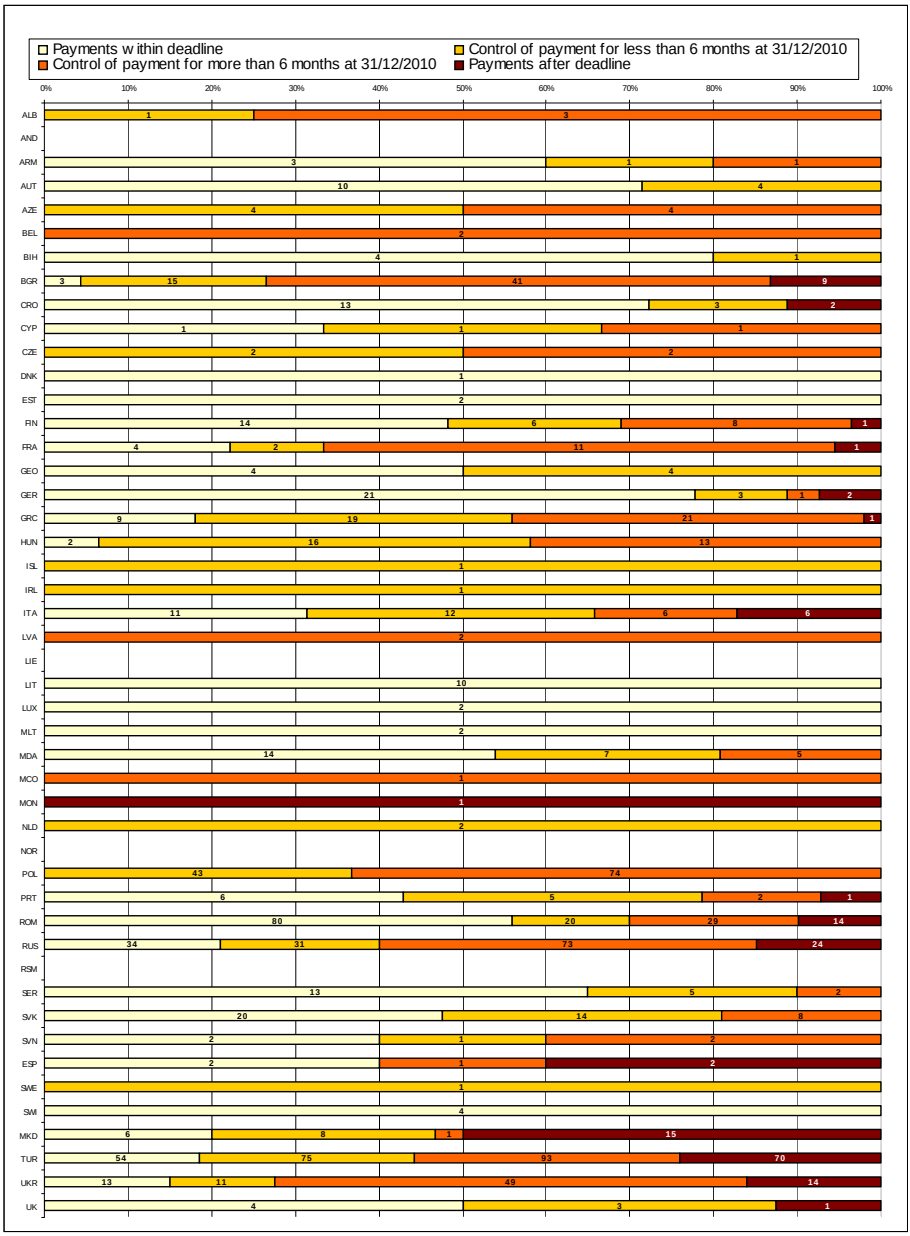


Figure 18. Respect of payment deadlines by states: situation at 31 December 2010



C.5. Just satisfaction awarded in cases which became final between 1 January and 31 December 2010

The data in this chapter take into account payment awards in all new judgments, including those on just satisfaction, which became final in 2010.[28] Figures 19, 20 and 21 refer to the data in Table V, page 55.

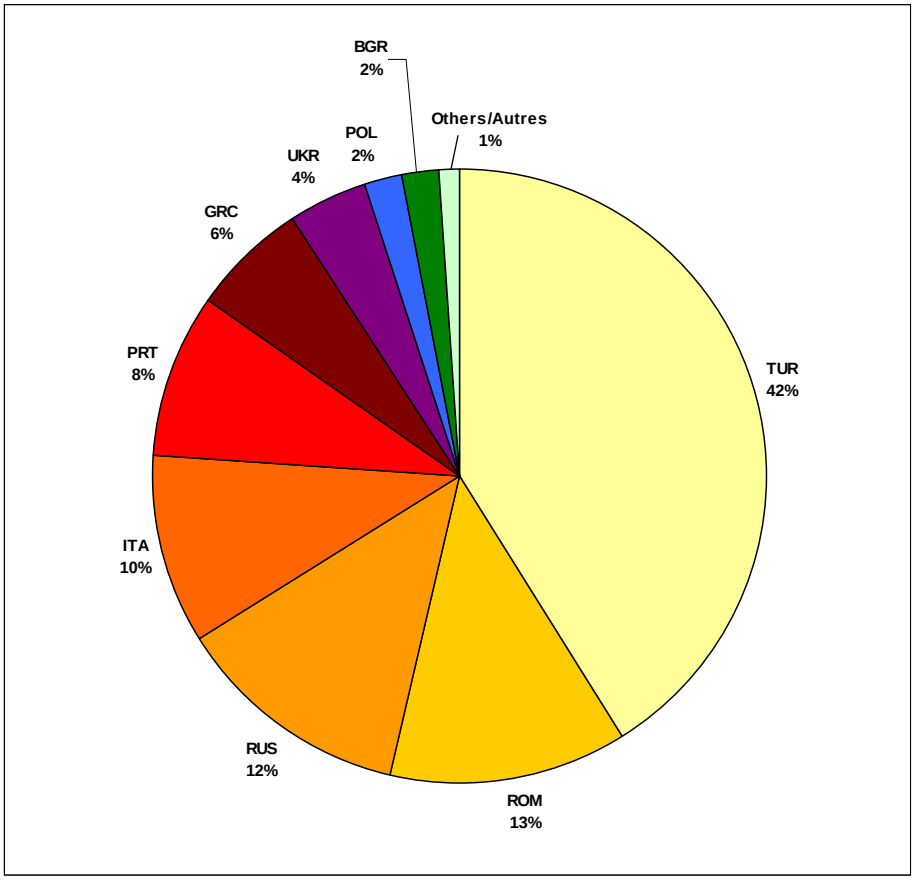
It should be noted that the sums are those indicated in the judgment – usually in euros – and do not include default interest. In order to facilitate comparison, sums awarded in currencies other than the euro have also been converted into euros. For the purposes of these statistics the rate used was that applicable at 31 December 2010.

As regards cases where the European Court of Human Rights left the respondent state the choice between restitution of property and payment of its equivalent market value, as assessed by the Court itself, the latter amount has been included in the data.

In 2010 the total amount awarded by the European Court of Human Rights was 64 032 638 euros.

The highest awards of just satisfaction concerned cases against Turkey, Romania, Russian Federation, Italy, Portugal, Greece, Ukraine, Poland and Bulgaria.

Figure 19. Total just satisfaction awarded in judgments (and decisions) which became final in 2010



28. The total number of new cases considered in this chapter does not correspond to that of new cases in Figures 14 to 16 and Table III, because these tables only included final judgments on the merits and not those on just satisfaction.

Figure 20. Total just satisfaction awarded in judgments (and decisions) which became final in 2010[29]

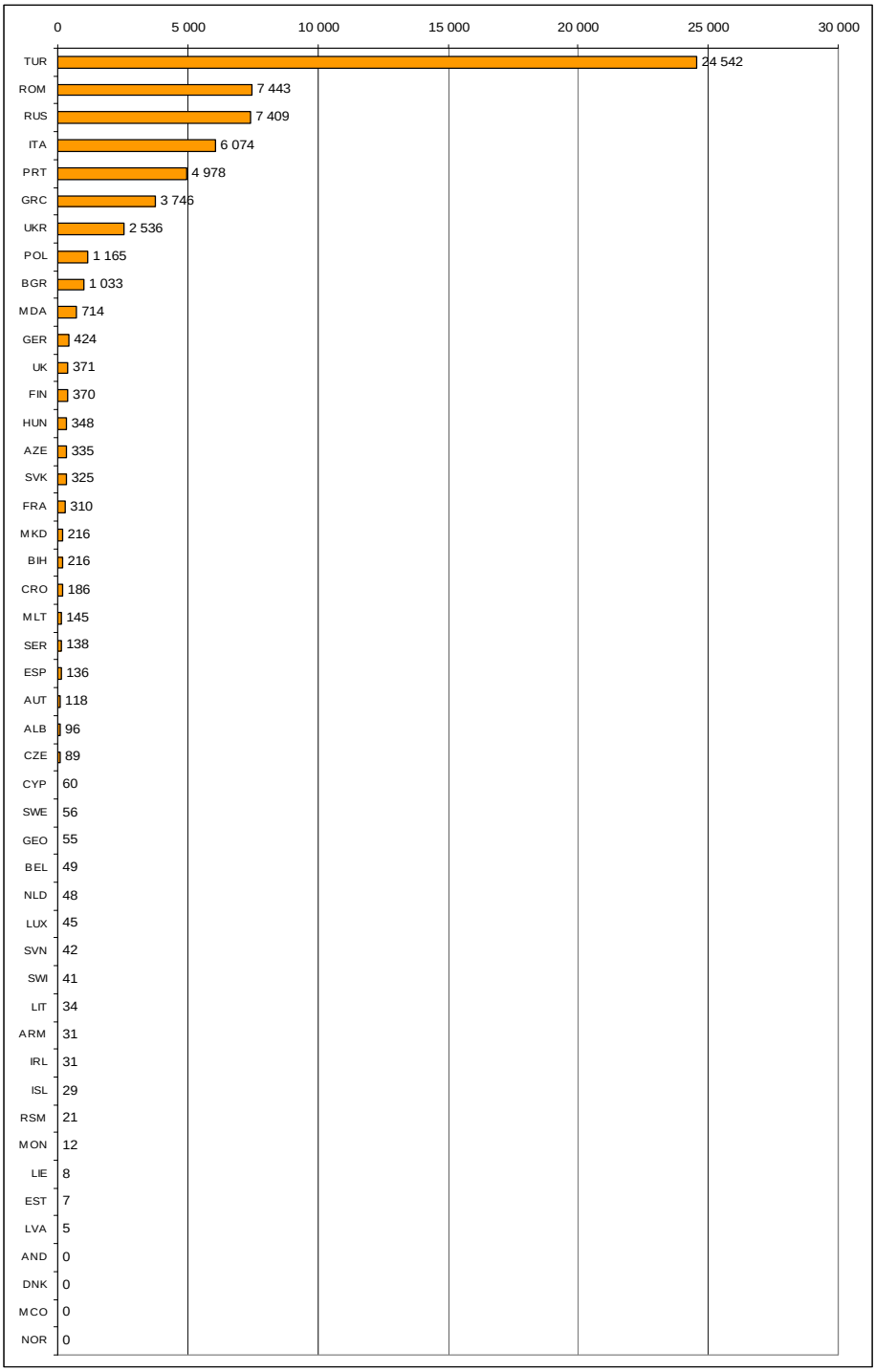
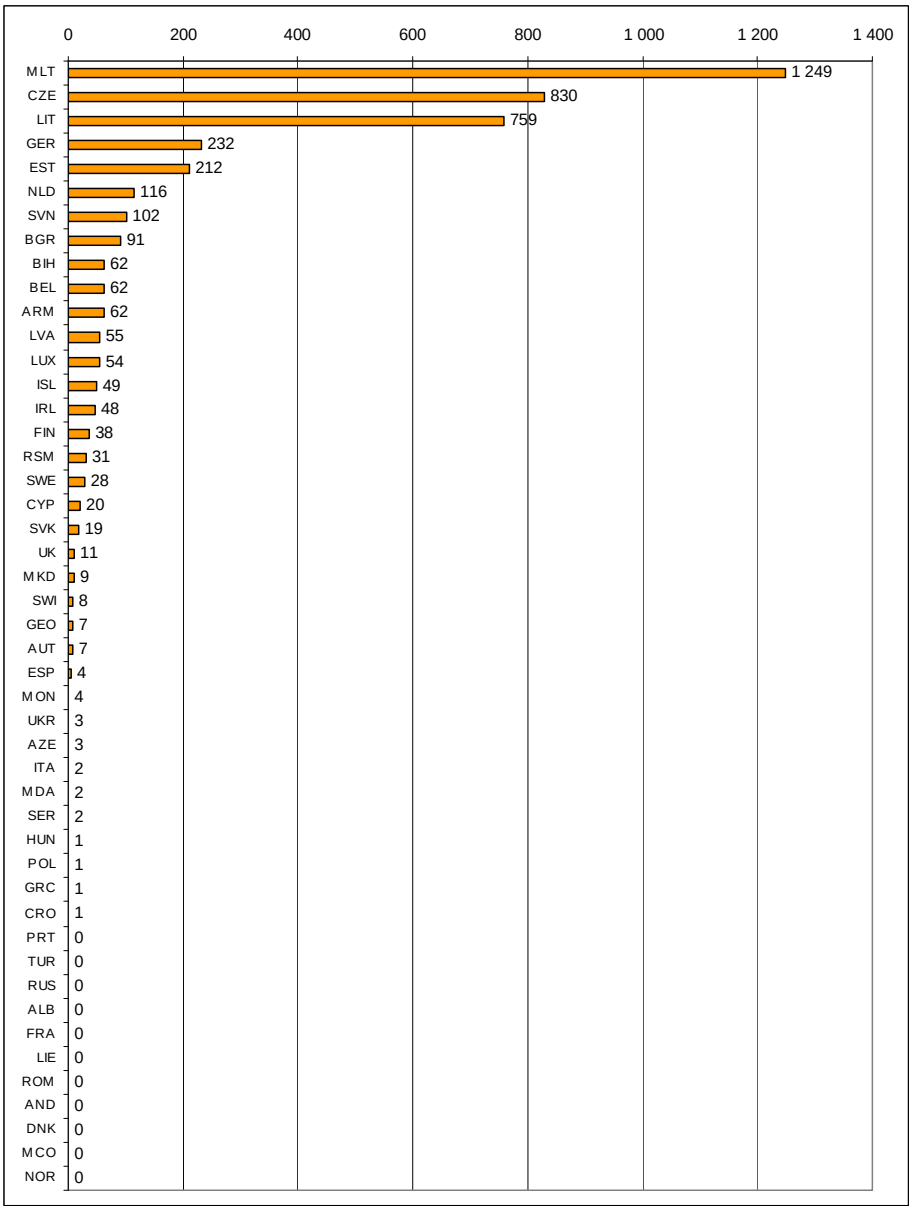


Figure 21. Just satisfaction awarded on average by case in judgments which became final in 2010[30]



29. Figures in thousands of euros, rounded in the graph.
30. Figures in thousands of euros, rounded in the graph.

Table IV. Sums awarded by state in judgments and decisions which became final in 2010*– details

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)	Costs and expenses (€)	Global sum (€)	Internal debts (€)	Total (€)
ALB	5	19 170	7 200	19 500	65 000	4 150			95 850
AND									
ARM	6	5 158	745	25 700		4 500			30 945
AUT	17	6 912	5 000	49 000		61 000	2 500		117 500
AZE	12	27 884	178 880	145 900		9 822			334 602
BEL	3	16 391		26000		23173			49 173
BIH	5	43 186	60000	55000		929		100000	215 929
BGR	82	12 592	201902	449012	254460	106607	7500	13100	1 032 581
CRO	22	8 459		106150		41743	35905	2300	186 098
CYP	3	19 883		52000		3150		4500	59 650
CZE	6	14 775	30000	17000		41647			88 647
DNK									
EST	2	3 604		2 000		208		5 000	7 208
FIN	31	11 922	147080	119350		79621	9935	13600	369 586
FRA	19	16 335	64572	120000	47424	77860		500	310 356
GEO	6	9 215		51000		4289			55 289
GER	32	13 242		238200		50233		135300	423 733
GRC	58	64 582	2376267	1215000		73500		81000	3 745 767
HUN	30	11 585	0	260 000		24 340		63 200	347 540
ISL	1	29 000				29 000			29 000
IRL	2	15 250		20 500		10 000			30 500
ITA	58	104 727	4514327	1051892		507933			6 074 151
LVA	1	5 000		5 000					5 000
LIE	1	8 000		6000		2000			8 000
LIT	8	4 199		17400	10000	3790		2400	33 590
LUX	4	11 325		33800		11500			45 300
MLT	3	48 167	93 000	42 500		9 000			144 500
MDA	39	18 296	5 349	176 600	325 096	50 088	9 000	147 404	713 537
MCO									
MON	2	5 750		11 500					11 500
NLD	3	16 139			2 500	45 918			48 418
NOR									
POL	137	8 503	254385	553740	16000	56144		284578	1 164 847
PRT	19	262 010	4086194	573500	220000	98500			4 978 194
ROM	138	53 936	5874822	647840	650500	96727	3500	169800	7 443 189
RUS	189	39 203	1108496	4991795		342 738	826000	49861	7 409 391
RSM	1	20 500					20 500		20 500
SER	29	4 762		35 700		46 100	52 700	3 600	138 100
SVK	54	6 016	32 188	150 540		15 961		126 150	324 839
SVN	7	5 967		11 500		3 275	26 991		41 766
ESP	7	19 487		50 600	70 000	15 811			136 411
SWE	2	27 853	25000	14000		16705			55 705
SWI	5	8 176	4202	12000		24 676			40 878
MKD	36	5 999		24 000		6 805	185 170		215 975
TUR	287	85 512	15416333	5 098 490	3 021 550	401 629		598 060	24 541 838
UKR	122	20 786	389747	413945	2 400	13 491	2 435	80 080	2 535 894
UK	13	28 551		58 000		313 160			371 160
TOTAL €	**1 507**	**42 490**	**34 875 688**	**16 951 654**	**4 684 930**	**2 727 722**	**1 182 136**	**1 880 433**	**64 032 638**

* Figures rounded to whole number of euros. Sums awarded in national currency have been converted into euros. The amount in euros corresponds to the amount converted and indicated directly in the judgment, or, failing such an indication, the conversion was done at the rate applicable at 31 December 2010.

Table V. Sums awarded in foreign currency*

State	Number of new cases	Pecuniary damages	Global sum	Internal debts	Total	Currency
POL	39		1 127 000		1 127 000	zlotys, PLN
RUS	2			26 449	26 449	rouble, RUR
TUR	1			9 200 000 000	9 200 000 000	former Turkish lira, TRL
UKR	11	225 614		16 966 112	17 191 725	hryvna, UAH

* In Table IV, page 54, sums are converted into euros at the rate applicable at 31 December 2009, in order to allow the presentation of the total amount in euros. An exact calculation would take into account the rate applicable at the date of payment.

Pecuniary and non-pecuniary damages cover sums awarded by the European Court of Human Rights for both pecuniary and non-pecuniary damages, without any distinction being made between the two.

Global sum refers to sums awarded by the European Court of Human Rights (often in friendly settlements) without any further detail. The sums can therefore cover all kinds of damages as well as costs and expenses.

Internal debts cover those sums which the European Court of Human Rights has awarded under this specific heading in this judgment. Normally such sums cover "internal debt" due under a domestic judgment which has not been executed.

C.6. Length of execution of leading cases pending before the Committee of Ministers at 31 December 2010

The Court's judgments in general do not set an express deadline for the adoption of execution measures, other than the payment of just satisfaction. It is thus difficult to assess in absolute terms the acceptable length of execution of a judgment. Such assessment forms one of the main parts of the supervision by the Committee of Ministers and takes into account, *inter alia*, the type of measures required, any action plan and the obstacles, if any, encountered by states. Because of the great variety of situations, the time needed for execution can be very different from case to case.

In 2010 the percentage of leading cases pending for more than two years has increased as compared to 2009, while the percentage of cases pending for less than two years has decreased.

Note that the following tables do not include cases where only the formal adoption of a final resolution is awaited (under section 6).

Furthermore, these data only reflect the information received and assessed up to 31 December 2010.

Accordingly, where no information concerning the execution measures has been received, is incomplete or still under assessment, the cases are shown as still pending, according to the data available at 31 December of the year in question, although the relevant measures might have been taken.[31] Only when the information is received and the Committee of Ministers has concluded that the measures taken are sufficient for the purposes of Article 46 is the examination in principle closed and a final resolution prepared and adopted.

Moreover, it should be borne in mind that in many cases appearing as "pending", important interim measures have been taken to limit the possibilities of new violations awaiting the entry into force of more permanent measures, whether legislative or not.

Figures 22 and 23 (outer rings) and Figure 24 refer to the data in Table VI, page 59. The figures in the inner rings of Figures 22 and 23 refer to the *Annual report* 2009.

31. For instance, a number of cases appear as "pending" due to outstanding problems with payment of just satisfaction, while all other execution measures have been taken.

Figure 22. Leading cases, by state, pending for more than two years at 31 December 2010 (outer ring) and at 31 December 2009 (inner ring)

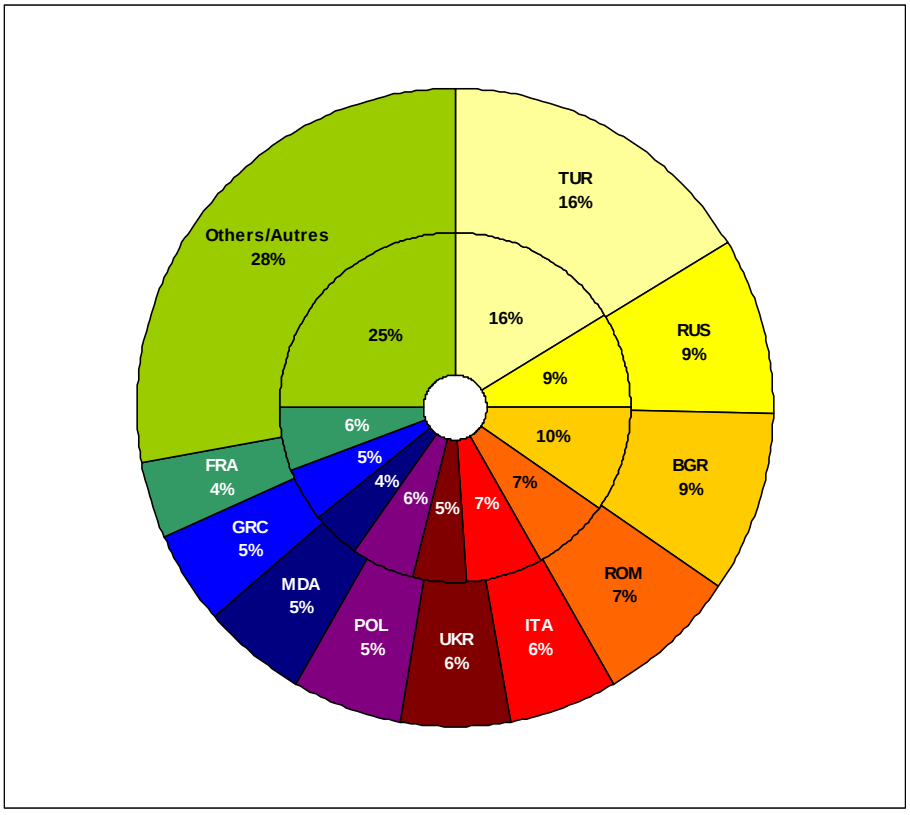


Figure 23. Length of leading cases pending before the Committee of Ministers – global situation at 31 December 2010 (outer ring) and at 31 December 2009 (inner ring)

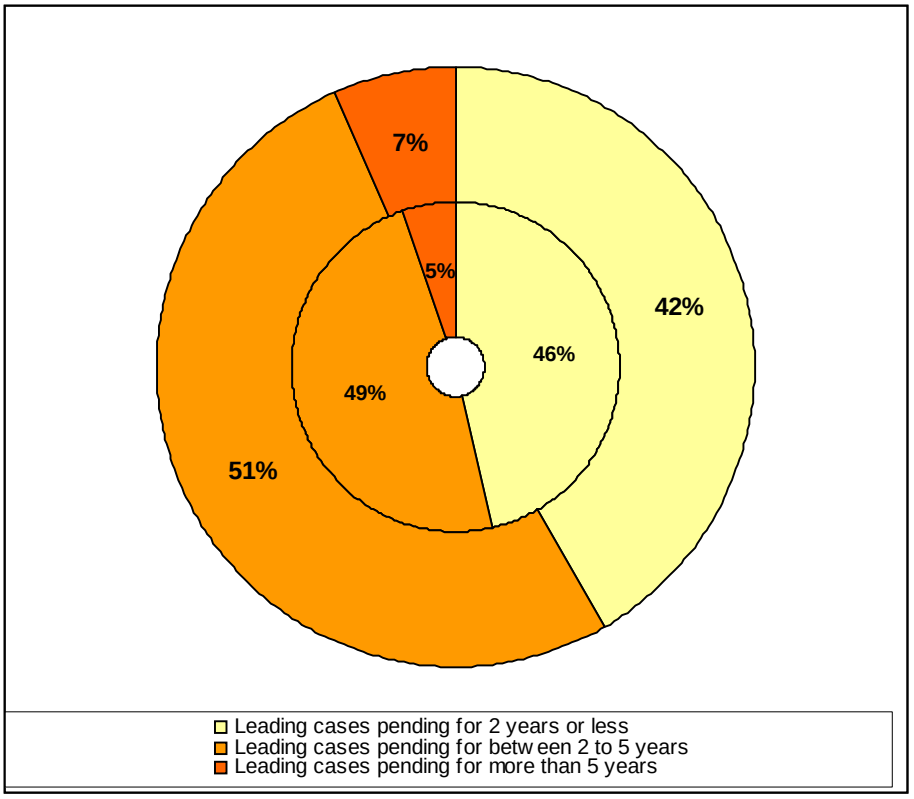


Figure 24. Leading cases pending before the Committee of Ministers at 31 December 2010 by state

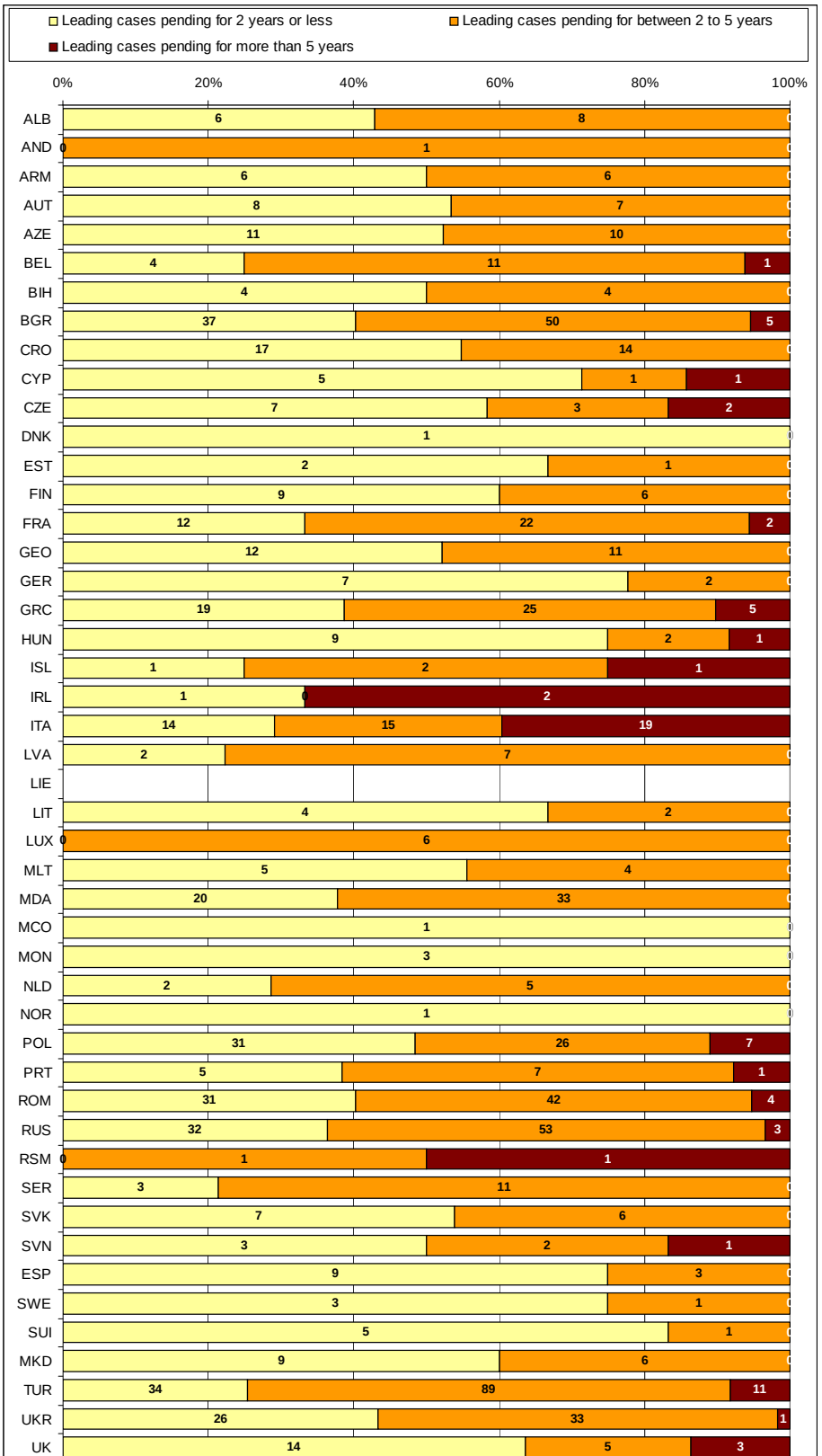


Table VI. Leading cases pending before the Committee of Ministers at 31 December 2010 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6.2)*

State	Leading cases pending for 2 years or less		Leading cases pending for between 2 to 5 years		Leading cases pending for more than 5 years	
	Number	%	Number	%	Number	%
ALB	6	42.86%	8	57.14%	0	0.00%
AND	0	0.00%	1	100.00%	0	0.00%
ARM	6	50.00%	6	50.00%	0	0.00%
AUT	8	53.33%	7	46.67%	0	0.00%
AZE	11	52.38%	10	47.62%	0	0.00%
BEL	4	25.00%	11	68.75%	1	6.25%
BIH	4	50.00%	4	50.00%	0	0.00%
BGR	37	40.22%	50	54.35%	5	5.43%
CRO	17	54.84%	14	45.16%	0	0.00%
CYP	5	71.43%	1	14.29%	1	14.29%
CZE	7	58.33%	3	25.00%	2	16.67%
DNK	1	100.00%	0	0.00%	0	0.00%
EST	2	66.67%	1	33.33%	0	0.00%
FIN	9	60.00%	6	40.00%	0	0.00%
FRA	12	33.33%	22	61.11%	2	5.56%
GEO	12	52.17%	11	47.83%	0	0.00%
GER	7	77.78%	2	22.22%	0	0.00%
GRC	19	38.78%	25	51.02%	5	10.20%
HUN	9	75.00%	2	16.67%	1	8.33%
ISL	1	25.00%	2	50.00%	1	25.00%
IRL	1	33.33%	0	0.00%	2	66.67%
ITA	14	29.17%	15	31.25%	19	39.58%
LVA	2	22.22%	7	77.78%	0	0.00%
LIE						
LIT	4	66.67%	2	33.33%	0	0.00%
LUX	0	0.00%	6	100.00%	0	0.00%
MLT	5	55.56%	4	44.44%	0	0.00%
MDA	20	37.74%	33	62.26%	0	0.00%
MCO	1	100.00%	0	0.00%	0	0.00%
MON	3	100.00%	0	0.00%	0	0.00%
NLD	2	28.57%	5	71.43%	0	0.00%
NOR	1	100.00%	0	0.00%	0	0.00%
POL	31	48.44%	26	40.63%	7	10.94%
PRT	5	38.46%	7	53.85%	1	7.69%
ROM	31	40.26%	42	54.55%	4	5.19%
RUS	32	36.36%	53	60.23%	3	3.41%
RSM	0	0.00%	1	50.00%	1	50.00%
SER	3	21.43%	11	78.57%	0	0.00%
SVK	7	53.85%	6	46.15%	0	0.00%
SVN	3	50.00%	2	33.33%	1	16.67%
ESP	9	75.00%	3	25.00%	0	0.00%
SWE	3	75.00%	1	25.00%	0	0.00%
SUI	5	83.33%	1	16.67%	0	0.00%
MKD	9	60.00%	6	40.00%	0	0.00%
TUR	34	25.37%	89	66.42%	11	8.21%
UKR	26	43.33%	33	55.00%	1	1.67%
UK	13	61.90%	5	23.81%	3	14.29%
TOTAL	441	41.76%	544	51.52%	71	6.72%

* The length of execution is calculated as from the date at which the judgment became final.

Appendix 3: Where to find further information on execution of the European Court of Human Rights judgments

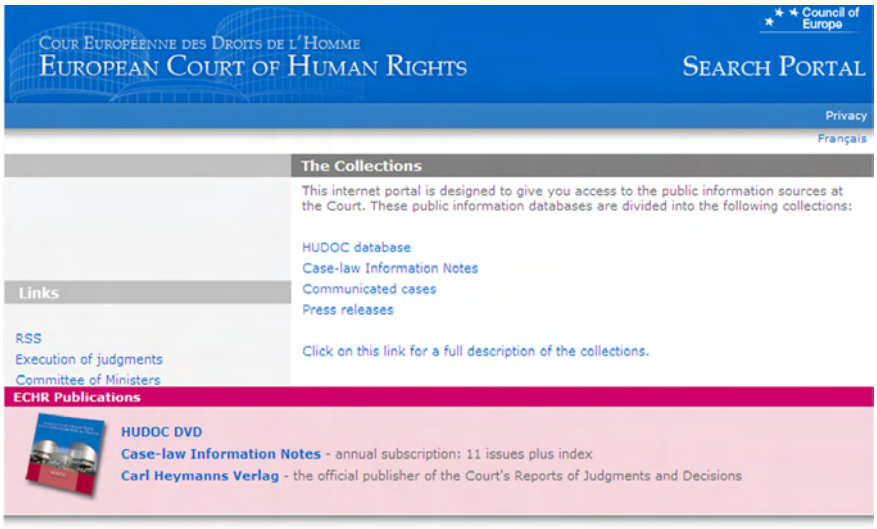
Further information on the supervision by the CM of the execution of ECtHR judgments, on the cases mentioned in the Annual reports as well as on all other cases is available on

- the CM website: **http://www.coe.int/cm/**, and also from

• the special Council of Europe website dedicated to the execution of the ECtHR's judgments, kept by the Department for the Execution of Judgments of the ECtHR (Directorate General of Human Rights and Legal Affairs), at the following address: **www.coe.int/execution**

This website contains notably overview of pending cases, sortable by state, type of supervision procedure, type of violation and date of judgment. It also contains a number of collection of reference documents.

• The text of resolutions adopted by the CM can also be found through the HUDOC database on **www.echr.coe.int**. As a general rule, information concerning the state of progress of the adoption of the execution measures required is published some 15 days after each HR meeting.



Appendix 4: List of Final Resolutions adopted in 2010

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)1	12643/02	Moser	AUT	1078	AR 2007, p. 145 AR 2008, p. 167 AR 2009, p. 154
(2010)2	26103/95	Van Geyseghem and 4 other cases	BEL	1078	AR 2007, p.116
(2010)3	31677/96	Watson	FRA	1078	
(2010)4	46096/99 76977/01	Mocie and Desserprit	FRA	1078	
(2010)5	59842/00	Vetter	FRA	1078	AR 2007, p. 137
(2010)6	71611/01	Wisse	FRA	1078	AR 2007, p. 65
(2010)7	15048/03	Mathony	LUX	1078	
(2010)8	45701/99 952/03	Metropolitan Church of Bessarabia and others and Biserica Adevărat Ortodoxă din Moldova and others	MDA	1078	AR 2007, p. 158 AR 2008, p. 174 AR 2009, p. 161
(2010)9	35731/97	Venema	NLD	1078	
(2010)10	1948/04	Salah Sheekh	NLD	1078	AR 2007, p. 71
(2010)11	12148/03	Sanchez Cardenas	NOR	1078	
(2010)12	38187/97	Adali	TUR	1078	AR 2007, p. 38 AR 2008, p. 102
(2010)13	1414/03	Mareš	CZE	1078	AR 2007, p. 117
(2010)14	48548/99	Zich and others	CZE	1078	
(2010)15	20728/05	Vokoun	CZE	1078	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)16	28301/03	S.H.	FIN	1078	
(2010)17	30943/96 31871/96	Sahin and Sommerfeld	GER	1078	
(2010)18	28466/03	Citarella and 12 other cases	ITA	1078	
(2010)19	33866/96	Bogulak and 3 other cases	POL	1078	
(2010)20	75088/01 29288/02	Urbino Rodrigues and Roseiro Bento	PRT	1078	
(2010)21	65402/01	Radu Cornelia Eufrosina	ROM	1078	
(2010)22	6301/05	The Estate of Nitschke	SWE	1078	
(2010)23	51965/99	Yakişir and 4 other cases	TUR	1078	
(2010)24	27961/02	Booth and 7 other cases	UK.	1078	
(2010)25	38000/05	R.K. and A.K.	UK.	1078	
(2010)26	25149/03	Van Houten	NLD	1078	
(2010)27	44330/98	Principe and others	ITA	1078	
(2010)28	9388/02	Cruz Da Silva Coelho	PRT	1078	
(2010)29	17684/02	Rosival and others	SVK	1078	
(2010)30	44298/02	Synnelius and Edsbergs Taxi AB	SWE	1078	
(2010)31	10578/05	Hunt and Miller	UK.	1078	
(2010)32	47441/99	Wood Mark	UK.	1078	
(2010)36	76900/01	Öllinger	AUT	1086	
(2010)37	54645/00	Osinger	AUT	1086	
(2010)38	2293/03	Wieser	AUT	1086	
(2010)39	33400/96	Ernst and others	BEL	1086	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)40	31365/96	Varbanov and 3 other cases	BGR	1086	AR 2008, p. 113
(2010)41	43578/98	I.D.	BGR	1086	
(2010)42	42346/98 40653/98	G .B. and Iorgov	BGR	1086	
(2010)43	23890/02	Phinikaridou	CYP	1086	AR 2009, p. 152
(2010)44	18358/02	Muttilainen	FIN	1086	
(2010)45	70216/01 45830/99	Laaksonen and Juha Nuutinen	FIN	1086	
(2010)46	62236/00	Guilloury	FRA	1086	
(2010)47	75833/01	Schemkamper	FRA	1086	
(2010)48	49580/99	Santoni	FRA	1086	
(2010)49	19421/04	Faure	FRA	1086	
(2010)50	38208/03	Seris	FRA	1086	
(2010)51	77773/01	Flandin	FRA	1086	
(2010)52	45749/06 51115/06	Kaemena and Thöneböhn	GER	1086	
(2010)53	54810/00	Jalloh	GER	1086	AR 2007, p. 45
(2010)54	25691/04	Bukta and others	HUN	1086	AR 2009, p. 171
(2010)55	42211/07	Riolo	ITA	1086	
(2010)56	28320/02 22728/03 24424/03	Guidi, De Pace and Zara	ITA	1086	
(2010)57	57829/00	Vides Aizsardzības Klubs	LVA	1086	
(2010)58	10807/04	Veraart	NLD	1086	AR 2007, p. 160
(2010)59	44760/98	Del Latte	NLD	1086	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)60	50435/99	Rodrigues Da Silva and Hoogkamer	NLD	1086	
(2010)61	7623/04 25053/05	Antunes and Pires and Ferreira Alves No. 3	PRT	1086	
(2010)62	57239/00	Kanala	SVK	1086	
(2010)63	50959/99	Odabaşi and Koçak	TUR	1086	
(2010)64	75836/01	Arslan Adem and 22 other cases	TUR	1086	
(2010)65	8866/04	Yassar Hussain	UK.	1086	
(2010)66	1271/05	Gault	UK.	1086	
(2010)67	13229/03	Saadi	UK.	1086	
(2010)68	10254/03	Drahorád and Drahorádová and 4 other cases	CZE	1086	
(2010)69	74827/01 5868/02	Pavlík and Z.	SVK	1086	
(2010)70	25632/02 21351/03	Stere and others and Stîngaciu and tudor	ROM	1086	
(2010)71	34813/02 27866/03 48913/99	Ömer Aydin, Beker and and Yürekli	TUR	1086	
(2010)72	34740/03	Bozlak and others	TUR	1086	
(2010)73	42572/98	İmret	TUR	1086	
(2010)74	7860/02 7306/02	Mehmet Siddik Eren and others and Baizi	TUR	1086	
(2010)75	60860/00	Tsfayo	UK.	1086	AR 2008, p. 158
(2010)76	28025/03	Kolona	CYP	1086	
(2010)77	70456/01	Sayoud	FRA	1086	
(2010)78	45214/99	Sildedzis	POL	1086	
(2010)79	62617/00	Copland	UK.	1086	AR 2008, p. 164

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)80	13881/02	King	UK.	1086	
(2010)81	515/02 14399/02	Henworth and Massey	UK.	1086	
(2010)82	53746/00	Ivan Ivanov	BGR	1086	
(2010)84	36812/97	Sylvester	AUT	1092	AR 2007, p. 146 AR 2009, p. 154
(2010)85	5356/04	Mazélié	FRA	1092	
(2010)86	7508/02	L.L.	FRA	1092	
(2010)87	12316/04	Asnar	FRA	1092	AR 2009, p. 140
(2010)88	57516/00	Société de gestion du Port de Campoloro and Société fermière de Campoloro	FRA	1092	
(2010)89	58148/00	Société Plon	FRA	1092	
(2010)90	56651/00	Destrehem	FRA	1092	
(2010)91	59480/00	Harizi	FRA	1092	
(2010)92	46044/99	Lallement	FRA	1092	
(2010)93	17997/02	Le Stum	FRA	1092	
(2010)94	64927/01	Palau-Martinez	FRA	1092	
(2010)95	25444/94	Pélissier and Sassi	FRA	1092	
(2010)96	25971/94	Société Proma Di Franco Gianotti	FRA	1092	
(2010)97	71846/01	Rachdad	FRA	1092	
(2010)98	65411/01	Sacilor-Lormines	FRA	1092	
(2010)99	40892/98	Koua Poirrez	FRA	1092	
(2010)100	37637/05 65687/01	Sarnelli and Matteoni and others	ITA	1092	
(2010)101	52763/99	Covezzi and Morselli	ITA	1092	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)102	36455/02	Gurov	MDA	1092	AR 2008, p. 150
(2010)103	37328/97	A.B.	NLD	1092	
(2010)104	45582/99	Lebbink	NLD	1092	
(2010)105	38258/03	Van Vondel	NLD	1092	
(2010)106	46300/99	Marpa Zeeland B.V. and Metal Welding B.V.	NLD	1092	AR 2007, p. 102
(2010)107	50252/99	Sezen	NLD	1092	AR 2008, p.121
(2010)108	60665/00	Tuquabo-Tekle and others	NLD	1092	AR 2007, p. 71
(2010)109	54789/00	Bocos-Cuesta	NLD	1092	AR 2007, p. 126
(2010)110	69966/01	Dacosta Silva	ESP	1092	AR 2008, p. 117
(2010)111	32106/96	Komanický	SVK	1092	
(2010)112	13284/04	Bader and Kanbor	SWE	1092	AR 2007, p. 73
(2010)113	32772/02	Verein Gegen Tierfabriken (VGT) (No. 2)	SUI	1092	AR 2009, p. 171
(2010)114	58757/00	Jäggi	SUI	1092	
(2010)115	21768/02	Selçuk	TUR	1092	AR 2007, p. 152 AR 2008, p. 168
(2010)116	61353/00	Tunceli Kültür Ve Dayanişma Derneği	TUR	1092	AR 2007, p. 181
(2010)117	28602/95	Tüm Haber Sen and Çinar	TUR	1092	AR 2007, p. 177
(2010)118	35765/97	A.D.T.	UK.	1092	
(2010)119	40787/98 59512/00	Hirst and Blackstock	UK.	1092	
(2010)120	18731/91	John Murray and 4 other cases	UK.	1092	AR 2007, p. 139
(2010)121	51796/99	Spasov and 4 other cases	BGR	1092	
(2010)122	44451/98	A.A.U and 35 other cases	FRA	1092	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)123	7091/04 5107/04	Pieri and Djaoui	FRA	1092	
(2010)124	58675/00 53929/00 49699/99	Martinie, Richard-Dubarry and Siffre, Ecoffet and Bernardini	FRA	1092	AR 2007, p. 84 AR 2009, p. 122
(2010)125	53892/00	Lilly France	FRA	1092	
(2010)126	34043/02 73529/01	Mattei and Miraux	FRA	1092	
(2010)127	53946/00	Vaney	FRA	1092	
(2010)128	37876/02	Clément	FRA	1092	
(2010)129	29222/03	Grasso and 6 other cases	ITA	1092	
(2010)130	24423/03 24425/03	Annunziata and Salvatore Piacenti	ITA	1092	
(2010)131	26668/95	Visser	NLD	1092	
(2010)132	34549/97	Meulendijks	NLD	1092	
(2010)133	30381/06	Ferreira Alves No. 5	PRT	1092	
(2010)134	32927/96	Segal and 12 other cases	ROM	1092	
(2010)135	2895/07	Blackgrove	UK.	1092	
(2010)136	30034/04 1303/02	Elahi and Lewis	UK.	1092	
(2010)137	39393/98	M.G.	UK.	1092	
(2010)138	45276/99	Hilal	UK.	1092	
(2010)139	22520/93 517/02	Johnson and Kolanis	UK.	1092	
(2010)140	47676/99 29798/96	Beet and ohers and Lloyd and others	UK.	1092	
(2010)141	33424/96	Nouhaud and others	FRA	1092	
(2010)142	59423/00	SARL Aborcas	FRA	1092	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)143	75699/01 17902/02	Vaturi and Zentar	FRA	1092	
(2010)144	51392/99 48086/99	Göçer and Beumer	NLD	1092	
(2010)145	25525/03	El Majjaoui and Stichting Touba Moskee	NLD	1092	
(2010)146	21413/02	Kansal	UK.	1092	
(2010)147	11810/03 1513/03	Draon and Maurice	FRA	1092	AR 2007, p. 184
(2010)148	48233/99	Almeida Do Couto	PRT	1092	
(2010)149	75129/01	Roşca	ROM	1092	
(2010)150	10793/02	Dura	ROM	1092	
(2010)151	14858/03	C.	UK.	1092	
(2010)152	40016/98	Karner	AUT	1100	
(2010)153	32899/96	Buchberger	AUT	1100	
(2010)154	60553/00 513/05	Malek and Schmidt	AUT	1100	
(2010)155	47650/99	Silvester's Horeca Serv	BEL	1100	
(2010)156	11423/03	Pello	EST	1100	
(2010)157	12157/05	Liivik	EST	1100	
(2010)158	2192/03 38241/04	Harkmann and Bergmann	EST	1100	
(2010)159	14659/04 16855/04	Dorozhko and Pozharskiy	EST	1100	
(2010)160	52206/99	Mokrani	FRA	1100	
(2010)161	50278/99	Aoulmi	FRA	1100	
(2010)162	59450/00	Ramirez Sanchez	FRA	1100	AR 2007, p. 173
(2010)163	38736/04	FC Mretebi	GEO	1100	AR 2009, p. 126

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)164	12979/04	Gorelishvili	GEO	1100	
(2010)165	38460/97	Platakou	GRC	1100	AR 2007, p. 123
(2010)166	48679/99	AEPI S.A. and 3 other cases	GRC	1100	
(2010)167	67629/01	Assymomitis	GRC	1100	
(2010)168	66294/01	Boulougouras	GRC	1100	
(2010)169	47760/99	Koskinas	GRC	1100	
(2010)170	66810/01	Kliafas and others	GRC	1100	
(2010)171	33554/03	Lykourezos	GRC	1100	AR 2008, p. 198
(2010)172	33932/06	Todorova	ITA	1100	
(2010)173	35972/97 26740/02	Grande Oriente d'Italia di Palazzo Giustiniani and Grande Oriente d'Italia di Palazzo Giustiniani No. 2	ITA	1100	
(2010)174	36919/02 23373/03	Armonienė and Biriuk	LIT	1100	
(2010)175	10425/03	Gulijev	LIT	1100	AR 2009, p. 117
(2010)176	37259/04	Švenčionienė	LIT	1100	
(2010)177	2345/02	Said	NLD	1100	
(2010)178	52391/99	Ramsahai	NLD	1100	AR 2007, p. 33
(2010)179	6830/05	Pijevschi	PRT	1100	
(2010)180	38565/97	Cotleț	ROM	1100	AR 2008, p. 119
(2010)181	57808/00	Albina	ROM	1100	
(2010)182	58472/00	Dima	ROM	1100	
(2010)183	1483/02	Puig Panella	ESP	1100	
(2010)184	71907/01	Kavakçi and 3 other cases	TUR	1100	AR 2008, p. 198

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)185	61406/00	Gurepka	UKR	1100	AR 2009, p. 127
(2010)186	28212/95	Benjamin and Wilson	UK.	1100	AR 2007, p. 63
(2010)187	36536/02	B. and L.	UK.	1100	
(2010)188	53820/00 68079/01	Boneva and Nikola Nikolov	BGR	1100	
(2010)189	31036/02	Todev	BGR	1100	
(2010)190	31407/07	Malkov	EST	1100	
(2010)191	67114/01	Coorbanally and 9 other cases	FRA	1100	
(2010)192	43837/02	Castren-Niniou	GRC	1100	
(2010)193	32259/02	Iera Moni Profitou Iliou Thiras	GRC	1100	
(2010)194	2507/02	Kurti	GRC	1100	
(2010)195	73717/01 75483/01 21091/04	Alija, Dimitrellos and Papa	GRC	1100	
(2010)196	9747/04	Gorou No. 4	GRC	1100	
(2010)197	52464/99 14189/05 7629/05	Papadopoulos Georgios, Karanakis and Roidakis	GRC	1100	
(2010)198	75898/01	Ioannidou-Mouzaka	GRC	1100	
(2010)199	32550/03 8073/05 15581/05	Gennari, Perinati and Pierotti	ITA	1100	
(2010)200	17712/03	Melegari and 4 other cases	ITA	1100	
(2010)201	15625/04	Bagarella	ITA	1100	
(2010)202	24950/06	Montani	ITA	1100	
(2010)203	16631/04	Zarb	MLT	1100	
(2010)204	74154/01 30303/03	Braga and Nistas Gmbh	MDA	1100	

Resolution CM/ ResDH No.	Application No.	Title of the leading case	State	HR Meeting	See, for further details, Annual report (AR)
(2010)205	46639/99	Ban	ROM	1100	
(2010)206	32925/96	Cretu and 8 other cases	ROM	1100	
(2010)207	41316/98 60847/00	Atça and others and Saçik	TUR	1100	
(2010)208	25142/94	Selim Sadak	TUR	1100	
(2010)209	17534/03 30944/04	Ceyran and Kara	TUR	1100	
(2010)210	15360/05 44307/04 42900/04	Coşkun, Güçlü and Yener and Albayrak	TUR	1100	
(2010)211	47297/99	Bülbül	TUR	1100	
(2010)212	68514/01	Yilmaz and Kiliç	TUR	1100	
(2010)213	23924/94	C.A.R. S.R.L. and 12 other cases	TUR	1100	
(2010)214	30308/96	Faulkner and 25 other cases	UK.	1100	
(2010)215	12268/03	Hachette Filipacchi Associés (« Ici Paris »)	FRA	1100	
(2010)216	17070/05	Farhi	FRA	1100	
(2010)217	28340/02	Examiliotis No. 2	GRC	1100	
(2010)218	10162/02	Eko-Elda Avee	GRC	1100	AR 2008, p. 191
(2010)219	15123/03	Volovik	UKR	1100	
(2010)220	49781/99	Florică	ROM	1100	
(2010)221	53507/99	Swedish Transport Workers Union	SWE	1100	

Appendix 5: Cases the examination of which has been in principle closed in 2010 on the basis of the execution information received (cases examined under section 6.1)

As far as groups of cases are concerned, only the references of the leading case are indicated..

Application No.	Name of the leading case(s)	State	Meeting	See, for further details, Annual report (AR)
31365/96	Varbanov	BGR	1078	AR 2008, p. 113
39269/98	Kepenerov	BGR	1078	
40061/98	M.S.	BGR	1078	
42967/98	Loffelmann	AUT	1078	
49686/99	Gutl	AUT	1078	
55525/00	Hadri-vionnet	SUI	1078	
56272/00	Kayadjieva	BGR	1078	
59444/00	Kania	POL	1078	
73316/01	Siliadin	FRA	1078	AR 2007, p. 47
23779/02	Kozlowski	POL	1078	
24661/02	Buj	CRO	1078	
25471/02	Gemici	TUR	1078	
25632/02	Stere and others	ROM	1078	

Appendix 5. Cases the examination of which has been in principle closed in 2010

Application No.	Name of the leading case(s)	State	Meeting	See, for further details, Annual report (AR)
28320/02	Guidi	ITA	1078	
32772/02	Verein Gegen Tierfabriken Schweiz (VgT)	SUI	1078	AR 2009, p. 167
1606/03	Salihoglu	TUR	1078	
11364/03	Mooren	GER	1078	
21351/03	Stingaciu and Tudor	ROM	1078	
22728/03	De Pace	ITA	1078	
24424/03	Zara	ITA	1078	
28648/03	Lang	AUT	1078	
39051/03	Emonet and others	SUI	1078	
22427/04	Cemalettin Canli	TUR	1078	
17070/05	Farhi	FRA	1078	
29002/06	Schlumpf	SUI	1078	
37794/97	Pannullo and Forte	FRA	1086	
67881/01	Gruais & Bousquet	FRA	1086	
70845/01	Kilic	TUR	1086	
15472/02	Folgero and others	NOR	1086	AR 2007, p. 186 AR 2008, p. 197 AR 2009, p. 177
34425/04	Stojanovic	ser	1086	
12157/05	Liivik	EST	1086	
28070/06	A.	NOR	1086	
32848/06	Moesgaard Petersen	DNK	1086	

Application No.	Name of the leading case(s)	State	Meeting	See, for further details, Annual report (AR)
36244/06	Hasslund	DNK	1086	
49492/06	Carlson	SUI	1086	
38406/97	Albayrak	TUR	1092	
1483/02	Puig Panella	ESP	1092	
10163/02	Johansson	FIN	1092	
17209/02	Zarb Adami	MLT	1092	AR 2007, p. 190
27912/02	Suljagic	BIH	1092	
32186/02	Agga No. 3	GRC	1092	AR 2007, p. 157
33331/02	Agga No. 4	GRC	1092	AR 2007, p. 157
12268/03	Hachette Filipacchi Associés (« Ici Paris »)	FRA	1092	
12979/04	Gorelishvili	GEO	1092	
38736/04	FC Mretebi	GEO	1092	AR 2009, p. 126
6830/05	Pijevschi	PRT	1092	
39058/05	Kyriakides	CYP	1092	
39627/05	Taliadorou	CYP	1092	
15100/06	Pyrgiotakis	GRC	1092	
17056/06	Micallef	MLT	1092	
33932/06	Todorova	ITA	1092	
30324/96	Smoleanu	ROM	1100	
31549/96	Popovici and Dumitrescu	ROM	1100	
35671/97	Lindner and Hammermayer	ROM	1100	

Appendix 5. Cases the examination of which has been in principle closed in 2010

Application No.	Name of the leading case(s)	State	Meeting	See, for further details, Annual report (AR)
39272/98	M.C.	BGR	1100	AR 2008, p. 107
40476/98	Yanakiev	BGR	1100	
44624/98	Prikyan and Angelova	BGR	1100	
47579/99	Raichinov	BGR	1100	
50824/99	Azas	GRC	1100	
55794/00	Efstathiou & Michailidis & Cie Motel Amerika	GRC	1100	
58243/00	Liberty and others	UK.	1100	
58295/00	Zagaria	ITA	1100	
58634/00	Konstantopoulos AE and others	GRC	1100	
58642/00	Interoliva Abee	GRC	1100	
60018/00	Bonev	BGR	1100	
60868/00	Vasilescu	ROM	1100	
61582/00	Biozokat A.E.	GRC	1100	
62740/00	Matheus	FRA	1100	
63778/00	Zeleni Balkani	BGR	1100	
64215/01	De Trana	ITA	1100	
68354/01	Vereinigung Bildender Kunstler	AUT	1100	
68490/01	Stankov	BGR	1100	
73836/01	Organochimika Lipasmata Makedonias A.E.	GRC	1100	
73957/01	Varga	ROM	1100	
75101/01	Grecu	ROM	1100	AR 2007, p. 127

Application No.	Name of the leading case(s)	State	Meeting	See, for further details, Annual report (AR)
76576/01	Fesar	CZE	1100	AR 2009, p. 113
399/02	Bocellari and Rizza	ITA	1100	
2531/02	Athanasiou and others	GRC	1100	
4227/02	Iorga	rom	1100	
5048/02	Macovei and others	ROM	1100	
7893/02	Ghibusi	ROM	1100	
17305/02	Zacharakis	GRC	1100	
20594/02	Tzvyatkov	BGR	1100	
24528/02	Borovsky	SVK	1100	
28336/02	Grifhorst	FRA	1100	
2141/03	Vrioni and others	ALB	1100	
6489/03	Karaman	TUR	1100	
15741/03	Visan	ROM	1100	
16382/03	Bota	ROM	1100	
17771/03	Precup	ROM	1100	
26141/03	Fiala	CZE	1100	
26634/03	Kriz	CZE	1100	
27726/03	Mezl	CZE	1100	
28586/03	Czarnowski	POL	1100	
30431/03	Vajagic	CRO	1100	AR 2009, p. 126
32730/03	Ouzounoglou	GRC	1100	

Appendix 5. Cases the examination of which has been in principle closed in 2010

Application No.	Name of the leading case(s)	State	Meeting	See, for further details, Annual report (AR)
39973/03	Moon	FRA	1100	
4234/04	Popescu Sergiu	ROM	1100	
7510/04	Kontrova	SVK	1100	
7550/04	Reslova	CZE	1100	AR 2008, p. 168
18642/04	Smatana	CZE	1100	AR 2009, p. 113
22755/04	Chruscinski	POL	1100	
24488/04	Guillard	FRA	1100	
31283/04	Orr	NOR	1100	
1633/05	Koudelka	CZE	1100	
1905/05	Perre e altri	ITA	1100	
14044/05	Zavrel	CZE	1100	
31276/05	Women on waves and others	PRT	1100	
995/06	Andelova	CZE	1100	AR 2009, p. 155
7333/06	Lombardo and others	MLT	1100	
47486/06	Khan A.W.	UK.	1100	
4514/07	Bongiorno and others	ITA	1100	
30506/07	Leone	ITA	1100	
40589/07	Sartory	FRA	1100	
1820/08	Omojudi	UK.	1100	

Appendix 6: List of Interim Resolutions adopted in 2010

As far as groups of cases are concerned, only the references of the leading case are given.

Application No.	Leading Case(s)	State	Meeting	See, for further details, Annual report (AR)	Resolution CM/ResDH No.
46347/99	**Xenides-Arestis** (judgments of 22/12/2005, final on 22/03/2006 and of 07/12/2006, final on 23/05/2007)	TUR	1078	AR 2007, p. 185 AR 2008, p. 196 AR 2009, p. 176	(2010)33
34422/97	**Oliveira Modesto and others** (judgment of 08/06/2000, final on 08/09/2000) and other similar cases *Excessive length of judicial proceedings*	PRT	1078	AR 2007, p. 92	(2010)34
47095/99	**Kalashnikov** (judgment of 15/07/2002, final on 15/10/2002) and other similar cases *Conditions of detention in remand prisons*	RUS	1078	AR 2007, p. 51	(2010)35
246/07	**Ben Khemais** (judgment of 24/02/2009, final on 06/072009)	ITA	1086	AR 2009, p. 182	(2010)83
40450/04 56848/00	**Yuriy Nikolayevich Ivanov** (judgment of 15/10/2009, final on 15/01/ 2010) and **386 cases against Ukraine** (group of cases **Zhovner**) *Failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities as well as the absence of an effective remedy*	UKR	1100	AR 2007, p. 110 AR 2008, p. 144 AR 2009, p. 138	(2010)222
37104/97 45950/99	**84 cases against Bulgaria** (groups of cases **Kitov** and **Djangozov**) *Excessive length of judicial proceedings*	BGR	1100		(2010)223
/	**2183 cases against Italy** (groups of cases **Luordo** and **Ceteroni**) *Excessive length of judicial proceedings*	ITA	1100	AR 2007, p. 182 AR 2008, p. 128	(2010)224
2015/02	**78 cases against the Slovak Republic** (group of cases **Jakub**) *Excessive length of civil proceedings*	SVK	1100	AR 2008, p. 131	(2010)225

Appendix 7: List of memoranda and other relevant public documents prepared by the Department for the Execution of Judgments of the European Court of Human Rights

As far as groups of cases are concerned, only the references of the leading case are indicated.

Title of the document	Document reference	Date at which the document was declassified	Case(s) (appl. No.)	State	Theme
Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – Outstanding issues concerning the practical modalities of implementation of the new twin track supervision system	CM/Inf/DH(2010)45final	07/12/2010	–	–	Interlaken
Supervision of the execution of the judgments in the case of D.H. and others against Czech Republic, judgment of 13/11/2007 – Grand Chamber	CM/Inf/DH(2010)47	30/11/2010	D.H. (No. 57325/00)	CZE	Roma
Supervision of the execution of the judgments in the case of Oršuš and others against Croatia	CM/Inf/DH(2010)46	30/11/2010	Oršuš (No. 15766/03)	CRO	Roma
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	CM/Inf/DH(2010)37	14/09/2010	–	–	Interlaken
Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – elements for a roadmap Document revised in the light of the discussions at the 1086th "Human Rights" meeting of the Committee of Ministers (01-03 June 2010)	CM/Inf/DH(2010)28rev	29/06/2010	-	–	Interlaken

Title of the document	Document reference	Date at which the document was declassified	Case(s) (appl. No.)	State	Theme
Action of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights	CM/Inf/ DH(2010)26	01/06/2010	Khashiyev (No.57942/00)	RUS	Actions of security forces
Cases concerning the non-enforcement of final domestic decisions in Albania General measures to comply with the European Court's judgments	CM/Inf/ DH(2010)20	01/06/2010	Qufaj Co. /ALB (No. 54268/00) Marini /ALB (No. 3738/02) Gjonbocari/ ALB (No. 10508/02) Driza / ALB (No. 33771/02) Ramadhi/ALB (No. 38222/02) Vrioni / ALB (No. 2141/03) Beshiri/ALB (No. 7352/03) Nuri / ALB (No. 12306/04) Vrioni/ALB and ITA (No. 35720/04) Bajrami/ALB (No. 35853/04) Hamzaraj No. 1 /ALB (No. 45264/04) Bushati/ALB (No. 6397/04) Gjyli/ALB (No. 32907/07)	ALB	Non-enforcement
Cases concerning the non-enforcement of final court or administrative decisions in Serbia. Progress achieved in implementing the Court's judgments and outstanding issues in respect of the general measures	CM/Inf/ DH(2010)25	01/06/2010	–	SER	Non-enforcement
Cases concerning the non-enforcement of final domestic court decisions in Bosnia and Herzegovina Progress achieved in executing the Court's judgments and outstanding issues	CM/Inf/ DH(2010)22	01/06/2010	Jelicic/BIH (No. 41183/02) Karanovic/BIH (No. 39462/ 03))	BIH	Non-enforcement
Round Table on "Effective remedies against non-execution or delayed execution of domestic court decisions" Conclusions of the Round Table held in the Strasbourg, Council of Europe, 15 – 16 March 2010	CM/Inf/ DH(2010)15	22/03/2010	–	–	Non-enforcement

Appendix 8: Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly settlements

(Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies)

Decision adopted at the 964th meeting of the Committee of Ministers – 10 May 2006

The Deputies

1. adopted the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements as they appear at Appendix 4 to the present volume of Decisions and agreed to reflect this decision in the report "Ensuring the continued effectiveness of the European Convention on Human Rights – The implementation of the reform measures adopted by the Committee of Ministers at its 114th Session (12 May 2004)" and in the draft Declaration on "Sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels";

2. decided, bearing in mind their wish that these Rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these Rules shall take effect as from the date of their adoption, as necessary by applying them *mutatis mutandis* to the existing provisions of the Convention, with the exception of Rules 10 and 11.

Following the last ratification required for the entry into force of Protocol No. 14 to the European Convention on Human Rights in February 2010, Rules 10 and 11 have taken effect on 1 June 2010.

I. General provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.
2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.
2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph 4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem.
2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

II. Supervision of the execution of judgments

Rule 6
Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.
2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:
a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and
b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:
i. individual measures[32] have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

32. For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the reopening of impugned domestic proceedings (see on this latter point Recommendation Rec (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

ii. general measures[33] have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

Rule 7
Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.
2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

Rule 8
Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;
b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;
b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;
c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.
4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.
5. In all cases, where an injured party has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 9
Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.
3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

33. For instance, legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.

Rule 10
Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.
3. A referral decision shall take the form of an Interim Resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.
4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

Rule 11
Infringement proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.

2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an Interim Resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.

3. The referral decision of the matter to the Court shall take the form of an Interim Resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

III. Supervision of the execution of the terms of friendly settlements

Rule 12
Information to the Committee of Ministers on the execution of the terms of the friendly settlement

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.
2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

Rule 13
Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,[34] on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

34. In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.

Rule 14
Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 15
Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of the terms of friendly settlements.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

IV. Resolutions

Rule 16
Interim Resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt Interim Resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Rule 17
Final resolution

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.

Appendix 9: Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights

(Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

a. Emphasising High Contracting Parties' legal obligation under Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") to abide by all final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in cases to which they are parties;

b. Reiterating that judgments in which the Court finds a violation impose on the High Contracting Parties an obligation to:

- pay any sums awarded by the Court by way of just satisfaction;
- adopt, where appropriate, individual measures to put an end to the violation found by the Court and to redress, as far as possible, its effects;
- adopt, where appropriate, the general measures needed to put an end to similar violations or prevent them.

c. Recalling also that, under the Committee of Ministers' supervision, the respondent state remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention to abide by the final judgments of the Court;

d. Convinced that rapid and effective execution of the Court's judgments contributes to enhancing the protection of human rights in member states and to the long-term effectiveness of the European human rights protection system;

e. Noting that the full implementation of the comprehensive package of coherent measures referred to in the Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels", adopted by the Committee of Ministers at its 114th Session (12 May 2004), is inter alia intended to facilitate compliance with the legal obligation to execute the Court's judgments;

f. Recalling also that the Heads of State and Government of the member states of the Council of Europe in May 2005 in Warsaw underlined the need for an accelerated and full execution of the judgments of the Court;

g. Noting therefore that there is a need to reinforce domestic capacity to execute the Court's judgments;

h. Underlining the importance of early information and effective co-ordination of all state actors involved in the execution process and noting also the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process;

i. Noting that the Parliamentary Assembly recommended that the Committee of Ministers induce member states to improve or, where necessary, to set up domestic mechanisms and procedures – both at the level of governments and of parliaments – to secure timely and effective implementation of the Court's judgments, through co-ordinated action of all national actors concerned and with the necessary support at the highest political level[35];

j. Noting that the provisions of this recommendation are applicable, mutatis mutandis, to the execution of any decision[36] or judgment of the Court recording the terms of any friendly settlement or closing a case on the basis of a unilateral declaration by the state;

Recommends that member states:

1. designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process. This co-ordinator should have the necessary powers and authority to:

- acquire relevant information;
- liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment; and
- if need be, take or initiate relevant measures to accelerate the execution process;

2. ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;

3. take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;

4. identify as early as possible the measures which may be required in order to ensure rapid execution;

5. facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences;

6. rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;

7. take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case law as well as with the relevant Committee of Ministers' recommendations and practice;

8. disseminate the *vade mecum* prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;

9. as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;

10. where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.

35. Parliamentary Assembly Recommendation 1764 (2006) – "Implementation of the judgments of the European Court of Human Rights".

36. When Protocol No. 14 to the ECHR has entered into force.

Appendix 10: The Committee of Ministers

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg. It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings.

The 47 member states

Albania
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Monaco
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
"The former Yugoslav Republic of Macedonia"
Turkey
Ukraine
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Appendix 11: High Level Conference on the Future of the European Court of Human Rights – Declaration and Action Plan, Interlaken, 19 February 2010

The High Level Conference meeting at Interlaken on 18 and 19 February 2010 at the initiative of the Swiss Chairmanship of the Committee of Ministers of the Council of Europe ("the Conference"):

Expressing the strong commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the European Court of Human Rights ("the Court");

Recognising the extraordinary contribution of the Court to the protection of human rights in Europe;

Recalling the interdependence between the supervisory mechanism of the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy;

Welcoming the entry into force of Protocol No. 14 to the Convention on 1 June 2010;

Noting with satisfaction the entry into force of the Treaty of Lisbon, which provides for the accession of the European Union to the Convention;

Stressing the subsidiary nature of the supervisory mechanism established by the Convention and notably the fundamental role which national authorities, i.e. governments, courts and parliaments, must play in guaranteeing and protecting human rights at the national level;

Noting with deep concern that the number of applications brought before the Court and the deficit between applications introduced and applications disposed of continues to grow;

Considering that this situation causes damage to the effectiveness and credibility of the Convention and its supervisory mechanism and represents a threat to the quality and the consistency of the case-law and the authority of the Court;

Convinced that over and above the improvements already carried out or envisaged additional measures are indispensable and urgently required in order to:

i. achieve a balance between the number of judgments and decisions delivered by the Court and the number of incoming applications;

ii. enable the Court to reduce the backlog of cases and to adjudicate new cases within a reasonable time, particularly those concerning serious violations of human rights;

iii. ensure the full and rapid execution of judgments of the Court and the effectiveness of its supervision by the Committee of Ministers;

Considering that the present Declaration seeks to establish a roadmap for the reform process towards long-term effectiveness of the Convention system;

The Conference

1. Reaffirms the commitment of the States Parties to the Convention to the right of individual petition;

2. Reiterates the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level and calls for a strengthening of the principle of subsidiarity;

3. Stresses that this principle implies a shared responsibility between the States Parties and the Court;

4. Stresses the importance of ensuring the clarity and consistency of the Court's case-law and calls, in particular, for a uniform and rigorous application of the criteria concerning admissibility and the Court's jurisdiction;

5. Invites the Court to make maximum use of the procedural tools and the resources at its disposal;

6. Stresses the need for effective measures to reduce the number of clearly inadmissible applications, the need for effective filtering of these appli-

cations and the need to find solutions for dealing with repetitive applications;

7. Stresses that full, effective and rapid execution of the final judgments of the Court is indispensable;

8. Reaffirms the need for maintaining the independence of the judges and preserving the impartiality and quality of the Court;

9. Calls for enhancing the efficiency of the system to supervise the execution of the Court's judgments;

10. Stresses the need to simplify the procedure for amending Convention provisions of an organisational nature;

11. Adopts the following Action Plan as an instrument to provide political guidance for the process towards long-term effectiveness of the Convention system.

Action Plan

A. Right of individual petition

1. The Conference reaffirms the fundamental importance of the right of individual petition as a cornerstone of the Convention system which guarantees that alleged violations that have not been effectively dealt with by national authorities can be brought before the Court.

2. With regard to the high number of inadmissible applications, the Conference invites the Committee of Ministers to consider measures that would enable the Court to concentrate on its essential role of guarantor of human rights and to adjudicate well-founded cases with the necessary speed, in particular those alleging serious violations of human rights.

3. With regard to access to the Court, the Conference calls upon the Committee of Ministers to consider any additional measure which might contribute to a sound administration of justice and to examine in particular under what conditions new procedural rules or practices could be envisaged, without deterring well-founded applications.

B. Implementation of the Convention at the national level

4. The Conference recalls that it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention and consequently calls upon the States Parties to commit themselves to:

a. continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application;

b. fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations;

c. taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another State, where the same problem of principle exists within their own legal system;

d. ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;

e. considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;

f. ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations.

5. The Conference stresses the need to enhance and improve the targeting and coordination of other existing mechanisms, activities and programmes of the Council of Europe, including recourse by the Secretary General to Article 52 of the Convention.

C. Filtering

6. The Conference:

a. calls upon States Parties and the Court to ensure that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria. To this end, the role of the Council of Europe information offices could be examined by the Committee of Ministers;

b. stresses the interest for a thorough analysis of the Court's practice relating to applications declared inadmissible;

c. recommends, with regard to filtering mechanisms,

i. to the Court to put in place, in the short term, a mechanism within the existing bench likely to ensure effective filtering;

ii. to the Committee of Ministers to examine the setting up of a filtering mechanism within the Court going beyond the single judge procedure and the procedure provided for in i.

D. Repetitive applications

7. The Conference:

a. calls upon States Parties to:

i. facilitate, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;

ii. co-operate with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases;

b. stresses the need for the Court to develop clear and predictable standards for the "pilot judgment" procedure as regards selection of applications, the procedure to be followed and the treatment of adjourned cases, and to evaluate the effects of applying such and similar procedures;

c. calls upon the Committee of Ministers to:

i. consider whether repetitive cases could be handled by judges responsible for filtering (see above, Section C);

ii. bring about a co-operative approach including all relevant parts of the Council of Europe in order to present possible options to a State Party required to remedy a structural problem revealed by a judgment.

E. The Court

8. Stressing the importance of maintaining the independence of the judges and of preserving the impartiality and quality of the Court, the Conference calls upon States Parties and the Council of Europe to:

a. ensure, if necessary by improving the transparency and quality of the selection procedure at both national and European levels, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal systems as well as proficiency in at least one official language. In addition, the Court's composition should comprise the necessary practical legal experience;

b. grant to the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe.

9. The Conference, acknowledging the responsibility shared between the States Parties and the Court, invites the Court to:

a. avoid reconsidering questions of fact or national law that have been considered and decided by national authorities, in line with its case-law, according to which it is not a fourth instance court;

b. apply uniformly and rigorously the criteria concerning admissibility and jurisdiction and take fully into account its subsidiary role in the interpretation and application of the Convention;

c. give full effect to the new admissibility criterion provided for in Protocol No. 14 and to consider other possibilities of applying the principle *de minimis non curat praetor*.

10. With a view to increasing its efficiency, the Conference invites the Court to continue improving its internal structure and working methods and making maximum use of the procedural tools and the resources at its disposal. In this context, it encourages the Court in particular to:

a. make use of the possibility of requesting the Committee of Ministers to reduce to five members the number of judges of the Chambers, as provided by Protocol No. 14;

b. pursue its policy of identifying priorities for dealing with cases and continue to identify in its judgments any structural problem capable of generating a significant number of repetitive applications.

F. Supervision of execution of judgments

11. The Conference stresses the urgent need for the Committee of Ministers to:

a. develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent. In this regard, it invites the Committee of Ministers to strengthen this supervision by giving increased priority and visibility not only to cases requiring urgent individual measures, but also to cases disclosing major structural problems, attaching particular importance to the need to establish effective domestic remedies;

b. review its working methods and its rules to ensure that they are better adapted to present-day realities and more effective for dealing with the variety of questions that arise.

G. Simplified Procedure for Amending the Convention

12. The Conference calls upon the Committee of Ministers to examine the possibility of introducing by means of an amending Protocol a simplified pro-

cedure for any future amendment of certain provisions of the Convention relating to organisational issues. This simplified procedure may be introduced through, for example:

a. a Statute for the Court;

b. a new provision in the Convention similar to that found in Article 41 (d) of the Statute of the Council of Europe.

Implementation

In order to implement the Action Plan, the Conference:

1. calls upon the States Parties, the Committee of Ministers, the Court and the Secretary General to give full effect to the Action Plan;

2. calls in particular upon the Committee of Ministers and the States Parties to consult with civil society on effective means to implement the Action Plan;

3. calls upon the States Parties to inform the Committee of Ministers, before the end of 2011, of the measures taken to implement the relevant parts of this Declaration;

4. invites the Committee of Ministers to follow up and implement by June 2011, where appropriate in co-operation with the Court and giving the necessary terms of reference to the competent bodies, the measures set out in this Declaration that do not require amendment of the Convention;

5. invites the Committee of Ministers to issue terms of reference to the competent bodies with a view to preparing, by June 2012, specific proposals for measures requiring amendment of the Convention; these terms of reference should include proposals for a filtering mechanism within the Court and the study of measures making it possible to simplify the amendment of the Convention;

6. invites the Committee of Ministers to evaluate, during the years 2012 to 2015, to what extent the implementation of Protocol No. 14 and of the Interlaken Action Plan has improved the situation of the Court. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2015, on whether there is a need for further action. Before the end of 2019, the Committee of Ministers should decide on whether the measures adopted have proven to be sufficient to assure sustainable functioning of the control mechanism of the Convention or whether more profound changes are necessary;

7. asks the Swiss Chairmanship to transmit the present Declaration and the Proceedings of the Interlaken Conference to the Committee of Ministers;

8. invites the future Chairmanships of the Committee of Ministers to follow-up on the implementation of the present Declaration.

Appendix 12: Committee of Ministers' 120th ministerial session, May 2010

Follow-up to the High-level Conference on the Future of the European Court of Human Rights

Decisions

The Committee of Ministers

1. endorsed the Declaration and Action Plan unanimously adopted at the High-level Conference on the Future of the European Court of Human Rights held in Interlaken on 18 and 19 February 2010, paid tribute to the Swiss authorities for this initiative and expressed its determination to implement the Interlaken outcome in a timely manner;

2. recalled the shared responsibility between the States Parties, the Court and the Committee of Ministers for the full and effective implementation of the Interlaken Declaration and Action Plan, as well as the subsidiary nature of the system of the European Convention on Human Rights;

3. welcomed the first steps made by the Court to follow up the Interlaken Declaration and invited the Court to take further steps to this end;

4. encouraged States Parties to implement the measures in the Action Plan addressed to them, in particular by providing effective remedies in case of violation of the Convention rights and freedoms and taking measures to enhance knowledge of the Convention system and the Court's case-law;

5. encouraged member states to respond favourably to the call for secondments of national lawyers, particularly judges, to the Registry of the Court;

6. recalling the fundamental importance of the right to individual petition, encouraged the Court to pursue its efforts to provide better information about the Convention system and invited the Secretary General to investigate possible means of providing comprehensive and objective information to potential applicants to the Court on the Convention and the Court's case-law, in particular on the application procedures and admissibility, including through independent national human rights institutions or Ombudspersons. The Committee invited the Secretary General to make proposals to this end by December 2010;

7. also invited the Secretary General to make proposals by the end of 2010 on how to grant the Court, in the interest of its efficient functioning, the necessary level of administrative autonomy within the Council of Europe;

8. reaffirmed that prompt and effective execution of the judgments and decisions delivered by the Court is essential for the credibility and effectiveness of the Convention system and a determining factor in reducing the pressure on the Court. This requires the joint efforts of member states and the Committee of Ministers. The Committee instructed its Deputies to step up their efforts to make execution supervision more effective and transparent and to bring this work to a conclusion by December 2010;

9. instructed its Deputies to pursue the follow-up to the Interlaken Declaration and Action Plan in a swift and effective manner, through an open and constructive dialogue and engagement with all relevant stakeholders, to ensure that the agreed deadlines are met;

10. welcomed the intention of the future Turkish Chairmanship of the Committee of Ministers to organise in April 2011 a further High-level Conference on the Future of the European Court of Human Rights to review the progress made in the follow-up to the Interlaken Declaration and, as appropriate, provide further guidance for its successful completion;

11. welcomed the forthcoming entry into force of Protocol No. 14 to the European Convention on Human Rights on 1 June 2010 and the preparations made by the European Court of Human Rights for its implementation;

12. adopted Recommendation CM/Rec (2010) 7 of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, as it appears at Appendix 1 to the present volume of Decisions and took note of the Explanatory Memorandum thereto (CM (2010) 32 add).

Appendix 13: Entry into force of Protocol No. 14

Consequences for the supervision of the execution of judgments of the European Court of Human Rights by the Committee of Ministers. Information document prepared by the Department for the Execution of Judgments of the European Court of Human Rights (Memorandum DH-DD(2010)278 of 25 May 2010)

Introduction

1. Following the ratification of Protocol No. 14 to the European Convention on Human Rights (hereinafter "the Convention") by the Russian Federation on 18 February 2010, the Protocol entered into force on 1 June 2010, the first day of the 1086th meeting of the Ministers' Deputies devoted to human rights. Accordingly, it would seem useful to point out the main changes entailed by its entry into force for supervision of the execution of judgements by the Committee of Ministers.

I. Broadening of the scope of Committee of Ministers' supervision

2. Article 15 of Protocol No. 14 amends Article 39 of the Convention concerning friendly settlements. Under the new paragraph 4 of Article 39, the Committee of Ministers will also be competent to supervise the execution of all European Court of Human Rights decisions endorsing the terms of friendly settlements handed down as of 1 June 2010. This is an additional power of supervision devolved to the Committee of Ministers (see paragraph 94 of the Explanatory Report to Protocol No. 14). Until now, the Committee of Ministers supervised only friendly settlements endorsed through Court judgments.

3. The new Article 39 of the Convention seeks to encourage friendly settlements in the spirit of Resolution Res (2002) 59 concerning the practice in respect of friendly settlements. The Explanatory Report to Protocol No. 14 (paragraph 93) points out that they "may prove particularly useful in repetitive cases, and other cases where questions of principle or changes in domestic law are not involved". The procedures for supervising the terms of friendly settlements endorsed by decisions of the Court are set out in Chapter III of the Rules of the Committee of Ministers for the supervision of the execution of judgments of the European Court of Human Rights. As the Committee of Ministers already supervised the execution of the terms of friendly settlements endorsed through European Court of Human Rights judgments, the same procedures will apply to supervision of those endorsed by European Court of Human Rights decisions.

4. At present, it is difficult to make a realistic projection of the additional workload to be handled by the Committee of Ministers following this modification of the Convention.[37] The statistics available show that in 2009 the European Court of Human Rights accepted some 460 friendly settlements endorsed by decision. In 2008 and 2007, that figure was 464 and 360 respectively. On that basis, and bearing in mind the sustained political will – notably in the Interlaken Action Plan – to encourage friendly settlements, the number of such settlements is likely to be substantial, possibly resulting in an increase in the number of new cases submitted for supervision by around 30%-40%; those cases may not necessarily be straightforward ones.

37. Other factors potentially increasing the number of cases include Article 28 of the Convention in its new version (as per Article 8 of Protocol 14): "1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote […] b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court."

5. In addition, there is the inevitable interest – notably in the Interlaken action plan – in extending supervisory competence to decisions closing cases on the basis of unilateral declarations. In 2009, the European Court of Human Rights took some 167 decisions of this type. Some 48 such decisions were taken up to 1 April 2010. It would appear, however, that the European Court of Human Rights considers that the Committee of Ministers is already competent to supervise the execution of some of these decisions.[38]

6. Furthermore, the Committee of Ministers is already beginning to receive cases ruled on pursuant to the new competence assigned to three-judge committees by Protocol No. 14 (in force since 1 November 2009 pursuant to Protocol No. 14 bis[39]) to declare individual applications admissible and render a judgment on the merits in the same decision if the underlying question in the case, concerning the interpretation or the application of the Convention or the protocols thereto, is already the subject of well-established case-law of the European Court of Human Rights. As of 14 April 2010, the Committee of Ministers had before it 7 cases ruled on by the European Court of Human Rights in the exercise of this competence. The consequences for the supervision of execution are difficult to evaluate at this stage.

7. It is important therefore that discussion to be held by the Committee of Ministers on follow-up to the Interlaken process at its 1086th meeting take these different factors into account and above all the consequences of its extended task of supervision under Article 39, paragraph 4, of the Convention.

38. The Committee of Ministers has already had certain cases of this type referred to it. As pointed out by the Court in its *Uskov v. Russia* decision (application no. 6394/05, decision of 12 November 2009): "As regards the question of implementation of the Government's undertakings raised by certain applicants, the Committee of Ministers remains competent to supervise this matter in accordance with Article 46 of the Convention (see the Committee's decisions of 14-15 September 2009 concerning the implementation of the *Burdov (no. 2)* judgment, Committee of Ministers/Del/Dec (2009) 1065). In any event the Court's present ruling is without prejudice to any decision it might take to restore, pursuant to Article 37 §2 of the Convention, the present applications to the list of cases (see *E.G. v. Poland* (dec.), no. 50425/99)."

39. Protocol No. 14 bis will cease to be in force or to be applied on a provisional basis on the date of entry into force of Protocol No. 14. The aforementioned provision also appears in the latter protocol.

II. The new competencies of the Committee of Ministers within the framework of its supervision of the execution of judgments of the European Court of Human Rights

8. Since the Ministerial Conference in Rome in 2000, it has been considered necessary to strengthen the means given to the Committee of Ministers to ensure rapid and full execution of European Court of Human Rights judgments.[40]

9. Accordingly, the new Article 46 of the Convention, as amended by Protocol No. 14, assigns two new competencies to the Committee of Ministers:

[…] "3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the Committee."

"4. If […] a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1."

Where infringement proceedings are concerned, it is stipulated that "5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

10. The Explanatory Report points out that the Committee of Ministers should make careful use of the new possibility of a referral of a judgment for interpretation to the European Court of Human Rights and that infringement proceedings should be brought only in exceptional circumstances.[41] The latter consideration was spelt out in specific terms in the new Rule 11 (see §16 below).

11. It should be noted that from the date of entry into force of Protocol No. 14, these two new competencies (referral of a judgment for interpretation, infringement proceedings against a State) shall apply to "all judgments whose execution is under supervision by the Committee of Ministers" (Arti-

40. See the Explanatory Report to Protocol No. 14, §§98 and 100.

cle 20, paragraph 1, of Protocol No. 14), in other words to all the cases pending before the Committee of Ministers as of 1 June 2010. Rules 10 (referral for interpretation) and 11 (infringement proceedings of the Committee of Ministers' Rules) also enter into force on that date.

12. The exercise of these two new competencies requires a majority vote of two-thirds of the representatives entitled to sit on the Committee of Ministers, which differs from the majority required by the Committee of Ministers to adopt decisions, Interim Resolutions and final resolutions, set out in article 20 (d) of the Statute of the Council of Europe.

13. Under Rule 10 (paragraph 2), a decision to refer a judgment to the Court for a ruling on the question of interpretation may be taken at any time during Committee of Ministers supervision of the execution of the judgments of the European Court of Human Rights. The Explanatory Report (paragraph 97) states in this respect that "the aim of the new paragraph 3 [of article 46] is to enable the Court to give an interpretation of a judgment, not to pronounce on the measures taken by a High Contracting Party to comply with that judgment. No time-limit has been set for making requests for interpretation, since a question of interpretation may arise at any time during the Committee of Ministers' examination of the execution of a judgment."

14. The referral decision takes the form of an Interim Resolution, which must be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

15. According to the Explanatory Report (paragraph 97), "the Court is free to decide on the manner and form in which it wishes to reply to the request. Normally, it would be for the formation of the Court which delivered the original judgment to rule on the question of interpretation. More detailed rules governing this new procedure may be included in the Rules of Court."

16. Rule 11, paragraph 2, concerning infringement proceedings, stipulates that these "should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an Interim Resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee".

17. Accordingly, the combined effects of Article 46, paragraph 4, of the Convention and paragraph 2 of Rule 11 mean that infringement proceedings follow a two-phase procedure, given their exceptional nature and this new means of pressure available to the Committee of Ministers,[42] namely:

i. formal notice given to the State concerned, in the form of an Interim Resolution informing it of the intention to bring infringement proceedings, through an Interim Resolution;

ii. if necessary, within six months of formal notice being given at the latest, a decision to refer infringement proceedings to the Court, also requiring a majority vote of two-thirds of the representatives entitled to sit on the Committee, via a reasoned Interim Resolution, concisely reflecting the views of the High Contracting Party concerned.

18. It should be noted that, under the new paragraph *b* of Article 31 of the Convention, it is for the Grand Chamber to rule on infringement proceedings.

19. The Explanatory Report to Protocol No. 14 states, in paragraph 99, that "this infringement procedure does not aim to reopen the question of violation, already decided in the Court's first judgment. Nor does it provide for payment of a financial penalty by a High Contracting Party found in violation of Article 46, paragraph 1. It is felt that the political pressure exerted by proceedings for non-compliance in the Grand Chamber and by the latter's judgment should suffice to secure execution of the Court's initial judgment by the state concerned".

20. These new competencies of the Committee of Ministers do not appear to call for more in-depth discussion, at this stage, of working methods or the

41. Following a request for clarification by the Permanent Representative of the Russian Federation, the Deputies, in a decision adopted at the 1073rd meeting (9 and 14 December 2009, CM/Del/Dec (2009) 1073), "[…] 2. took due note of the declaration of 7 December 2009 by the Russian Federation regarding paragraphs 3 and 4 of Article 46 of the Convention, introduced by Protocol No. 14, and confirmed that in line with its established practice, the Committee of Ministers engages in a dialogue with the state concerned with a view to securing the full execution of the Court's judgment and that nothing in the text or the drafting history of Protocol No. 14 indicates that this should be different as regards the question of a possible application of new paragraphs 3 and 4 of Article 46, or that these provisions aim at giving the Court a new power to prescribe a particular manner of implementing a judgment".

42. See paragraphs 98 and 100 of the Explanatory Report to Protocol No. 14.

rules for supervision. It should be borne in mind that the European Court of Human Rights has published its new Rules of Court on its Internet site and these set out, under Title II (Procedure) – in force as of 1 June 2010 – a Chapter X (Rules 91-99) entitled *Proceedings under Article 46 §§3, 4 and 5 of the Convention*.

Appendix 14: Measures to improve the execution of the judgments of the European Court of Human Rights

Proposals for the implementation of the Interlaken Declaration and Action Plan 1100th HR meeting of the Ministers' Deputies, 2 December 2010

Decisions

The Deputies,

1. recalling the decision adopted by the Committee of Ministers at its 120th Session approving the Interlaken Declaration and Action Plan, and instructing the Deputies to intensify their efforts to increase the efficiency and the transparency of the supervision of execution and to complete this work by December 2010:

2. approved the proposals contained in document CM/Inf/DH (2010) 45 as amended in the paragraphs appended, and recalled document CM/Inf/DH (2010) 37;

3. decided to implement the new, twin-track supervision system with effect from 1 January 2011, taking into account the transitional provisions set out below;

4. decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process;

5. decided that action plans and action reports, together with relevant information provided by applicants, non-governmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9 §3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information;

6. decided that all new cases transmitted for supervision after 1 January 2011 will be examined under the new system;

7. decided that all cases pending before the Committee of Ministers for supervision of execution on 1 January 2011 will be subject to transitional arrangements and instructed the Execution Department to provide, to the extent possible in time for their DH meeting in March 2011 and, in any event, at the latest for their DH meeting of September 2011, proposals for their classification following bilateral consultations with the states concerned;

8. decided that any cases not yet included in one or other of the supervision tracks[43] will be placed on a specific list and until their classification, will be dealt with under the standard procedure;

9. decided that the practical modalities of supervision of the execution of European Court's judgments and decisions under the twin-track approach would be evaluated specifically at the DH December meeting in 2011;

10. decided to declassify document CM/Inf/DH (2010) 45, as amended.

43. Including, on this occasion, decisions as well as judgments becoming final if appropriate until 31 December 2010, as set out in document CM/Inf/DH (2010) 49.

Appendix 15: The Department for the Execution of Judgments of the European Court of Human Rights

The Department for the Execution of Judgments of the ECtHR, composed of lawyers and assistants recruited from the member states of the Council of Europe, belongs to the Directorate of Monitoring, within the Directorate General of Human Rights and Legal Affairs.

The Department is in particular responsible for assisting the Committee of Ministers in its function of supervising the execution of ECtHR judgments by member states.

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Appendix 16: Thematic overview of issues examined by the Committee of Ministers in 2010

Introduction

The overview below presents the execution situation in a selection of ECtHR judgments examined by the CM in the course of 2010, in particular as regards cases (or groups of cases), which have appeared to present a more general interest, whether as a result of the nature of the violation established or the questions posed as regards individual or general measures. Cases in which no major development has taken place in 2010, whether at national or CM level, are not included.

The presentation in the overview is thematic, based on the different rights and freedoms protected by the ECHR and the main violation identified.

An index by state of major cases examined in the course of 2010 is presented at the end of the thematic overview. Cases in principle closed or already closed by final resolution in 2010 are highlighted. Furthermore, lists of cases closed by final resolution in 2010 and of those in principle closed in 2010 and awaiting the drafting of such a resolution are found in Appendices 3 and 4.

Cases contained in previous Annual reports are presented anew if there have been major developments in 2010 *which have been presented to the CM (i.e. that have already been presented in the CM's annotated agenda)*. In principle, the presentation is limited to new developments.

Full descriptions by state of all major pending cases can be found on the special Council of Europe website dedicated to the supervision of the execution of the judgments of the ECtHR[44] under the heading "cases – state of execution".

The information in the thematic overview is presented as follows:

- **State / Case** (as far as groups of cases are concerned only the references of the leading case are given);
- **Indication of whether the case was included in the 2007 Annual report (AR 2007), in the 2008 Annual report (AR 2008) or in the 2009 Annual report (AR 2009), and of whether it has been closed or in principle closed**
- **Application No., date of leading judgment**
- **Last examination: meeting No. and Section**
- **Summary of violation(s) found**
- **Individual (IM) and General (GM) measures taken or outstanding** (see for further information the case descriptions in the notes on the agenda available on the above mentioned special Council of Europe website dedicated to the execution of the judgments of the ECtHR)

44. http://www.coe.int/execution/, (accessible also over the CM's website "http://www.coe.int/cm", heading "Human Rights Meetings": link to the Council of Europe's website dedicated to the execution of judgments of the European Court of Human Rights, "Cases".

A. Right to life and protection against torture and ill-treatment

A.1. Actions of security forces

1. MKD / Jasar and other similar cases (see AR 2007, p. 37 and AR 2008, p. 101)

Application No. 69908/01 *Last examination: 1051-4.2*

Judgment of 15/02/2007, final on 15/05/2007

Lack of an effective inquiry into allegations of ill-treatment (1998-2001) perpetrated by police officers during arrest and custody, on account of the prosecutors' failure to make effective investigations in response to the complaints lodged and of the undue burden of proof which the courts imposed on the applicants, compounded by unjustified refusals to examine witnesses (Trajkoski and Sulejmanovic). In certain cases, the prosecutors' inaction also prevented the applicants from bringing private actions (violations of Article 3, procedural aspect).

IM The ECtHR awarded just satisfaction in all cases in respect of the non-pecuniary damage sustained. According to the government, the applicants are no longer in a position to carry on the enquiry personally against the police officers alleged to have maltreated them, because of limitation since 2006 in the *Trajkoski* (application No. 13131/02) case and since 2003 in the other cases. In these circumstances, no other individual measure seems necessary.

GM The new Public Prosecution Act adopted in 2007 requires the prosecutor to take measures authorised by law not later than 30 days after a complaint has been filed.
In May 2007 a criminal law reform strategy was also adopted, and amendments to the Code of Criminal Procedure (CCP) and to several other laws were undertaken and are currently at the final drafting stage. In particular, Article 282 of the CCP is expected to prescribe a time limit of 3 months for prosecutors to take a decision on complaints. Non-compliance with that stipulation must be notified to the applicant and to the senior prosecutor.

Concurrently, bills to amend the Public Prosecution Act provide for a specialised department with jurisdiction over this type of case to be set up as part of the prosecution.

In order to bring their obligations in pursuance of the ECHR quickly to the notice of prosecutors and courts, the judgments were translated, published and transmitted to the authorities concerned.

2. RUS / Khashiyev and other similar cases (see AR 2007, p. 33, AR 2008, p. 100 and AR 2009, p. 103)

Application No. 57942/00 *Last examination: 1100-4.3*

Judgment of 24/02/2005, final on 06/07/2005 *CM/Inf/DH(2006)32 rev. 2, CM/Inf/DH(2008)33, CM/Inf/DH(2010)26*

Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2004: liability of the state for homicides, disappearances, ill-treatment, illegal searches and destruction of property; failure in the duty to take measures to protect the right to life; failure to investigate the abuses properly, and absence of effective remedies; ill-treatment inflicted on the applicants' relatives owing to the attitude of the investigating authorities (violation of Articles. 2, 3, 5, 8 and 13, and of Article 1 du Prot. No. 1). Lack of co-operation with the ECHR bodies, contrary to Article 38 ECHR, in several cases.

IM The domestic investigations of the circumstances which gave rise to the violations were resumed or reopened in order to give effect to the judgments of the ECtHR. Since its creation in 2007, the *Prokuratura Investigative Committee* has been responsible for these investigations, which it has assigned to a special group of investigators.
The CM is following their progress in the light of the advances made with the general measures. In this context, the observations submitted by NGOs

are also taken into account, as are the communications of the applicants' representatives. These criticise the lack of progress with the domestic investigations and the refusal of the Russian authorities to afford the applicants and their representatives a right of access to the investigation files.
Information is awaited from the Russian authorities concerning the progress of these investigations, especially having regard to the questions raised at the last HR meeting (December 2010).

GM The earlier developments regarding this group of cases are described in the AR for 2007, 2008 and 2009. They also appear in Memorandum CM/Inf/DH(2008)33.
Memorandum CM/Inf/DH(2010)26 of June 2010 contains an assessment of the information provided concerning:
– *Legal and regulatory framework of domestic investigations* carried out following the judgments of the ECtHR: this raises two main questions. The first concerns the Special Investigative Unit set up within the Investigating Committee in the Chechen Republic. It should be noted that at present, despite important measures adopted, information is still awaited on the concrete results achieved by this Special Unit in individual cases. The second relates to the changes in prosecutors' powers following the recent reform setting up the Investigative Committee which separated the authorities in charge of the investigations (investigators) from the authorities responsible for supervision of lawfulness of these investigations (prosecutors). Information is awaited as to how these changes contributed to the effectiveness of domestic investigations.
– *Victims' rights during investigations*: certain developments have occurred, but it would appear that additional measures are still needed to ensure the coherent and effective implementation of these rights in practice.
– *Remedies available to victims during investigations*: here, Russian legislation contains a number of remedies (the possibility of claiming damages in case of excessive length of criminal proceedings, including pre-trial proceedings, has recently been introduced). Furthermore, the Russian authorities took a number of steps to improve the procedure for complaining of the ineffectiveness of domestic investigation. However, the impact of these measures in practice remains to be demonstrated.

In the light of the situation, in December 2010 the CM recalled that its assessment of the effectiveness of the measures taken would largely depend on the results achieved in the individual cases.

3. RUS / Mikheyev and other similar cases (see AR 2007, p. 34, AR 2008, p. 101)

Application No. 77617/01 *Last examination: 1100-4.2*

Judgment of 26/01/2006, final on 26/04/2006

Torture or inhuman and degrading treatment inflicted on the applicants while in police custody in 1998-2004, and failure to investigate this effectively (violations of Article 3); lack of an effective remedy in this regard (violation of Article 13).

IM
Mikheyev case: the individual measures taken pursuant to the judgment are summarised in the 2009 AR.
Maslova and *Nalbandov* case: the Russian authorities' observations are awaited concerning the memorials lodged by a regional NGO and the CPT, which raise doubts about the will of the Russian authorities genuinely to prosecute and punish those guilty of torturing the applicants.
Polonskiy case: according to the information provided by the Russian authorities, the decision to suspend the investigation of the applicant's allegations of torture, taken on 28/08/2009, was set aside on 05/11/2009. Information is awaited on the outcome of the fresh investigation.
Concerning the other cases, information is still awaited regarding any measures which the authorities may have taken following the applicants' allegations of torture.

GM Since the *Mikheyev* judgment, the Russian authorities have supplied information on various measures taken or envisaged to avert similar violations.

Institutional changes: in 2007 the Investigative Committee was set up under the authority of the *Prokuratura* to enhance the independence of investigators by separating the authorities responsible for investigation from those responsible for supervision of its legality, which continues to be carried out by the prosecutors. Investigation of allegations of

police brutality is in the exclusive remit of this committee.

Legislative and administrative measures:

a) *Improving safeguards during police custody*: the new Code of Criminal Procedure strengthens these safeguards, providing in particular that a suspect may have access to counsel as soon as actually stopped and questioned, and stipulating the inadmissibility of disclosures obtained in the absence of counsel unless confirmed by the suspect before the court.

b) *Improving the statutory and regulatory framework governing police activities*: an extensive reform of the Interior and Police Ministry has been undertaken and, as observed before the CM, is an excellent opportunity for improving the statutory and regulatory framework in keeping with the requirements of the ECHR. It was suggested to pay close attention to the experience of other states which have been faced with similar situations, and to keep under consideration the following questions:

– enhancement of the safeguards for persons deprived of liberty (such as the right to inform one's family of the detention or to obtain an independent medical examination) and their effective application (information on every prisoner's rights from the beginning of custody, and proper keeping of registers),

– measures to make the police accountable in the event of abuses, including penalties for culprits, use of suitable machinery for addressing police "heavy-handedness", and system of complaints about the police;

– development of modern methods of investigation and questioning, including use of audio/video recording of sessions, and wide reliance on forensic examination techniques;

– improvement of basic and in-service training for police officers, judges, prosecutors and investigators.

c) *Guaranteeing proper investigations where abuses are alleged*: the judgments of the ECtHR emphasise that the ineffectiveness of domestic inquiries was due to recurrent deficiencies such as the unreserved acceptance by officials of police statements, failure to seek corroborative evidence, lack of prompt requests for forensic examinations, or shortcomings in certifying the number and type of injuries sustained, selective assessment of medical findings, lack of access for victims to the investigation, failure to identify eye-witnesses, etc. The Investigative Committee seems to be paying more attention to these cases, as demonstrated by a recent circular distributed after the *Nadrosov* judgment (application No. 9297/02). However, additional measures may be needed to remove the above inadequacies and change the attitude of investigators.

Publication and dissemination: The judgments, accompanied by circulars, are all regularly distributed to all competent authorities: judges, prosecutors, investigators and police officers.

The accompanying circulars contain instructions. For example, the circular of 22/05/2009 concerns the procedures to follow during examinations, verifications and preliminary checks, decision-making and submission of records of investigation for verification to the state Prokuratura.

Last examination by the CM: in December 2010, the CM noted that, notwithstanding the changes in legislation and administrative practice, there still remained issues necessitating further general measures in order to guarantee effective protection against torture and ill-treatment. In that respect, it encouraged the authorities to seize the opportunity represented by the reform of the Interior Ministry to ensure that the legislative and regulative framework applicable to the activities of the police embodied all the necessary safeguards against arbitrary and wrongful acts by the police resembling those found in these judgments.

A.2. **Positive obligation to protect the right to life**

4. **SVN / Šilih**

Application No. 71463/01 *Last examination: 1100-4.2*

Judgment of 09/04/2009 – Grand Chamber

Inefficiency of the Slovenian judicial system in dealing with the applicants' criminal claim (brought in 1995 and still pending before the Constitutional Court in 2009) and civil claim (1993-2000) that their son's death in 1993 resulted from medical malpractice (violation of Article 2, procedural aspect).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained. The prosecution of the alleged offence of medical malpractice became time-barred in 2003. According to the latest information provided by the authorities in 2009, the Constitutional Court decided to examine the applicants' complaint and hearings were held in September and October 2009. Information is awaited on the outcome of these proceedings.

GM The judgment has been translated and published on the website of the State Attorney's Office. It was also published in the guide on the ECHR which is distributed to all judges and lawyers in Slovenia. The case has also been included in the training programme for judges for 2010.

Legislative changes have been proposed to increase the transparency and legitimacy of the investigations into alleged medical malpractice. Under these proposals, the composition of the courts working with the Slovenian Doctors' Association would be changed to also include Ministry of Health officials and experts from the justice sector. Information is awaited on the follow-up given to the proposed legislative amendments, on how they will reduce the risk of excessive length of proceedings before domestic courts in medical malpractice cases and how the proceedings before the Slovenian Doctors' Association are related to such court proceedings.

5. UKR / Kats and Others

Application No. 29971/04 *Last examination: 1092-4.2*

Judgment of 18/12/2008, final on 18/03/2009, rectified on 06/05/2009

Failure of the authorities in their obligation to protect the right to life of a relative of the applicants, who died in pre-trial detention in 2004, being HIV-positive and not having received proper care; failure to investigate the death effectively, particularly in that certain inquiries were carried out by the authority implicated (violations of Article 2, substantive and procedural aspects); unlawful detention of the person concerned from the release order onwards, as this was not immediately enforced (violation of Article 5§1.c).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. After a further inquiry, criminal proceedings were instituted against the prison doctor whose professional misconduct allegedly led to the death of the person concerned.

Information is awaited concerning the outcome of these proceedings, particularly as to the means of redressing the breaches noted by the ECtHR.

GM **Failure to protect prisoners' right to life:** concerning the lack of proper medical care for prisoners generally, in 2007 the authorities provided information on construction and repair work in progress or completed to renovate the prison buildings, including the medical units and the health facilities under a state programme to improve conditions of detention. For further information, see *Kuznetsov* judgment (application No. 39042/97).

As regards the specific question of medical care for HIV-positive persons in pre-trial detention, it was noted that the CPT had observed in its report of 2004 (CPT/Inf (2004) 34) that the Ukrainian State Department for the Execution of Sentences had devised a priority strategy for curbing the spread of the virus. This was founded on awareness and information campaigns aimed at prisoners and prison staff, introduction of screening tests and follow-up after tests, provision of means of prevention and disinfection for prisoners, and prohibition of discrimination against HIV-positive prisoners. Information was requested concerning the results of this strategy, and the measures taken or envisaged for protecting the lives of prisoners under official control, particularly those suffering from serious illnesses such as AIDS, as well as on the procedure to release persons from pre-trial detention for medical reasons.

Lack of an effective and independent investigation: information is awaited concerning measures taken or envisaged as regards the independence and due diligence of investigations of incidents in custodial establishments.

Unlawful detention: information is awaited concerning measures taken or envisaged to ensure strict application of the legislation prescribing the prisoner's immediate release following an order to that effect.

The judgment was translated and published on the website of the Ministry of Justice and in the *Official Journals,* including the one issued by the govern-

ment ("*Kurier*"). It was transmitted, together with an explanatory note, to the State Department for the Execution of Sentences and also sent out to regional prosecutors' offices. The Prosecutors' College was asked to include it in its syllabus. Information is awaited about the possibility of organising training with the authorities concerned.

A.3. Ill-treatment – special situations

6. TUR / Ülke (see AR 2007, p. 46 and AR 2009, p. 108)

Application No. 39437/98

Judgment of 24/01/2006, final on 24/04/2006

Interim Resolutions CM/RES DH(2007)109 and CM/RES DH(2009)45

Last examined: 1100-4.3

Degrading treatment as a result of the applicant's repeated convictions and imprisonment between 1996 and 1999 for having refused to perform compulsory military service on account of his convictions as a pacifist and conscientious objector (violation of Article 3).

IM The applicant's situation was described in ARs 2007 and 2009. In 2010 the progress made in adopting the requisite legislation to remedy the consequences of the violation for the applicant was examined in detail by the CM at several meetings.
In March 2010, the CM took note of the reply from Turkey's Minister for Foreign Affairs to the letter of 01/10/2009 from the Chairman of the CM and noted with satisfaction the Turkish authorities' commitment to execute the ECtHR judgment. The CM invited the Turkish authorities to provide concrete information about the legislative amendment work mentioned in the aforementioned reply from Turkey's Minister for Foreign Affairs, and insisted that these changes should aim to provide redress to the applicant and prevent similar violations. The CM also stressed the urgency and priority of the adoption of the measures necessary for the execution of this judgment.
In June 2010, the CM took note of the information provided by the Turkish authorities, according to which the legislative amendment work was under examination by the monitoring group on legislative reforms and several authorities concerned had been invited to give an opinion on this amendment. In reply, the CM urged the Turkish authorities to ensure that the legislative work aiming at remedying the applicant's situation was carried out without further delay.

In December 2010, the CM noted that the Turkish authorities had stated that the execution of this judgment raised certain difficulties, since it required legislative amendments concerning military service, but that the Turkish authorities were in the process of preparing legislative amendments aimed at remedying the applicant's situation. The CM stressed once again the urgency and priority of the adoption of the measures necessary for execution of this judgment, and invited the authorities to clarify whether the applicant was still being sought by the authorities to serve his previous sentences.

GM The situation described in AR 2009 remains, in the light of the above, unchanged.

7. UKR / Kucheruk

Application No. 2570/04

Judgment of 06/09/2007, final on 06/12/2007

Last examination: 1086-4.2

Inhuman and degrading treatment inflicted on the mentally ill applicant during his detention, owing to the use of truncheons, the fact that he was made to wear handcuffs for seven days and the lack of appropriate medical treatment in 2002-2003 (violation of Article 3); absence of an effective investigation into the excessive use of force by the prison guards (violation of Article 3, procedural aspect); unlawful detention of the applicant in a psychiatric hospital from 22/07/2003 to 06/08/2003 (violation of Article 5§1); impossibility for the applicant to challenge in court the lawfulness of that detention (violation of Article 5§4).

IM The applicant did not submit any claim in respect of pecuniary damages. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained.
The applicant was discharged from the psychiatric hospital, declared legally incapacitated and placed under the responsibility of his mother in November 2003. The investigation into the ill-treatment which he had suffered was still pending when the ECtHR delivered its judgment. The ECtHR noted that this investigation did not satisfy the requirements of effectiveness, owing in particular to its excessive duration and to the lack of independence of the preliminary inquiry (the investigating body represented the authority involved). Information is still awaited about the measures taken to comply with the judgment.

GM **Inhuman and degrading treatment and lack of an effective investigation**: as regards the *unjustified use of truncheons and handcuffs* on the applicant while he was in solitary confinement, information is awaited about the measures taken or envisaged in order to ensure the application of the most suitable means of restraining persons suffering from a mental illness, and also about the rules currently applicable to the use of force against persons suffering from a mental illness.
The general question of the *lack of appropriate care* for persons detained in regional pre-trial detention centres (SIZOs) or in prison has been examined in the *Kats and Others* (application No. 29971/04) and the *Melnik* (application No. 72286/01) judgments. As for the specific question raised in this case of the pre-trial detention of persons suffering from a mental illness, according to the information provided by the authorities, special wards have been set up within twelve regional SIZOs to ensure that these detained persons receive proper medical assistance. Information is awaited about the additional measures taken or envisaged on this subject and also on the procedural rules concerning pre-trial detention, including the medical treatment of persons suffering from a mental illness, and about measures to ensure that special recommendations in forensic reports are followed immediately.

The measures relating to the **effectiveness, independence, diligence and public nature of investigations** into ill-treatment in institutions for the execution of sentences controlled by the Department of State are being examined in the *Kuznetsov* (application No. 39042/97) group of cases.

Unlawful detention: the lack of a legal basis for pre-trial detention and the failure to release a person immediately owing to certain administrative formalities was examined in the *Doronin* (application No. 16505/02) and *Kats and Others* (application No. 29971/04) cases.

The **impossibility of challenging the lawfulness of detention** in a psychiatric institution is being examined in the *Gorshkov* case (application No. 67531/01).

Measures to increase awareness: in 2008 the findings of the ECtHR and the relevant case-law were transmitted to the College of the Department of State for the execution of sentences, to all its regional branches, to the prisons and to the SIZOs. The attention of the Attorney General's Office was also drawn to this case. Training has been provided to officials of the prisons and the SIZOs on the ECHR and the relevant domestic legislation. The judgment was included in the programme of studies for students of the National Academy of Prosecutors and also in the training of serving prosecutors. A summary of the judgment appears in an official government publication.

B. Prohibition of slavery and forced labour

8. CYP and RUS / Rantsev

Application No. 25965/04 *Last examination: 1100-4.2*

Judgment of 07/01/2010, final on 10/05/2010

Failure by the Cypriot authorities to conduct an effective investigation into the death of the applicant's daughter in 2001 (violation of Article 2, procedural aspect); failure by the Cypriot authorities in their positive obligation to set up an appropriate legislative and administrative framework to combat the trafficking and exploitation resulting by the "artist's" visa system and police failure to take adequate specific measures to protect the applicant's daughter (violation of Article 4). Failure by the Russian authorities to conduct an effective investigation into the recruitment of the appli-

cant's daughter in Russia by traffickers (violation of Article 4, procedural aspect). Arbitrary and unlawful deprivation of liberty of the applicant's daughter on account of the Cypriot police's decision to release her into the custody of her manager, at his apartment (violation of Article 5§1).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained.

As regards individual measures, prior to the ECtHR's judgment, the Cypriot Council of Ministers appointed an independent committee to investigate Ms Rantseva's death, including the question of whether there was any link between her death and allegations of trafficking. The independent investigators have taken testimony and evidence from various persons in Cyprus. On 29/10/2010, the Cypriot authorities sent a request to the Russian authorities, asking for their assistance in organising a visit to Russia to collect evidence and testimony. The Russian authorities' reply is still awaited.

According to information provided by the Russian authorities, a single criminal investigation into Ms Rantseva's death has been opened. The allegations of trafficking, including the circumstances of Ms Rantseva's recruitment, are being examined within the framework of this investigation. Exhumation has taken place and forensic expert examination is under way. Ms Rantseva's parents have been granted the status of victims. On 19/05/2010, the Russian authorities requested legal assistance from the Cypriot authorities, for interrogation of certain witnesses. On 01/09/2010, the Cypriot authorities replied that they would provide all the requisite information once the Cypriot investigators had completed their investigation.

GM In September 2010, both delegations provided extensive information on general measures taken or envisaged, details of which can be found in the Cypriot Action Plan, (see DH-DD(2010)376E) and the document submitted by the Russian authorities (see DH-DD(2010)411E). The most important developments which have taken place are outlined below.

According to information provided by the Cypriot authorities, the system of artist's visas has been abolished. In 2007, a new law was enacted, revising the legal framework governing the special protection of victims of trafficking and exploitation and related issues. There also appears to be a number of new measures concerning immigration policy and police training and awareness. Lastly, it should be noted that the Group of Experts on Action against Trafficking in Human Beings (GRETA) recently visited Cyprus and is due to adopt its report on this country in the first quarter of 2011.

According to information provided by the Russian authorities, two amendments were made to the Criminal Code subsequent to the events of this case. The first criminalising the trade in human beings and use of slave labour, and the second allowing investigators to open a criminal case if an offence has been committed against a Russian national outside Russia. The authorities also referred to other measures to prevent human trafficking, including measures on special protection of victims and witnesses.

In December 2010, the CM stressed again the cleear importance of close co-operation between Cypriot and Russian authorities with a view to ensuring that an effective investigation is carried out to identify and punish those responsible and encouraged the Cypriot and Russian authorities to continue their co-operation in this respect. The CM further emphasised the importance of ensuring that the applicant is informed of all developments in the domestic investigations and in a position to exercise any rights he may have in this respect.

C. Protection of rights in detention

C.1. Poor detention conditions

9. ALB / Grori

Application No. 25336/04 *Last examination: 1100-4.2*

Judgment of 07/07/2009, final on 07/10/2009

Degrading treatment of the applicant, suffering from a serious disease, on account of the inadequate medical treatment provided to him for long periods of time during his detention between 2001 and 2008 and of the absolute discretion of the prosecutor to decide whether a medical examination was

necessary (violation of Article 3); unlawfulness of the applicant's detention between 15/05/2002 and 29/12/2003, pending the outcome of the validation and enforcement proceedings in respect of the life sentence imposed *in absentia* by the Italian courts: the detention was not based on any domestic legal provision and the international treaties relied on had not entered into force yet with respect to Albania (violation of Article 5§1); unjustified delay (17 days) in complying with the ECtHR's interim measure of 10/01/2008 ordering to transfer the applicant to a civilian hospital for examination (violation of Article 34).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained.

In February 2010 the Albanian Ombudsman, following an investigation at the prison where the applicant is detained, concluded that the applicant's treatment was acceptable and that there were no serious problems with the care services. However, referring to the applicant's serious health problems, the Ombudsman suggested certain measures which would meet fully the required standards of the treatment. The Directorate General of Prisons subsequently took the suggested measures. Thus, at the end of February 2010 a full re-examination was carried out including an MRI scan at the prison hospital. No physiotherapy was prescribed, but it can be, if necessary. Currently, the applicant is receiving specific medical treatment and has a wheelchair. If necessary, he will also have access to a lift. Lastly, the medical staff's attention has been drawn to the applicant's medical treatment and its contraindications.

GM An action plan has been requested, in view of the fact that the problems raised by this case in relation to Article 3 have certain similarities with the *Dybeku* case (application No. 41153/06).

10. BGR / G.B. (Final Resolution CM/ResDH(2010)42)
BGR / Iorgov

Applications No. 42346/98 and 40653/98

Judgments of 11/03/2004, final on 11/06/2004 and on 07/07/2004

Last examination : 1086-1.1

Inhuman and degrading treatment of the applicants, who had been sentenced to the death penalty, whereas a moratorium on the death penalty had already been established, on account of the stringent custodial regime and the material conditions of their detention (from 1990 to 1998 in the case of G.B and from 1995 to 1998 in the case of Iorgov) (violations of Article 3).

IM Following the abolition of the death penalty in Bulgaria in 1998, the applicants' sentences were commuted to life imprisonment and the applicants were no longer subject to the prison regime and conditions which the ECtHR held to be in violation of the Convention. The ECtHR awarded just satisfaction for the non-pecuniary damage sustained by the applicants. Consequently no further individual measures was considered necessary.

GM All death sentences passed before the death penalty was abolished in Bulgaria have been commuted to life imprisonment. The Bulgarian Government has pointed out that the prison regime and the material conditions in which this category of prisoners are held have been examined on several occasions by the CPT. More specifically, during the visit it made in 2002 the CPT noted that the evidence gathered during this visit suggests that steps have been taken by the Bulgarian authorities to improve the situation of life-sentenced inmates in the light of its recommendations. In this regard, the CPT's delegation was pleased to learn of plans to progressively integrate life-sentenced prisoners into mainstream prison regimes. The Bulgarian authorities are fully determined to pursue their efforts in this field, in the light, in particular, of the most recent recommendations of the CPT (see document CPT/Inf(2008)11).

11. EST / Kochetkov

Application No. 41653/05 *Last examination: 1100-4.2*

Judgment of 02/04/2009, final on 02/07/2009

Degrading treatment of the applicant resulting from the poor conditions of his pre-trial detention in Narva remand centre between April and May 2005 (violation of art. 3); lack of an effective remedy in this respect on account of the restrictive interpretation of the applicable law by domestic courts (violation of Article 13).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained. No further individual measure seems necessary.

GM

Ill-treatments: the judgment has been translated and forwarded to the Ministry of Interior, to the Ministry of Justice as well as to the Supreme Court for action and for communication to subordinate bodies. Furthermore, the authorities undertook a widespread effort to reconstruct and renovate prisons with the technical assistance of the Council of Europe and the Nordic-Baltic Prison Reform project. Some old prisons were closed, two new prisons were built and another one is currently planned to be built in Tallinn. A new detention centre was inaugurated in 2008 in Jõhvi, not far from the detention centre of Narva where a new ventilation system was installed. The latter is still used for short periods of detention.

Lack of an effective remedy: the Estonian courts have been informed of the ECtHR's criticism of the interpretation of the national legislation with regard to the violation of Article 13 of the ECHR. A draft amendment of the law at issue has been prepared and is planned to be submitted to the government. The CM is expecting information on the legislative amendments.

C.2. Unjustified detention and related issues

12. GEO / Gigolashvili

Application No. 18145/05 *Last examination: 1092-4.2*

Judgment of 08/07/2008, final on 08/10/2008

Unlawfulness of the applicant's remand in custody from 05/06/2004 to 27/10/2004, owing to the lack of judicial authorisation (violation of Article 5§1.c).

IM The applicant is no longer in pre-trial detention. He did not submit any request for just satisfaction, and consequently the ECtHR did not award him any sum on that account. No individual measure seems necessary.

GM At the material time, Article 406§4 of the Code of Criminal Procedure (CCP) provided that the time spent by an accused and his/her representative in studying the case file was not reckoned part of the period of pre-trial detention (even though the persons remained in custody). When the case was referred to the court competent to try the accused, it was required to hold a hearing on the admissibility of the case and to decide whether a custodial measure was imperative. However, the time limits within which the hearing must be held were not consistent with the record of the accused. As a result, individuals could be deprived of liberty for unlimited periods without judicial authorisation.
Since the events of this case, the legislative framework of pre-trial detention has been altered. Firstly, in a judgment of 16/12/2003 the Constitutional Court declared Article 406§4 of the CCP unconstitutional and incompatible with Article 5§1 of the ECHR. Subsequently, it was repealed and, since 01/01/2007, Article 162 of the CCP has stipulated that the total duration of pre-trial detention may not exceed 9 months.
The judgment of the ECtHR was translated and published in the *Official Gazette.*
Bilateral contacts are currently under way to clarify the procedure for extension of pre-trial detention, particularly as regards detention subsequent to the referral of the case file to the court competent to try the accused.

13. **GEO / Patsuria**

Application No. 30779/04 *Last examination: 1092-4.2*

Judgment of 06/11/2007, final on 06/02/2008

Absence of "relevant" and "sufficient" grounds for placing and maintaining the applicant's detention on remand in 2004, especially in that the courts, essentially relying on the gravity of the charges, had failed to address the specific features of the case or to consider alternative non-custodial pre-trial measures, and had used a standard pre-printed form to extend his detention (violation of Article 5§3).

IM The applicant, sentenced in 2005 to 3 years of imprisonment for fraud, is no longer detained. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained, but dismissed his claim for pecuniary damage as no causal link had been established between the alleged damage and the violation found. In those circumstances, no other individual measure appeared necessary before the CM.

GM According to the information supplied by the authorities, the Code of Criminal Procedure (CCP) was amended and the impugned clause concerning the gravity of the crime committed as a valid ground for imposing a pre-trial detention measure was abolished. The new Article 151 of the CCP, as worded at the date 25/03/2005, lays down the principle that "a detention measure may only be ordered if the objectives pursued cannot be achieved by a less severe measure". This principle is recalled to prosecutors and judges in the same text.

The judgment was translated and published in the Official Gazette. Training sessions during which this case was presented were organised for prosecutors, particularly in July 2008 under a joint Council of Europe – European Commission programme.

The CM awaits confirmation by the authorities that the judgment was circulated to the district courts, regional courts and the Supreme Court, and that steps have been taken to stop the use of the standard pre-printed form for extending detention.

14. **SER / Vrenčev**
SER / Milošević

Applications Nos 2361/05 and 31320/05 *Last examination: 1100-4.2*

Judgments of 23/09/2008, final on 23/12/2008, and of 28/04/2009, final on 28/07/2009

Prolonged provisional detention (20 and 41 days) without any judicial review in 2004 and 2005 (violations of Article 5§3); in the Vrenčev case : violation of the right to be released pending trial, given the disproportionate nature of the detention and the authorities' failure to consider any alternatives to detention (violation of Article 5§3); lack of diligence in the review proceedings before the Supreme Court, which took six days (instead of 48 hours), without a hearing, to reach a decision (violation of Article 5§4); lack of compensation for the unlawful detention (violation of Article 5§5).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained. The applicants are no longer detained. No other individual measure appears to be necessary.

GM The Code of Criminal Procedure, as amended in September 2009, provides henceforth that a detention order can be made only after a judge has heard the accused. A person arrested must in any event be heard by a judge within 48 hours.

In order to draw the authorities' attention to the requirements of the ECHR, the judgment has been translated and published, in particular, in the Official Gazette and on the internet site of the Agent of the Government. It has been transmitted to the Supreme Court with a view to its dissemination to all the courts. It has been referred to in public statements and a seminar has been organised on it.

Information is awaited concerning the measures taken or envisaged in order to ensure that a detained person is heard by a judge when any decision is taken to extend his or her detention and that judicial review is exercised rapidly and automatically, that all the relevant facts relating to the possibility

of releasing the detained person are considered, that the proceedings before the Supreme Court are conducted diligently and that the right to compensation following unlawful detention is put in place.

15. TUR / Selçuk (Final Resolution CM/ResDH(2010)115)

Application No. 21768/02 *Last examination: 1092-1.1*

Judgment of 10/01/2006, final on 10/04/2006

Excessive length of the applicant's pre-trial detention in 2002 (over four months) considering in particular that the courts failed to convincingly demonstrate the need to extend his detention and failed to take account of the fact that he was a minor at the material time (violation of Article 5§3).

IM The applicant was released in 2002. The ECtHR awarded him just satisfaction for the non-pecuniary damage sustained. No other individual measure was considered necessary.

GM Since the events at issue, a new law on protection of offending minors, setting up the juvenile courts, came into force on 15/07/2005.
According to the new law, proceedings against minors are to be speedy, effective and fair, and must be aimed at furthering the rights of minors. They must make for the effective participation of the minor and his/her family in the process whereby the juvenile courts reach decisions, and allow close collaboration between the minor, his/her family, public institutions and non-governmental organisations. In the course of their work, judges receive tuition in the rights of the child and child psychology, and assistance from experts and psychologists.

As to permissible coercive measures during the investigation, the law gives precedence to measures not involving any detention, such as confinement in certain places or prohibition of making contact with certain persons. Measures restricting freedom and prison sentences must be applied as a last resort, and are subject to the twofold condition that the minor be over 15 years of age and that the offence with which he/she is charged be punishable by over 5 years of imprisonment. The minor must be held in units for minors, apart from adults. Likewise, a pre-trial detention order can only be issued if it is evident that no result can be achieved through the above-mentioned alternative measures, or in case of non-compliance with these measures. The authorities feel that the general rationale of the law will prompt judges to give a detailed statement of grounds for the expediency of placing and keeping minors in pre-trial detention.

The translated judgment was published, particularly on the websites of the Ministry of Justice and the Court of Cassation, and circulated to the authorities concerned.

16. UK / Johnson (Final Resolution CM/ResDH(2010)139)
UK / Kolanis

Applications Nos. 22520/93 and 517/02 *Last examination: 1092-1.2*

Judgments of 24/10/1997 final on 24/10/1997 and of 21/06/2005, final on 21/09/2005

Unlawful continuation of the applicants' psychiatric detention (from 1989 to 1993 and from 1999 to 2000 respectively): excessive delay in implementing the decisions on conditional discharge taken by the competent court (Mental Health Review Tribunal) given the impossibility of fulfilling the conditions at issue and the court's lack of jurisdiction for ensuring compliance with them or for altering them; moreover, lack of effective review of the lawfulness of the continued detention, this review being confined to the regular annual verification of all detention (violations of Articles 5§1. e and 5§4) and absence in domestic law of an enforceable right to compensation for this violation (Kolanis, violation of Article 5§5).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. The applicants, Mr Johnson and Ms Kolanis, were discharged from psychiatric hospital in January 1993 and December 2000 respectively.

No other individual measure was considered necessary by the CM.

GM

Interference with the right to freedom and security: in 2002 the domestic courts, seized of a case similar to the *Kolanis* case, overturned the impugned precedent, which they held contrary to Article 5 ECHR. The House of Lords issued guidelines on how the authorities should apply the legislation in order to prevent new violations. Accordingly, where the conditions laid down by the *Mental Health Review Tribunal* (MHRT) cannot immediately be implemented, the decision taken is to be deemed provisional and the MHRT is to supervise the state of progress of the measures adopted for its execution. Where appropriate, it is to make the necessary changes to the decision or to the conditions laid down.

Lack of an enforceable right to compensation: the *Human Rights Act 1998*, which entered into force in October 2000, introduced an enforceable right to compensation for violation of Article 5.

The *Johnson* judgment was published in *European Human Rights Reports* and the *Kolanis* judgment was published in *Butterworth's Medical Legal Reports* and in *The Times*.

C.3. Detention and other rights

17. ITA / Messina Antonio No. 2 and other similar cases (see AR 2007, p. 58)

Applications No. 25498/94

Judgment of 28/09/2000, final on 28/12/2000

Interim Resolutions CM/ResDH(2005)56; CM/ResDH(2001)178

Last examination: 1086-4.2

Systematic delays on the part of the courts in delivering decisions in case of appeals against ministerial decrees imposing a special detention regime under Article 41 bis of the Prisons Act (e.g. restrictions on the right to receive visits and correspondence, etc.) on certain prisoners, notably those convicted of mafia-related offences (in some cases, absence of decision on the merits as the validity of the decrees had already expired when the appeal was considered) (violations of Articles 6§1 and 13); violation of the right of access to a court due to the impossibility to challenge placements in "high-level surveillance" prison units (E.I.V.) (violation of Article 6§1); arbitrary monitoring of prisoners' correspondence and lack of an effective remedy in this respect (violation of Article 8 separately and taken in conjunction with Article 13).

IM

The applicants are no longer subject to **special detention regime**, except in the *Asciutto* (application No. 35795/02) and *Enea* (application No. 74912/01) cases in which information on the applicants present situation has been requested.

The question of individual measures in respect of **monitoring of correspondence** has been solved by the adoption of the new legislation (see GM and AR 2007).

GM

Systematic delays / lack of judicial decisions on the merits: in its IR CM/ResDH(2005)56, recalled in the AR 2007, the CM noted the case-law development whereby decisions on the merits were henceforth taken even if the validity of the ministerial decree had expired. It called nevertheless upon the Italian authorities to rapidly adopt the legislative and other necessary measures to ensure a rapid and efficient judicial review. It encouraged in this context the courts to grant direct effect to the ECtHR's judgments so as to prevent new similar violations and requested information on progress made.

In response the Italian authorities indicated anew that it was impossible in practice to respect the ten-day time-limit set by law for a decision on the lawfulness of a special detention regime without at the same time infringing the procedural guarantees given in the detainee's favour. The authorities also made reference to certain recent ECtHR's judgments where no violation of Article 6§1 was found (*Campisi*, application No. 24358/02, §76) or where the grievance was considered as unfounded (*De Pace,* application No. 22728/03, §63, and *Guidi*, application No. 28320/02, §59). In these cases the decisions had intervened in time, before the expiry of the relevant decrees. In the two first cases the ECtHR added that there had been no systematic delays leading to a series of ministerial decrees without taking into account the judicial decisions.

The CM has been further informed that Law No. 94 of 15/07/2009 partially modified Article 41bis of the Prisons Act, extending to four years the period of validity of ministerial decrees imposing a special detention regime and to twenty days the period allowed for the court decision in case of appeal against such decrees. In addition, after the reform the sole supervisory court competent to decide on the appeals became the Court of Rome, instead of the court having jurisdiction on the prison where the appellant is detained.

The CM has requested information on the effects of the reform.

Lack of access to a court to contest placement in a "high-level surveillance" (E.I.V.) prison unit: in the *Musumeci* (application No. 33695/96) judgment of 2005 the ECtHR found a violation of Article 6 under its "civil" head because of the impossibility to challenge the placement decision itself before a court. In the subsequent *Enea* case (application No. 74912/01), the government argued that the placement decision itself only implied a more important surveillance of the person detained and did not itself affect his or her personal rights. In its judgment of 2009 the Grand Chamber developed its approach and did not find a violation of the right of access to a court because of the impossibility to challenge *per se* the merits of the placement decision as any special restriction on "civil rights" imposed during the placement (for example visiting rights) could be separately appealed to the courts responsible for the execution of sentences In the light of the reasoning of the ECtHR in the *Enea* case it has not appeared necessary to pursue the issue of general measures.

Control of the prisoners' correspondence: the necessary general measures have been taken and are presented in Final Resolution CM/ResDH(2005)55 closing the supervision of the case *Calogero Diana and 6 other cases* (application No. 15211/89).

D. Issues related to aliens

D.1. Unjustified expulsion or refusal of residence permit

18. ITA / Ben Khemais

Application No. 246/07
Judgment of 24/02/2009, final on 06/07/2009
Interim Resolution CM/ResDH(2010)83
Last examination: 1100-4.3

Violation of the applicant's right to individual petition to the ECtHR on account of the Italian authorities' failure, in June 2008, to comply with an interim measure whereby the ECtHR ordered to suspend the applicant's expulsion to Tunisia as the expulsion prevented the ECtHR from effectively examining the complaints that he risked being tortured. Furthermore, the applicant had no effective remedy to challenge the expulsion order before Italian courts (violation of Article 34); in addition the implementation of the ministerial expulsion order at issue (based on national security grounds and approved by the courts), had created serious risks of treatment contrary to Article 3: these risks were not dispelled by the diplomatic assurances obtained from the Tunisian authorities: there was nothing to prove that these assurances emanated from a body competent to bind the state and furthermore, Tunisia was exposed to serious criticism on account of absence of action in response to complaints of ill-treatment and had a record of non-cooperation with international supervisory bodies. In addition, neither the applicant's lawyer, nor the Italian ambassador were allowed to visit the applicant in the Tunisian prison (violation of Article 3).

IM The applicant is currently serving a sentence of 13 years' imprisonment in Tunisia following a conviction in 2002 for involvement in a terrorist organisation. In March 2010, the CM noted the efforts made by the Italian authorities to collect information on the applicant's situation in prison, in addition to the diplomatic assurances given by the Tunisian authorities and welcomed the Italian authorities' readiness to pursue their efforts in this respect. In June 2010, several delegations stated that further information was necessary to clarify the applicant's current situation in Tunisia and whether or not the Italian authorities could obtain sufficient guarantees that the applicant would not be subject

to treatment contrary to Article 3. Further information is accordingly expected.

GM The CM noted that the Italian authorities had expelled also other applicants to Tunisia after the present judgment had become final, despite the ECtHR's indications under Rule 39 to suspend expulsion (see notably judgment of 13/04/2010, final on 13/07/2010 in the case of *Trabelsi*, application No. 50163/08). In response hereto, in May 2010, the Secretary General of the Council of Europe had issued a public statement in which he strongly regretted the repeated expulsions by Italy and PACE had addressed a Written Question (No. 571) to the CM about Italy's non-compliance with ECtHR interim measures.

In June 2010 the CM adopted an IR (CM-ResDH(2010)83) firmly recalling the obligation of the Italian authorities to respect interim measures indicated by the ECtHR, urging the Italian authorities to take all necessary steps to adopt sufficient and effective measures to prevent similar violations in the future and deciding to examine the implementation of the *Ben Khemais* judgment at each human rights meeting until the necessary urgent measures were adopted.

Subsequently, the Italian authorities indicated that a number of developments had taken place since the judgment in this case was rendered. In particular:

– In a case, concerning an applicant convicted of terrorism, in which the ECtHR had indicated an interim measure in January 2009 (*Mostafà*, application No. 42382/08), the Prefect of Benevento ordered the stay of execution of an expulsion order until the proceedings before the ECtHR are concluded. Consequently, on 30/01/2009 the Court of Milan ordered alternative preventive measures in the form of police surveillance and compulsory residence in Milan for a duration of 3 years.

– On 03/05/2010, the Court of Cassation held that justices of the peace should assess the concrete risks that an irregular immigrant would face in his country of origin before accepting the execution of an expulsion order. Shortly before, in a decision of 28/04/2010, the Court of Cassation had underlined in the same vein in appeal proceedings lodged against an expulsion order for international terrorism, the binding force of interim measures ordered by the ECtHR and the fact that all Italian authorities, including judicial authorities, must respect them and should identify and take appropriate preventive measures other than expulsion where the person to be expelled is considered to be socially dangerous. The Court of Cassation also indicated that judicial authorities should base their decisions on the specific situation of the person concerned and that this obligation should be observed until concrete and reliable evidence is brought before domestic courts that the human rights situation has improved in Tunisia.

– On 27/05/2010, the Italian Ministry of Justice sent to all Italian courts of appeal – and, through them, to the Justices of the Peace – a circular stressing the obligation to respect interim measures ordered by the ECtHR. The circular referred to the ECtHR case law as well as to the possibility for domestic courts to apply alternative measures to expulsion, such as placing applicants in "working houses" (*case di lavoro*) as had been done already in one case (see inadmissibility decision in the case of *Drissi,* application No. 44448/08). As far as administrative expulsions (i.e. expulsions ordered by the Ministry of Interior as in the case of *Ben Khemais* or by the Prefect) were concerned, the circular letter indicated that a more effective judicial control would be applied to expulsion orders, so as to assess inter alia whether the expulsion would entail a risk of violating fundamental rights in the country of destination. Finally, the Ministry of Justice stated that courts of appeal were expected to provide feedback on the implementation of the requirements of the ECHR.

– In September 2010, the CM noted these developments which demonstrated a positive trend towards ensuring full compliance with interim measures indicated by the ECtHR, but noted also that it remained to be seen how these measures would be applied in practice, in particular in respect of expulsion orders issued by the Ministry of Interior or by Prefects.

The ECtHR judgment was translated and published on the website of the Court of Cassation. It has also been sent out with a brief explanatory note to justices of the peace (competent for the validation of expulsion orders) and to judges competent for the execution of sentences.

19. NLD / Rodrigues da Silva and Hoogkamer (Final Resolution CM/ResDH(2010)60)

Application No. 50435/99 *Judgment of 31/01/2006, final on 03/07/2006*

Last examination: 1086-1.1

Breach of the right to respect for family life of the applicants – a Brazilian mother and her daughter, born in 1996 in the Netherlands and Dutch citizen – because of the refusal to grant the mother a residence permit when she sought to regularise her situation in 1998, after the separation with the father, refusal reiterated in 2002: the authorities did not sufficiently take into account her situation, notably the fact that between 1994 and 1997 she could have received a permanent residence permit had she only applied. Even if this negligence was clearly criticisable, it did not justify the harsh consequence of expulsion and separation from her daughter with whom she had since the beginning had close contacts, even if parental rights had formally been vested in the father (violation of Article 8).

IM With regard to the non-pecuniary damage alleged by applicants, the ECtHR considered that the judgment constituted in itself sufficient just satisfaction.

The first applicant was granted a residence permit with retroactive effect as from 15/07/1999. Consequently, no other individual measure was considered necessary by the CM.

GM Following the judgment of the ECtHR, the Dutch policy regarding Article 8 of the ECHR has been adapted to the ECHR requirements by a special decision (WBV 2007/30), which has been incorporated in chapter B2/10 of the Aliens Act Implementation Guidelines of 2000. The authorities consider that given the direct effect of the ECtHR's judgments in the Netherlands, all authorities concerned are expected to align their practice to the present judgment. For that purpose, the judgment was disseminated to the immigration authorities and published in several legal journals in the Netherlands.

20. NLD / Salah Sheekh (Final Resolution CM/ResDH(2010)10) (see AR 2007, p. 71)

Application No. 1948/04 *Last examination: 1078-1.1*

Judgment of 11/01/2007, final on 23/05/2007

Risk of ill-treatment in case of expulsion to Somalia following the rejection of the applicant's request for asylum in 2003 and the fact that the applicant, as member of the Ashraf minority, was unlikely to be allowed to settle in a "relatively safe" area (violation of Article 3).

IM The applicant has not submitted any claim for just satisfaction before the ECtHR.

On 10/03/2006, before the ECtHR handed down its judgment on this case, the applicant was granted a residence permit for asylum purposes on the basis of a temporary categorical protection policy, adopted by the Minister of Justice on 24/06/2005 in respect of asylum seekers from certain parts of Somalia.

Following the ECtHR's judgment, the applicant has been granted a new residence permit for asylum purposes, valid until June 2010, on the basis of the Aliens Act 2000 (see GM). This residence permit is, in principle, renewable. In addition, the Dutch authorities gave assurances that they will apply the principles of their reformed non-refoulement/expulsion policy in conformity with Article 3 of the ECHR (see GM) in their future decisions concerning the applicant.

GM In August 2007, changes were made to the way in which an alleged risk of treatment contrary to Article 3 in asylum procedure is assessed, in particular:

– asylum-seekers must still prove that they risk being persecuted but the overall situation in a country, including as regards minorities, are included in the assessment criteria;

– specific groups of asylum seekers, "vulnerable minority groups" (including Reer Hamar (Ashraf) in Somalia), have been identified;

– asylum seekers only have to adduce minor indications to qualify for a residence permit for asylum purposes under Article 29§1(b) of the Aliens Act

2000 (risk of torture or inhuman or degrading punishment or treatment);
– assessment is no longer based solely on the country reports of the Ministry of Foreign Affairs but also increasingly on other sources.

The judgment has also been published in numerous legal journals in the Netherlands and the *Nederlands Juristenblad* (2007-7) issued a special edition on the case. It has also been broadcast on radio and television.

21. NLD / Tuquabo-Tekle and Others (Final Resolution CM/ResDH (2010)108), (see AR 2007, p. 71)

Application No. 60665/00 *Last examination: 1092-1.1*

Judgment of 01/12/2005, final on 01/03/2006

Disproportionate interference in the applicants' right to private and family life resulting from the fact that Mrs Tuquabo-Tekle's daughter, who had stayed in Eritrea when the family fled the civil war in 1989, wasn't authorised in 2000 to join her mother, who was lawfully resident in the Netherlands, and her step-family; although they had already obtained a right to family reunion during a lawful stay in Norway of the mother, the reunion had at that time been impossible for reasons beyond their control (violation of Article 8).

IM On 04/02/2010 the Royal Netherlands Embassy in Khartoum (Sudan) issued the daughter of Mrs Tuquabo-Tekle a *laissez-passer* and an entry visa for the Netherlands. On 11/02/2010 she arrived in the Netherlands. Mrs Tuquabo-Tekle was issued a residence permit on 23/04/2010. Furthermore, the ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained.

GM On 25/09/2006, the Ministry of Justice adopted a new policy in cases concerning the right to family reunion of minors with a parent legally residing in the Netherlands. According to the authorities, the criterion of "factual family ties" used to determine whether a right to family reunion exists, is now interpreted in conformity with the ECtHR'interpretation of Article 8 of the ECHR (see AR 2007). Thus, it is now assumed that a child has factual family ties with the parent concerned if family life within the meaning of Article 8 of the ECHR exists.

22. SUI / Emre

Application No. 42034/04 *Last examination: 1092-4.2*

Judgment of 22/05/2008, final on 22/08/2008

Breach of the right to respect for family life: the applicant, a Turkish national who came to Switzerland with his family in 1986 before he was six years old, was deported in 2003 for an indefinite term following a series of offences, although their gravity was merely relative and they partly came under the heading of juvenile delinquency, and despite the weak ties he had with his country of origin, where the psychological troubles he suffered from were liable to complicate still further his return to Turkey (violation of Article 8)

IM The ECtHR awarded the applicant just satisfaction for the non-pecuniary damage sustained.

Following the ECtHR's judgment, the applicant lodged an application for review with the Federal Supreme Court, which on 06/07/2009 allowed the application and altered the decision of 03/05/2004, limiting to ten years as from 02/06/2003 the duration of the removal measure.

On 11/01/2010, the applicant filed a new application before the ECtHR (No. 5056/10) Articles 8 and 46 of the ECHR complaining that the construction placed on the judgment of the ECtHR by the Federal Supreme Court in the judgment of 06/07/2009 was not consistent with the conclusions underlying the finding of a violation at issue in this case and still did not respect his family life. The fresh application was communicated to the Swiss Government on 27/04/2010, which filed its observations on 13/09/2010. The assessment of the information provided is in progress.

GM The authorities have signified to the CM that the case is of a somewhat isolated character. The judgment of the ECtHR was nevertheless transmitted without delay to the Federal Supreme Court and to the competent cantonal authorities. An abstract of the judgment is also set out in the Federal Council's annual report on the activities of Switzerland within the Council of Europe in 2008.

Having regard to this situation, no other general measure appeared necessary before the CM

D.2. Detention in view of expulsion

23. AUT / Rusu

Application No 34082/02 *Last examination: 1086-4.2*

Judgment of 02/10/2008, final on 02/01/2009

Arrest and detention of a Romanian national when she attempted to return to Romania from Spain in 2002 – on the basis of documents issued by the French police following the theft of her passport in France – and was refused by the Hungarian border police and sent back to the Austrian border police. She was not given prompt and adequate information of the reasons underlying this arrest and detention: the only reasons given in a language she understood were those contained in standardized forms referring to out of date legislation and unconnected with the reasons of the specific detention decision taken in her case (violation of Article 5§2); also arbitrary detention as there was no indication that she was trying to evade expulsion to Romania (violation of Article 5§1.f).

IM The applicant did not make any claim for just satisfaction. However, having regard to the fundamental importance of the right to liberty, the ECtHR awarded just satisfaction as compensation for the non-pecuniary damage sustained by the applicant. In the circumstances, no further individual measure appears necessary.

GM

Violation of Article 5§2: The new information sheets for detainees issued under the 2005 Aliens Act currently in force have been translated into various languages and are available to police authorities and detention centres via the Intranet site of the Ministry of Interior. Police officers can thus normally present relevant information to detainees promptly upon their arrest. In addition, when foreigners are questioned shortly after their arrest, an interpreter is always present to explain notably the reason for the detention. Moreover, foreigners may avail themselves of the services provided by specific organisations with a view to facilitate their return. Members of these organisations have the linguistic skills to guarantee effective communication with foreigners. In addition, on the initiative of the Human Rights Advisory Board a project is developed which will provide improved electronic information for download by foreigners in 40 languages (short video demonstrations and information about reasons for arrest and access to legal advice, including as regards appeal against detention pending expulsion). In these circumstances, it has been considered that no further general measure seems necessary as regards this violation.

Violation of Article 5§1.f: Already the Aliens Act 1997 did provide for less stringent measures (although these were not used), such as residence orders in accommodation designated by the authorities, awaiting expulsion. Information is now awaited on measures envisaged or taken under the new 2005 Act to avoid new, similar violations.

In order to contribute to the **prevention of new similar violations** the ECtHR judgment has been sent to the Constitutional Court, the Administrative Court, the Supreme Court, all Federal Ministries, the Human Rights Advisory Council, the Parliament, the Asylum Court, the Independent Administrative Panels and all Human Rights Co-ordinators. It has also been published by the Austrian Institute for Human Rights.

24. CZE / Rashed

Application No. 298/07 *Last examination: 1092-4.2*

Judgment of 27/11/2008, final on 27/02/2009

Unlawful detention of an Egyptian asylum seeker, from 10/09/2006 to 28/04/2007, on account of his placement in a special Interior M0inistry establishment at the Prague international airport to prevent his entering Czech territory: although the applicant was free to leave at any moment the country, his placement outside the normal reception centre amounted to arbitrary detention because it was not clearly prescribed by law (violation of Article 5§1); lack of judicial review of the placement's lawfulness insofar as none of the applicant's requests for judicial review gave rise to a final decision before the applicant's return to Egypt in June 2007 (violation of Article 5§4).

IM In June 2007 the applicant returned to his country of origin. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained. The CM considered that no other individual measure was necessary.

GM **Illegality of detention:** the ECtHR noted that the relevant provision of the Law on asylum had been substantially amended on 21/12/2007. It henceforth provides for the possibility of holding an asylum seeker in a facility other than the airport reception centre. It also lays down the deadline within which the competent authorities must rule on an asylum request (upon expiry of the deadline the Ministry of the Interior must authorise the alien to enter the territory and transfer him/her to an asylum centre), and the maximum duration of an asylum seeker's detention in an airport reception centre. According to the authorities, these changes have dispelled the risk that the law be interpreted to the detriment of the persons concerned.

No other general measure seems necessary regarding the violation of Article 5§1.

Absence of judicial review: the CM was informed that draft amendments to the impugned law on asylum and to the Code of Administrative Procedure were expected to take effect in December 2010. These amendments would set a time limit of seven days for obtaining a court decision on appeals against decisions refusing entry to the territory. More detailed information is awaited concerning the draft amendments.

Information was also requested as to whether the courts would need to rule on the merits of the appeal even when the interference complained of was over by the time they adopted their decision, so that the applicants might claim damages under national law.

To draw attention to the requirements of the ECHR, the judgment was published on the Ministry of Justice website and sent to the authorities concerned.

25. UK / Saadi (Final Resolution CM/ResDH(2010)67)

Application No. 13229/03 *Last examination: 1086-1.1*

Judgment of 29/01/2008 – Grand Chamber

Violation of the right of the applicant (an Iraqi national who sought asylum upon his arrival to the United Kingdom) to be informed promptly of the reasons for his 7 days arrest in the context of a "fast track" procedure for the examination of cases likely to allow for rapid decision. The applicant was only informed of the real reasons for his detention by his legal representative 76 hours after his placement in a special detention facility for asylum-seekers (violation of Article 5§2)

IM The applicant was granted asylum on 14/01/2003. In response to the applicant's demand for non-pecuniary damage in respect of his detention, the ECtHR considered that the finding of a violation constituted in itself sufficient just satisfaction. In the circumstances, the CM considered that no further individual measure appears necessary.

GM The relevant form ("Reasons for Detention and Bail Rights" notice) presented to asylum-seekers when they are detained was changed in 2002 to include a box indicating that detention was authorised for applications "which may be decided using the fast-track procedures".

In addition, in July 2004, an instruction was circulated to Immigration Officers responsible for filling

in the forms, stating that they must include all the reasons why detention is considered appropriate and not just focus upon the sole reason that detention is authorised to process an application under the fast-track procedure.
Finally, the ECtHR's judgment has been published in several law journals and the national press.

26. UKR / Soldatenko and other similar cases

Application No. 2440/07 *Last examination: 1092-4.2*

Judgment of 23/10/2008, final on 23/01/2009

Unlawful detention pending extradition between 2004 and 2009 (violations of Article 5§1(f)); in certain cases, lack of judicial review of the detention (violations of Article 5§4) and absence of a right to compensation in that regard (violation of Article 5§5); in one case, the extradition also entailed a real risk of ill-treatment (violation of Article 3); lack of an effective remedy to challenge the extradition (violation of Article 13).

IM All the applicants have been released and the Ukrainian authorities have informed the states seeking their extradition that the applicants would not be extradited. In the *Svetlorusov* case (application No. 2929/05), the ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained. In the *Soldatenko* and *Novik* (application No. 48068/06) cases the ECtHR did not award the applicants just satisfaction, as they had not applied for it.

GM **Unlawfulness of detention pending extradition and lack of a judicial remedy**: in its judgments, the ECtHR found that the Ukrainian law in force at the material time did not provide for a procedure for detention pending extradition sufficiently accessible, precise and foreseeable in its application, to avoid the risk of arbitrary detention pending extradition. Judicial review of the lawfulness of detention was thus also rendered ineffective. According to the information provided by the authorities, a special procedure relating to arrest and detention pending extradition was incorporated into the Code of Criminal Procedure on 17/06/2010. In particular, it includes rules on arrest, provisional arrest and arrest pending extradition, and also the associated appeal procedures. This information is being examined and examples of the application of this new procedure in practice are awaited.

Absence of a right to compensation for victims in respect of unlawful detention ordered in the context of extradition proceedings: information is awaited about the measures taken or envisaged in order to comply with the judgments.

Extradition in circumstances in which the authorities must be aware of the real risk that the applicant will be ill-treated: information is awaited about the measures envisaged to ensure that all the authorities concerned comply with the requirements of Articles 3 and 13 in extradition proceedings.

Awareness-raising measures: all the judgments have been translated into Ukrainian and published in the government's official journal. The attention of all the authorities concerned has been drawn to the findings of the ECtHR in these cases.

E. Access to and efficient functioning of justice

E.1. Excessive length of judicial proceedings

27. BGR / Djangozov and other similar cases (see AR 2007, p. 84)

Application No. 45950/99 *Interim Resolution CM/ResDH(2010)223*

Judgment of 08/07/2004, final on 08/10/2004 *Last examination: 1100-4.2*

Excessive length of civil proceedings which, in certain cases (such as Djangozov and Todorov), was largely due to the excessive duration of the criminal proceedings (violations of Article 6§1); lack of an effective remedy in that regard in 18 cases (violations of Article 13).

IM Proceedings in all these cases are completed except for the *Kambourov* (application No. 55350/00), *Kavalovi* (application No. 74487/01) and *Merdzhanov* (application No. 69316/01) cases. In its Interim Resolution CM/ResDH(2010)223 of December 2010, the CM called upon the Bulgarian authorities to provide for acceleration as much as possible of the proceedings pending in these cases, in order to bring them to an end as soon as possible, and to inform it of their progress.

GM

Excessive length of civil proceedings: in 2007 a new Code of Civil Procedure (CCP) was adopted with the main aim of speeding up court proceedings. In particular, it sets out to concentrate the investigative steps at first instance and to restrict petitions at appeal and on points of law.

Monitoring of the application of the CCP is performed by the Inspectorate of the Ministry of Justice. The Inspectorate of the Judicial Service Commission supervises compliance by officers of court with the procedural deadlines by means of planned inspections. In this context, the authorities have also provided information on disciplinary proceedings before the Judicial Service Commission.

In 2006 the Bulgarians authorities presented a report from two NGOs on the average length of civil proceedings (see AR 2007). In 2007 and 2010 they supplied official statistics. These indicate in general terms and for all courts that despite an upsurge in the number of cases registered, the number of cases concluded for all courts is on the increase (in 2009, 4.59% over 2007 and 15.46% over 2008). Likewise, the backlog before all courts has decreased for the second consecutive year. Thus the reduction in the number of cases pending at the end of 2009 is 10.26% compared to 2007 and 2.35% compared to 2008. The number of judges, taking all courts together, was 2 162 in 2009, i.e. 1.45 % more than in 2007 and 1.74 % more than in 2008 (for further details, see Interim Resolution CM/ResDH(2010)223).

Seminars and other types of training concerning the ECHR were organised, and the authorities have indicated that over the period 2007-2010 improvement of judges' and prosecutors' qualifications, including their knowledge of the ECHR, was a priority.

Absence of an effective domestic remedy for excessive length of civil proceedings: a remedy for complaining of the slowness of civil proceedings was introduced in 1999 into the former CCP (see AR 2007). These provisions were largely incorporated by the new CCP of 2007 which affords the parties the possibility of asking the higher court at any time to set a deadline for the performance of a procedural step, if the court entertaining the case does not carry out the step in question promptly. The authorities report that a bill amending the law on state and local authority liability has been drawn up to provide the possibility of claiming compensation in the event that reasonable time is exceeded.

Excessive length of criminal proceedings: a new Code of Criminal Procedure (CPP) was adopted in 2005 particularly in order to allow criminal proceedings to be expedited. Its provisions stipulate, in particular, short time-spans for consideration of a case and for adjournment of hearings, and the wider use of simplified procedures. In addition, a crime policy strategy for 2010–2014 was adopted to alleviate further the undue formalism of the criminal procedure. This gave rise to amendments of the CPP in 2010. For further information, readers are referred to the *Kitov* case (application No. 37104/97) in the context of which these measures are examined.

Overall appraisal in the Interim Resolution of December 2010: in its Interim Resolution CM/ResDH(2010)223, the CM encouraged the authorities to persevere with their efforts to monitor the effects of the reforms and invited them to complete as soon as possible the reform for the introduction of a remedy whereby compensation may be granted for prejudice caused by excessive length of judicial proceedings, and to keep the CM informed of developments in that connection.

28. CRO / Počuča and other similar cases (see AR 2008, p. 124)

Application No. 38550/02 *Last examination: 1100-4.2*

Judgment of 29/06/2006, final on 29/09/2006

Excessive length of the proceedings before the administrative authorities and courts, which began between 1996 and 1999 (violation of Article 6§1); absence of an effective remedy in that regard in the Božić and Štokalo and Others cases (violation of Article 13)

IM In the *Počuča* and *Božić* (application No. 22457/02) cases, the proceedings ended after the dismissal of the applicants' actions by the Constitutional Court, in 2009 and 2007 respectively. Information is awaited on the stage reached in the proceedings in the other three cases and, if appropriate, on how they are being speeded up.

GM

Excessive length of proceedings: legislation was enacted in 2004 and 2005 to fill the gap created by the case-law of the Constitutional Court on the adjustment of pensions (see AR 2008). The legislation established a mechanism to compensate for the reduction of certain pensions. According to the information provided by the authorities, the payment of compensation under the Law of 2005 has been implemented. The authorities stated that two thirds of pensioners had withdrawn their applications to participate in the pension fund, while one third of the applications had been maintained. The number of complaints brought before the Administrative Court under the right to compensation has none the less fallen significantly. However, the ECtHR has found similar violations in the context of proceedings relating to denationalisation (the *Smoje* and *Štokalo* cases, applications Nos. 28074/03 and 15233/05). In the *Božić* case, moreover, the ECtHR identified a structural problem in the procedural system leading to cases repeatedly being remitted owing to failings in the determination of the facts.

Information is awaited on the reasons for the violation found in the cases relating to denationalisation and the measures taken or envisaged in order to avoid similar violations, including the question of the repeated remission of cases.

Effective remedy against excessive length of proceedings: in 2007 the Constitutional Court altered its case-law on the period to be taken into account in cases relating to the length of administrative proceedings, in accordance with the criteria of the ECHR (see AR 2008). No further measure appears to be necessary.

In addition, the Croatian authorities took part in the round table organised by the Department for the execution of judgments of the ECtHR in March 2010 on effective remedies against non-execution or delayed execution of domestic court decisions, financed by the Human Rights Trust Fund, and designed to enable interested states to exchange their experiences and take note of the most recent developments in the case-law of the ECtHR.

29. EST / Saarekallas Oü
EST / Missenjov

Applications Nos. 11548/04 and 43276/ 06

Last examination: 1092- 4.2

Judgments of 08/11/2007, final on 08/02/2008 and of 29/01/2009, final on 29/04/2009

Excessive length of civil proceedings (1998-2006 in the Saarekallas Oü case and 1999-2006 in the Missenjov case) (violation of Article 6§1); lack of an effective remedy in that regard (violation of Article 13).

IM The civil proceedings in both cases ended in 2006. Subsequently the ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. In these circumstances, no other question of an individual measure seems to arise before the CM.

GM

Undue length of proceedings: the Estonian authorities reaffirmed that the undue length of civil proceedings was not a structural problem in Estonia, and made reference to the measures taken and already mentioned in the final resolution in the *Treial* case (application No. 48129/99, Resolution CM/ResDH(2007)152).

Lack of an effective remedy: according to the information supplied at the time, the 2006 Code of Civil Procedure already provided for a remedy notably allowing to complain to the administrative courts of the excessive length of proceedings, invoking the Constitution, the ECHR, the Code of Administrative Procedure and the case-law of the Supreme Court.

That being so, after the judgments in question here, additional developments have taken place in order to improve the remedies further.

(a) *Expeditive appeal*: in addition to the various statutory time-limits intended to ensure the celerity of proceedings (described in the ECtHR's judgment), the Ministry of Justice has prepared amendments to the Code of Civil Procedure in order to introduce a

specific expeditive appeal enabling the higher courts to order the lower courts to take specific measures within the time limits set.
(b) *Compensatory appeal*: the government considers that the uncertainties still remaining at the time of the procedure before the ECtHR owing to the lack of conclusive precedent were dispelled by a Supreme Court judgment of December 2008 (No. 3-4-1-12-08) which made it clear that a party could claim and secure damages for excessive length of proceedings before an administrative court. It was furthermore made clear that the appeal could be brought not only after the end of the proceedings by a final decision but also while the proceedings in question were still pending.

The judgment was translated into Estonian and posted on the website of the Council of Europe information office. It was circulated to all courts and authorities concerned.

30. GER / Kaemena and Thöneböhn (Final Resolution CM/ResDH(2010)52)

Application No 45749/06,
Judgment of 22/01/2009, final on 22/04/2009

Last examination: 1086-1.1

Excessive length (1996 – 2006) of joint criminal proceedings against the applicants, who had been convicted to a life sentence, owing to substantial periods of delay before the Federal Constitutional Court (more than 6 years and one month) (violation of Article 6§1); lack of an effective remedy capable of affording the applicants redress for a violation of the reasonable-time requirement (violation of Article 13).

IM The proceedings are closed. The ECtHR awarded the applicants just satisfaction in respect of non-pecuniary damage sustained as a result of the suffering caused by the excessive length of the proceedings against them and the lack of effective remedy. Accordingly, no further individual measure was deemed necessary.

GM *Length of proceedings*: the violation resulted from the particular workload of the Federal Constitutional Court at the material time. In the meantime, the authorities have addressed the problem by establishing an additional registry, recruiting additional legal officers and introducing a simplified procedure, under which decisions are taken by a chamber composed of three judges.
Lack of an effective remedy: by a decision of 17/01/2008 the Federal Court of Justice changed its case-law, affording redress for excessive length of proceedings in cases in which a mandatory life sentence is imposed in such a way that a specified part of the life sentence – which is enforced for at least 15 years – had to be considered as having been served (so called "execution approach", "*Vollstreckungslösung*") The ECtHR welcomed this reversal of case-law, which, however, was not applicable to the applicants as it was introduced after their conviction.

Publication and dissemination: the judgment has been transmitted to the courts concerned and to the Ministries of Justice of the *Länder*. It was published in various law journals included in the Ministry of Justice's Report of the case-law of the ECtHR and the execution of its judgments in proceedings against the Republic of Germany in 2009. All judgments of the ECtHR against Germany are publicly available via the website of the Federal Ministry of Justice which provides a direct link to the ECtHR's website for judgments in German.

31. ITA / Ceteroni and other similar cases (see AR 2007, p. 87, AR 2008, p. 128 et AR 2009, p. 123)

Application No. 22461/9,

Judgment of 15/11/1996 (final)

Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135, ResDH(2005)114, CM/ResDH(2007)2, CM/ResDH(2009)42, CM/ResDH(2010)224

Memorandum CM/Inf/DH(2005)31 and addendum 1 and 2, CM/Inf/DH(2005)33, CM/Inf(2005)39, CM/Inf/DH(2007)9, CM/Del/Act/DH(2007)1007 final, CM/Inf/DH(2008)42

Last examination: 1100-4.2

Excessive length of civil, criminal and administrative judicial proceedings (violation of Article 6§1).

IM According to the information available, the proceedings in 707 cases have not yet ended (531 civil actions, 109 labour court cases, 1 forced execution procedure, 23 criminal trials and 43 procedures before the administrative courts). The Italian authorities have indicated that the findings of violations were notified to the national courts in order to expedite the pending proceedings.

GM Since the early 1980s, a large number of ECtHR judgments and CM decisions have revealed a structural problem linked with the duration of court proceedings in Italy, which remains to be settled despite the numerous measures adopted (these measures and the CM's assessment thereof are presented, in particular, in a series of IR adopted since 1997; see also the 2007 AR for a summary).

In response to the IR adopted in 2005 and 2007 (IR(2005)114 and IR(2007)2) in which the CM had invited the authorities to devise an effective new strategy addressing the problem of excessive length of court proceedings, the Minister of Justice set up a special committee and several legislative initiatives were taken. A number of meetings were held in 2007 and 2008 between the Secretariat and the competent Italian authorities (see AR 2008 and document CM/Inf/DH(2008)42).

In March 2009 the CM adopted another Interim Resolution (CM/ResDH(2009)42) calling upon the authorities in particular to prescribe and adopt measures for improving the efficiency of justice and reducing the backlog of civil, criminal and administrative proceedings. It also asked them to evaluate the outcomes of the reforms so that any necessary adjustments could be made, and to provide for the resources needed to implement reforms (for detailed particulars of this, see AR 2009).

However, since this Interim Resolution there has not been constant and adequate information on several outstanding questions, which has prevented the CM from making an effective assessment. Thus, the statistics for 2009 were submitted shortly before the meeting in December 2010, making it impossible to evaluate them during the meeting. The few statistics for 2008 nevertheless point to a significant reduction in the average length of proceedings before civil courts at first instance and at appeal, and before lay magistrates, whereas a slight increase is observed before the criminal courts and lastly, where administrative proceedings are concerned, a rise in the number of pending cases was recorded in 2008.

In a further IR adopted in December 2010 (CM/ResDH(2010)224), the CM again called upon the Italian authorities at the highest level to uphold firmly their political commitment to resolve the problem of excessive length of court proceedings, and take all the necessary technical and budgetary measures to that end. It invited them to initiate an interdisciplinary action co-ordinated at the highest political level, involving the principal agents of justice, to devise an effective strategy as a matter of urgency, and to present it to the CM together with up-to-date information and statistics.

32. MKD / Atanasović and Others, and other similar cases (see AR 2008, p. 134)

Application No. 13886/02

Judgment of 22/12/2005, final on 12/04/2006

Last examination: 1092-4.1

Excessive length of proceedings before the civil courts or labour tribunals, including the enforcement stage (violations of Article 6§1); lack of an effective remedy in that respect (case of Atanasovic and Others) (violation of Article 13).

IM According to the information provided by the authorities, the proceedings are still pending in the cases of *Atanasovic* and *Bogdanska Duma* (application No. 24660/03) and *MZT Learnica* (application No. 26124/02). Concerning the *Atanasovic* case, a new law has enabled applicants to request as from 01/07/2011 the transfer of the enforcement procedure to the private bailiff service. After 31/12/2011, transfer is compulsory. However, this legislative amendment will in no circumstances absolve the authorities of their obligation to bring the proceedings to an end as soon as possible. More generally, information is still awaited on the urgent measures required to expedite the pending proceedings. In the *Atanasovic* case, information is awaited particularly concerning the enforcement procedure which has remained "inoperative" since 1995, and thus had already lasted for over 14 years at the delivery of the ECtHR's judgment in 2005, 8 of which had elapsed since the ratification of the ECHR.

GM

Excessive length of proceedings: a new law on enforcement and a new law on civil procedure, aimed at increasing the effectiveness of civil procedure and reducing its duration were passed in 2005 (for further details, see AR 2008). Subsequently, the statistics on the duration of civil proceedings improved considerably (for example, in 2008, 52.10% of all civil cases were disposed of within 6 months, whereas a further 24.60% of cases were closed during the year).

As to the handling of the backlog before the courts, according to a report from the Ministry of Justice in 2009 the number of cases has been reduced by 44%.

In addition, an automatic system of information on and management of cases was set up in all domestic courts in February 2009. All pending cases have been recorded in it since 15/09/2009, and as from 01/01/2010 the registration, monitoring and management of cases will be carried out solely by means of this system.

Finally, in 2009 four national judges attended a seminar on Article 6 of the ECHR, twelve judges made a visit to the ECtHR to receive updated information on its practice regarding length of proceedings, three seminars were organised on the right to be heard within reasonable time and two on Article 6 of the ECHR.

Information is awaited concerning the first experiences with the new management system, the new statistics on the average duration of civil proceedings and the backlog for 2010, as well as any other measure taken or envisaged for reducing the length of proceedings before the civil courts and labour tribunals.

Absence of effective remedies: a new law on the courts was passed in 2006, providing a domestic remedy in the event of excessive length of judicial proceedings, then amended in 2008 after certain deficiencies were observed by the ECtHR and the Supreme Court (see AR 2008).

Subsequent to these amendments, the authorities provided the statistics requested by the CM, showing that 106 and 312 complaints of excessive length of proceedings were lodged before the Supreme Court in 2008 and 2009 respectively. Between 2008 and 2010, the Supreme Court delivered decisions in 310 cases and concluded in 122 cases that the proceedings had been unduly long. It also set deadlines (between 3 and 6 months) to close proceedings in a number of cases. The decisions on complaints of excessive length of proceedings were taken within 6 months in most instances.

The CM considered that the measures taken were encouraging, but thought that their sustainability still remained to be demonstrated. Information is awaited concerning fresh statistics on the average length of proceedings in connection with complaints of excessive duration of proceedings.

The translated judgment was published and brought to the attention of the judiciary and and other authorities concerned.

33. MKD / Nankov

Application No. 26541/02 *Last examination: 1078-4.2*

Judgment of 29/11/2007, final on 02/06/2008

Excessive length of the criminal proceedings instituted against the applicant between 1992 and 2002, particularly owing to decisions by the courts of appeal to refer the case back on three occasions for review by the lower courts, and frequent changes of judges (violation of Article 6§1).

IM The criminal proceedings against the applicant ended in 2002 when the Court of Appeal hearing the case ruled that the prosecution was time-barred. The ECtHR did not award a just satisfaction, the applicant having submitted no claim in that respect within the deadlines. In the light of the situation, no individual measure appeared necessary before the CM.

GM The ECtHR pointed out that the repetition of remittal orders within one set of proceedings disclosed a serious deficiency in the judicial system. It added that the frequent change of judges had also contributed to the length of the proceedings.
The government informed the CM that amendments to the Code of Criminal Procedure (CCP) designed to eliminate repetitive remittals of cases for re-examination within a single set of proceedings, are expected to be adopted. In particular, Article 443 of the CCP would be amended to provide that courts of appeal decide on the merits when examining a case for the second time on appeal within a single set of proceedings.

As regards the rules governing the change of trial judges in criminal proceedings, the authorities have indicated that the relevant provision of the CCP has been amended so as to introduce the possibility, subject to certain conditions, that the hearing need not to be re-started all over again in a case of change of trial judges within a single set of criminal proceedings.

The judgment was translated and published on the Ministry of Justice website. It was sent to all domestic courts together with an explanatory note.

The CM considered that the proposed amendments may prevent similar violations. Information is awaited concerning the progress of these amendments.

34. ROM / Stoianova and Nedelcu and other similar cases

Application No. 77517/01 *Last examination: 1092-4.2*

Judgment of 04/08/2005, final on 04/11/2005

Excessive length of the criminal proceedings in which the applicants stood trial or were plaintiffs (violations of Article 6§1) and lack of an effective remedy in that respect (violation of Article 13); violation of the applicants' right to examine the prosecution witnesses or to have them examined following the refusal by the national courts of their repeated request to do so (Reiner and Others) (violation of Article 6§3.d).

IM The authorities were invited to supply information on the progress of the cases still pending and, where relevant, to take the proper steps to expedite them.
Concerning the case of *Reiner and Others* (application No. 1505/02), the ECtHR noted that the applicants could ask for the proceedings to be reopened under Article 408-1 of the Code of Criminal Procedure.

GM
Excessive length of the criminal proceedings: since 2005, Judicial Service Commission inspectors have regularly supervise the activity of the courts from the standpoint of compliance with the recommended deadlines for criminal proceedings and have applied disciplinary measures where necessary. Furthermore, the Ministry of Justice has been drawing up a new Code of Criminal Procedure containing a series of measures which should enhance the celerity of proceedings.
In accordance with the CM's practice since the adoption of Recommendation Rec(2004)6 to member states on the improvement of domestic remedies, information has also been requested concerning the measures taken or envisaged to set up an effective remedy against excessive length of criminal proceedings. In the *Soare* judgment of 16/06/2009 (application No. 72439/01) the ECtHR subsequently found a violation of Article 13.

During the bilateral consultations on 08/07/2010, the authorities submitted detailed information on the reform of criminal procedure, including matters relating to the effective remedy. The information provided is being examined.

Impossibility to examine witnesses: the violation in the case of *Reiner and Others* apparently stems from an incorrect practice of the courts. Given the direct effect of the ECHR in Romania, the government believes that the requirements of Article 6§3d and the case-law of the ECtHR will be taken into account in the future, above all following the publication and dissemination of the judgment of the ECtHR, so as to prevent further similar violations. In that regard, it has been pointed out that the judg-

ments of the ECtHR are regularly published in the *Official Gazette* and on the website of the High Court of Cassation and Justice.

35. SVK / Jakub and other similar cases (see AR 2008, p. 131)

Application No. 2015/02 — *Interim Resolution CM/ResDH(2010)225*

Judgment of 28/02/2006, final on 28/05/2006 — *Last examined: 1100-4.2*

Excessive length of civil proceedings begun between 1990 and 2000 and concluded, in most cases, between 1999 and 2004 (violations of Article 6 §1), absence of domestic remedy prior to 2002; ineffectiveness as regards proceedings concluded or lawfully stayed, of the constitutional appeal set up in 2002, also in the light of the manifestly inadequate compensation awarded (violation of Article 13). Unfairness of proceedings in one case, where the court refused to examine the merits of the applicant's request in 1999 because she had not paid the court fees, although the need to exempt her from these fees had not been adequately examined (violation of Article 6§1). Violation of the right to respect for private life in proceedings concluded in 1999 because of the excessive burden of proof imposed on the applicant when he sought to challenge the justification of his registration as a former agent of the State Security services (violation of Article 8).

IM

Violations of the right to a hearing within a reasonable time: according to the information supplied by the Slovakian authorities, the domestic proceedings have been concluded in 63 cases, but 15 are still pending. The CM, in Interim Resolution CM/ResDH(2010)225, adopted in December 2010, invited the authorities to expedite the proceedings still pending, so that they may be concluded rapidly. Information is awaited on this subject.

Violation of the right to a fair hearing *Múčková* case, (application No. 21302/02 **and violation of the right to respect for private life** *Turek* case, (application No. 57986/00)**:** the applicants have had an opportunity to request reopening of the proceedings in pursuance of Article 228§1(d) of the Code of Civil Procedure (CCP), which allows reopening if the ECtHR has found a violation and if the consequences of that violation are inadequately remedied by the granting of just satisfaction.

In these circumstances, no other individual measure seems necessary in this respect.

GM

Length of proceedings: between 2007 and 2010, four legislative reforms were adopted. The first three concerned minor amendments of the CCP, the company law and voluntary auctions (for more details, see AR 2008). The fourth reform, known as the "big amendment of the CCP", brought a number of innovations with effect from 15/10/2001, such as simplification of the arrangements for serving documents, harmonisation of the procedure for challenging judges, extension of courts' capacity to determine a case without a hearing, simplification of inheritance procedures, introduction of a simplified procedure for the settlement of minor litigation, broadening of the scope of the legal rules governing court orders, introduction of a possibility for courts to appoint joint counsel for several parties to a single set of proceedings, limitation of the possibility for courts of appeal and cassation to challenge or quash rulings delivered by a lower court, and to refer them back for review.

Staff and judicial organisation measures, as well as ITC development measures have also been taken (see AR 2008).

In its IR of December 2010, the CM noted that, subsequent to constant growth, particularly between 2002 and 2004, the average length of civil proceedings now seems to be decreasing regularly, dropping from 17.6 months in 2004 to 13 months in 2009. It nevertheless emphasised the need to use data gathered over a longer period to make a full assessment of the effectiveness of the aforementioned reforms.

Effective remedy against excessive length of proceedings: a reform of the Constitution, in 2002, introduced the possibility to complain of violations of human rights protected by international treaties. The ECtHR, while finding that this new procedure represents an effective remedy within the meaning of Article 13 of the ECHR, has nevertheless noted in several cases various kinds of difficulties associated with application of this remedy:

– in respect of the difficulties linked with dismissals of petitions when cases are no longer pending before the courts responsible for the alleged delays, the authorities have supplied examples of Constitutional Court judgments bearing witness to a change in its practice whereby account is taken of the length of proceedings before several courts;

– where difficulties linked with the manifest inadequacy of the compensation awarded by the Constitutional Court are concerned, the authorities have stated – referring to 12 decisions delivered in 2009 – that compensation now ranges from 25% to over 100% of the amounts that could be awarded by the ECtHR;

– in respect of the difficulties associated with the ineffectiveness of the Constitutional Court's injunctions to expedite proceedings, a monitoring system has been set up, but confirmation of its proper functioning is awaited;

– finally, examples of decisions testifying to the Constitutional Court's present practice are still awaited relating to the difficulties linked with the criteria applied when assessing the length of proceedings.

General evaluation of the measures taken: in IR CM/ResDH(2010)225, the CM welcomed the numerous reforms introduced by the Slovakian authorities, and encouraged them to continue their efforts to solve the general problem of excessive length of civil proceedings and to consolidate the downward trend in the average length of proceedings. It also invited them to expedite those proceedings still pending and to keep it informed of relevant developments.

Insufficient examination of the need for exemption from court fees (*Mučková* case) and **unfairness of the proceedings** regarding registration as an agent of the State Security service (*Turek* case): see AR 2008.

The judgments have been translated and published.

36. UK / King (Final Resolution CM/ResDH(2010)80)

Application No. 13881/02
Judgment of 16/11/2004, final on 16/02/2005

Last examination: 1086-1.3

Excessive length of certain criminal proceedings before the tax authorities regarding the imposition of a tax penalty (between 1987 and 2001) on account of the periods of delay or inactivity attributable to different tax authorities (violation of Article 6§1).

IM The impugned proceedings ended in 2001. In response to the applicant's claim for non-pecuniary damage, the ECtHR considered that the finding of violation was sufficient just satisfaction. Consequently, no other individual measure was considered necessary.

GM Since the material time, a two-month target has been set for production and release of a written decision after a hearing before the Special Commissioners and it has been met invariably.

Tax officers have been instructed to advise taxpayers of their rights under Article 6 of the ECHR, to make penalty determinations as soon as practicable (although no time-limit has been set) and to review files every six months to ensure that a matter is progressing at an appropriate rate.

In addition, the judgment was published and a copy of it was circulated to all relevant parties, in particular, to the Inland Revenue teams specifically concerned with technical and policy matters with respect to penalties and to the Department of Constitutional Affairs (DCA – now, the Ministry of Justice), which has responsibility for all the Tax Tribunals.

In April 2005, the DCA distributed a circular to all General Commissioners of Income Tax drawing their attention to the judgment, to the violation found, and in particular, to the delays caused by Inland Revenue, Special Commissioners and General Commissioners.

E.2. Lack of access to a court

37. BGR / I.D. (Final Resolution CM/ResDH(2010)41)

Application No. 43578/98 *Last examination : 1086-1.1*

Judgment of 28/04/2005, final on 28/07/2005

Violation of the applicant's right of access to a court due to the dismissal in 1997 of her claim against her employer for damages in respect of an occupational disease: the domestic courts dealing with the case considered themselves to be bound by the conclusions of the medical commissions set up under the authority of the Ministry of Health to the effect that there was no link between her illness and the nature of her job (violation of Article 6§1)

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage. Furthermore, the applicant had the possibility to ask for the re-opening of the proceedings concerning her claim for damages on basis of the former Article 231§1.z of the Code of Civil Procedure which was in force at the time when the ECtHR delivered its judgment. In these circumstances, no individual measure was considered necessary by the CM.

GM The ECtHR noted in its judgment that in a series of decisions delivered since 1999, the Supreme Administrative Court (unlike its predecessor, the Supreme Court) has held that the medical commissions' decisions are subject to judicial review.

Furthermore, the regulation adopted by the Bulgarian Council of Ministers in 2001 on the declaration and the establishment of an occupational disease provided expressly that the decisions of these commissions are subject to judicial review under the Administrative Procedure Act. A similar provision was included in a new regulation on this matter adopted in 2008.

38. CRO / Popara

Application No. 11072/03 *Last examination: 1100-4.2*

Judgment of 15/03/2007, final on 15/06/2007

Violation of the applicants' right of access to a court through the suspension, from 1998 to 1999 and from 2001 to 2004, of the proceedings brought for damage caused by terrorist acts: the proceedings had been suspended pursuant to a law pending the adoption of new legislation (violation of Article 6§1).

IM National court proceedings in the case had resumed before the ECtHR delivered its judgment. The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained, deeming the redress which the Constitutional Court had granted upon the applicants' petition insufficient at 4400 HRK (about 600 euros). No other individual measure seems necessary.

GM The new law on the courts, which came into force in 2005, introduced an appeal in respect of excessively long proceedings. The appeal is brought before the court immediately above the one responsible for the excessive length. If it considers the complaint founded, the court in question sets a final date for the delivery of a decision and awards the plaintiff compensation. Thus the bringing of a complaint before the Constitutional Court has now become a subsidiary means of appeal after exhaustion of remedies before the lower courts.

Concerning the compensation granted, the average amount awarded in similar cases ranges from 4 000 to 10 000 HRK, depending on the circumstances of the case and having regard to the country's economic and social standards. However, since the ECtHR considered that the sum of 12 750 HRK awarded in the *Milašinović* case (application No. 41751/02) did not suffice, the above-mentioned average amount of compensation does not seem adequate. Information is therefore awaited concerning the measures taken or envisaged in order to guarantee the effectiveness of the remedy against excessive length of proceedings.

To bring the requirements of the ECHR to the attention of the authorities, the judgment was trans-

lated, published and circulated to the authorities concerned.

39. ESP / Stone Court Shipping Company S.A. and other similar cases (see AR 2007, p. 105)

Application No. 55524/00 *Last examination: 1092-4.2*

Judgment of 28/10/2003, final on 28/01/2004

Breach of the applicants' right of access to a court between 1997 and 2005 in a series of civil, administrative and criminal cases, owing to certain inconsistent or particularly narrow constructions placed by the Supreme Court and the Constitutional Court on procedural rules relating to the right to appeal or to admissibility of appeals, especially in connection with appeals on points of law (violations of Article 6§1).

IM The ECtHR awarded the applicants just satisfaction in respect of non-pecuniary damage except in two cases, in which the applicants made no claim for it. Information is awaited concerning the situation of each applicant so that the CM may assess the expediency of individual measures.

GM The authorities provided examples of changes in the practice of the Supreme Court and the Constitutional Court which embody the principles laid down by the ECtHR. Accordingly, the Constitutional Court laid down criteria for ascertaining whether a declaration of inadmissibility issued by a lower court violates the right of access to a court. In particular, it determines whether the decision as to inadmissibility is adequately reasoned, whether it is arbitrary, or whether it arises from an obvious error or from an unduly strict interpretation of the procedural rules. The Constitutional Court also indicated that there were exceptional circumstances where non-compliance with the procedural rules need not carry inadmissibility of the application. In that respect, various factors must be taken into account, such as the distance between the place where a document is to be lodged and the applicant's place of residence, the diligence of the party to the proceedings, the relationship between the substantive complexity of the case and the time allowed for appeal, and whether the applicant has received the assistance of a lawyer.

The judgments of the ECtHR were translated and published in the information bulletin of the Ministry of Justice and transmitted to all courts and competent authorities.

In these circumstances, no other general measure seems necessary.

40. GEO / FC Mretebi (Final Resolution CM/ResDH(2010)163) (see AR 2009, p. 126)

Application No. 38736/04 *Last examination: 1100-1.1*

Judgment of 31/07/2007, final on 30/01/2008, rectified on 24/01/2008

Infringement of the right of access to a court and, accordingly, of the right to a fair hearing owing to the fact that the applicant, the Football Club Mretebi, was unable to continue the proceedings for damages because the Supreme Court had refused to grant its request for exemption from court fees (violation of Article 6§1).

IM The applicant did not claim just satisfaction for non-pecuniary damage. The ECtHR dismissed the applicant's claim in respect of pecuniary damage. The applicant's request for a review of its case following the judgment of the ECtHR in this case had been rejected by the Supreme Court on 21/07/2008 (see AR 2009).

On 04/05/2010, a number of amendments to the Code of Civil Procedure were adopted, providing in particular that a judgment of the ECtHR finding a violation of the ECHR constitutes a ground for reopening proceedings. Where the proceedings cannot be reopened because third parties have acquired rights in good faith, the court dealing with the matter may award damages to the applicant. In addition, in the light of the findings of the ECtHR in this judgment, the legislature introduced transitional provisions allowing natural and legal persons (including the applicant club) whose application to reopen proceedings has already been refused, to

lodge a fresh application to reopen the proceedings within 15/06/2010. The Georgian authorities have indicated that the applicant club did not avail itself of that right.
Last, in 2009, the applicant club submitted a new application to the ECtHR, relying on Articles 6, 13 and 46 of the ECHR.

GM In March 2009 the Georgian authorities informed the CM that a number of provisions of the Code of Civil Procedure concerning court fees had been amended (see AR 2009).

41. MDA / Clionov and other similar cases

Application No. 13229/04 *Last examination: 1100-4.2*

Judgment of 09/10/2007, final on 09/01/2008

Violations of the applicants' right of access to a court due to the refusal by the Supreme Court of Justice to examine their appeals on points of law because they did not pay court fees: under the law such appeals could not be subject to any exemption from court fees, partial or total, irrespective of the appellant's financial situation and exemptions never applied to legal entities; moreover, in the Clionov case, belated enforcement of a final domestic judgment awarding the applicant monetary compensation from his employer (violations of Article 6§1 and Article 1 of Protocol No. 1).

IM The ECtHR awarded just satisfaction in respect of pecuniary and non-pecuniary damage sustained by the applicants. The domestic judgment delivered in the applicant's favour in the *Clionov* case was enforced. Information is awaited as to whether the authorities have informed the applicants of the possibility to request reopening of the proceedings.

GM

Late enforcement of final domestic judgments: see the measures referred to in the context of the *Luntre* group of judgments (application No. 2916/02) and of the *Olaru* pilot judgment (application No. 476/07).

Right of access to a court:

– *Blanket prohibition of waiving court fees*: On 17/04/2008 the Code of civil procedure was modified and provides now the possibility to request exemption from, or deferred payment of court fees. In such cases the appeal on the points of law shall not be declined and the panel of three judges shall decide whether to grant the request (these changes concern all the three cases).

– *Possibility of waiving the court fees for legal entities*: On 4/06/2010 further legislative amendments were made to the effect that legal entities were also entitled to request exemption from court fees and that legal entities subject to bankruptcy proceedings can pay the court fee after the consideration of the case, but no later than 6 months from the date of the court decision.

Awareness raising measures: the *Clionov* judgment has been translated and published on the web page of the Ministry of Justice . Information is awaited on translation, publication and dissemination of the *Istrate* (application No. 53773/00) and *Tudor-Comert* (application No. 27888/04) judgments.

42. POL / Siałkowska
POL / Staroszczyk

Applications No. 8932/05 and No. 59519/00 *Last examination: 1072-4.2*

Judgments of 22/03/2007, final on 09/07/2007

Interference with the right to effective access to a court in "civil" litigation: the applicants could not approach the Supreme Court because of defects in the organisation of the assistance rendered by official counsel (no deadline was prescribed and no requirement was laid down regarding form or grounding): the applicants were not informed of the lawyers' position in a manner affording a real possibility of assessing and remedying the situation (under the Polish system, an appeal can be lodged only by a lawyer or by legal counsel) (violation of Article 6§1).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained. The applicants' claims were dismissed respectively in 2004 and in 1999. According to the authorities, the applicants did not lodge a request to have the civil proceedings at issue reopened, or they brought an appeal on points of law out of time. In these circumstances, no additional measure appeared necessary before the CM.

GM The judgment was expeditiously published on the website of the Ministry of Justice. The CM also received the following information on developments since the events at issue here.

In 2005 the Code of Civil Procedure was amended and the time allowed for bringing an appeal on points of law was increased from one month to two as from the notification of the judgment under appeal.

Concurrently, the case-law concerning the lawyer's responsibility has evolved particularly with a judgment of the Supreme Court in 2002 and a judgment of the Gdansk Court of Appeal in 2005, and it has become plain that a lawyer assigned to act as official defence counsel is obligated to submit in writing, within the prescribed time, to the parties and to the court the reasons for refusing to lodge an appeal on points of law.

This case-law specified that a party could submit a claim for compensation against official defence counsel for professional misconduct.

Moreover, since 05/02/2006 a person whose official defence counsel has refused to lodge an appeal on points of law may apply to the Supreme Court to have the judgment at appeal declared incompatible with the law. Such a decision by the Supreme Court allows compensation to be claimed from the Public Treasury.

Following the judgments of the ECtHR, the presiding judges of courts of appeal have asked all judges in their administrative purview to include in the letters to the Bar Association concerning provision of legal aid the information that a lawyer has been officially assigned to lodge an appeal on points of law, and the deadlines for this. The Ministry of Justice has also written to the President of the National Bar Council asking that the lawyers concerned be informed that they have been officially assigned to assist the parties in lodging an appeal on points of law.

On 15/09/2007 the National Bar Council passed a resolution recalling that the assessment of prospects of success should be carried out as soon as possible, and a refusal presented in written form and immediately handed to the client and to the leader of the bar. The lawyer must also inform the competent court forthwith. In addition, where a lawyer acting as official counsel refuses to lodge an appeal on points of law, normally the leader of the bar does not designate a second lawyer. Exceptions may be made, however.

What is more, the government has various proposals to alter the system of lodging appeal on points of law under consideration, particularly the arrangements for provision of legal aid. One proposal aims at allowing the parties to be assisted by a lawyer of their own choice and to introduce detailed arrangements where a lawyer refuses (particularly a stipulation of written presentation and of precise deadlines). Another of those proposals aims at requiring judges to state reasons for decisions on refusals to officially appoint a lawyer to lodge an appeal on points of law, and to take steps to avert non-compliance with the deadlines for lodging such appeals in the event that an application for legal aid has been filed. Information about the action taken on these proposals is awaited.

43. PRT / Pijevschi (Final Resolution CM/ResDH(2010)179)

Application No. 6830/05 *Last examination: 1100-1.1*

Judgment of 13/11/2008, final on 13/02/2009

Violation of the applicant's right of access to a court of appeal for an examination of the merits of his criminal conviction: the rules on time-limits for lodging appeals were interpreted by the appellate courts, in 2004, too strictly and inconsistently with the interpretation of the first-instance court (violation of Article 6§1).

IM The ECtHR did not award the applicant just satisfaction, as he had not submitted his claims within the prescribed period.

The applicant was sentenced in 2004 tor six years and nine months' imprisonment and prohibited from entering the national territory for fifteen

years. He was conditionally released in February 2006 and deported in March 2006.

The Code of Criminal Procedure (CCP), as modified in 2007, provides for the revision of final judgments, following the finding of a violation by the ECtHR. The public prosecutor and the convicted person himself/herself, *inter alia*, can apply for revision without being subject to any time limit. This applies also to cases decided before 2007.

Consequently, the CM did not consider any further individual measures necessary.

GM Article 411 of the CCP provided, at the material time, that an appeal against a decision of a first-instance court must be introduced within fifteen days of notification of the conviction and sentence. However, in cases where the transcript of the hearing was required, as in the present case, some courts allowed further time.

Following inconsistencies in the case-law as to the effects of the latter practice, the Constitutional Court held in 2004 that it was contrary to the rights of the defence enshrined in the Constitution to declare inadmissible an appeal lodged within the period prescribed by the Court of First Instance but outside the fifteen days specified in the law.. The Supreme Court also set aside another decision based on the impugned interpretation, taking the view that it adversely affected the fairness of the proceedings.

The judgment has been translated into Portuguese and published on the internet site of the Office of the Principal State Prosecutor. It has also been sent to the Judicial Service Commission with a view to being disseminated to the competent authorities.

44. ROM / Iosif and Others

Application No. 10443/03 *Last examination: 1092-4.2*

Judgment of 20/12/2007, final on 20/03/2008

Violation of the applicants' right of access to a court owing to the excessively high security deposit required by the legislation in force at the material time (2002) for bringing an action to terminate a mortgage, reclassified as an action challenging a forced execution (violation of Article 6§1).

IM The ECtHR awarded the applicants just satisfaction for the non-pecuniary damage. It also held that the most appropriate redress would be, in principle, retrial or reopening of the proceedings. In that respect, it noted that Romanian law provided the possibility of reopening civil proceedings where a violation of the ECHR had been found. No other individual measure therefore seems necessary.

GM The ECtHR noted that the Constitutional Court in January 2004 had declared unconstitutional the impugned provisions, imposing the security deposit at issue here. Information is awaited concerning the present legal framework for payment of a deposit for bringing a similar action.

45. SWE / Mendel

Application No. 28426/06 *Last examination: 1100-4.2*

Judgment of 07/04/2009, final on 07/07/2009

Violation of the applicant's right to access to a court, in that, in accordance with the law at the material time, it was clearly stated in an administrative decision of 2006, removing her from a job search assistance programme, that the decision could not be the subject of an appeal (violation of Article 6§1).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained. Information is awaited as to the applicant's possibility of appealing against the disputed administrative decision, as well as on the outcome of the compensation proceedings in progress before the Chancellor of Justice.

GM The employment service has published a decision amending the information given to plaintiffs about appeals against decisions terminating their participation in a programme set up under an employment policy. The right to appeal against such decisions is now clearly indicated.

Generally speaking, the government has emphasised constant case-law since the 1990s confirming

that a prohibition of judicial appeal against an executive decision may be reversed if the decision relates to civil rights or obligations deriving from Article 6 of the ECHR.
Furthermore, the relevant legislation is currently being revised. Information is awaited on this subject.

In order to draw the authorities' attention to the requirements of the judgment, this and a translated summary thereof were speedily published and disseminated to the authorities concerned.

46. UKR / Ponomaryov

Application No. 3236/03 *Last examination: 1092-4.2*

Judgment of 03/04/2008, final on 29/09/2008

Breach of the "right to a court" and of the principle of legal certainty in that a final and enforceable judgment of 2001 concerning the settlement of back pay was quashed in 2004 on the sole ground that, at the time of the proceedings, the opposing party had been unable to pay the court fees, which couldn't be assimilated to a "serious miscarriage of justice" (violation Article 6§1); the quashing also constituted a disproportionate interference with the applicant's property rights in so far as it frustrated the applicant's reliance on a binding judicial decision and deprived him of an opportunity to receive the money he had legitimately expected to receive (violation of Article 1 of Prot. No. 1).

IM The ECtHR awarded the applicant just satisfaction covering, in respect of the pecuniary damage, the sum awarded by the judgment of 2001. It also awarded compensation for the non-pecuniary damage sustained.
In April 2009 the Supreme Court of Ukraine dismissed the application for review of the applicant's case, holding that the monetary compensation owed to the applicant pursuant to the decision of 2001 had been covered by the just satisfaction awarded by the ECtHR.
On 28/08/2009 the applicant complained that the Supreme Court had failed to address part of the 2001 judgment. The government submitted its observations in reply and, at the time of the latest examination by the CM, bilateral consultations were under way between the Department for the execution of judgments of the ECtHR and the Ukrainian authorities with a view to settling the outstanding questions.

GM The judgment was translated into Ukrainian, put on line on the Ministry of Justice website, and published in the government's *Official Gazette*.

Information is awaited chiefly on other measures being applied or planned in order to ensure that the legislative provisions are interpreted in accordance with the requirements of the ECHR, particularly as regards legal certainty.

E.3. Unfair judicial proceedings – civil rights

47. ARM / Nikoghosyan and Melkonyan (see AR 2008, p. 145)

Applications Nos. 11724/04 and 13350/04 *Last examination: 1100-4.2*

Judgment of 06/12/2007, final on 06/03/2008

Unfair civil proceedings concerning the cancellation of a property sale contract: the applicants received the summons to attend the appeal proceedings after the hearing had been held, so that they were unable to take part (violation of Article 6§1).

IM The applicants lodged no request for redress of non-pecuniary damage, and the ECtHR dismissed their claim in respect of pecuniary damage, holding that the most suitable form of redress in the instant case would be to reopen the proceedings (see AR 2008).

Following the judgment of the ECtHR, the applicants lodged a request to reopen proceedings before the Court of Cassation which, by decision of 13/03/2009, set aside the impugned earlier decisions and referred the case back to a court of first instance for fresh examination. That court, having held a

hearing, took account of the findings of the ECtHR, upheld the earlier decisions on the merits and found in favour of the other party to the proceedings.

Information is awaited particularly as to how the principle of legal certainty was accommodated for the other party.

GM The judgment was translated and published in the *Official Gazette* as well as on the Ministry of Justice and judicial service websites. In order to draw the attention of the courts to the importance of duly notifying the parties, the judgment was transmitted to all the judicial authorities, in particular the Court of Cassation and the Civil Court of Appeal.

48. FRA / Le Stum (Final Resolution CM/ResDH(2010)93)

Application No. 17997/02 *Last examination: 1092-1.1*

Judgment of 04/10/2007, final on 04/01/2008

Breach of the applicant's right to an impartial tribunal, since the "juge-commissaire" (bankruptcy judge) responsible, during the judicial assessment and settlement proceedings, for supervising the administration of the company managed by the applicant, also presided over the bench that ruled on the errors of management with which the applicant was charged (liability for insufficient assets) in 1997 (violation of Article 6§1).

IM The ECtHR held that the non-pecuniary damage was adequately redressed by the finding of a violation.

Concerning the damage incurred by the applicant on account of the costs he had to pay to the company under liquidation to comply with the ruling delivered against him, the ECtHR stated that it could not speculate as to the outcome of the impugned proceedings in case the violation of the ECHR had not occurred. Having regard in particular to the principle of legal certainty, the CM considered that the reopening of these proceedings wasn't necessary.

GM The existence of a violation in this type of proceedings depends on a case-by-case assessment, having regard to the role performed by the bankruptcy judge in the collective procedure. At all events, the law was amended and henceforth, when the court is to rule on the manager's possible liability for insufficient assets, the bankruptcy judge cannot sit on the trial court bench or take part in the deliberations. Similar measures have been taken as regards other counts of liability and penalisation against managers which the court may deem admissible.

49. MLT / San Leonard Band Club

Application No. 77562/01 *Last examination : 1092-4.2*

Judgment of 29/07/2004, final on 29/10/2004

Violation of the applicant company's right of access to an impartial tribunal, in 1996, in the course of civil proceedings, engaged by a third person against the applicant company and the Housing Secretary, regarding the validity of a requisition order in favour of the applicant issued by the Housing Secretary in respect of certain properties owned by the third person: the examination of the applicant company's appeal on points of law (considered as an extraordinary remedy under domestic law) was examined by the same judges who had earlier considered the substance of the case on appeal (violation of art. 6§1).

IM The applicant company submitted no claim for just satisfaction. The ECtHR indicated that, in principle, in respect of this kind of violation, the most appropriate form of relief would be to ensure a retrial by an independent and impartial tribunal. Following a decision by the Constitutional Court on 18/05/2005, the proceedings have been reopened, and the fresh proceedings have been carried out by a new panel of judges, different from those having sat in the original first-instance or appeal proceedings. The new proceedings were completed in 2009. No further individual measure appears necessary.

GM The judgment has been translated and disseminated to the courts. According to the information provided to the CM, the ECtHR's judgment has led to a change of judicial practice. In cases of appeals of the kind here at issue, judges who have already been engaged in the proceedings concerning a certain case abstain from participating in review proceedings.

Even if this information appears encouraging, a case concerning a similar violation is currently pending before the ECtHR (*Central Mediterranean Development Corporation Limited (II) v. Malta*, application No.18544/08).

In the light hereof, information has been requested with respect to any other measure envisaged.

50. UKR / Benderskiy

Application No. 22750/02 *Last examination: 1100-4.2*

Judgment of 15/11/2007, final on 15/02/2008

Violation of the applicant's right to a fair hearing owing to the national courts' failure to examine a substantive argument of the applicant that might have been decisive for the outcome of the action for compensation which he had brought in 1998 (violation of Article 6§1).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained. The applicant has been informed by the authorities that he can apply to have the contested proceedings reopened following the judgment of the ECtHR. No other individual measure seems to be required.

GM The new Code of Civil Procedure of 2005 contains improvements as regards the requirements related to the examination of evidence by the courts. For example, courts must make a full assessment of the various items of evidence separately and as a whole. The decision must indicate the outcome of the assessment and any decision declaring the evidence inadmissible or rejecting it must state the reasons on which it is based. The decision must also be based on an exhaustive examination of the facts. Failure to comply with these obligations gives rise to an appeal, including an appeal on a point of law. Information has been requested about any training measures implemented to ensure that all judges comply with their obligations, and also about measures relating to judges' disciplinary responsibility.

In order to draw the authorities' attention to the requirements of the ECHR, the translated judgment has, in particular, been published on the internet site of the Ministry of Justice and in the *Official Gazette* of Ukraine. The Supreme Court's attention has been drawn to the findings of the ECtHR in this case. Information is awaited on the wide dissemination of the judgment, together with an explanatory note, to all national courts.

E.4. Unfair judicial proceedings – criminal charges

51. ARM / Harutyunyan (see AR 2008, p. 144 and AR 2009, p. 140)

Application No. 36549/03 *Last examination: 1086- 4.2*

Judgment of 28/06/2007, final on 28/09/2007

Breach of the right to a fair trial on account of the use of statements obtained under duress when convicting in 1999, the applicant, a serviceman in the army, for murder of another serviceman to 10 years' imprisonment (violation of Article 6§1).

IM After lengthy proceedings before various courts, and following an amendment to the Code of Criminal Procedure (CCP), the applicant eventually obtained the reopening of the proceedings (for further details, see AR 2008 and 2009): by a decision of 10/04/2009 the Court of Cassation quashed the previous impugned judgments and remitted the case to the Court of First Instance for a fresh examination. The CM has emphasised that the new trial must be consistent with the requirements of Article 6 of the ECHR and has requested that the Armenian authorities keep it informed of developments in the case.

Furthermore, at the request of the CM, the authorities have supplied the text of the revised provisions of the CCP concerning the reopening of criminal

proceedings: Article 426.1 confers jurisdiction on the courts of appeal to review the decisions of the courts of first instance and on the Court of Cassation to review its own decisions and those of the courts of appeal. Article 426.8.1 provides that, on the basis of a decision to reopen the proceedings, the court reviews the judicial decision in the event of new or newly discovered circumstances. The authorities have also informed the CM that further amendments to the CCP (Article 426.2) are in progress. Information is awaited on the final version adopted.

GM Under the CCP (Article 105), in the version already in force at the time of the facts, it is unlawful to use evidence or to use as the basis for criminal proceedings facts obtained by the use of force, threats, fraud or insults and also by any other unlawful action.

In order to draw the authorities' attention to the requirements of the ECHR, the judgment has been translated and published. It has been sent to the Constitutional Court, the Court of Cassation, the courts of appeal, the courts of first instance, the Office of the Defender of Human Rights, the Office of the State Prosecutor, the police, the Standing Committee on the State and Legal Affairs, and the Standing Committee on the Protection of Human Rights and Public Affairs of the National Assembly.

Study of the case-law of the ECtHR and of the present case has been included in the training curriculum of the Police Academy, the Prosecutors' School and the Judicial School.

52. FIN / Laaksonen (Final Resolution CM/ResDH(2010)45)
FIN / Juha Nuutinen

Applications No. 70216/01 and 45830/99 *Last examination : 1086-1.1*

Judgments of 12/04/2007, final on 12/07/2007 and of 24/04/2007, final on 24/07/2007

Unfairness of criminal proceedings in the appeal court: the applicant was sentenced in 1999 without a public hearing in a court of appeal, following a reassessment of the facts, whereas he had been acquitted of the charge at first instance (Laaksonen; violation of Article 6§1); sentencing of the applicant by a court of appeal in 1997 for an offence, the relevant facts of which did not appear in the indictment of the court of first instance (Nuutinen; violation of Articles 6§1 and 6§3.a and 6§3.b).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage suffered by the applicants. Furthermore, under the provisions of the Code of Judicial Procedure, the applicants may apply for the reopening of the proceedings. Consequently, no other individual measure was considered necessary.

GM Under the new Code of Criminal Procedure (CCP), which came into force on 01/10/1997, an accused may not be convicted of an offence not mentioned in the bill of indictment. This provision was not observed in the present cases, as the proceedings at issue began before the entry into force of the new Code.

As regards the lack of oral hearing in the *Laaksonen* case, even according to the provisions of the Code of Judicial Procedure of 1978 in force at the time, the Court of Appeal could not change the first instance court's judgment without holding an oral hearing unless the sentence was only a fine or the oral hearing was manifestly unnecessary. The current Code of Judicial Procedure provides that the Court of Appeal shall hold an oral hearing if the credibility of testimony admitted before a court of first instance is at stake.

Furthermore, the judgments of the ECtHR in English and excerpts in Finnish have been published on the judicial database *Finlex* (accessible to the public). They were sent out to the competent national authorities and courts.

53. FRA / Guilloury (Final Resolution CM/ResDH(2010)46)

Application No. 62236/00 *Last examination: 1086-1.1*

Judgment of 22/06/2006, final on 22/09/2006

Unfairness of criminal proceedings in the appeal court which resulted in the applicant being sentenced in 2000 to 30 months' imprisonment, six of which were suspended, for aggravated sexual assault. The courts had essentially relied on the statements of the victims and witnesses, without the applicant having ever been given the opportunity to examine the prosecution witnesses and without the appellate court hearing evidence from the defence witnesses (violation of Article 6 §§1 and 3.d).

IM Under Articles L 626-1 ff of the Code of Criminal Procedure, it was open to the applicant to apply for reconsideration of the criminal verdict at issue (in this respect, see also §69 of the judgment).

GM According to the legislation in force at the material time, appellate judges could order the hearing of new prosecution witnesses who had not testified at first instance (as in the present case).or decline such hearing provided that they gave reasons for their decision – see in particular former Article 513 of the Code of Criminal Procedure.
As regards defence witnesses, no such limitation was provided by the legislation
Subsequent to the facts in this case, Article 513 was amended by Law No. 2000-516 of 15/06/2000. Since, it provides that "witnesses called by the accused shall be heard in conformity with the rules provided in Articles 435-437. The prosecution may object to such witnesses' testifying if they have already been heard by the court. It is for the court to determine such issues before considering the merits". Thus, the hearing of the defence witnesses by the judge is guaranteed.

A summary of the judgment of the ECtHR was published in *La Cour européenne des droits de l'Homme 2002-2006 – Arrêts concernant la France et leurs commentaires* – a publication of the European Law Observatory (*Observatoire de Droit Européen*) available on the website of the Court of Cassation.

54. FRA / Pélissier and Sassi (Final resolution CM/ResDH(2010)95)

Application No. 25444/94 *Last examination: 1092-1.1*

Judgment of 25/03/1999 – Grand Chamber

Infringement of the applicants' right to be informed in detail of the nature and cause of the charge laid against them, and of their right to have the necessary time and facilities for preparing their defence, owing to the Court of Appeal's reclassification, during its deliberations, of the offences with which the applicants were charged (violation of Article 6§3.a and 6§3.b); excessive length (from 1984-1985 to 1994) of the criminal proceedings (violation of Article 6§1).

IM As it's deemed null and void, the applicants' conviction can no longer have any effect in criminal law and no longer appear on *"bulletin No. 2"* of the criminal record, only accessible to administrations and legal persons. Consequently, no other individual measure was considered necessary.
The judgment of the ECtHR was the subject of an information paper addressed to First Presidents and State Prosecutors attached to the courts of appeal, with a view to its general distribution. An extensive excerpt from the judgment was also published in the newsletter of the Court of Cassation.

In addition, the general measures required to obviate excessive length of criminal proceedings as a whole were adopted. These have been itemised in connection with other cases (see Resolution CM/ResDH(2007)39).

55. FRA / Rachdad (Final Resolution CM/ResDH(2010)97)

Application No. 71846/01 *Last examination: 1092-1.1*

Judgment of 13/11/2003, final on 13/02/2004

Unfairness of criminal proceedings brought against the applicant, a Moroccan national, sentenced in 1998 for drug trafficking offences to a prison term of six years and to permanent exclusion from

French territory, on the sole basis of statements by witnesses whom he was unable to examine or to have examined at any stage of the proceedings (violation of Article 6§1 and §3.d).

IM On 26/01/2005, the Reims Court of Appeal set aside the order excluding the applicant from the territory. Pursuant to the provisions of articles 626-1s of the code of criminal procedure, the applicant can lodge a request for review of his case. Consequently, no other individual measure was considered necessary by the CM.

GM The government indicated that the judgment had been published on the Ministry of Justice's intranet site and was accessible to all courts as well as to the directorates of Ministry departments. It added that the judgment had been circulated to all courts which might be seized of a similar case.

56. GRC / Pyrgiotakis (examination in principle closed at the 1092nd meeting in September 2010)

Application No. 15100/06 *Last examination: 1092-6.1*

Judgment of 21/02/2008, final on 29/09/2008

Unfairness of the applicant's trial in that his criminal conviction for drug trafficking essentially originated in the conduct of one of the police officers involved in the case, who had acted as a decoy and prompted criminal activity that would not have occurred otherwise (violation of Article 6§1).

IM The ECtHR held that the finding of a violation in itself constituted adequate just satisfaction for the non-pecuniary damage sustained by the applicant.
In addition, the CM was informed that the applicant, sentenced to ten years of imprisonment and a 7 000 euro fine, had requested retrial following the judgment of the ECtHR. The case was referred to the Athens Court of Appeal which acquitted the applicant on all charges against him.
No other individual measure seems necessary.

GM The authorities reported to the CM that national court practice recently acknowledged the principles invoked by the ECtHR and established that, in accordance with Article 6 of the ECHR, the conviction of an accused should not result purely from the behaviour of a police officer involved in the case (acting as a decoy) (Court of Cassation 193/2009). The conviction should moreover be founded on firm additional evidence, and not rely solely on the testimony of the police officers involved (Court of Cassation 100/2007, Corfu Court of Appeal 29/2007).

The translated judgment was published, particularly on the official website of the State Legal Adviser, and widely circulated to all competent criminal justice agencies including prosecutors.

No other general measure seems necessary.

57. LUX / Mathony (Final Resolution CM/ResDH(2010)7)

Application No. 15048/03 *Last examination: 1078-1.1*

Judgment of 15/02/2007, final on 15/05/2007

Unfairness of criminal proceedings (2001-2002) brought against the applicant and in particular lack of objective impartiality of the court which convicted him, given that the appellate court was composed of the same judges who convicted the applicant in the first-instance (violation of Article 6§1).

IM The driving ban, resulting from the applicant's conviction, has expired and the non-pecuniary damage sustained was compensated by the just satisfaction awarded by the ECtHR. Moreover, even if the ECtHR considered the applicant's fears *objectively* justified, the judges' *subjective* impartiality was not at issue. Thus it does not seem that the violation arose from shortcomings sufficiently serious to raise any real doubt as to the outcome of the domestic proceedings in question.

GM In 2007 the judgment of the ECtHR was forwarded by the Ministry of Justice to the State Prosecutor General, who confirmed its dissemination all magistrates concerned. It has been published on the Internet site of the Ministry of Justice and in *Codex* – legal information site. The authori-

ties of Luxembourg indicated that it will now be for the domestic courts which grant direct effect to the ECHR, and in particular for criminal courts, to ensure – with respect to the composition of the relevant court in each case – that the *Mathony* judgment is respected.

58. MDA / Ziliberberg
MDA / Russu

Applications Nos. 61821/00 and 7413/05

Judgments of 01/02/2005, final on 01/05/2005 and of13/11/2008, final on 13/02/2009

Last examination: 1092-4.2

Unfairness of the criminal proceedings brought against the applicants under the Code of Administrative Offences for participating in unauthorised demonstrations, owing to the late service of their summons to appear at the hearings held on their appeals against the decisions at first instance, thus denying them the possibility of fully exercising their right to a defence (violation of Article 6§1).

IM In the first case, the ECtHR recalled that it had declared inadmissible the applicant's submissions concerning a violation of Article 11. It added that it could not speculate as to the outcome of the proceedings had there not been the violations found. Accordingly, in the first case it dismissed the claim for refund of the fine imposed, for want of proof of a causal link. It held furthermore that no sum of money could be awarded in respect of non-pecuniary damage because the applicant had claimed nothing on that account. In the second case, the ECtHR partially allowed the applicant's claim to be compensated for non-pecuniary damage, particularly as she had been dismissed from employment after her conviction and had sustained a definite prejudice. Information is awaited concerning a possible request from the applicants to reopen the proceedings.

GM The violations found were due to the absence of legislative provisions on the traceability and service of summons at the material time. Subsequently, new codes came into force and introduced a number of provisions on traceability of summons and advance notices.

The new Code of Administrative Offences stipulates that summons to appear must be served on the person concerned not later than five days before the hearing is held, by registered mail with acknowledgment of reception. The deadline is the same as the one set in the 2003 Code of Criminal Procedure which also provides that summons must be sent by post or via a properly authorised messenger. The signature of the person summoned is stipulated so that the summons may be deemed duly served.

In order to draw the authorities' attention to the applicability of Article 6 to this type of penalty in the Code of Administrative Offences, the judgments were translated and published on the website of the Ministry of Justice and the *Official Gazette*, and transmitted to all authorities concerned.

59. TUR / Hulki Güneş and other similar cases (see AR 2007, p. 129; AR 2008, p. 155; AR 2009, p. 145)

Application No. 28490/95

Judgment of 19/06/2003, final on 19/09/2003

Interim Resolutions CM/ResDH(2005)113; CM/ResDH (2007)26; CM/ResDH (2007)150

Last examination: 1100-4.2

Unfairness of criminal proceedings (final judgments of 1994-1999) culminating in the sentencing of the applicants to long prison terms (on the basis of statements made by gendarmes or other persons who never appeared in court or on the basis of statements obtained under duress and in the absence of a lawyer); ill-treatment of the applicants while in police custody, lack of independence and impartiality of state security courts; excessive length of criminal proceedings; absence of an effective remedy (violations of Articles. 6 §§ 1 and 3, 3 and 13).

IM The situation was described in ARs 2007, 2008 and 2009. In 2010, the progress made in the adoption of the requisite legislation for the reopening of the criminal proceedings concerned was examined in detail by the CM at several meetings.

In March 2010, the CM noted that the draft law enabling the proceedings in the applicants' cases to be reopened was still pending in parliament, and strongly encouraged the authorities to give priority to that draft law.
In June 2010, having observed that the draft was still awaiting adoption in parliament, and that parliament was to resume examination thereof after the summer recess, the CM urged the authorities to bring the legislative process to an end without further delay.
In December 2010, the draft was still pending in parliament. The CM nevertheless noted the Turkish government's willingness to ensure the adoption of the legislative amendments necessary for the execution of these judgments adopted before the general elections of June 2011.

GM The situation described in AR 2009 remains unchanged. The relevant general measures have been taken (see the *Çiraklar* case, application No. 19601/92, closed by Final Resolution DH(99)555), or are under examination in the context of other cases (see the cases concerning the activities of the Turkish security forces, in the *Aksoy* group, application No. 21987/93).

E.5. Non-respect of final character of court judgments

60. ALB / Driza and other similar cases (see AR 2008, p. 140 and AR 2009, p. 146)

Application No. 33771/02 — *Last examination: 1100-4.2*

Judgment of 13/11/2007, final on 02/06/2008 — *Memorandum CM/Inf/DH(2010)20*

Non-enforcement of final court and administrative decisions relating to restitution or compensation in respect of property nationalised under the communist regime (violations of Article 6§1 and Article 1 of Prot. No. 1); lack of an effective remedy, the authorities having failed to take the necessary measures either to set up the appropriate bodies to settle certain disputes relating to restitution or compensation or to provide the means of enforcing decisions actually taken (violation of Article 13 in conjunction with Article 6§1 and Article 1 of Prot. No. 1); breach of the principle of legal certainty because a final judgment of 1998 granting compensation was subsequently quashed twice by the Supreme Court, once in parallel proceedings and once by means of supervisory review; lack of impartiality of the Supreme Court due to the role of its president in the supervisory review proceedings and because a number of judges had to decide a matter on which they had already expressed their opinions, and even justify their earlier positions (violations of Article 6§1 – Driza).

IM In addition to the payment of just satisfaction for pecuniary and non-pecuniary damage caused by the violations of Articles 6, 13 and 1 of Prot. No. 1, the ECtHR had also ordered the restitution of various plots of land or, failing that, the payment of additional just satisfaction (see AR 2008 and 2009). The land at issue in the *Driza* case was accordingly restituted while in the *Ramadhi* case (application No. 38222/02), the authorities opted to pay the additional compensation. In view of the compensation paid and the measures taken, no further individual measures appear to be necessary. The authorities, furthermore, have refunded the tax of 10% unduly levied on the sums awarded in respect of just satisfaction.

GM Given the growth in the number of similar applications, the ECtHR considered it appropriate, under Article 46, to assist the state with enforcement by making recommendations as to the appropriate statutory, administrative and budgetary measures. The authorities subsequently adopted a series of measures with due regard for these recommendations and additional information provided by the CM in the context of its supervision of the execution of judgments. The issues raised by these cases were also addressed in a project financed by the Human Rights Trust Fund, involving, *inter alia* a series of bilateral and multilateral activities (including a major seminar held in Strasbourg in March 2010).
The latest developments in the situation were outlined in a memorandum in June 2010 (CM/Inf/DH(2010)20). Among the points raised were the following:

Non-enforcement of final domestic decisions relating to the restitution of property / right to compensation:

The effectiveness of the right to restitution of property or to compensation has been improved by amend-

ments made in 2009 to the 2004 law "on restitution of property and compensation for owners" ("the Property Act").

In particular, the new legislation *eliminates ineffective administrative steps* and reduces the time for processing requests. The various regional offices for property restitution and compensation have been abolished and replaced by a central agency, the PRCA (Property Restitution and Compensation Agency). The Director of the PRCA, furthermore, has the right to review decisions delivered by the former regional offices/commissions. An assessment of the capacity of the PRCA to deal with the process of providing compensation has been requested, as well as information concerning the powers of its Director.

As regards the award of compensation, the Property Act stipulates that compensation will be based on the market value of the property in question. Also, in order to ensure the effectiveness of the compensation, a compensation fund was set up in 2004. An "In-kind Compensation Fund" was scheduled to be set up in 2008 but is still not operational. The government, furthermore, has approved and issued a property valuation map, as recommended by the ECtHR. It includes the average price per square metre throughout the country and is used by the PRCA to calculate the value of the expropriated properties and the amount of compensation to be awarded. It is revised periodically to take account of changes in property market value. The Property Act also provides for the right to receive default interest covering the period running from the recognition of the right to property until the award of the financial compensation, calculated on the basis of the annual average rate of the Bank of Albania.

With regard to the need to consolidate the compensation fund, it is worth noting that, as of 2010, the latter has a new statutory framework. Under the new legislation, it is a "special" fund within the meaning of the budgetary law, and so financed mainly from the state budget. The novelty lies in the fact that in order to compensate *former owners,* other sources of funding will be used (sale of property for which no restitution orders have been issued and income generated by the legalisation of illegal constructions).

To make it easier to deal with restitution and compensation issues, attention has also been focused on advancing the *property registration process*. The authorities have indicated that, of the 500,000 immovable properties listed, they are close to finalising the registration of 120,000 properties and all 500,000 are expected to be registered by 2012.

As regards the *procedure,* the lodging of an application for compensation entails the payment of a processing fee. Applications are examined in chronological order of receipt. *Former owners* who were not awarded compensation due to lack of funds can re-submit their application once they have paid the processing fee. This charge raises concerns and requires additional clarification. The conditions governing compensation for former owners are currently being revised, however. The Constitutional Court recently ruled that the erasure of a registration of former owners could limit and violate property rights, thus creating legal uncertainty. Information is awaited on developments in this area.

The financial compensation process is now subject to a supervisory procedure, including submission of a report to the Prime Minister and the Minister of Justice, as well as Parliament, every three months, and a half-yearly audit.

Measures to provide effective remedies in cases of non-enforcement of final domestic decisions: in order to remedy the ineffectiveness of the actions of the state bailiffs criticised in these judgments, in 2008 Albania, with the support of a project financed by the European Commission, introduced a private bailiff service to operate alongside the state one. In addition, the Code of Civil Procedure has been amended in order to accommodate the new system and improve the execution of decisions. These changes should speed up the process of the execution of judicial decisions.

As regards the right to redress, reference was made *inter alia* to the law "on the extra contractual liability of public administration bodies" of 1999 which provides that public administration bodies are liable for damage caused to natural persons or legal entities. The injured party has the right to receive pecuniary and non-pecuniary compensation, including for any loss of profit. Reference was also made to Article 450 of the Civil Code which provides for the possibility of obtaining financial compensation for damage caused by delayed payment of a sum. Even though these remedies have not proven effective in the past, it has been noted that the Constitutional Court recently declared inadmissible a claim for compensation for non-enforcement of a court decision because the applicant had not exhausted the compensatory remedy provided for in Article 450. Additional information is needed concerning existing or developing practices with regard to the right to redress.

Lack of legal certainty and lack of impartiality of the Supreme Court: these questions are still pending – see AR 2009
Awareness raising measures: the judgments have been published in the Official Gazette and sent out to the relevant competent authorities.
Last CM assessment: when it last examined the case in December 2010, the CM noted with interest the new preliminary action plan and action report presented on 01/11/2010, containing proposals made by the inter-ministerial committee which has the specific task of identifying a comprehensive strategy to address the outstanding issues. The CM stressed the crucial importance of urgently addressing the situation criticised by the ECtHR, generating many similar violations, and accordingly encouraged the authorities to adopt without further delay a comprehensive action plan, based on a comprehensive and coherent strategy accompanied by a detailed calendar for its implementation.

61. ALB / Xheraj

Application No. 37959/02 *Last examination: 1100-4.2*
Judgment of 29/07/2008, final on 01/12/2008

Unjustified infringement of the principle of legal certainty: quashing in 1999 of a final judgment, acquitting the applicant of charges of murder, and reopening of the case, without substantial and compelling grounds, as the prosecutor could have appealed within the period prescribed by law (violation of Article 6§1).

IM The ECtHR noted that, following the impugned conviction, the Albanian authorities had, in 2002, requested the applicant's extradition from Italy, where he was serving a prison sentence for offences unconnected with the present case. The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained and considered that the most appropriate form of just satisfaction would be for the applicant's final acquittal to be confirmed and his conviction to be erased with effect from that date.

The Constitutional Court, upon application by the applicant, emphasised in a decision of 09/03/2010 that it was necessary for Parliament to remedy the absence of legislative provisions allowing criminal proceedings to be reopened in order to give effect to judgments of the ECtHR. The authorities indicated that amendments to the Code of Criminal Procedure relating to the reopening of criminal proceedings should be adopted within six months. The Constitutional Court considered, however, that the Supreme Court had jurisdiction to remedy the violation in the present case. On 23/09/2010 the applicant's lawyer, following the dismissal of his application by the Supreme Court, again brought the matter before the Constitutional Court.

In the meantime, on 25/02/2010 the Italian authorities cancelled the decree ordering the applicant's extradition to Albania. It appears, however, that the Albanian authorities' extradition request is still valid.

When examining this case in December 2010, the CM strongly regretted the authorities' inaction and emphasised that the applicant continues to suffer the consequences of the quashing of his final acquittal. The CM noted, however, that the authorities have stated that they are prepared to amend the Code of Criminal Procedure within six months, in order to enable criminal proceedings to be reopened, and that the applicant has lodged a fresh application with the Constitutional Court, which is currently pending.
The CM emphasised the urgency of obtaining rapid confirmation of the applicant's acquittal, the erasure of the conviction from his criminal record and the withdrawal of the request for his extradition from Italy, in compliance with the judgment of the ECtHR, and, in consequence, urged the respondent state to act without delay and to provide the CM with information about the results achieved.

GM The judgment has been translated and published. A panel of judges, prosecutors and representatives of the Ministry of Justice and the Judicial Service Commission has been convened to discuss the measures to be taken. The judgment, together with an explanatory note, has been sent to the district courts, the courts of appeal, the Supreme Court, the Constitutional Court, the general prosecution service and the serious crimes court.
In December 2010 the CM also encouraged the authorities to provide information about the general measures adopted or envisaged in order to prevent similar violations.

E.6. Non-execution of domestic judicial decisions

62. CRO / Radanović and other similar cases (see AR 2008, p. 191)

Application No. 9056/02 *Last examination: 1100-4.2*

Judgment of 21/12/2006, final on 21/03/2007

Disproportionate interference with the applicants' right to the peaceful enjoyment of their possessions owing to the non-execution before the end of 2003 of court decisions delivered from 2000 onwards ordering the eviction of persons occupying the applicants' property under the law on requisitions in force at the time of the facts (violation of Article 1 of Prot. No. 1); absence of an effective remedy in that regard (Radanovic, violation of Article 13); excessive length of the proceedings (Brajović-Bratanović and Kunić, violations of Article 6§1).

IM All the applicants have recovered their possessions. The ECtHR awarded them just satisfaction in respect of the pecuniary and non-pecuniary damage sustained. No other individual measure appears necessary.

GM **Interference with the right to the peaceful enjoyment of possessions:** the Law "on requisitions" was repealed in 1998. However, the Law of 1996 "on areas of special state concern", as amended in 2002, confers a right to housing on the temporary occupants. If a temporary occupant is entitled to housing in the form of the provision of construction materials, he/she will have to vacate the property within 90 days of the materials being supplied. The temporary occupant may be evicted if this period is not observed. The law also provides for compensation for the loss sustained by owners who brought an action for restoration of their possessions before November 2002 and who had not recovered their possessions on that date.

In 2008 the Supreme Court recognised that the judgment of the ECtHR had direct effect and amended its case-law on compensation for owners whose property was allocated to third parties. When the courts rule on compensation, they must thus evaluate in each case whether an excessive burden was placed on the owner because it was impossible to enjoy his or her possessions.

Information is still awaited on the measures taken or envisaged in order to ensure the rapid enforcement of the eviction decisions delivered in this context, and also on the number of eviction decisions of this kind which have not been enforced to date and the resources allocated for alternative housing or construction materials.

Lack of an effective remedy: information is awaited on the measures taken or envisaged in order to ensure the effectiveness of the remedies in similar situations.

Excessive length of the proceedings: this issue is being considered in the context of the *Počuča* (application No. 38550/02) and *Cvijetić* (application No. 71549/01) cases.

In order to draw attention to the requirements of the ECHR, the judgment has been published and disseminated to the competent authorities.

63. MDA / Olaru and other similar cases (see AR 2009, p. 134)

Application No. 476/07 *Last examination: 1100-4.3*

Judgment of 28/07/2009, final on 28/10/2009 (Pilot judgment)

Violations of the applicants' right of access to a court and right to peaceful enjoyment of their possessions on account of the state's failure to enforce final domestic judgments awarding them housing rights or monetary compensation in lieu of housing (violations of Article 6 and Article 1 of Prot. No. 1).

IM The ECtHR had decided that the question of just satisfaction must be reserved and that a further procedure be fixed, with due regard for the possibility of an agreement being reached between the Moldovan Government and the applicants.

Artur Lungu, Corina Lungu, Olivia Lungu: a friendly settlement was reached between the applicants and the authorities. All sums due to the applicants were paid on 01/07/2010.

Simion Racu: on 20/04/2010 a similar judgment was delivered in respect of Simion Racu following an unilateral declaration lodged by the government. All sums due to the applicant were paid on 01/07/2010.

Vera Gusan and Vasile Olaru: on 28/09/2010 and 12/10/2010, the ECtHR delivered its judgments in respect of just satisfaction. In both cases, the applicants had not made any claims in respect of pecuniary damage but had requested enforcement of the domestic judgments at issue. The ECtHR stated in reply that it was leaving it to the CM to ensure that the Moldovan authorities adopted the necessary measures to put an end to the violation and to redress as far as possible the effects. The ECtHR further awarded just satisfaction for the non-pecuniary damage sustained by the applicants.

Information is awaited on the measures adopted to implement the domestic court decisions delivered in favour of the applicants.

GM It is recalled that the ECtHR had used the "pilot-judgment" procedure to handle the problem raised by the present case. It stressed that the **non-enforcement of final judgments** was Moldova's prime problem in terms of number of applications pending before it and that the violations found in the present judgment reflected a persistent structural dysfunction – see AR 2009.

In December 2009, bilateral consultations were held in Chisinau between the competent Moldovan authorities and the Secretariat on the issues raised by the pilot judgment.

In March 2010, the Moldovan authorities submitted an action plan for the implementation of the pilot judgment.

Shortly after, they took part in the round table organized by the Department of Execution of Judgments of the ECtHR (15-16 March 2010) on effective remedies against non-enforcement or delayed enforcement of domestic court judgments, funded by the Human Rights Trust Fund, and intended to enable interested states to exchange experiences and take note of recent developments in the case-law of the ECtHR.

The starting point for the submitted action plan was *the abrogation, through legislation adopted in December 2009, of social housing privileges for 23 categories of persons*. It was noted that according to the ECtHR, such a measure was capable of solving the problem in question and in March 2010, the CM welcomed its adoption.

The plan goes on to address the **lack of effective domestic remedies** and the handling of the cases whose examination was postponed by the EctHR: in May 2010, the Moldovan authorities transmitted to the Secretariat draft laws for the introduction of a domestic remedy in case of non-enforcement or lengthy enforcement of domestic judicial decisions. In June 2010, the CM noted with interest that the Moldovan authorities recommended introducing a remedy covering all cases of non-enforcement and unreasonably delayed enforcement of domestic judicial decisions but observed that the deadline set by the ECtHR for introducing the remedy required by the pilot judgment had expired.

Concerning **the settlement of individual applications frozen** by the ECtHR, the authorities stated in June 2010 that the ECtHR had communicated to them 133 applications frozen in the context of the pilot judgment. According to the Moldovan authorities, in 100 cases, domestic judgments had already been enforced through the allocation of social housing to the applicants or through the payment of a sum of money in lieu of housing. The Moldovan authorities have already offered redress to certain applicants (see the ECtHR's decisions in the *Peciul* and Others case, application No. 15279/07 and in the *Cojocaru* case, application No. 16128/07).

The authorities also stated that, subject to further confirmation, some 400 further judgments granting social housing had been identified at domestic level.

In December 2010, the CM took note of the progress made in the settlement of individual applications which were lodged with the ECtHR before the delivery of the pilot judgment and encouraged the Moldovan authorities to intensify their efforts to bring to an end the process of settlement of these applications within the new deadline set by the ECtHR.

It regretted that these draft laws to introduce an effective general remedy had still not been adopted and called upon the Moldovan authorities to give priority to the adoption of a domestic remedy as required by the pilot judgment. It noted in this context that there were still approximately 400 unenforced domestic judgments granting social housing rights which might give rise to a substantial risk of repetitive applications to the ECtHR.

To conclude, the CM strongly encouraged the Moldovan authorities, pending the adoption of the above-mentioned reform, to explore other possible solutions aimed at providing adequate and sufficient redress to those who had obtained judgments

granting social housing rights to prevent the risk of repetitive applications.

64. RUS / Burdov No. 2 (see AR 2009, p. 136)

Application No. 33509/04

Judgment of 15/01/2009, final on 04/05/2009 (Pilot judgment)

Interim Resolutions CM/ResDH(2009)43 CM/ResDH(2009)158

Memorandum CM/InfDH (2006) 19rev2 CM/InfDH (2006) 19rev3, CM/InfDH (2006) 45,

Last examination: 1100-4.3

Violation of the applicant's right to a court due to the structural problem of the social authorities' failure to enforce final judicial decisions ordering them to pay certain compensation and allowances (with subsequent indexation) for health damage sustained by the applicant during emergency and rescue operations at the Chernobyl nuclear plant and damages for their delayed enforcement (violations of Article 6§1 and of Artcile 1 of Prot. No. 1); lack of an effective remedy in respect of the continued non-enforcement of the judgments in the applicant's favour (violation of Article 13).

IM All domestic judgments in the applicant's favour have been enforced. The ECtHR awarded just satisfaction in respect of non-pecuniary damage sustained.

GM

Measures in respect of other similar applications pending before the ECtHR: pursuant to the pilot judgment procedure, the ECtHR held that the Russian Federation was under an obligation to grant adequate and sufficient redress, before 04/05/2010, to the 1180 applicants in the 166 cases communicated to the government before the issuing of the pilot judgment. This deadline was later extended by the ECtHR until 15/09/2010. The CM also encouraged the authorities to bring to an end the settlement of the "frozen" individual petitions having regard to the extension of the time allowed by the ECtHR. As of December 2010, important progress had been made by the Russian authorities in dealing with these applications.

Lack of effective remedy: the ECtHR held that the Russian Federation had to introduce before 04/11/2009 a remedy which secured genuinely effective redress for the violations of the ECHR on account of the state authorities' prolonged failure to comply with judicial decisions delivered against the state or its entities. Following intense cooperation between the Russian authorities and the Secretariat, a Federal Law "On compensation for violations of the right to a trial within reasonable time or of the right to the execution of a domestic court decision within reasonable time" entered into force on 04/05/2010. This law in particular provides a possibility to claim compensation in case of excessively lengthy execution proceedings before domestic courts, regardless of whether the authorities are found to be at fault. While assessing the length of execution proceedings and the amount of compensation to be awarded, domestic courts should base themselves on the criteria established by the ECtHR. This legislative measure also constitutes a response to the CM' IR CM/ResDH(2009)43 and CM/ResDH(2009)158 adopted respectively in March and December 2009. In its inadmissibility decision of 23/09/2010 in the case *Nagovitsyn and Nalgiyev* (application No. 27451/09), the ECtHR considered that all new cases introduced after the pilot judgment should be submitted in the first place to the national courts according to the Compensation Act. It specified, however, that this position may be subject to review in the future, depending in particular on the domestic courts' capacity to establish consistent case-law under the Compensation Act in line with the requirements of the ECHR. The CM has requested information on measures taken or envisaged by the highest Russian courts to ensure the effective implementation by all courts of the provisions of this law.

Structural problem of non-enforcement or delayed enforcement of final judicial decisions: in its inadmissibility decision of September 2010 referred to above, the ECtHR recalled that the Russian authorities remain under the obligation to implement the necessary reforms under the supervision of the CM so as to ensure timely enforcement of domestic judgments. The adoption of such measures is all the more pressing since it was observed by the ECtHR that the Compensation Act does not ensure the ultimate execution of a domestic judgment but only provides the possibility to obtain compensation for delays already occurred. Moreover, the ECtHR in-

dicated that an issue may subsequently arise as to whether the new compensatory remedy would still be effective in a situation in which the defendant state authority persistently failed to honour the judgment debt notwithstanding a compensation award or even repeated awards made by domestic courts under the Compensation Act. The progress achieved and outstanding issues with regard to the implementation of the necessary reforms are being examined by the CM in the *Timofeyev* group of cases (application No. 58263/00), (See also CM/Inf/DH(2006)45, CM/Inf/DH(2006)19rev 3, IR ResDH(2009)43).

65. SER / EVT Company and other similar cases

Application No. 3102/05 *Last examination: 1100-4.2*

Judgment of 21/06/2007, final on 21/09/2007

Failure or substantial delay by the administration in abiding by final judgments in commercial, civil and administrative matters, in family-related matters or in cases concerning socially-owned companies (mainly, violation of Article 6§1 and 1 of Prot. No. 1).

IM In the vast majority of cases, the CM considered that the necessary individual measures had been taken: enforcement of domestic decisions has not been requested, has been ordered, is in progress or has been completed.

In the case of *EVT Company,* according to information provided by the Serbian authorities, the debtor companies' assets are largely insufficient to cover the applicant's claim. Information is awaited on further developments and measures taken or envisaged to ensure full execution of this judgment.

In the case of *Kostić* (application No. 41760/04), information is awaited on measures taken or envisaged to ensure speedy execution of the demolition order in question, as requested by the ECtHR.

GM The authorities have provided information on a number of legislative measures designed to improve the **efficiency of enforcement proceedings**.

Among these measures is the *draft Enforcement Act*, under which private bailiffs are to be introduced in parallel with the already existing court bailiffs and the possibility to appeal or to file objections during enforcement proceedings is to be reduced to a strict minimum. The act also includes provisions in respect of commercial and family-related matters.

A new Bankruptcy Act was also adopted in 2009. Among other things, it requires judges to decide *ex officio* to open preliminary insolvency proceedings in respect of any corporation whose bank accounts have been "blocked" due to outstanding debts. The Central Bank, furthermore, is obliged to publish information on such corporations and to forward the information on those insolvent corporations to the competent courts, who will, in turn, start *ex officio* bankruptcy proceedings.

Pursuant to a decision of the Serbian Government of 09/07/2009, the competent authorities should apply to the court in order to start bankruptcy procedures in respect of any *socially-owned companies.*

The *new Planning and Construction Act,* in force since 11/09/2009, includes a "legalisation" procedure which should provide authorisation for certain unauthorised constructions and thus make those constructions legal. It appears, however, that the enforcement of demolition orders is currently blocked if the "legalisation" procedures have been started. The authorities have also observed that unauthorised construction is now a criminal offence in Serbia. In this regard, the Ombudsman has called for the adoption of a demolition schedule, including a schedule for enforcing the demolition orders.

In order to solve the problem of inaccurate information contained in the land registers, the *State Survey and Cadastre Act* was adopted in 2009. Under this legislation, title registration is now made in the real estate cadastres and title holders have an obligation to apply for title registration. In this respect, the Serbian authorities have been implementing since 2004 the Real Estate Cadastre and Registration Project, which is supported by the World Bank. The aim of this project is to secure safe and reliable information in the cadastre system.

Effective remedies: the Constitutional Court Act, which was adopted in 2007, introduced the mechanism of constitutional appeal with the aim of providing a remedy in respect of excessive length of proceedings, including excessive length of enforcement proceedings. The Constitutional Court has so far heard 27 cases and found violations in respect of excessive length of enforcement proceedings in 7 cases. The ECtHR found in the case of *Vinčić* (application No. 44698/06) that the constitutional appeal should, in principle, be considered as an effective remedy as of 07/08/2008.

In this context, the Serbian authorities took part in the round table held by the ECtHR's Department for the Execution of Judgments in March 2010 on effective remedies against non-execution or delayed execution of domestic court decisions. Financed by the Human Rights Trust Fund, the event provided an opportunity for interested states to share their experiences and to take note of the latest developments in the ECtHR's case-law.

In June 2010, the CM invited the Serbian authorities to inform it as to the timetable for the adoption of the draft Enforcement Act, as well as the measures taken to ensure its effective implementation. It observed that problems related to the non-enforcement of court decisions rendered in respect of socially-owned companies were a major issue of concern as there were already over 400 similar applications pending before the ECtHR, and strongly encouraged the Serbian authorities to take the necessary measures to find appropriate solutions to this problem.

66. UKR / Zhovner (see AR 2007, p. 110; AR 2008, p. 144; AR 2009, p. 138)
UKR / Yuriy Nikolayevich Ivanov and other similar cases

Applications Nos. 56848/00 and 40450/04

Judgments of 29/06/2004, final on 29/09/2004 and of 15/10/2009, final on 15/01/2010 (Pilot judgment)

Interim Resolutions CM/ResDH(2008)1, CM/ResDH (2009)159, CM/ResDH (2010)222

Memorandum CM/InfDH(2007)30 (rev. English only) and CM/InfDH(2007)33

Last examination: 1100-4.3

Failure or serious delay by the administration or state companies in abiding by final domestic judgments (violation of Article 6§1); absence of effective remedies to secure compliance(violation of Article 13); violation of the applicants' right to protection of their property (violations of Article 1 of Prot. No. 1).

IM Urgent measures are still necessary regarding the domestic judgments which have still not been executed. In the pilot case *Yuriy Nikolayevich Ivanov*, the domestic court ruling delivered in the applicant's case has been enforced and the just satisfaction ordered by the ECtHR has been paid to the applicant.

It should be emphasised that the ECtHR decided to suspend consideration of all applications lodged regarding protracted inaction on domestic judicial rulings and absence of effective remedies in that respect, for one year from the date on which the judgment became final. Concerning applications lodged before the delivery of the judgment, the ECtHR stipulated that by 15/01/2011 the respondent government should afford suitable redress to all victims of failure to pay, or unduly delayed payment by the state authorities of a claim arising from a domestic court decision.

GM The previous AR contain indications as to the outstanding questions concerning the resolution of the structural problem disclosed by the *Zhovner* group of judgments since 2004, and the CM's responses to the persistence the problem, which include two IR in 2008 and 2009 stressing the importance of finding a speedy solution and in the meantime adopting provisional measures to contain as far as possible the risk of further violations of the ECHR.

In the *Yuriy Nikolayevich Ivanov* pilot judgment, which became final on 15/01/2010, the ECtHR reiterated that the necessary specific reforms in Ukrainian law and practice were to be implemented without delay in order to ensure their alignment with its findings and meet the requirements of Article 46 of the ECHR. The ECtHR specified that Ukraine must speedily, and not later than one year from the date on which the judgment became final, institute a remedy or a combination of remedies in domestic law and ensure that the remedy or remedies complied, both in theory and in practice, with the key criteria set by the ECtHR.

In March 2010, a round table was organised by the Department for the Execution of Judgments to aid the exchange of experience between states and the ECtHR, on that occasion concerning effective domestic remedies (the previous round table in 2007 had concentrated on the substantive problem of non-enforcement) The round table was financed by the Human Rights Trust Fund and the conclusions were published on the website of the Department for the Execution of Judgments.

In June 2010, meetings were held between the Department for the Execution of Judgments of ECtHR and the Ukrainian authorities to devise a

comprehensive strategy for solving the problems that had generated the repeated violations of the ECHR. The Ukrainian authorities supplied information on several initiatives in respect of certain problems behind the violations.
On 30/11/2010 the CM adopted a third IR (CM/ResDH(2010)222) in which it noted with deep concern that notwithstanding its repeated calls since 2004, the Ukrainian authorities had failed to give priority to devising a comprehensive strategy to bring their legislation and administrative practice in line with the ECHR, thus generating new massive applications before the ECtHR, and that in these circumstances the ECtHR had delivered on 15/10/2009 a pilot judgment in the case of *Yuriy Nikolayevich Ivanov.*
The CM noted that despite the information provided by the Ukrainian authorities concerning a bill on the execution of court decisions for which the state is responsible, no clarification was made as to the exact content of the bill or on the timetable envisaged for its adoption. Consequently, it once again strongly urged the Ukrainian authorities at the highest political level to abide by their undertaking to resolve the problem of non-enforcement of domestic judicial decisions and to adopt as a matter of priority the specific reforms in Ukraine's legislation and administrative practice required by the pilot judgment.

The CM also firmly invited the authorities to intensify their efforts in resolving the similar individual cases lodged with the ECtHR before the delivery of the pilot judgment and to keep it regularly informed of the solutions reached and of their subsequent implementation.

F. No punishment without law

67. EST / Liivik (Final Resolution CM/ResDH(2010)157)

Application No. 12157/05 *Last examination: 1100-1.1*

Judgment of 25/06/2009, final on 25/09/2009

Violation of the principle "no punishment without law" on account of the conviction in 2004 of the applicant – Director General of the Estonian Privatisation Agency – to two years imprisonment on the basis of an excessively vague provision criminalising "misuse of official position" under Article 161 of the Criminal Code (violation of Article 7).

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicant on account of the distress and anxiety suffered during the pre-trial and trial proceedings. According to Article 366 of the new Code of Criminal Procedure, in force as of 18/11/2006, the applicant is entitled to apply for the re-opening of his criminal case. The Estonian authorities informed the CM that on 23/11/2009 the Supreme Court accepted the applicant's submission for the re-opening of his criminal case. In these circumstances, no further individual measures appear necessary.

GM With the entry into force of the new Criminal Code on 01/09/2002, the legislative provision at issue was repealed and replaced by another, which, in turn, was repealed by a legislative amendment of 15/03/2007 concerning economic offences. In its explanatory memorandum concerning the legislative amendment, the Ministry of Justice made special reference to the interpretation of Article 7§1 of the ECHR by the ECtHR, according to which the necessary elements of a criminal offence had to be clearly defined in law.
In addition, the judgment has been translated into Estonian and published on the website of the Council of Europe Information Centre in Tallinn.

68. ITA / Sud Fondi Srl and Others

Application No. 75909/01 *Last examination: 1092-4.2*

Judgment of 20/01/2009, final on 20/04/2009

Violation of the principle that offences and penalties must be defined by law, owing to the confiscation in 2001 of the land and buildings belonging to the applicant companies without a clear, accessible and foreseeable legal basis: according to the case-law, confiscation was mandatory in the event

of a breach of the law, even when, as in the present case, the breach resulted from an unavoidable and excusable error, made in good faith and thus did not imply the criminal conviction of the applicants (violation of Article 7); the confiscation also constituted an arbitrary and unjustified interference with the applicants' property rights in so far as it applied to all the unlawful constructions and 85% of the land in question without any right to compensation (violation of Article 1 of Prot. No. 1).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. It reserved its decision on the question of pecuniary damage.

GM The ECtHR's judgment indicates that on 09/04/2008, in the context of criminal proceedings unconnected with the present case, the Bari Court of Appeal questioned the constitutionality of automatic confiscation of an unlawful construction in cases involving no criminal liability, and referred the question to the Constitutional Court.
In addition, in a decision of 24/10/2008 the Court of Cassation criticised the approach, according to which confiscation may also be applied against persons, who, without committing the violation, came into possession of the property concerned in good faith. The Court of Cassation held that the generic wording of the law raises considerable questions of interpretation and, since it is applied without distinction to all builders, expressed doubt as to its constitutionality. Contrary to the predominant case-law, the Court of Cassation stressed that, although confiscation constitutes a penalty, its administrative nature makes it necessary to comply with the general principles relating to administrative penalties. Consequently, confiscation cannot be applied to persons who were not involved in the violation and have acted in good faith. The President of the 3rd Division of the Court of Cassation stated, in a letter of July 2009, that the approach to the question of confiscation following unlawful construction was being revised in order to comply with the principles laid down by the ECtHR.

The CM welcomed the judgment of the Court of Cassation and the letter from the President of the 3rd Division of the Court of Cassation. However, in the light of the inconsistent case-law on the question, it requested further information, including as regards the current approach of the lower courts. To that end, information is also awaited about the referral by the Bari Court of Appeal to the Constitutional Court on the question of the constitutionality of confiscation, including in situations where there is no finding of criminal liability.

The authorities' assessment regarding the question of the lack of clarity, accessibility and foreseeability of the law and the extent of the confiscation is also awaited.

G. Protection of private and family life

69. FIN / Johansson (examination in principle closed at the 1092th meeting in September 2010)

Application No. 10163/02 *Last examination: 1092-6.1*

Judgment of 06/09/2007, final on 06/12/2007

Violation of the applicants' right to respect for their private and family life owing to the authorities' refusal in 1999 to register the forename which the applicants had chosen for their son, on the ground that the name did not conform to Finnish practice in that regard, despite the fact that others were already registered with the same forename (violation of Article 8).

IM The ECtHR granted just satisfaction in respect of the non-pecuniary damage sustained. The Finnish authorities informed the CM that the applicants' son bore the forename which they had chosen. No other individual measure seems necessary.

GM Considering the direct effect of ECtHR judgments in the Finnish legal system, and since the judgment was published and circulated to all the institutions concerned, it appears that no structural change is necessary and that the judgment of the ECtHR will be complied with in domestic administrative and legal practice. In the light of the foregoing, no other general measure seems necessary.

The measures of publication and dissemination were the following: an abstract of the judgment in Finnish was published in the *Finlex* legal database and the judgment was sent to the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the parliamentary Constitutional Law Committee, the Supreme Court, the Supreme Administrative Court, the Ministry of Justice, the State Prosecutor's Office, the Helsinki Administrative Court, the Population Registration Centre and the Hyvinkää local Population Registration Authority.

70. LIT / L.

Application No. 27527/03 *Last examination: 1100-4.2*

Judgment of 11/09/2007, final on 31/03/2008

Infringement of a transsexual applicant's right to respect for private life in that, despite the adoption in 2000 of provisions granting the right to gender reassignment surgery, by 2007 the authorities had still not introduced implementing legislation that would have enabled him to undergo gender reassignment surgery and to change his gender identity in official documents (violation of Article 8).

IM The ECtHR held that Lithuania had to pass the required subsidiary legislation by the end of June 2008 or pay the applicant 40,000 euros to cover the cost of having the final stages of the gender reassignment surgery performed abroad. The Lithuanian authorities paid the applicant the prescribed sum and the CM took the view that no further measures were necessary.

GM In 2008, the Lithuanian authorities stated that the domestic courts were in a position to fill the existing legal lacunae pending the adoption of the necessary legislative amendments. In the absence of unanimity on the matter, however, the bill which had been prepared was withdrawn in 2010. The authorities reiterated their view that there was no need for legislation. The government further requested in March 2010 that the justice and health ministries adopt the necessary measures to fill the legal lacunae identified by the ECtHR and table bills to ensure the implementation of these measures.
The authorities have also stated that persons who have undergone gender reassignment surgery can now apply to the domestic courts if registry offices deny their request to change their gender identity in official documents. The Ministry of Justice, moreover, has prepared a bill designed to clarify the appropriate procedure for changing a person's gender identification in official documents. Under the terms of this bill, anyone who has undergone gender reassignment surgery can have their gender identity in official documents changed by applying to health care institutions for a medical report confirming the gender reassignment.

The CM is awaiting information on the practical effects of measures already taken and measures envisaged or in the process of being adopted.

In order to draw the attention of the competent authorities to the requirements of the ECHR, the ECtHR's judgment has been translated and published on the website of the Ministry of Justice together with an explanatory note. The Government Agent has also informed all relevant institutions and all domestic courts about the judgment in an explanatory note, and has brought the judgment to the attention of the Speaker of Parliament and the Minister of Health.

G.1. Home, correspondence and secret surveillance

71. FRA / Vetter (Final Resolution CM/ResDH(2010)5) (see AR 2007, p. 137)

Application No. 59842/00 *Last examination: 1078-1.1*

Judgment of 31/05/2005, final on 31/08/2005

Violation of right to respect for private life on account of the use of listening devices by the criminal police in 1997 in an appartment regularly visited by the applicant suspected of murder: with regard to the planting of microphones, French law did not set out clearly enough the extent of the authorities' discretion or how this discretion should be exercised (violation de Article 8); unfairness of the proceedings before the criminal chamber of the Court of Cassation, due to the failure to communi-

cate the report of the reporting judge to the applicant or his lawyer, whereas this report had been submitted to the advocate-general (violation of Article 6§1).

IM The ECtHR awarded the applicant just satisfaction for the non-pecuniary damage sustained.
Violation of Article 8: the authorities indicated that, following the request of the State Prosecutor, the evidence (including the recordings) was destroyed on 09/12/2004.
Violation of Article 6§1: the applicant, sentenced to 20 years' imprisonment, had the possibility to apply for the re-opening of his cassation appeal on the basis of Articles L 626-1 ff of the Code of Criminal Procedure (CCP).
No further individual measures seem necessary.

GM With regard to the ***planting of microphones***, a new law, enacted in 2004, on adapting justice to developments in crime, includes measures relating to the use of listening devices in proceedings relating to organised crime (Article 706-96 of the Code of Criminal Procedure (CCP) which refers to article 706-73).The technical operations set up can be designed to listen, transcript, transmit and record words spoken privately or confidentially, in private or public premises or vehicles or image of one or more persons whilst in private premises. Such operations are allowed in a vehicle or private premises without the knowledge or consent of the owner of the premises or vehicle or the person residing in the premises or any other person that has a right over the premises or the vehicle. The devices cannot concern lawyers' offices, press or broadcasting companies, doctors' surgeries, notary's, solicitors or bailiffs' offices. The new law provides for a limit to the duration of those operations, the conditions for drawing up summaries of conversations overheard, as well as the circumstances in which recordings can or must be erased or destroyed.

Furthermore, the authorities submitted two judgments of the *Cour de cassation* of 2006 and 2007, which demonstrate the due control exercised by this court of this new legislative framework, referring to Article 8 of the ECHR as well as to the ECtHR's case-law.

For its part, the *Conseil constitutionnel*, seized of the law adapting justice to the changes in crimes, found that the different offences relating to organised crime enumerated in the new Article 706-73 of the CCP were defined precisely enough and presented sufficiently serious and complex character to justify exceptional procedures in the framework of the investigation or prosecution The *Conseil constitutionnel* also verified that contested operations (including the recording of images and sounds in private or public premises) would be submitted to a decision of the judge of investigation and liberties or the investigating judge.

With regard to **unfair criminal proceedings**, measures were adopted in the context of the execution of the *Reinhardt* (application No. 23043/93) and *Slimane-Kaïd* (application No. 22921/93), and *Slimane-Kaïd No. 2* (application No. 29507/95) judgments.

Moreover, the judgment has been published on the *Legifrance* website and disseminated to all domestic courts via the website of the Service of European and International Affairs.

72. ROM / Popescu Dumitru No. 2

Application No. 71525/01 *Last examination: 1086-4.2*

Judgment of 26/04/2007, final on 26/07/2007

Interference with the applicant's right to respect for his private life because his telephone calls were intercepted and recorded by the authorities in the course of criminal proceedings without adequate safeguards against arbitrary action (violation of Article 8).

IM The ECtHR held that the finding of a violation in itself constituted adequate just satisfaction for the non-pecuniary damage sustained. Information is awaited as to whether the recordings complained of were destroyed.

GM In the present case, the violation related to the organisation of telephone tapping under the National Security Act and specifically to the lack of independence of the competent authorities (the prosecutors in this instance) for authorising the tapping, the lack of prior verification of the authorisation, and of subsequent review by an independent authority of the justification of tapping, the absence of guarantees for preservation of the recordings in an intact and complete state, and for their destruction, and the lack of independence of the authori-

ties certifying the authenticity and reliability of the recordings.

After the material time, the Code of Criminal Procedure (CCP) was amended. The new legal position was reviewed by the ECtHR which observed, to begin with in the judgments at issue here, that there were now many safeguards for the interception and transcription of telephone calls, the storage of these data, and the destruction of irrelevant information. Accordingly, the CCP lays down the requirement of a court's reasoned authorisation for the interception and recording of communications by telephone or by any other electronic device. Moreover, verification of the reliability of recordings is henceforth carried out by the National Forensic Institute, answerable to the Ministry of Justice, whose experts are independent from the authorities empowered to intercept and transcribe calls.

However, the ECtHR observed that it still seemed possible for measures of surveillance to be ordered by a prosecutor under section 13 of National Security Act no. 51/1991. This appears to be confirmed by a recent decision of the Constitutional Court (published in the *Official Gazette* of 16/01/2007) which considered it justified to apply section 13 of the Act, given its exceptional character, to circumstances that arose after the entry into force of the new procedure prescribed by the CCP.

The judgment was translated and published in the *Official Gazette* and on the website of the Supreme Court of Cassation and Justice. It was also sent to the Judicial Service Commission for forwarding to all domestic judicial authorities and prosecution departments, together with a recommendation that it be discussed in connection with judges' and prosecutors' in-service training activities.

The CM awaits information on the present legal framework governing telephone tapping and the measures taken or envisaged to prevent similar future violations.

G.2. Respect of physical or moral integrity

73. CYP / Kyriakides (examination closed in principle at the 1092nd meeting in September 2010)

CYP / Taliadorou and Stylianou

Applications Nos. 39058/05 and 39627/05 *Last examination: 1092-6.1*

Judgments of 16/10/2008, final on 16/01/2009

Breach of the positive obligation to protect the moral and mental integrity and reputation of the applicants – police officers – because in 2005 the Supreme Court overturned without adequate grounds a decision awarding them certain damages for their unjustified dismissal following allegations of torture (violation of Article 8).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. Following the national proceedings, the applicants were reinstated in 1997.

No other measure seems necessary.

GM Before the CM, the government stated that the Cypriot Constitution required court decisions to be grounded. Failure to do so constitutes a ground of appeal, and the Cypriot authorities have provided examples of decisions set aside for inadequate grounding.

Moreover, judgments of the ECtHR have a direct effect in Cypriot law and the judgments in question here, accompanied by a detailed analysis, were promptly circulated to the Supreme Court, the Bar Association, the parliamentary human rights committee, the parliamentary legal affairs committee, the Ministry of Justice and all Counsels for the Republic. The judgments were translated and published in *Cyprus Law Journal* in 2009.

Having regard to this situation, no other measure seems necessary.

74. UK / A. D. T. (Final Resolution CM/ResDH(2010)18)

Application No. 35765/97 *Last examination: 1092-1.1*

Judgment of 31/07/2000, final on 31/10/2000

Violation of the applicant's right to respect for his privacy through sentencing in 1996 to two years of imprisonment for gross indecency, in accordance with the legislation applicable at the time prohibiting any homosexual act between men even where they consented and, if more than two men were involved, where the acts occurred in private (violation of Article 8).

IM The ECtHR awarded the applicant just satisfaction in respect of the pecuniary and non-pecuniary damage sustained, covering in particular the value of the items seized and destroyed as a result of the search of his residence. The applicant was conditionally discharged on 20/11/1996, and his lawyer indicated in 2003 that he did not wish to pursue the question of possible further individual measures. Furthermore, since the entry into force in 2004 of a new law (see general measures below), anyone convicted of such acts can ask for the restrictions resulting from the conviction to be lifted. Consequently, no other individual measure was considered necessary by the CM.

GM A new law (*Sexual Offences Act 2003*), which came into force on 01/05/2004, repealed all the provisions underlying the applicant's conviction in this case, namely sections 12 (buggery) and 13 (gross indecency) of the Sexual Offences Act 1956, as well as section 1 of the Sexual Offences Act 1967 which provided that homosexual acts "in private" would be prosecuted only where they involved more than two persons. The new law is centred on the concept of "consent" and defines no specific offence for any homosexual activity whatsoever engaged in privately between consenting adults.

In addition, persons subject to the obligation to supply the police with certain information following their conviction or censure under the provisions challenged in this case can now ask the Home Secretary to be exempted. This also applies to persons convicted before the new law came into force.

The judgment of the ECtHR was published in *European Human Rights Reports* and received wide press coverage.

G.3. Disclosure or retention of information in violation of privacy

75. FRA / L.L. (Final resolution CM/ResDH(2010)86)

Application No. 7508/02 *Last examination: 1092-1.1*

Judgment of 10/10/2006, final on 12/02/2007

Interference with the right to respect for the applicant's private and family life through the production and use in court, in divorce proceedings between 1996 and 2000, of certain medical evidence concerning him (violation of Article 8).

IM The ECtHR held that the finding of the violation constituted sufficient redress of the non-pecuniary damage sustained. The French authorities guarantee that the data concerning private life in the case file and judgment in divorce proceedings are protected by legislative provisions (see description of general measures below). Thus no other individual measure seems necessary.

GM In order to ensure strict scrutiny of the expediency of measures constituting interference with private and family life, the judgment was brought to the attention of all courts with jurisdiction over cases of this type, the State Prosecutor attached to the Court of Cassation and to the Rennes Court of Appeal, and the relevant directorates of the Ministry of Justice. A summary of the Court's judgment has been presented on the Court of Cassation website ("Observatoire du droit européen") since July 2007. French judges, who give direct effect to the ECHR, are thus in a position to draw the appropriate inferences directly from this judgment when applying the relevant national provisions.

Concerning the guarantees surrounding the use of data relevant to the private life of the parties, in this type of proceedings, the new Code of Civil Procedure (which came into force on 01/01/2005) absolutely prohibits distributing more extensive excerpts from a divorce ruling than its sole operative

provisions. In practice, the public have access on the French administration's website to an official notice stating that where divorce is concerned, persons who were not parties to the proceedings may obtain only an abstract of the decision. Furthermore, in divorce proceedings the material in the file (such as the medical certificate at issue in the case of *L.L.*) can be consulted only by the parties to the suit and their lawyers – subject to professional secrecy.

G.4. Placement in public care, custody and access rights

76. ITA / Covezzi and Morselli (Final resolution CM/ResDH(2010)101)

Application No. 52763/99 *Last examination: 1092-1.1*

Judgment of 09/05/2003, final on 24/09/2003

Violation of the right to respect for the applicants' family life through the failure of the juvenile court to involve them adequately in the procedure relating to their parental rights. After having ordered the removal of four of their children (then aged 11, 9, 7 and 4 years) in 1998, the juvenile court waited more than four months before hearing the applicants and more than twenty months before declaring their parental authority lapsed in 2000. During these excessively long periods, the provisional decision on urgent placement was maintained without consideration on the merits, and without the applicants being able to avail themselves of an effective remedy for challenging it (violation of Article 8).

IM The adoption of individual measures was not imperative in this case: the ECtHR did not find a violation of the ECHR as regards the urgent removal of the children and the conditions thereof, the lack of a prior hearing with the applicants, the placement of the children and the protracted interruption of contacts with the applicants who were convicted of sexual abuse inflicted on the children.

GM A new law which came into force in April 2001 amended the provisions applicable to the adoption and placement of minors. It prescribes greater parental participation when urgent proceedings are instituted, with the possibility for the parents, assisted by a lawyer, to take part in the investigations ordered by the court, to lodge applications and to ask the court for disclosure of the file. The court must decide within 30 days whether to maintain, modify or revoke the urgent measures. In addition, the suspension of the proceedings must be reasoned and may not exceed one year.

The judgment was transmitted in December 2003 to all juvenile courts and published in the *Official Gazette* of the Ministry of Justice in order to alert juvenile court judges to the requirements of the ECHR. Furthermore, seminars were organised by the Judicial Service Commission on the case-law of the ECtHR and the execution of its judgments.

77. ITA / Roda and Bonfatti
ITA / Clemeno and Others

Applications Nos. 10427/02 and 19537/03 *Last examination: 1086-4.2*

Judgments of 21/11/2006, final on 26/03/2007 and of 21/10/2008, final on 06/04/2009

Violation of the right to respect for family life after the applicants' children had been taken into public care (on account of allegations of sexual abuse by family members) due, on the one hand, to the authorities' failure between 1998 and 2006 (*Roda and Bonfatti*) and 1997 and 2002 (*Clemeno*) to take the necessary measures (in particular through the organisation of regular visits) to maintain contact between the children and their natural family and, on the other hand, to the authorities' decision in the *Clemeno* case, after more than 4 years of proceedings, to confirm a provisional order from 1997 declaring one of the children adoptable without any attempts to maintain, whilst the proceedings were pending, the child's contacts with her mother and brother against whom no crim-

inal proceedings had been brought (in the meantime, in 2001, the father had been acquitted as no crime was established) (violations of Article 8).

IM The ECtHR awarded just satisfaction to all applicants in respect of non-pecuniary damage sustained. In both cases the children attained majority in 2006 before the ECtHR's judgments. No individual measures have thus been considered necessary.

GM

Contacts between parents and their children: on 24/04/2001, i.e. at the moment of the facts of the case, the Law No. 1049/01 on adoption and care of minors entered into force. It provides *inter alia* for the obligation of social services, under instruction of the judge, to ease relationships between the child and the natural family and to facilitate the return within the family.

Moreover, Title III of the above Law, in force as of 30/06/2007, provides for greater involvement of parents in emergency measures (ex. possibilities, with the assistance of a counsel, to take part in the investigations ordered by the court, to submit claims, to ask the judge for disclosure of the file). The extension, modification or revocation of emergency measures shall be decided by courts within 30 days; any suspension of proceedings must be reasoned and cannot exceed one year.

The CM has requested information on envisaged possible training measures for social services to prevent similar violations.

"Declaration of adoptability": the Law No. 149/01 also establishes clearer rules at the various stages of the procedure on "declaration of adoptability" and provides for greater involvement of parents from the very beginning of the procedure. The appeal procedure against a decision of the Children court on "declaration of adoptability" did not change.

Publication and dissemination: both judgments were published on the Internet Site of the Court of Cassation. The *Roda and Bonfatti* judgment has been translated into Italian and widely disseminated to the competent authorities. The CM has requested information on the dissemination of the *Clemeno* judgment to children courts and social services.

78. ITA / Todorova (Final Resolution CM/ResDH(2010)172)

Application No. 33932/06 *Last examination: 1100-1.1*

Judgment of 13/01/2009, final on 13/04/2009

Infringement of the applicant's right to respect for her family life in that the authorities failed in their positive obligation to ensure that her consent to relinquish her children had been given in full knowledge of the implications and had been attended by the appropriate guarantees, particularly considering that the applicant, who was in a state of psychological distress, never received a hearing, although she requested this, concerning the declaration of her children's availability for adoption delivered 27 days after childbirth in October 2005 (violation of Article 8).

IM The children (twins) were adopted shortly after birth. Consequently, having regard to the legal ties thereby formed with the adoptive family, it does not appear possible to contemplate another individual measure besides the just satisfaction in respect of non-pecuniary damage awarded by the ECtHR.

GM Following the events which gave rise to the case, law No. 149/01, which came into force in 2007, prescribed new rules for the adoption of minors, including an "adoptability declaration" procedure. It provides in particular for greater participation by the parents from the outset of the procedure, and applies clearer rules to the various steps in the procedure. The procedure for challenging a measure by which the juvenile court has declared a child adoptable was not altered.

The judgment was published on the website of the Court of Cassation, in the database on the case-law of the ECtHR and on the government's website. These sites are extensively used by all legal practitioners in Italy: civil servants, lawyers, prosecutors and judges.

According to the authorities, these general measures suffice to avert similar violations in future.

79. NLD / Venema (Final Resolution CM/ResDH(2010)9)

Application No. 35731/97 *Last examination: 1078-1.1*

Judgment of 17/12/2002, final on 17/03/2003

Breach of the right of the applicants (parents and their minor daughter) to respect for their family life in that they were not involved in the decision-making process before the Child Welfare Board and the Juvenile Judge which led, in 1995, to the adoption of provisional orders for the daughter to be removed from her parents (violation of Article 8).

IM After a separation of five months and eighteen days, the family was reunited on 22/05/1995. The consequences of the violation found have been redressed by the ECtHR through the award of just satisfaction for non-pecuniary damages suffered.

GM The procedures followed by the Child Welfare Board were radically changed and new rules were laid down in a binding instruction from the Ministry of Justice "Standards 2000", an updated version of which entered into force on 01/05/2003. The new procedures provide *inter alia* the involvement of parents in the decision-making process concerning the placement of children into care and in its investigations, as well as intervention of a behavioural psychologist and a legal expert in child protection cases. As a matter of course, the Child Welfare Board now involves the parents of the child in its investigations; it may deviate from this rule only in highly exceptional circumstances, after consulting experts from different disciplines.

Moreover, the ECtHR's judgment was published and broadly disseminated.

H. Cases concerning environmental protection

H.1. Non-respect of judicial decisions in the field of the environment

80. ITA / Giacomelli

Application No. 59909/00 *Last examination: 1086-4.2*

Judgment of 02/11/2006, final on 26/03/2007

Disrespect of the obligation to protect the applicant's private life and home, as the regional authorities did not comply with the environmental legislation and subsequently refused to enforce decisions of the Administrative Court of Lombardy (29/04/2003) and of the Council of State (25/05/2004), finding unlawful a 1999 decision of the Regional Council of Lombardy renewing the operating licence of a plant for treatment of industrial waste (built 30 meters from the applicant's house): the procedural safeguards available to the applicant were thus made inoperative in breach of the principle of the rule of law (violation of Article 8).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage on account of the distress and anxiety suffered during several years because of the dangerous activities carried out at the plant built close to her house. Besides payment, IM and GM are closely linked in this case. According to the judgment, following an environmental impact assessment carried out in 2004, the Ministry of the Environment adopted on 28/04/2004 a Decree approving the continued operation of the plant provided that it complied with the environmental requirements fixed by the Lombardy region. The implementation of these requirements was to be verified upon renewal of the authorisation to operate the plant in 2004.

The Italian authorities have indicated that based on the above mentioned decree, the Lombardy region adopted a new decree on 23/12/2004 authorising the treatment of all types of waste. As a consequence the government submitted to the CM that the authorisation procedure had been fully regularised and that no negative consequences remained.

However, on 27/01/2010 the Ministry of the Environment was invited to provide information on the implementation of the requirements of the 2004

Decree. The CM has requested updated information on this issue.

GM The ECtHR's judgment has been published on the Internet site of the Court of Cassation, in the Italian database on the ECtHR's case law – a widely used website. With a view to ensure that the requirements of the ECHR are duly taken into account by the authorities, the CM has requested information on the dissemination of the judgment, notably to the authorities under the Ministry of the Environment.

I. Freedom of religion

81. GEO / 97 members of the Gldani Congregation of Jehovah's Witnesses and 4 others

Application No. 71156/01 *Last examination: 1086-4.2*

Judgment of 03/05/2007, final on 03/08/2007

Failure by the authorities to comply with their positive obligation to protect against ill-treatment 45 of the applicant members of the Gldani Congregation of Jehovah's Witnesses who had been violently assaulted by an orthodox religious group in 1999 and to carry out an effective investigation in order to identify and punish the guilty parties (violations of Article 3); failure by the authorities to comply with their obligation to take the necessary measures to enable the applicants to exercise freely their freedom of religion (violation of Article 9); discriminatory attitude of the authorities involved in the case (violation of Article 14 in conjunction with Article 3 and 9).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. According to the position established by the CM, there is a continuing obligation to conduct an investigation following a finding of violation of Article 3. Information is awaited about the measures taken or envisaged in that regard.

GM

Protection against ill-treatment, effective investigations and discriminatory attitude: according to the information provided by the authorities, some twenty incidents against Jehovah's Witnesses were recorded by the Ombudsman of the Republic of Georgia for the first half of 2009 (a number of investigations were still being conducted in February 2010). Proceedings for public order offences were initiated, penalties imposed or warnings issued. Some incidents were avoided owing to the presence of the police. Effective and full investigations are now carried out whenever a problem is reported to the police.

Freedom of religion: the authorities have stated that the Code of Criminal Procedure provides for penalties for unlawful interference with the exercise of freedom of religion with violence, the threat of violence or insults of a religious nature.

Fuller information is awaited about the legislative and regulatory framework applicable to situations similar to that in the present case, in particular as to whether the new Code of Criminal Procedure introduces amendments and whether provision is made for penalties to be imposed on law enforcement officers who refuse to protect persons who have sought their protection. Confirmation that the judgment has been sent to the police and all Georgian criminal courts is also awaited.

The judgment has been translated and published in the *Official Gazette* of Georgia and on the internet site of the Ministry of Justice. It has also been sent to various organs of the state.

82. **GRC / Agga No. 3 (examination in principle closed at the 1092nd meeting in September 2010) (see AR 2007, p. 157)**
GRC / Agga No. 4

Applications Nos. 32186/02 and 33331/02 *Last examination: 1092-6.1*

Judgment of 13/07/2006, final on 13/10/2006

Unjustified interference with the applicant's right to manifest his religion owing to criminal proceedings and convictions between 1997 and 2002 on the ground that he had delivered and signed messages as Mufti of Xanthi after his election by Muslims (violation of Article 9).

IM The ECtHR did not award the applicant any compensation in respect of pecuniary damage in so far as the applicant did not prove that he had paid any fine whatsoever, and accordingly held that the finding of a violation in itself constituted adequate just satisfaction for the non-pecuniary damage sustained.
Furthermore, the CM was informed that the applicant had died in 2006 and that in accordance with the national legislation his heirs are entitled to request the reopening of the criminal proceedings on the basis of the judgment of the ECtHR. Having regard to this situation, no other individual measure appeared necessary.

GM There have been positive developments in court practice whereby Article 175 of the Penal Code (PC), the source of the violation, is interpreted in the light of ECtHR precedent in the context of the *Serif* and *Agga No. 2* cases (applications No. 38178/97 and 5776/99) concerning similar violations, but they have proved insufficient to avert further violations in so far as the Court of Cassation early in 2002 had still not given the present judgment direct effect (see AR 2007).

Subsequently however, the Court of Cassation gave the findings of the ECtHR full endorsement in its case-law. Accordingly, in its decision no. 1045/2002, it held that the mere fact of distributing messages of a religious nature to persons of the Muslim religion, even by posing as a Mufti without having acquired that title by law, did not constitute an offence of usurping the functions of a minister of a "known religion". These acts primarily enabled the doer to exercise the right to profess his religion in public or in private, through worship and teaching, as secured by Article 13 of the Constitution and Article 9 of the ECHR overriding any other national provision (Article 28 of the Constitution). The authorities have demonstrated with supporting examples that the national courts have made a regular practice of applying the case-law of the ECtHR directly in their decisions and that there is no pending case concerning a violation of Article 175 of the PC.

The judgments were translated and circulated to all judges in the country, drawing their attention to the reasoning and the conclusions of the ECtHR. They were also sent to the Greek prosecutors.

The government emphasised that the annual training programmes of the National Judicial Service College comprised tuition in the ECHR and the case-law of the ECtHR, their direct effect included. Finally, thematic seminars have been organised in order to keep judges informed of recent developments concerning the ECHR.

Having regard to this situation, no other general measure appeared necessary.

83. **UKR / Svyato-Mykhaylivska Parafiya**

Application No. 77703/01 *Last examination: 1092-4.2*

Judgment of 14/06/2007, final on 14/09/2007

Unjustified interference with the right to freedom of religion of the applicant parish owing to the authorities' refusal to register changes to its statutes following its decision to separate from the parent church and to join another parent church, owing to the excessively vague nature of the provisions underlying the refusal (relating, in particular, to the definition of "parish" and the forms in which the parish could take decisions, which permitted arbitrary interference with the organisation of the parish) and lack of adequate judicial review of the refusal (violation of Article 9).

IM Under Ukrainian legislation, an application to reopen proceedings may be lodged following a finding of violation by the ECtHR. According to the information provided by the authorities, rather than initiate such an action, the applicant lodged an application for *restitutio in integrum* before the Supreme Court. In January 2008, the Supreme Court annulled its decision of 2000 upholding the administration's refusal to register the change in the statutes and remitted the case to the Administrative Court of the District of Kiev for a fresh examination. The proceedings are currently pending.

In any event, the ECtHR had noted in its judgment that the lack of coherence and foreseeability of the legislation could prevent the domestic courts, when reviewing a decision, from reaching a different finding from that of the registering authorities. In those circumstances, it is not clear if the new procedure will be capable of eliminating the violation found by the ECtHR, since the individual measures seem to be linked to the adoption of general measures, namely the law on freedom of conscience and religious organisations (see GM below).

GM A draft law on freedom of conscience and of religious organisations has been prepared by a working group composed of representatives of the Ministry of Justice, churches and registered denominations, NGOs and academics.

According to an Opinion of the Venice Committee on the matter (Opinion No. 391/2006), although the draft law in general met the requirements of international standards concerning freedom of religion, certain aspects needed to be further developed. In particular, the registration of religious organisations needed to be clarified and simplified.
According to the information provided by the authorities, the bill is currently being amended by the State Committee on nationalities and religious affairs. According to the Committee, the judgment of the ECtHR was taken into consideration when the bill was being drafted, particularly as regards the provision of legal guarantees for the protection of religious organisations against unjustified interference by the state in their activities and the limitation of state powers in the evaluation of the lawfulness of religious beliefs. The bill also contains a clear definition of a religious organisation.
More detailed information is awaited about the way in which the new law, if enacted, would make good the shortcomings identified by the ECtHR and about the temporary measures adopted in order to comply with the judgment of the ECtHR pending the enactment of the law. A copy of the final version of the bill is also awaited.
The judgment has been translated and published, *inter alia*, in the *Official Gazette*. The authorities have stated that the judgment had been sent to all the competent authorities.

J. Freedom of expression and information

J.1. Defamation

84. AZE / Fatullayev

Application No. 40984/07 *Last examination: 1100-2.1*
Judgment of 22/04/2010, final on 04/10/2010

Serious infringements of a journalist's right to freedom of expression, on account of his sentencing to imprisonment in 2007, first for defamation and then for threat of terrorism and incitement to ethnic hostility, insofar as the imposition of a prison sentence for a press offence is compatible with freedom of expression only in exceptional circumstances and there was no such circumstance in the present case. The application of the anti-terrorist provisions was wholly arbitrary, moreover (violations of Article 10); violation of the right to a fair hearing: the criminal case for defamation was heard by the same judge who had previously examined a civil action concerning the same allegations and involving the assessment of similar evidentiary material (violation of Article 6§1;), also violation of the right to presumption of innocence on account of statements made by the Prosecutor General before the applicant's conviction (violation of Article 6§2).

IM In its judgment, the ECtHR ordered that the applicant be immediately released under Article 46. The government submitted the ECtHR's judgment to the Supreme Court in order to ensure its implementation. The Supreme Court re-examined the case on 11/11/2010 and quashed the convictions criticised by the ECtHR. It did, however, uphold a 2007 decision to lift the stay that had been granted to the applicant concerning the execution of another two-year prison sentence for defamation imposed in September 2006, and a 4-month prison sentence for tax evasion imposed in October 2007, i.e. when cumulated, 2 years and 3 months' imprisonment. The Supreme Court ruled that this prison sentence had been served and that the applicant could be released.

The applicant is still in prison, however, because he was sentenced in July 2010 to two and a half years' imprisonment for possession of drugs in December 2009 (while he was serving the prison sentences at issue here). The applicant appealed against this sentence and the appeal proceedings are currently pending. In this context, he was detained on remand by decision of 05/11/2010. An appeal has been lodged against this decision as well.

After examining the situation at the December 2010 meeting, the CM recalled that under Article 46 of the ECHR, the respondent state is required under the supervision of the CM to choose the general measures and/or, if appropriate, individual measures to be adopted within its domestic legal order to put an end to violations found by the ECtHR and as far as possible to erase their consequences. It further recalled in this context that the Court considered that amongst the means available to the state to fulfil its obligation under Article 46, it should ensure the immediate release of the applicant.

The CM noted with satisfaction that the convictions criticised by the ECtHR had been annulled by the Supreme Court on 11/11/2010, thus making it possible in principle for the applicant to be released. It noted nonetheless with concern that the applicant was still in custody and that there were a number of questions concerning the erasure of the consequences of his unjustified detention since his arrest on 20 April 2007. The CM accordingly called on the competent Azerbaijani authorities to examine rapidly the questions which had been raised during the meeting, and in particular to explore all possible means of ending the applicant's detention including, if necessary by alternative, non-custodial measures. It also invited the Azerbaijani authorities, in close collaboration with the Secretariat, to provide the said information needed to allow an in-depth examination of the case at the latest at their 1108th meeting in March 2011.

GM The CM's first examination focused on IMs.

85. AZE / Mahmudov and Agazade

Application No. 35877/04 *Last examination: 1092-4.2*

Judgment of 18/12/2008, final on 18/03/2009

Disproportionate interference with the freedom of expression of the applicants, a chief editor and a journalist, in that they were convicted and sentenced to imprisonment in 2003 for defamation and insult of a public figure (violation of Article 10).

IM The applicants were sentenced to 5 months' imprisonment. The ECtHR awarded them just satisfaction in respect of non-pecuniary damage. However, it found no causal link between the violation found and the pecuniary damage claimed. During the CM's examination of the case, the authorities said that the applicants had been exempted from serving their sentences in application of the Resolution of the Parliament of Azerbaijan on "*Amnesty in Connection with the Anniversary of the Victory over Fascism in World War II*". No record of the sentence has been included in the applicant's criminal records. This being the case, no further individual measures appear necessary.

GM The ECtHR reiterated in its judgment that, although sentencing is in principle a matter for national courts, the imposition of a prison sentence for a press offence can only be compatible with journalists' freedom of expression as guaranteed by Article 10 of the ECHR in exceptional circumstances, particularly where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence.

Azerbaijan legislation currently provides for penalties of up to six months' imprisonment for defamation or insult.

At the March 2010 HR meeting, the authorities stated that amendments to the Criminal Code and

adoption of a law on defamation had been the subject of wide public discussion. They mentioned various initiatives to create a favourable environment for the adoption of the law on defamation (adoption of two presidential decrees on the media, co-operation with the OSCE Office and the Council of Europe). Lastly, they made it known that Azerbaijan was not against the decriminalisation of the acts of journalists, but that to do so would require efforts on the part of journalists, the public, government agencies and international organisations.

The judgment has been translated and published and sent out to judges and other legal professionals. It has been included in the curricula for the training of judges and candidates for the post of judge.

In March 2010, the CM noted that in the judgment of *Mahmudov and Agazade*, the ECtHR had reiterated its well-established case-law. The authorities were invited to bring the relevant legislative provisions into conformity with this case-law. In addition, confirmation that the ECtHR's judgment has been circulated to the courts concerned, together with an explanatory note, is awaited.

86. GEO / Gorelishvili (Final Resolution CM/ResDH(2010)164)

Application No. 12979/04 *Last examination: 1100-1.1*

Judgment of 05/06/2007, final on 05/09/2007

Unjustified interference with the right to the freedom of expression of the applicant, a journalist, convicted in civil proceedings for libel in 2003 following the publication of an article on a political figure's financial situation, without proving all the "information" given: neither the law nor the case-law made the distinction due between facts and value judgments, nor accepted as a defence the applicant's good faith as to the truth of the factual statements (violation of Article 10).

IM No claim for redress of the pecuniary damage was made. The ECtHR held that the finding of a violation did not suffice to redress the non-pecuniary damage sustained by the applicant and awarded her just satisfaction on that account. No other claim was brought before the CM.

GM Since the material time, the Civil Code has been amended and no longer mentions the obligation of defendants to substantiate the information which they transmit. The Press and Media Act in force at the material time has also been replaced. The new law of 24/06/2004 on freedom of speech and expression defines libel as a statement containing substantially untrue facts, prejudicing an individual, and slandering his/her name or reputation. Moreover, it distinguishes libel committed against a private individual from libel committed against a public figure. The defendant incurs civil liability for libel against a public figure where the plaintiff proves that the defendant knew the alleged fact to be erroneous. Lastly, the new law provides that it must be interpreted, notably, in accordance with the ECHR and with the case-law of the ECtHR.

The judgment was translated and published in the Official Gazette and on the website of the Ministry of Justice. It was transmitted to various state bodies and particularly the Supreme Court.

Finally, given the direct effect of the ECHR and of the case-law of the ECtHR in Georgia, these are unfailingly referred to by the domestic courts when dealing with litigation over freedom of expression.

87. LVA / Vides Aizsardzības Klubs (Final Resolution CM/ResDH(2010)57)

Application No 57829/00 *Last examination: 1086-1.1*

Judgment of 27/05/2004, final on 27/08/2004

Disproportionate interference in the right to freedom of expression of a non-governmental organisation for the protection of the environment, which was sentenced by the district court (sentence upheld by the appeal court in 2000) to publish an official apology and pay damages to a local mayor on account of certain claims published in a newspaper: the truth of most of its statements had been proven and insufficient account had been taken of the difference between factual allegations and value judgments (violation of Article 10).

IM The ECtHR awarded the applicant association just satisfaction covering *inter alia* non-pecuniary damage and the value of the fine paid as a result of the impugned domestic judicial decisions. No further measure therefore appears necessary.

GM According to the Latvian Government, this judgment is an isolated case, which does not appear to raise any legislative problems. The Latvian authorities have provided examples of domestic case-law in which national courts have adapted their interpretation of defamation to the requirements of the ECtHR, including a more thorough evaluation with regard to the difference between value judgments and statements of fact.

Furthermore, the judgment was translated and published published in the *Official Periodical Latvijas Vēstnesis* and in the annual report of the government Agent's Office as well on several internet sites. It was sent out to all judges and included, with comments, in the training programme for judges.

J.2. Access to information

88. HUN / Társaság a Szabadságjogokért

Application No. 37374/05 *Last examination: 1100-4.2*

Judgment of 14/04/2009, final on 14/07/2009

Disproportionate interference with the right of the applicant (a human rights NGO) to communicate information of general interest in the public sphere, due to the domestic courts' refusal to grant it access to information concerning a constitutional complaint relating to amendments to the Criminal Code, thus preventing it from disseminating this information (violation of Article 10).

IM The ECtHR held that the finding of a violation constituted sufficient just satisfaction for the damage sustained. Information is awaited concerning the possibility of granting the applicant NGO unlimited access to the relevant complaint filed with the Constitutional Court.

GM According to information provided by the Hungarian authorities, the Constitutional Court has amended its previous practice and now allows individuals to have access to information concerning the content of any complaints before it.
Information is awaited on this new case-law of the Constitutional Court, including examples of decisions in this area.

J.3. Broadcasting rights

89. ARM / Meltex Ltd and Mesrop Movsesyan (see AR 2009, p.167)

Application No. 32283/04 *Last examination: 1100-4.2*

Judgment of 17/06/2008, final on 17/09/2008

Unlawful interference with the applicant company's right to freedom of expression on account of the refusal by the National Television and Radio Commission (NTRC), on seven occasions in 2002 and 2003, to deliver the applicant a broadcasting licence in the context of different tender calls. The refusals were not required by law to be motivated and the system did thus not provide adequate guarantees against arbitrariness (violation of Article 10).

IM The ECtHR awarded the applicant company just satisfaction in respect of non-pecuniary damage.
Before the CM, the Armenian authorities stated from the outset that individual measures in this case are closely linked to the issue of general measures (see below) and that a new call for tender would not satisfy the requirements of the ECtHR's case-law if the law on radio and television was not first modified.

Reopening of proceedings: in the meantime, the applicant has attempted to reopen the judicial review proceedings of 2004 which had upheld the NTRC's incriminated refusals. The reopening proceedings, which have involved also a complaint to the Constitutional Court, still appear to be pend-

ing: in August 2010 the applicant company indicated that no decision had been taken yet on the merits.

New call for tenders: in March 2010, the CM took note with interest that the applicant would be given the possibility to participate in a new call for tenders in July 2010; it recalled in this context the recommendations and declarations it had adopted on freedom of expression, media pluralism and diversity; it stressed the importance of the call for tender for the execution of this judgment and took note of the government's position according to which, while awaiting the issue of the procedure, no measure was possible in favour of the applicant company because any measure other than an effective and transparent conduct of a tender process would lead to a situation in which the rights of third parties would be infringed. It accordingly invited the Armenian authorities to keep it informed of the progress of the call for tenders and recalled that detailed information on the developments regarding the remedies pursued by the applicant before the competent national judicial authorities was awaited.

The new call for tenders took place in July 2010 after the adoption on 10/6/2010 of a new "Law amending and supplementing the Law on Television and Radio". The applicant company complained in August 2010 that under the new law the NTRC was no longer under an obligation to provide explanations for its decisions to refuse broadcasting licences and that some other amendments might place it at significant disadvantage in tendering. The CM has requested the further information on the issue from the authorities

GM The Law on Television and Radio Broadcasting has been subject to several amendments since the facts of the case.

In its decision adopted in September 2010, the CM noted with concern that the amendments of June 2010 to the TV and Radio Broadcasting Act no longer explicitly required that reasons be given to unsuccessful competitors for a broadcasting license. However, the Government Agent made an official statement according to which the relevant provision of the TV and Radio Broadcasting Act should be interpreted in accordance with the ECHR, and in the light of the *Meltex* judgment, such that a single decision of the Commission provides a full and proper substantiation and reasoning of the results of the points-based vote, in respect of both the winner of the competition and all other participants.

The CM also invited the Armenian authorities to provide a comprehensive overview of the legislative and regulatory framework to substantiate the unambiguous obligation of the NRTC under Armenian law to give reasons for its decisions to award or not, or to revoke broadcasting licenses, in the framework of competitions or applications for broadcasting, as well as with information as to the concrete implementation of this framework in respect of the ongoing tender procedures.

In order to draw the attention of competent authorities to the requirements of the ECHR, the judgment has been translated and published in relevant official publications, as well as on the official websites of the judiciary and of the Ministry of Justice. The translated text of the judgment has also been sent to the NTRC and to the Court of Cassation.

90. NOR / Tv Vest As and Rogaland Pensjonistparti

Application No. 21132/05 *Last examination: 1100-4.2*

Judgment of 11/12/2008, final on 11/03/2009

Disproportionate interference with the right to freedom of expression of the applicants (a television broadcasting company and a political party) on account of a fine imposed by the State Media Authority in 2003 for breaching legislation prohibiting television broadcasting of political advertisement (violation of Article 10).

IM Following the judgment of the ECtHR, on 08/07/2009 the Media Authority annulled its decision of 10/09/2003 fining TV Vest under the Broadcasting Act and the Broadcasting Regulations. The fine was never collected due to the dispute concerning its lawfulness. The applicants, who had requested the re-opening of the case in order to claim legal costs pertaining to the proceedings before the national courts and the ECtHR, withdrew their request in October 2009, when they reached a friendly settlement with the Ministry of Culture. No further individual measure seems necessary.

GM Although the prohibition in the Broadcasting Act has remained unchanged, the authorities in-

dicated that they have implemented in 2009 two general measures to prevent similar violations.

First, the Statutes of the national public broadcaster (NRK) have been amended so as oblige NRK to provide broad and balanced coverage of elections, under the control of the Media authority. This should ensure that smaller political parties, such as the applicant Pensioners Party, are included in the NRK's editorial coverage. The Norwegian authorities reported that during the last parliamentary elections (September 2009), the Pensioners Party and other political parties of similar size were included in the NRK's election coverage.

Secondly, all political parties can communicate with the public by using an open television channel (Frikanalen) available since October 2008 to organisations and individuals to broadcast their own programmes. To facilitate party political broadcasts during elections, the Ministry of Culture and Church Affairs in May 2009 signed an agreement with Frikanalen aimed at promoting and facilitating freedom of speech for all political parties and lists before elections. During the last parliamentary elections the applicant Party, as well as smaller parties, have broadcast programmes on Frikanalen.

In addition, already the ECtHR's judgment highlighted the direct effect of the ECtHR's case-law accepted by the State Media Authority. In order to assist in drawing the attention of the authorities to the ECHR requirements, a summary of the judgment in Norwegian, with a link to the original judgment, was published on the Internet site Lovdata, which is widely used by all who practice law in Norway, civil servants, lawyers, prosecutors and judges alike. The Norwegian Centre for Human Rights (an independent national human rights institution) writes the summaries of the ECtHR's judgments for the database.

The CM has requested some clarifications and details on the measures taken, in the light of the fact that the provision at the origin of the violation remains unchanged and that, according to a OSCE/ODHIR report of 2009 the open channel was functioning on a limited basis. As a response, the authorities provided in August 2010 an action report, which is being examined by the CM.

J.4. Protection of sources

91. BEL / Ernst and Others (Final Resolution CM/ResDH(2010)39)

Application No. 33400/96 *Last examination: 1086-1.1*

Judgment of 15/07/2003, final on 15/10/2003

Violation of the right of four journalists and two associations of journalists to respect for their homes and their privacy as a result of searches carried out in 1995 under broadly worded search warrants giving no information on the investigation in question, on the precise places to be searched or the objects to be seized (violation of Article 8); also disproportionate infringement of their freedom of expression: the purpose of the searches was to find information relating to "leaks" in the investigation of legal proceedings, whereas the applicants were not suspected of involvement and no other methods of enquiry had been tested (violation of Article 10).

IM The ECtHR awarded each of the four journalists just satisfaction in respect of the non-pecuniary damage caused by the searches and seizures. Moreover, the applicants' lawyer has confirmed to the Belgian authorities that some of the objects and documents seized had been returned, that the rest were no longer of interest, and that none of the applicants has any further claim in this respect. Consequently, no further individual measure seems to be required in this respect.

GM Under the new law of 07/04/2005 on the protection of journalistic sources, seeking information sources, in particular by means of searches or seizures, is now forbidden, unless ordered by the courts, so as to prevent the commission of offences constituting a serious physical threat to a person or a group of persons, and if the information sought is of crucial importance in avoiding the commission of such offences and cannot be obtained by other means.

Furthermore, in view of the direct effect granted to the ECHR in Belgium, further measures have been taken to draw the attention of the competent authorities to the *Ernst* judgment, so that they can take it into account in practice. Thus, this judgment – like all other judgments of the ECtHR concerning Belgium – has been published in the three official languages on the internet site of the Minis-

try of Justice and was sent on 11/02/2004 to the Secretariat of the College of Prosecutors General, the Federal Police and the Court of Cassation.

J.5. Other issues

92. HUN / Vajnai

Application No. 33629/06 *Last examination: 1100-4.2*

Judgment of 08/07/2008, final on 08/10/2008

Unjustified interference with the right of the applicant, then vice-president of the Workers' Party (a registered, left-wing political party), to freedom of expression, due to his conviction in 2005 for wearing, during a peaceful demonstration, a red star, the public display of which is considered totalitarian propaganda and is an offence under the Criminal Code (violation of Article 10).

IM The ECtHR held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

According to the information provided to the CM by the Hungarian authorities, the applicant's case was reopened before the Supreme Court, which reversed the previous decisions and acquitted the applicant on 10/03/2009. According to the information provided by the applicant, the latter is nevertheless taken to the police station whenever he wears a red star in public and the police confiscate the red star. The applicant argues that such administrative practice, based on the Hungarian Criminal Code in force but not necessarily leading to criminal proceedings against the applicant, deprives him of his right to freedom of expression. In this respect, he has submitted a report by the Independent Police Board and a decision of the Chief Police Commissioner to substantiate these allegations.

Information is awaited on the current situation of the applicant and whether there is such an administrative practice as alleged by the applicant, which could have a dissuasive effect for the applicant in his future activities.

GM According to the information provided by the Hungarian authorities, when the Supreme Court acquitted the applicant and reversed the previous decisions in this matter, it changed its case-law concerning the section of the Hungarian Criminal Code at issue.

The ECtHR's judgments and the Supreme Court's decisions are binding upon lower courts in Hungary. However, should any similar case appear before the Supreme Court, it will apply its recent case-law.

In order to draw courts' attention to the requirements of the ECHR, the ECtHR's judgment was translated and published on the website of the Ministry of Justice and Law Enforcement as well as in professional journals. It was sent to the Office of the National Judicial Council for dissemination to courts nationwide and to the Prosecutor General's Office.

Information is awaited on this new case law of the Supreme Court, together with examples of decisions rendered by lower courts in this matter according to this new case law.

93. SUI / Verein gegen Tierfabriken No. 2 (Final Resolution (2010)113) – (see AR 2009, p. 167)

Application No. 32772/02 *Last examination: 1092-1.1*

Judgment of 30/03/2009 – Grand Chamber

Failure of the Swiss authorities to comply with their positive obligation to take the necessary measures to allow the applicant (an animal protection association) to broadcast a television commercial after the ECtHR had found, in a first judgment delivered in 2001 (Verein gegen Tierfabriken (VgT) No. 24699/94, judgment of 28/06/2001), that the broadcasting ban imposed on the applicant's commercial had violated its freedom of expression (violation of Article 10). In particular, the Swiss

Federal Court in 2002 had refused on excessively formalistic grounds the applicant's request to have the proceedings at issue in the 2001 case reopened (violation of Article 10).

IM In its judgment, the ECtHR held that reopening could be an important aspect of enforcement in that it enabled the authorities to abide by the findings and the spirit of its judgment. The ECtHR also stressed that states were under a duty to organise their judicial systems in such a way that their courts could meet the requirements of the ECHR, which also applies to the execution of the ECtHR judgments. For further details in this regard, see AR 2009.
According to the action report transmitted by the authorities to the CM, the Federal Court allowed the applicant's further request to reopen the proceedings on 04/11/2009, and set aside in particular its decision of 2002. It ordered the Swiss broadcasting corporation (SRG) and Publisuisse SA to broadcast the commercial at issue. It was broadcast on three occasions between 27 and 29 January 2010 by SRG and Publisuisse SA. No other individual measure seems necessary.

GM The judgment was transmitted to the authorities concerned and published, particularly in the quarterly publication of the Federal Office for Justice on ECtHR case-law. It was presented in the Federal Council's annual report on the activities of Switzerland within the Council of Europe in 2009.

K. Freedom of assembly and association

94. BGR / UMO Ilinden and Ivanov (see AR 2007, p. 179, AR 2008, p. 183)
BGR / Ivanov and Others (see AR 2007, p. 179, AR 2008, p. 183)

UMO Ilinden and Ivanov: Application No. 44079/98, judgment of 20/10/2005, final on 15/02/2006

Ivanov and Others: Application No. 46336/99, judgment of 24/11/2005, final on 24/02/2006

Last examination: 1100-4.1

Infringements of the freedom of assembly of organisations seeking "recognition of the Macedonian minority in Bulgaria"; prohibition of meetings of those organisations between 1998 and 2003 on national security grounds (alleged separatist ideas), although they had not advocated the use of violence or other means contrary to democratic principles in order to attain their objectives. Lack of effective remedies to complain about the prohibition of their meetings (violations of Articles 11 and 13).

IM The Bulgarian authorities informed the CM of the generally positive developments which took place in 2006 and 2007 (see also AR 2007). The authorities subsequently provided further information indicating that between 01/01/2009 and 15/08/2010 UMO Ilinden and UMO Ilinden – PIRIN were able to organise more than 200 officially notified events; in 2009 one event was rescheduled and one did not take place, as it had not been notified to the Mayor, as required by law.

GM

Organisation of peaceful meetings: Some important awareness-raising activities, including numerous training and information activities for judges, prosecutors, national experts, lawyers, NGOs, mayors and chiefs of police have taken place, particularly in 2007 and 2008, with the participation of the Council of Europe.

Effective remedy: The need to improve domestic remedies was examined following the judgments in question here. This examination led to the introduction, in March 2010, of amendments to the law on meetings and demonstrations, resulting in the deletion of a reference to a body which had ceased to exist and in the introduction of time limits which provide for an appeal against a ban on a meeting to be examined before the planned date of the meeting.

At its last examination of these cases, the CM decided to resume the examination in 2011 in order to consider the possibility of closing them.

95. GRC / Bekir-Ousta and Others, and other similar cases

Application No. 35151/05 *Last examination: 1100-4.2*

Judgment of 11/10/2007, final on 11/01/2008

Violation of the freedom of association of the applicant associations, founded by members of the Muslim minority in Western Thrace, owing to the authorities' refusal to register those associations (*Bekir-Ousta and Others* and *Emin and Others* cases) or owing to their dissolution (in the *Tourkiki Enosi Xanthis and Others* case) in 2005-2006 on the ground that their object was to promote the idea that an ethnic minority, as opposed to a religious minority, existed in Greece, a ground which in the eyes of the ECtHR could not constitute a threat to a democratic society (violation of Article 11). In addition, in the *Tourkiki Enosi Xanthis* case, excessive length of the civil proceedings relating to the dissolution of the association (violation of Article 6§1).

IM In these cases, the ECtHR found that the finding of a violation of Article 11 represented sufficient compensation for the non-pecuniary damage sustained by the applicants, with the exception of the first applicant in the *Tourkiki Enosi Xanthis and Others* case *(application No. 26698/05)*, who was awarded just satisfaction for the non-pecuniary damage sustained in respect of Article 6§1. The domestic proceedings whose excessive length was criticised by the ECtHR ended in 2005.

As regards individual measures, the CM has been informed that following the judgments the applicants requested the cancellation of the decision dissolving them or submitted fresh applications for registration. The latter applications have thus far been declared inadmissible for procedural reasons: first, because domestic law does not provide, in civil matters, for the reopening of proceedings following a finding of violation by the ECtHR and, second, because it is not possible, following a judgment of the ECtHR, to cancel a domestic decision which has become final in the context of non-contentious proceedings. However, the proceedings have not been completed: the national decisions relating to the *Bekir-Ousta* and *Tourkiki Enosi Xanthis* cases have been the subject of appeals on points of law and the decisions of the Xanthi Regional Court in the *Tourkiki Enosi Xanthis* case (concerning the action to set aside the previous decision of that court) and the decision of the Rodopi District Court in the *Emin (application No. 34144/05)* case are pending before the Thrace Court of Appeal. According to the information provided by the Greek authorities, the recent case-law of the Court of Cassation could lead to a substantive re-examination of the applicants' applications.

GM

Interference with the right to freedom of association: Bilateral consultations between the Greek authorities and the Secretariat were held on 2 and 3 November 2010 in order to discuss, in particular, the execution of these three judgments of the ECtHR. According to the information provided by the authorities, between January 2008 and October 2010, 32 out of 33 applications to register associations having the adjective "minority" in their title or indicating a minority origin in any way whatsoever were accepted.

Furthermore, the three judgments have been translated and placed on the internet site of the State Legal Counsel. In addition, the Ministry of Justice has sent the translation of the judgments to the President of the Court of Cassation, emphasising the principal findings of the ECtHR and also the state's obligation under Article 46 of the ECHR to comply with those judgments. The dissemination of the judgment to the judicial authorities concerned was also requested. The judgment in the *Tourkiki Enosi Xanthis and Others* case has also been sent to the Prefectures of the region (Drama, Kavala and Xanthi).

Excessive length of proceedings: the question is being considered in the context of the *Manios* group of cases (application No. 70626/01).

96. **LUX / Schneider**

Application No. 2113/04 *Last examination: 1086- 4.2*

Judgment of 10/07/2007, final on 10/10/2007

Disproportionate interference with the applicant's right to the peaceful enjoyment of her property and with her right to freedom of assembly and association on account of the obligation imposed on her to include her land in a hunting area and, under a law of 1925, to become a member of a hunting syndicate, whereas she was ethically opposed to hunting (violation of Article 1 of Prot. No. 1 and of Article 11).

IM The applicant made no claim for just satisfaction before the ECtHR.

According to the information provided by the authorities, hunting on the applicant's land could not be stopped for three reasons:

– under the principle of *res judicata*, no national provision would allow the re-opening of the judicial proceedings at issue;

– the relevant national provisions would also make it impossible to withdraw the ministerial approval of the decision of the hunting syndicate to let hunting rights in a zone including her land;

– such a withdrawal would infringe the rights of third persons (members of the hunting syndicate, tenants of the concerned hunting zone) bound by a 9-year lease, coming to an end in 2012.

Bilateral contacts are underway to clarify possible solutions to the applicant's situation.

GM Since the material time, on 13/07/2004, the Administrative Court decided in a case very similar to the *Schneider* case to annul the ministerial decision upholding a hunting syndicate's decision, relying in particular on Article 1 of Protocol No. 1 ECHR.

Following the ECtHR's judgment, the government tabled a draft law on hunting on 04/06/2008, with a view *inter alia* to avoiding new, similar violations. Concerning the forced enrolment in the association, the draft legislation provides that "landowners who oppose hunting on their land for personal, ethical reasons" do not need to become members of a hunting syndicate, provided that they lodge a motivated statement of withdrawal, at least 8 days before the general assembly of the syndicate. Concerning the forced inclusion in a hunting zone of the property of those who oppose hunting on ethnical grounds, it may be noted that formally, their land belongs to the hunting zone, but the right to hunt on the said land is suspended during the entire lease. The statement of withdrawal must be renewed each time a lease comes to an end.

On 03/03/2009, in the context of the relevant legislative procedure, the Conseil d'Etat delivered an advisory opinion on this draft law, in which it raises certain questions, concerning among other things the date of entry into force of the legal provisions concerning ethical opposition to hunting or cases in which the land is sold during the lease.

The judgment of the ECtHR has been sent out to Administrative courts and published in the Codex journal, issue of June-July 2007.

Bilateral contacts are under way.

L. Right to marry

M. Effective remedies – specific issues

NB: Many issues relating to effective remedies are dealt with in connection with the substantive violation.

97. **ITA / Mostacciuolo Giuseppe No. 1 and other similar cases (see AR 2008, p. 130)**

Application No. 64705/01 *Last examination: 1100-4.2*

Judgment of 29/03/2006 – Grand Chamber

Inadequate level of compensation awarded by the domestic courts to redress the consequences of unduly lengthy proceedings and unjustified delays in payment of compensation awarded pursuant to law No. 89 of 24/03/2001, known as the "Pinto Act" (violation of Article 6§1).

IM In these cases, the ECtHR awarded, where applicable, the difference between the amounts which the domestic courts had granted and the amounts which it would have determined in accordance with its practice, having regard to the additional damage sustained because of the delays in paying the compensation (see AR 2008).
The authorities have indicated that in all cases the applicants have received the compensation awarded by the domestic courts under the Pinto Act.
Bilateral contacts are in progress regarding the status of the proceedings in the *Mostacciuolo No. 1* (application No. 64705/01), *Musci* (application No. 64699/01), *Campana* (application No. 56301/00) and *Simaldone* (application No. 22644/03) cases, which were still pending at the time when the ECtHR delivered its judgments.

GM
Delay in paying compensation: in its Resolution CM/ResDH(2009)42, the CM encouraged the Italian authorities to envisage "amending the Pinto Law with a view to setting up a financial system resolving the problems of delay in the payment of compensation awarded, to simplify the procedure and to extend the scope of the remedy to include injunctions to expedite proceedings".
A bill amending the Pinto Act was forwarded in March 2009 to the Italian Parliament. The bill was subsequently revised and passed by the Chamber of Deputies, and is currently before the Senate.
The main changes are the following: that the compensation claim must be submitted to the presiding judge of the Court of Appeal, without the assistance of counsel being mandatory. Any compensation awarded by decision of the President of the Court of Appeal must be paid by the relevant Ministry within 120 days of notification. The bill also provides for reintroduction of court costs, award of compensation only for the period in excess of the "normal duration of procedure" (two years, extendable by one year in specific circumstances), priority handling of proceedings in which the applicant has lodged a request for celerity within the six months preceding the expiry of the aforementioned "normal duration" period, the calculation of compensation not to include postponement of a hearing for not more than 90 days, where requested or accepted by the parties, and reduction of the amount by a maximum of 25% where the complaints in the main proceedings are dismissed or were manifestly ill-founded. Lastly, the payment of a 1000-20000 euro fine would be ordered if an appellant dissatisfied with the decision delivered initially by a court of appeal under the Pinto Act challenged the decision, this petition was dismissed, and the opposing party (the state) refused to take part in the appeal proceedings.

Information is awaited concerning the progress of the bill. Clarifications were requested particularly as regards the envisaged operation of the provisions governing the calculation of the periods subject to compensation and as regards the budgetary provisions, in order to ascertain how they will help settle the problem of late payment.

Inadequate compensation: regarding the amount of the compensation, the Court of Cassation made a reversal of precedent in 2004 by stating that the criteria laid down by the ECtHR as to the level of compensation in the context of applications brought pursuant to the Pinto Act were binding on the Italian courts (see AR 2008).

The court practice subsequent to these decisions shows that the Court of Cassation took account of the ECtHR case-law concerning the adequate level of the amount to be awarded under the Pinto Act. No other general measure seems necessary in that respect.

However, the court costs abolished in 2002 are reintroduced under the Pinto Act reform bill. The authorities' attention was drawn to the fact that this measure would represent a step backwards in the procedure of bringing the Pinto procedure into line with the ECHR.

N. Property rights

N.1. Expropriations, nationalisations

98. ITA / Sarnelli (Final resolution CM/ResDH(2010)100)
ITA / Matteoni

Applications Nos. 37637/05 and 65687/01 *Last examination: 1092-1.1*

Judgments of 17/07/2008, final on 17/10/2008 and 01/12/2008

Interference with the applicants' right to respect for their possessions owing to the small amount of compensation (almost one-half less than the market value of the property, calculated without reckoning the duration of the procedure and taxed) awarded to them in 2004 and 2001 for the expropriation of their land in accordance with law No. 359 of 1992 (violation of Article 1 of Prot. No. 1); unfairness of the relevant proceedings, in that the law at issue had introduced new rules of compensation which applied retroactively without justification (violation of Article 6§1).

IM The ECtHR awarded compensation for the pecuniary damage, equivalent to the difference between the market value of the land at the time of expropriation in 1983 and the compensation obtained at national level, plus simple interest on that amount as partial compensation for the considerable lapse of time since possession of the land was lost. It also compensated for the non-pecuniary injury sustained. In these circumstances, no question of IM was raised before the CM.

GM Following the *Scordino No. 1* judgment (application No. 36813/97) dealing *inter alia* with the same questions as the present case (see 2008 AR, p. 188), in which the ECtHR held that the respondent state should remove any obstacle to compensation in reasonable proportion to the market value of the property in question, the Italian Court of Cassation delivered three orders in 2006 raising the question of the constitutionality of the relevant article – 5 bis – of law No. 359/1992. In a judgment of 2007, the Constitutional Court declared that article unconstitutional while recalling that the legislator would not be compelled to award full compensation for the property since, in striking a proper balance between the public interest and individual interests, regard must be had to the social function of the property. Subsequently, the 2008 Budget Act amended the Consolidated text on expropriation and especially the provision implementing Article 5 bis of law No. 359/1992. It now provides that the expropriation grant for a piece of building land must be fixed at the market value of the property. Compensation may be reduced by 25% if the expropriation serves purposes of economic, social or political reform. The amount is then updated to counterbalance the effects of inflation, credited with interest, and supplemented by an occupancy allowance (interest calculated on the expropriation grant for the period prior to expropriation). These new rules are applicable to all pending proceedings except those in which the expropriation grant has already been accepted or has become final. The Italian authorities have stated that recent Court of Cassation judgments in the matter uphold the application of these criteria while recalling the case-law of the ECtHR.

99. ROM / Strain and Others and other similar cases (see AR 2007, p. 181, AR 2008, p. 189 and AR 2009, p. 174)

Application n° 57001/00 *Last examination : 1100-4.2*

Judgment of du 21/07/2005, final on 30/11/2005

Failure to restore nationalised buildings to their owners or to compensate them, following the sale of those buildings by the state to third persons (violation of Article 1 of Prot. No. 1). Excessively lengthy judicial proceedings, quashing final court decisions and the failure of the domestic courts to address decisive arguments brought by the applicants (violations of Article 6)

IM Earlier developments are summarised in AR 2009. Information is awaited on the current situation of the applicants in a number of cases, in particular as to whether their properties have been returned or if they have received just satisfaction for pecuniary damage.

GM As regards developments between 2005 and 2010, notably concerning the restitution and compensation mechanism set up in 2005 and the developments of judicial practice, see AR 2009.

Action plan: on 25/02/2010, further to the CM's decision at its HR meeting in June 2009, the authorities provided an action plan for the implementation of this group of judgments.

The action plan includes the following measures:

– creation of an inter-ministerial commission to identify the best means of finalising the property restitution process;

– amendment of the legislation on restitution of nationalised property to simplify the process, to make it more effective and to accelerate it;

– approval by Parliament of Government Emergency Ordinance No. 81/2007 on speeding up the procedure for awarding compensation;

– organisation of talks every three months with associations of former owners and representatives of civil society.

Subsequently the authorities have provided complementary information indicating that Parliament had approved the Emergency Ordinance with some amendments, by Law No. 142 of 12/07/2010 and that the amendments were expected to facilitate the listing the Property Fund on the Bucharest Stock Exchange by 22/12/2010. Thus, the requirement of a public bid prior to the listing has been lifted in respect of the Property Fund.

In addition, the authorities indicated that a multi party working group had been established in March 2010. Several amendments to the restitution laws were proposed and were being examined These amendments aim to ensure, inter alia, that restitution claims are dealt with in a reasonable time, by setting strict time-limits for all stages of administrative proceedings and administrative sanctions for inobservance of such time-limits. The working party proposed an increase in staff assigned to restitution-related activities. The authorities also provided statistical data on the current progress of the compensation process.

The CM has noted the action plan with interest. The proposed further legislative amendments to make the restitution and compensation process more efficient have also been received with interest before the CM. As regards possible further amendments to the existing legislative framework, reference has been made also to the indications given by the ECtHR in the pilot judgment *Maria Atanasiu and Others* of 12/10/2010 (application Nos. 30767/05 and 33800/06). The ECtHR indicated that within 18 months from the judgment becoming final, remedial actions should be taken to ensure the effective implementation of the right to restitution, be it in kind or by award of compensation, and that ECtHR would freeze pending applications during that period. In the judgment the ECtHR in particular considered that:

– "an overhaul of the legislation in order to create clear and simplified rules of procedure would make the compensation scheme more forseeable in its application compared with the present system, the provisions governing which are contained in a number of different laws, ordinances and decrees";

– "setting a cap on compensation awards and paying them in instalments over a longer period might also help to strike a fair balance between the interests of former owners and the general interest of the community" (§235 of the judgment).

The CM has also received submissions under Rule 9§2 from four NGOs (Association française pour la Défense du Droit de Propriété en Roumanie, Asociația pentru Proprietatea Privată, Asociația Proprietarilor Deposedați Abuziv de Stat et Restitution Rumänien).

Other violations: with respect to violations relating to excessive length of proceedings, quashing final court decisions and the failure of the domestic courts to address decisive arguments brought by the applicants, the cases concerned present similarities respectively to the *Nicolau* group of cases (application No. 1295/02), the *Brumărescu* case (application No. 28342/95) and *Vlasia Grigore Vasilescu* (application No. 60868/*00)*.

When examining the situation at its HR meeting in December 2010 the CM recalled the large-scale structural nature of the problem and that this finding had been confirmed by the ECtHR in several judgments, including in the pilot judgment of 12/10/2010 in the *Maria Atanasiu and Others* case, which also contained clear deadlines for the remedial action required. The CM also recalled, however, the action plan of February 2010, as well as the supplementary information submitted in September 2010. It noted with interest, among the measures taken, the creation of a working group to propose amendments to the legislation to render the restitution and compensation process more ef-

fective. In this respect the CM noted the special indications given in the above mentioned pilot judgment.
The CM called on the Romanian authorities to set urgently a provisional calendar for the implementation of the various stages specified in the action plan and to keep it informed of the progress made and in particular with the legal reforms envisaged. It also underlined that in order to be able to assess the relevance of the measures proposed by the authorities, it was important to have a as precise and comprehensive report as possible on the progress of the compensation process for owners whose property rights have been prejudiced and on the number of claimants yet to be compensated and it invited the authorities to supplement the information already submitted on this issue.

100. SVK / Kanala (Final Resolution CM/ResDH(2010)62)

Application No. 57239/00

Judgment of 10/07/2007, final on 30/01/2008 (merits) and of 14/10/2008, final on 06/04/2009 (just satisfaction)

Last examination: 1086-1.1

Breach of the applicant's right to the peaceful enjoyment of his possessions due to the government regulations on public auctions which had led execution officers to allow his co-owner to exercise, in 1999, a pre-emptory right of acquisition in respect of jointly owned property at a price less than the market value in contrast to the general valuation principles emerging from the Supreme Court's practice at the time (violation of Article 1 of Prot. No. 1).

IM In its judgment concerning Article 41, the ECtHR indicated that it could not speculate as to the price for which the property would have been sold at public auction. However, in view of the conclusion reached in the principal judgment, the ECtHR considered the applicant to have suffered a loss of real opportunities. Having regard to the nature of the breach found and the documents before it, the ECtHR awarded a lump sum to the applicant in respect of all heads of damage taken together. In these circumstances, no further individual measure was considered to be necessary.

GM The government regulations at issue have been repealed on 01/01/2004. A first change in 1999 stipulated that the price which a co-owner should pay in exercising a pre-emptive right had to equal the market value of the property. Pursuant to a further regulation in force as of 31/12/2003, the general value of property was its final value, determined in an objective manner by an expert and corresponding to a price for which the property could be realised in normal circumstances.

Already before, in 1997 the Supreme Court had expressed the opinion that the "courts should take into account the general value of property, that is the price for which it could actually be sold," and that "the general value should also be applied where a co-owner availed him or herself of the pre-emptory right to buy the property".

In its judgment the ECtHR noted that this reasoning was in line with its own analysis and that the relevant law had been subsequently amended to the effect that the lowest bid at a sale by auction of real property has to equal its market value.

101. TUR / N.A. and Others

Application No. 37451/97

Judgment of 11/10/2005, final on 15/02/2006 (merits) and of 09/01/2007, final on 23/05/2007 (just satisfaction)

Last examined: 1100-4.2

Complete lack of compensation for the five applicants, who had acted in good faith, following the cancellation in 1987 of the entry in the land register of their ownership of a property, on the grounds that it was part of the coastline, and the demolition of the hotel which was being built on this property (violation of Article 1 of Protocol No. 1).

IM The ECtHR awarded just satisfaction in respect of the pecuniary damage sustained. No other individual measure seems to be necessary.

GM In 2008 the Turkish authorities indicated that the draft amendment of the law on the coastline begun in 2006 was still under preparation.
The authorities also indicated that a new and effective domestic remedy had been developed through the case-law of the Court of Cassation. The latter had confirmed the strict liability of the state in all cases where land registers had been badly kept. It had also ruled that the purchaser's good faith was to be presumed if he or she had bought a property on the basis of the land registers.
Furthermore, the establishment of state responsibility in cases in which the ownership of properties which are part of the coastline is cancelled creates an entitlement to damages and interest where the damage is a result of poor keeping of land registers. Finally, the Court of Cassation has made several references to the ECHR and the case-law of the ECtHR concerning compensation for applicants following cancellations of ownership similar to that in this case. This information is currently being evaluated.

The judgment has been translated and brought to the authorities' attention.

N.2. Disproportionate restrictions to property rights

102. GEO / Klaus and Iouri Kiladze

Application No. 7975/06 *Last examination: 1100 – 4.2*

Judgment of 02/02/2010, final on 02/05/2010

Unjustified interference with the applicants' right to peaceful enjoyment of their possessions, as it was impossible for them to make good their claims for compensation arising from their status, acknowledged in 1997, as victims of Soviet political oppression, insofar as the implementing texts for the law of 1997 under which the terms of such compensation could be settled had not been adopted, owing to the state's inertia (violation of Article 1 of Prot. No. 1).

IM/GM: In its judgment, the ECtHR noted with regard to Article 46 that the issue of a legislative vacuum raised by this case affected between 600 and 16 000 persons and that consequently legislative, administrative and budgetary measures should be taken speedily in order that the persons to whom the law of 1997 applied might effectively avail themselves of their right as secured by this provision.

At the last examination of the case in December 2010, the CM adopted a decision in which it noted with interest the latest developments in this case, in particular the round table organised in Strasbourg on 08/11/2010 and the progress in the preparation of an action plan. The CM decided to resume the examination of this item at a later stage.

103. MDA / Balan

Application No. 19247/03 *Last examination: 1100-4.2*

Judgment of 29/01/2008, final on 29/04/2008

Violation of the applicant's property rights as a result of the unlawful use of his photographs, protected by copyright, by the Ministry of Internal Affairs as background for the national identity cards and the domestic courts' refusal to grant the applicant appropriate compensation (violation of Aricle. 1 of Prot. No.1).

IM Since May 2000, the photograph taken by the applicant is no longer used on the identity cards and he was awarded a lump sum in respect of pecuniary and non-pecuniary damage. Furthermore, in 2008 the applicant lodged with the Supreme Court of Justice a revision request under Article 449 of Code of Civil Procedure. The CM is expecting information on the progress of these proceedings.

GM As the violation of the author's rights found in this case resulted from the fact that the domestic courts had inconsistently applied the Copyright and related rights of 1994, the Ministry of Justice informed the Superior Council of Magistrates of

the need to strengthen the responsibility of judges while examining similar cases. The Moldovan authorities further indicated that the National Institute of Justice organises regular training seminars for judges and prosecutors on this matter and that the excerpt of the ECtHR judgment in this case has been translated and published in the *Official Gazette* of the Republic of Moldova as well as published in full on the official website of the Ministry of Justice.

The CM noted that the violation had occurred despite a decision taken in 1998 by the Plenary of the Supreme Court of Justice on domestic courts' practice in applying certain legal provisions concerning copyright. Accordingly, it requested information on further measures to ensure the domestic courts' compliance with the ECHR criteria. Details about the training seminars organised by the National Institute of Justice are also expected, as well as on the dissemination of the ECtHR full judgment to all courts.

104. MLT / Ghigo and other similar cases

Application No. 31122/05

Last examination: 1092-4.2

Judgment of 26/09/2006, final on 26/12/2006 (merits) and of 17/07/2008, final on 17/10/2008 (just satisfaction)

Violation of the applicants' right to the peaceful enjoyment of their possessions, owing to the disproportionate and excessive burden imposed on them by the requisitioning of their real property and the imposition on them of quasi-lease agreements for a term of 22-65 years with low rent and negligible profit (violation of Article 1 of Prot. No. 1).

IM In separate judgments delivered in respect of just satisfaction, the ECtHR compensated the pecuniary damage resulting from the loss of rent incurred by the applicants.

It also found that in the *Fleri Soler and Camilleri* case (application No. 35349/05), the government had restored the requisitioned property in 2007. Before the CM, no other individual measure therefore appeared necessary in these cases.

In the *Ghigo* and *Edwards* (application No. 17647/04), cases, the ECtHR noted that the applicants were still subject to the impugned requisition measure. Since it was not able to quantify the future loss resulting from the continuation of the restrictive measure, it awarded compensation only for the loss incurred and dismissed the anticipative claims subject to measures to be taken by the government to put in place a mechanism allowing reasonable rent to be paid in the future. The IM in these cases are thus intimately linked with the GM (see below). Before the CM, information was also requested concerning the provisional measures envisaged pending the reforms.

GM In its judgments, the ECtHR indicated that the violation arose from the shortcomings of Maltese legislation on housing, with the consequence of denying an entire category of individuals their right to the peaceful enjoyment of their possessions. It stated the need for general measures, holding in particular that the Maltese State authorities should put in place a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community – including the availability of sufficient accommodation for the less well-off in accordance with the ECHR.

According to the information supplied by the government to the CM, a legislative reform on rentals, initiated in 2009, resulted in amendments to the Civil Code. Thus, new provisions were introduced, permitting increase in the rental of premises leased after 01/01/2010. These rents will be governed exclusively by tenancy agreements and by the provisions of the Civil Code.

However, these new provisions are not at present applicable to the cases in point since they do not concern premises requisitioned or occupied in the public interest. A solution to this shortcoming was found by means of a provision empowering the minister responsible for housing, as and when required and after consulting the Minister of Finance, to extend the application of the Civil Code provisions on lease, or part of it, to cases where a person has been accommodated in a residence under the Housing Act, or where a public authority has taken possession of a residence under the terms of the Land Acquisition (Public Purposes) Ordinance. It is foreseen that the rental reform will be extended to requisitioned premises and to premises taken over for a public purpose within six months.

Before the CM, it appeared that a timetable for adoption of the regulations enabling the applicants

to benefit from the legislative reform would be useful. It was also pointed out that information was awaited concerning the final legal framework, indicating that there would be provisions permitting redress of the damage sustained by the applicants in the *Ghigo* and *Edwards* cases.

105. MON and SER / Bijelić

Application No. 11890/05 *Last examination: 1092-4.2*

Judgment of 28/04/2009, final on 06/11/2009

Violation of the applicants' right to the peaceful enjoyment of their possessions by the failure, despite numerous attempts between 1994 and 2009, to execute a final judgment ordering the eviction of a third party from a flat belonging to them; faced with threats of violent, armed resistance by that party (and sometimes by the neighbours) should forced execution be attempted, the authorities have signified their powerlessness (violation of Article 1 of Prot. No. 1).

IM The ECtHR awarded two of the applicants just satisfaction in respect of the non-pecuniary damage sustained. In July 2009 the eviction was carried out and the flat was restored to the applicants. Before the CM, no other individual measure therefore appeared necessary.

GM The Montenegrin authorities have prepared a draft Enforcement Act and a draft Act on Bailiffs. The new legislation is expected to introduce a number of novel features, in order to ensure full and speedy enforcement of final judicial rulings including those that concern the type of situation at issue here. The government was to transmit the final draft to Parliament by the end of 2010.

In addition, special measures were taken to reduce the backlog of cases of all types before the Montenegrin courts, including execution of domestic judgments. High priority was given to these cases, which are subject to a special recording procedure. The presidents of all courts in Montenegro have regular monthly meetings with the President of the Supreme Court to discuss backlog issues. During 2009 the backlogged cases were reduced by 51%.

The case-law of the ECtHR, including the present judgment, was included in the training programme for judges and prosecutors. The judgment was also published in a digest of ECtHR judgments forwarded to all judges and prosecutors. Furthermore, it was published in the Montenegrin Official Gazette as well as on the website of the Supreme Court.

Information is awaited as to the details of the draft law and its state of progress, and the reduction of the backlog.

106. SVK / Urbárska Obec Trenčianske Biskupice and other similar cases

Application No. 74258/01 *Last examination: 1092-4.2*

Judgment of 27/11/2007 final on 02/06/2008 (merits) and of 27/01/2009, final on 24/04/2009 (just satisfaction)

Disproportionate interferences with the applicants' right to the peaceful enjoyment of their possessions through compulsory lease of their land at an inordinately low rate, and subsequent transfer of ownership to the tenants, without the market value of the land being reckoned in the compensation in cash or in the form of other land (violation of Article 1 of Prot. No. 1)

IM The ECtHR awarded the applicants just satisfaction in respect of the pecuniary losses covering reasonable loss of rent and, where appropriate, also the reasonable value of the property in relation to the market value. It also awarded compensation for the non-pecuniary damage sustained. Before the CM, no other individual measure seems necessary in these circumstances.

GM The ECtHR held that the cause of the violations in the instant case lay in the Slovakian legislation and specifically Act 64/1997 on the use of plots of land for allotment gardens and the conditions of their ownership where the Act is applied to a certain category of persons. The ECtHR already noted in the *Urbárska* judgment that the present cases were but the first in a series of cases pending before it, and identified a systematic violation.

The ECtHR accordingly indicated that the general measures should ensure that the rental terms for the letting of land in allotments took into account the actual value of the land and the current market conditions and that compensation for the transfer of ownership of land should have a reasonable relation to the true value of the property at the time of the transfer.

According to the information supplied by the Slovakian authorities to the CM, two draft amendments concerning Act 64/1997 and Decree 492/2004 on determining the general value of property are currently in preparation. Under these amendments, the rent assessed for the compulsory lease of land, as well as the compensation for the transfer of property, will be determined on the basis of the market value of the property. In cases of transfer of ownership, owners will be entitled either to financial compensation or to compensatory land corresponding to the original land with regard to category, size, quality, location and economic condition, and situated where possible in the same locality.

Furthermore, the amendments provide the possibility for the parties to proceedings on land arrangements to receive compensation for the difference between the amount specified under the new legislation and the compensation calculated under the previous legislation.

When the case was last examined, bilateral consultations were in hand to clarify the purpose and the scope of the draft amendments. Information are awaited concerning the progress of the legislative procedures under way.

107. TUR / Loizidou (see AR 2007, p. 185; AR 2008, p. 195; AR 2009, p. 175)

Application No. 15318/89

Judgment of 18/12/1996 (final)

Interim Resolutions (99)680, (2000)105, (2001)80, (2003)190, (2003)191

Last examined: 1092-4.3

Continuous denial of access for the applicant to her property in the northern part of Cyprus and consequent loss of control thereof (violation of Article 1 of Protocol No. 1).

IM The previous developments are described in ARs 2007-2009. It should be remembered that, in its decision adopted in June 2009, the CM emphasised that the ECtHR had been seized of the question of the effectiveness of the compensation, exchange and restitution mechanism, and took the view that the ECtHR's conclusions on this point might be decisive for the execution of this judgment.

Just after the DH meeting of March 2010, the ECtHR, on 05/03/2010, delivered its inadmissibility decision in the *Demopoulos* case (application No. 46113/99), in which it concluded that Law No. 67/2005, which set up the "Immovable Property Commission" in the northern part of Cyprus, "provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots". The consequences of the ECtHR's decision are under examination.

GM The main information concerning the system set up under the law of 2005 is presented in the *Cyprus v. Turkey* case (application No. 25781/94).

108. TUR / Xenides-Arestis (see AR 2007, p. 185; AR 2008, p. 196; AR 2009, p. 176)

Application No. 46347/99

Judgments of 22/12/2005, final on 22/03/2006 (merits), and of 07/12/2006, final on 23/05/2007 (just satisfaction)

Interim Resolutions CM/ResDH(2008)99, CM/ResDH(2010)33

CM/InfDH(2007)19

Last examination: 1092-4.3

Violation of the applicant's right to respect for the home due to the denial since 1974 of access to her property situated in the northern part of Cyprus (violation of Article 8), and consequent loss of control thereof (violation of Article 1 of Protocol No. 1).

Payment of just satisfaction: previous developments were summarised in ARs 2007-2009. It should be pointed out that the compensation awarded in the judgment of 22/12/2005 has been paid. However, the compensation awarded by the ECtHR in respect of pecuniary and non-pecuniary damage and costs and expenses, in its judgment of 07/12/2006, has not been paid, and in view of this

situation, the CM adopted IR CM/ResDH(2008)99, in which it strongly insisted that Turkey pay this compensation and the default interest. Subsequently, the Chairman of the CM wrote to his Turkish counterpart to convey the CM's continuing concern relating to the lack of information on the payment of these sums, and emphasising the Turkish authorities' obligation to pay this sum without further delay, with the default interest due. In March 2010, the CM adopted a second IR (CM/ResDH(2010)33), in which it strongly urged Turkey to review its position and to pay without any further delay the just satisfaction awarded to the applicant by the ECtHR. This position was reiterated when the case was last examined at the DH meeting of September 2010.

IM The previous developments were described in ARs 2007-2009. Just after the DH meeting of March 2010, the ECtHR, on 05/03/2010, delivered its inadmissibility decision in the *Demopoulos* case (application No. 46113/99), in which it concluded that Law No. 67/2005, which set up the "Immovable Property Commission" in the northern part of Cyprus "provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Greek Cypriots". The consequences of the ECtHR's decision are under examination.

The main available information is set out in respect of the *Cyprus v. Turkey* case (application No. 25781/94).

O. Right to education

See CZE / D. H. and other similar cases and GRC / Sampanis and Others, chapter « Discrimination », p. 191-196.

P. Electoral rights

109. BIH / Sejdić and Finci

Application No. 27996/06 *Last examined: 1100-4.3*

Judgment of 22/12/2009 – Grand Chamber

Discriminatory infringement of the right of the applicants, who declared themselves to be a Rom and a Jew respectively, to free elections and to the general prohibition of discrimination in that it was impossible for them to stand for election to the upper chamber and to the Presidency of the country, the constitution reserving this right for only those persons who declared themselves to belong to one of the three constituent peoples (Bosniacs, Croats and Serbs) (violation of Article 14 combined with Article 3 of Protocol No. 1 concerning legislative elections; violation of Article 1 of Protocol No. 12 concerning elections to the Presidency).

IM The ECtHR held that the finding of a violation in itself constituted sufficient just satisfaction for any non-pecuniary damage sustained.

It appears that the individual measures are closely linked to the general measures to be taken in this case. These should eliminate discrimination against the applicants, enabling them to stand in subsequent elections. However, the applicants were not able to stand in the elections of October 2010, attempts to adopt the necessary constitutional and legislative amendments having been unsuccessful to date.

GM The CM, Parliamentary Assembly and Venice Commission have stressed on several occasions the importance of constitutional and legislative reform, the current constitution being in contradiction with the ECHR, and have urged the authorities of Bosnia and Herzegovina (BIH) to comply with the judgment. Furthermore, in 2008, BIH had signed and ratified a Stabilisation and Association Agreement with the European Union (EU) and agreed to amend the electoral legislation concerned. However, the EU's latest attempt to negotiate constitutional reform in BIH ended in October 2009 without any result. Subsequently, representatives of various states, the European Commission and the European Parliament have requested information on the subject, emphasising the importance of reforms and inviting the authorities to amend the disputed provisions.

In February and March 2010, the authorities adopted two action plans with a view to preparation of the requisite constitutional and legislative amendments. These two plans set a timetable and identified the authorities responsible for preparing these amendments. However, as the political stakeholders present have not managed to reach agreement on the measures to be taken, no progress has been recorded since April 2010, and the terms of the action plan have not been complied with. Thus the elections of October 2010 were held in violation of the ECtHR judgment.

The judgment has been translated into the official languages of BIH and published on the website of the Office of the Government Agent and in the *Official Gazette* of Bosnia and Herzegovina on 08/03/2010. It has been sent to all relevant government authorities.

At its meeting in December 2010, the CM adopted a decision in which it pointed out that, since its meeting of March 2010, it had urged BIH to take general measures to execute the judgment, had expressed regret that the elections of October 2010 had taken place under rules found by the ECtHR to be discriminatory and in contravention of the judgment, and invited the authorities and political leaders to give priority to constructive work to bring the country's Constitution and Electoral Code into line with the judgment and with the ECHR.

Urgent information is awaited on the measures taken to comply with the judgment.

110. GEO / Georgian Labour Party

Application No. 9103/04 *Last examination: 1092-4.2*

Judgment of 08/07/2008, final on 08/10/2008

Violation of the applicant party's right to stand for the 2004 parliamentary elections as a result of the Central Electoral Commission's lack of independence and the authorities' unjustified failure to meet their positive obligation to take reasonable steps allowing the voters of two constituencies to exercise their right to vote. The results were annulled in these constituencies without cogent and adequate grounds and without transparency and coherence. Subsequently, the national results were endorsed without the voters in these constituencies having been able to vote (when the new poll was held, the polling stations remained closed) (violation of Article 3 of Prot. No. 3).

IM The ECtHR held that the finding of a violation in itself afforded just satisfaction for the non-pecuniary damage sustained. Parliamentary elections in which the Georgian Labour Party participated were held in 2008. In those circumstances, no individual measure appeared necessary before the CM.

GM The violation originated in the manner in which the Central Electoral Commission (CEC) took its decision to annul the results in the two constituencies. In that context, the ECtHR held that the composition of the electoral commissions did not afford sufficient guarantees to offset the power of the President, and that these commissions could hardly be independent in the face of outside political pressure.

Following the judgment of the ECtHR, which was translated and published in the Official Gazette in December 2009, the rules for appointing members of the CEC were amended. The CEC is now composed of 12 members and its Chair; five members are elected by Parliament and seven are appointed by the political parties. The Chair of the CEC is elected, from a list of three candidates nominated by the President of Georgia, by the members of the CEC whom the political parties appoint, except the one whose party gained the best result at the last parliamentary elections. The provisions on the reaching of decisions in the CEC were also amended: decisions are taken by a majority of members present, representing at least one-third of its total membership. The CEC's decisions on annulment of the decisions of the subordinate commissions, including decisions to annul the election results from given constituencies/polling stations, to open the parcels forwarded by the commissions in the polling stations, and to count the ballot papers and the special envelopes, must be taken by a two-thirds majority of the members present.

The CM has requested more exact information as to whether there is a quorum for decisions taken by a two-thirds majority of members present mentioned above and, and concerning the arrangements for convening the members of the CEC.

Information is awaited concerning other measures contemplated in order to enhance the decisional process within the CEC with regard especially to

the procedures for challenging election results. In this context, the attention of the Georgian authorities was drawn to the joint opinions of the Venice Commission and OSCE/ODHIR stressing the need to review the provisions on invalidation of results in order to make them clear and coherent (see CDL-AD(2009)001 of 9/01/2009 and CDL-AD(2010)013 of 9/06/2010). Information is also awaited concerning the available means of appeal against the CEC's decisions

111. UK / Hirst No. 2 (see AR 2007, p. 197 and AR 2009, p. 182)

Application No. 74025/01
Judgment of 06/10/2005 – Grand Chamber
Interim Resolution CM/ResDH(2009)160
Last examination: 1100-4.3

General, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote (violation of Article 3 of Prot. No. 1).

IM The applicant was released on licence in 2004 (see AR 2007 and 2009). In the event of being recalled to prison, the applicant's eligibility to vote will depend on the GM adopted.

GM The law at the origin of the violation, i.e. *section 3 Representation of the People Act 1983* imposes a blanket restriction on voting for convicted offenders detained in penal institutions.

The previous United Kingdom Government had presented an action plan for the execution of the above judgment. The implementation of this plan was started but never completed and the CM adopted in December 2009 an IR in which it expressed serious concern at the substantial delay in the implementation of the judgment (see AR 2009).

As the legislative changes had still not been taken, the CM adopted on 2 December 2010 a decision whereby it recalled the conclusions of the judgment and its Interim Resolution of 2009, noting that despite this, the United Kingdom general election was held on 06/05/2010 with the blanket ban on the right of convicted prisoners in custody to vote still in place.

The CM recalled that in such circumstances the risk of repetitive applications had materialised, as stated by the ECtHR in the pilot judgment, *Greens and M.T. against the United Kingdom* (applications No. 60041/08 and 60054/08, judgment not yet final), with over 2 500 clone applications received by the ECtHR;

In its decision the CM could, however, note that the United Kingdom authorities had confirmed that they would present draft legislation to implement the judgment in the near future as announced on 03/11/2010 by the Prime Minister to the United Kingdom Parliament and the CM thus expressed hope that the elections scheduled for 2011 in Scotland, Wales and Northern Ireland can be performed in a way that complies with the ECHR.

The CM concluded by calling upon the United Kingdom authorities to present without further delay an action plan for implementation of the judgment which includes a clear timetable for the adoption of the measures envisaged.

Q. Freedom of movement

112. UKR / Ivanov
UKR / Nikiforenko

Applications Nos. 15007/02 and 14613/03
Judgments of 07/12/2006, final on 07/03/2007, and 18/02/2010, final on 18/05/2010
Last examination: 1100-4.2

Interference with the applicants' freedom of movement, owing to the duration of the measures taken (around 11 years) to ensure that they would not abscond during the criminal proceedings engaged against them for what were rather trivial or moderately serious offences (in one case the measures continued even after charges had become time-barred) (violation of Article 2 of Prot. No. 4). Excessive duration of the criminal proceedings at issue (violation of Article 6§1) and lack of an effective remedy in that regard (violation of Article 13).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage sustained. In the *Ivanov* case the criminal proceedings ended on 22/05/2007, shortly after the judgment of the ECtHR, and in the *Nikiforenko* case the proceedings had already ended when the ECtHR delivered its judgment. In those circumstances, no further individual measure has appeared necessary before the CM.

GM

Restrictions on freedom of movement: According to the information provided by the authorities, the Code of Criminal Procedure of Ukraine provides that preventive measures must be withdrawn by the competent authority as soon as they cease to be necessary. The decision to this effect must state the reasons on which it is based and the person concerned must be informed immediately.

In addition, extensive measures have been taken to publish and disseminate the two judgments. The judgments have thus been translated and placed on the internet site of the Ministry of Justice and published in the *Official Gazette*. A summary of the *Ivanov* judgment appeared in the "Government Courier". This judgment has also been disseminated, together with an explanatory note, to the Supreme Court and all courts responsible for criminal investigations, with an invitation to take account of the findings of the ECtHR in their daily practice. The Supreme Court has communicated the same message to the Courts of Appeal.

In the light of this information, the CM awaits certain clarifications as to how the existing guarantees are implemented and, in particular, what can be done to ensure that when this type of restriction is applied, the gravity of the offence in question is taken into account.

Excessive length of proceedings and lack of an effective remedy: these matters are being considered in the context of the *Merit* case (application No. 66561/01).

R. Discrimination

113. CRO / Šečić

Application No. 40116/02 *Last examination: 1100-4.2*

Judgment of 31/05/2007, final on 31/08/2007

Failure of the authorities in their positive obligation to carry out an effective investigation into the ill-treatment suffered by the applicant, a person of Roma origin, following a violent attack in 1999 by unidentified individuals, probably for racist reasons (violation of Article 3 and Article 14 in conjunction with Article. 3).

IM The ECtHR awarded just satisfaction in respect of non-pecuniary damage. The investigation conducted against unknown perpetrators was still pending when the ECtHR delivered its judgment. In the meantime, any criminal prosecution has become time-barred. As a result, no further individual measures appear possible.

GM A number of measures have been taken in the context of the execution of the judgment. In 2006 "hate crime" was introduced into the Criminal Code, and a number of judgments related to this offence have already been delivered.

In addition, a special division for terrorism and extreme violence has been established within the Zagreb police department. It is authorised to conduct criminal inquiries to identify perpetrators of hate crimes. In 2006, a law enforcement officer training programme on combating hate crime was introduced. It seeks to raise police officers' awareness in identifying hate crimes and ensure the use of specific techniques and methods. The Ministry of the Interior plans to step up efforts to educate police officers by incorporating this programme in the national curriculum for police training and organising special courses. In 2007, the Police Academy developed an educational plan for suppressing hate crime as part of its specialised courses.

The authorities have also taken steps to improve the efficiency of investigations into hate crimes. However, in view of recent judgments rendered by the ECtHR (*Beganović,* application No. 46423/06 and *Sandra Janković,* application No. 38478/05), it appears that the lack of an effective investigation into allegations of violence by individuals, including that against persons of Roma origin, and the failure to bring perpetrators of such violence promptly to justice, might still represent an issue in

Croatia. Information is awaited on the measures taken or envisaged in this area.
In order to draw attention to the requirements of the ECHR, a translation of the judgment has been published and sent out to the relevant bodies.

The institutional measures and training measures have been criticised by the European Roma Rights Centre for being inadequate. The Croatian authorities have not commented on these allegations.

114. CZE / D.H. and Others (see AR 2008, p. 197 and AR 2009, p. 180)

Application No. 57325/00,
Judgment of 13/11/07 – Grand Chamber
Memorandum CM/Inf/DH(2010)47)
Last examination: 1100-4.2

Discrimination of the applicants – Roma children – in the enjoyment of their right to education, owing to their assignment between 1996 and 1999 to special schools intended for pupils displaying mental disabilities, without any objective and reasonable justification (violation of Article 14 in conjunction with Article 2 of Prot. No. 1).

IM In the Czech Republic, education is compulsory for all children aged six to fifteen. The applicants are all over fifteen years old and thus no longer subject to the system of compulsory schooling. The ECtHR awarded them just satisfaction in respect of the non-pecuniary damage sustained. Consequently, no other individual measure is necessary.

GM As the judgment of the ECtHR already indicated, the impugned legislation was repealed on 01/01/2005 (for further particulars, see AR 2008).
In April 2009 the Czech authorities submitted an action plan updated late in 2009 and subsequently in 2010, and undertook to develop a National Plan of Inclusive Education (NAPIV), (2010–2013). The National Plan comprises the bulk of the measures proposed by the authorities conceived on the basis of the violations found by the ECtHR.
Concerning the existence of discrimination against Roma pupils in primary education, the authorities have provided statistics indicating that the number of Roma children enrolled in "practical schools" (set up subsequent to the events of the instant case, for pupils with slight mental disabilities) has decreased since the date of the judgment but nonetheless remains significant: in 2009, 26.7 % of Roma pupils were enrolled in the "practical" schools (catering in aggregate for 3.1 % of pupils subject to compulsory education), whereas in 1999, 70% of Roma pupils continued their education in the former special schools. It has been noted that these figures are disputed by a number of NGOs and supervisory bodies at the Council of Europe.
As to the substantive guarantees which permit objective and reasonable justification of measures resulting in a difference of treatment, the authorities have stressed that one of the core objectives of the NAPIV is to increase the degree of integration in the ordinary structures. In this context, a proposal to convert the present "practical" primary schools into mainstream primary schools has been made. Transitional "staging" classes will be established to improve the results of pupils in need of additional learning support.

Furthermore, as regards the tests for ascertaining pupils' aptitude to undergo mainstream education schooling, the "Methodological recommendation on the provision of equal opportunities in education for socially disadvantaged children" embodies specific procedures for eliminating the risk of distortion of results in the case of socially disadvantaged pupils, Roma included.

In addition, the NAPIV provides for the creation of separate classes reserved for pupils displaying a diagnosed, confirmed mental disability in mainstream primary schools and prohibits enrolling pupils without a mental disability in these classes or in similar educational programmes.

Lastly, the NAPIV describes the introduction of guidance programmes for parents as regards their prospective consent to have their child or children oriented towards programmes reserved for "mentally disabled" pupils. It also comprises many other measures. These measures include an analysis of teaching methods, a report on teachers' educational qualifications and training programmes, a curriculum reform, co-ordination with local government, and measures relating to crèches and preschool facilities.

The situation and the outstanding questions, including those that concern procedural guarantees to ensure that the special needs of Roma children are taken into account, have been summarised in Memorandum CM/Inf/DH(2010)47 of 24/11/2010.

When it last examined this case in December 2010, the CM noted with satisfaction the Czech authorities' confirmation that the NAPIV was now finally adopted and that its implementation had commenced. The CM encouraged the authorities to proceed with the implementation forthwith, particularly the measures concerning the situation of pupils wrongfully placed in the "practical schools" in order to afford them the possibility of transfer to the mainstream education system. It further invited the authorities to provide full information on the outstanding questions specified in the above-mentioned memorandum and on the progress achieved in implementing the action plan.

115. FRA / Koua Poirrez (Final Resolution CM/ResDH(2010)99)

Application No. 40892/98 *Last examination: 1092-1.1*

Judgment of 30/09/2003, final on 30/12/2003

Violation of the right of the applicant, an Ivory Coast national, to peaceful enjoyment of his possessions, owing to the discriminatory rejection of his request for an allowance for disabled adults in 1990 on the ground that there was no reciprocity agreement with Ivory Coast, as was stipulated by the law then in force (violation of Article 14 in conjunction with Article 1 of Prot. No. 1).

IM Following the legislative amendment of 11 May 1998 (see general measures below), the applicant made a new claim and obtained an allowance for disabled adults payable from 01/06/1998. As to the preceding period, the ECtHR noted the existence of "undoubted non-pecuniary and pecuniary damage" and awarded the applicant a sum of 20 000 EUR, taking all heads of damage together. In view of this situation, no other individual measure was deemed necessary.

GM The Aliens (Conditions of Entry, Residence and Asylum) Act of 11 May 1998 abolished the impugned nationality requirement.

116. GRC / Sampanis and Others

Application No. 32526/05 *Last examination: 1100-4.2*

Judgment of 05/06/2008, final on 05/09/2008

Failure to provide schooling for the applicants' children in 2004-2005 and their subsequent placement in special preparatory classes in 2005. In particular, the Court concluded that, in spite of the authorities' willingness to educate Roma children, the conditions of school enrolment for those children and their assignment to special preparatory classes – housed in the present case an annex to the main school building – ultimately resulted in discrimination against them (violation of Article 14 in conjunction with Article 2 of Protocol No. 1); absence of an effective remedy in that regard (violation of Article 13).

IM The ECtHR awarded the applicants just satisfaction in respect of the non-pecuniary damage.

According to the information supplied to the CM, following the judgment of the ECtHR, the special preparatory classes have ceased to operate. The children still subject to compulsory schooling (aged 6-15 years) were enrolled for the 2008-2009 and 2009-2010 school years in a primary school set up in 2008 ("12th primary school"). It operates under the same conditions, particularly regarding enrolment, as the other schools in the region. It is temporarily located in separate prefabricated buildings and annexed to another school. Work took place in 2010 (installation of toilets, showers, air conditioning and canteen). A caretaker has been appointed to ensure that the premises are in order after the pupils' departure, and transportation for Roma children between encampment areas and the school is provided regularly.

The authorities and the applicants' representative drew attention to the absenteeism of Roma children in 2008 and 2009. The authorities have also reported that parents of non-Roma who should have been enrolled in the 12th primary school decided to put their children in private schools. The long-term measures in these matters are considered under general measures.

GM On 23/03/2010, a new programme "Active inclusion of Roma children in national education"

was launched by the Ministry of Education with co-financing by the European Social Fund. Its aim is to fight absenteeism of Roma children and allow them to be effectively and regularly integrated in national education. The means provided for that purpose include the appointment of Roma mediators, social workers and specific support classes for Roma pupils, together with enhancement of school activities. The schools benefiting are those with a significant number of Roma pupils. The Greek authorities have informed the CM that a Ministry of Education circular on the subject provides that classes must not comprise more than 50% of Roma pupils.

At the last examination of the case in December 2010, the CM noted with interest the developments subsequent to the adoption of the above-mentioned programme and encouraged the authorities to speed up its implementation. The CM also noted with satisfaction that the authorities would provide it with a consolidated action plan and updated information on the progress of the programme.

The information concerning absence of effective remedies is currently being evaluated.

117. LIT / Zickus

Application No. 26652/02 *Last examination: 1100-4.2*

Judgment of 07/04/2009, final on 07/07/2009

Disproportionate interference with the applicant's right to respect for his private life on account of his disbarment from practising as a barrister and the restrictions on his employment possibilities in certain branches of the private sector on the ground that in the past he had secretly collaborated with the KGB (violation of Article 14 in conjunction with Article 8).

IM The authorities indicated that the applicant had made no request to be reinstated as a barrister.

GM The legislative amendments introduced in 2009 in the context of the execution of the judgment in *Sidabras and Džiautas* and other similar cases (Application No. 55480/00, judgment of 27/07/2004, final on 27/10/2004, see AR 2008) removed certain restrictions applicable to former KGB officers, but not those which applied, under other legislation, to former secret KGB collaborators, as was the case here. In July 2010, amendments to the legislation criticised in this case came into force and persons who have admitted secretly collaborating with the special services of the former Soviet Union are no longer barred from the private sector. Professional restrictions continue to apply, but only to certain political, diplomatic and military posts, or posts that provide access to classified information. Professional restrictions also apply to certain public functions in the judiciary.

The Lithuanian authorities take the view that this amendment has thus restored the balance between the legitimate aims pursued by the restrictions in question and the right to respect for private life of the persons subject to those restrictions.

The CM is assessing this information. Cooperation with the ECtHR and respect of right to individual petition

118. RUS / Kamaliyevy

Application No. 52812/07 *Last examination: 1100-2.1*

Judgment of 03/06/2010, final on 03/09/2010

Failure by the Russian authorities to comply with an interim measure adopted by the ECtHR indicating that the applicant should not be deported to Uzbekistan until it had given a ruling on the case (violation of Article 34).

IM The first applicant is currently serving a prison sentence in Uzbekistan. The second applicant, his wife, died in August 2008. The ECtHR reserved its decision on the question of the application of Article 41 of the ECHR.

GM In its judgment, the ECtHR held that the difficulties mentioned by the authorities, namely the late hour at which the interim measure was notified and the time difference, did not mean that all reasonable steps had been taken to comply with the

decision and that there was an objective impediment to the application of the interim measure.
At its December 2010 meeting the CM adopted a decision emphasising the fundamental importance of compliance with the interim measures indicated under Rule 39 of the Rules of ECtHR It also took note of the information provided by the Russian authorities during the meeting concerning the practical steps taken to ensure compliance with interim measures, such as the appointment of officials whose working hours coincide with the working hours of the ECtHR, the setting up of a special procedure for immediate notification of the authorities concerned, and also measures ensuring wide dissemination of the judgment.
An action plan/report is awaited.

119. UK / Al-Saadoon and Mufdhi

Application No. 61498/08 *Last examination: 1100 – 2.1*
Judgment of 02/03/2010, final on 04/10/2010

Transfer of the applicants, Iraqi nationals, by the British authorities (in Iraq) to the Iraqi authorities on 31/12/2008 to stand trial for war crimes, punishable with sentences including death penalty: the British authorities' actions and inaction had subjected the applicants, at least since May 2006, to fear of their execution by the Iraqi authorities, thus causing mental anguish of such a nature and severity as to constitute inhuman treatment (violation of Article 3). Non-compliance with the right to an effective domestic remedy and the right to individual petition before the ECtHR in so far as the ECtHR had indicated before the transfer on 30/12/2008, that the applicants should be maintained in detention by the British authorities and that the failure to do so rendered ineffective both the appeal to the House of Lords and the petition before the ECtHR itself (violations of Articles. 34 and 13).

IM In its judgment the ECtHR concluded on the basis of Article 46 that in order to fulfil its obligations under Article 3 of the ECHR, the government must endeavour to end the applicants' suffering speedily by taking all possible steps to obtain from the Iraqi authorities the assurance that the death penalty would not be imposed. It should be noted in this respect that the ECtHR considered that the developments in the practice of states during these last few years are strongly indicative that Article 2 prohibits nowadays the death penalty in all circumstances.
Having regard to all the circumstances, it held that the finding of a violation of Articles 3, 13 and 34 and the measure indicated in accordance with Article 46 constituted adequate just satisfaction for the non-pecuniary damage sustained by the applicants.
In December 2010 at the first examination of the case, the CM concentrated on the individual measures adopted by the British authorities pursuant to the judgment of the ECtHR. Following that examination, the CM adopted a decision as follows in which it:
– recalled the Council of Europe's unequivocal condemnation of the death penalty and the fact that in its judgment the ECtHR held that the United Kingdom Government should seek to put an end to the applicants' suffering as soon as possible by taking all possible steps to obtain an assurance from the Iraqi authorities that the applicants would not be subjected to the death penalty,
– recalled in this respect that from the date on which the ECtHR's judgment became final until the present, the United Kingdom authorities had taken all possible steps to ensure that the death penalty would not be imposed on the applicants;
– expressed deep concern that the applicants faced the risk of the death penalty and that the United Kingdom authorities had so far received no assurances from the Iraqi authorities that it would not be imposed;
– called upon the United Kingdom authorities to take all further possible steps to obtain assurances from the Iraqi authorities that the applicants would not be subjected to the death penalty;
– invited the United Kingdom authorities to keep it informed of any development in the situation and declared its resolve to ensure, by all means available to the Organisation, the United Kingdom's compliance with its obligations under the terms of this judgment.

GM Not yet examined by the CM.

S. Inter-state case(s)

120. TUR / Cyprus (see AR 2007, p. 194; AR 2008, p. 203; AR 2009, p. 182)

Application No. 25781/94

Judgment of 10/05/2001 – Grand Chamber

Interim Resolutions ResDH(2005)44 and ReDH(2007)25

Last examined: 1092 – 4.3

Fourteen violations relating to the situation in the northern part of Cyprus since the military intervention by Turkey in July/August 1974 concerning:
– missing Greek Cypriots and their families (violation of Articles 2, 5 and 3);
– the homes and property of displaced persons (violation of Article 8, Article 1 of Protocol No. 1, and Article 13);
– the living conditions of Greek Cypriots in the Karpas region of the northern part of Cyprus (violation of Articles 9 and 10, Articles 1 and 2 of Protocol No. 1, and Articles 3, 8 and 13);
– the rights of the Turkish Cypriots who settled in the northern part of Cyprus (violation of Article 6).

GM Following the measures adopted by the respondent state's authorities in order to comply with this judgment, the CM decided to close the examination of the issues relating to the following points (for more detail, see IR (2005)44 and (2007)25):
– **the rights of Turkish Cypriots living in the northern part of Cyprus:** i.e. the possibility for civilians to be tried by military courts;
– **the living conditions of Greek Cypriots living in the northern part of Cyprus,** as far as secondary education, censorship of schoolbooks and freedom of religion are concerned.
As regards the issues under CM examination, developments in 2010 may be described as follows (it is pointed out that previous developments are summarised *inter alia* in the corresponding ARs):
Missing persons: the ECtHR acknowledged in the *Varnava* judgment of 18/09/2009 (application No. 16064/90) the importance of the activities of the Committee on Missing Persons in Cyprus (CMP) in respect of the exhumation and identification of remains, but nevertheless noted that, however important the work of the CMP may be, it was insufficient to fulfil the obligation to conduct effective investigations imposed on the state in pursuance of Article 2.
During its examination of this question in March 2010, the CM took note with interest of the presentation of the CMP's activities and recalled its invitation to the Turkish authorities to take concrete measures to ensure the CMP's access to all relevant information and places, without impeding the confidentiality essential to the carrying out of its mandate. The CM noted in this respect that, according to the information supplied, the authorities had acceded to several requests from the CMP for access to places situated in military zones. It asked the authorities to inform it of the concrete measures in the continuity of the CMP's work with a view to the requirements of the judgment. The CM is continuing to examine the questions raised.

Homes and property of displaced persons:

– In respect of the **measures designed to bring the continuing violations to an end**, following the judgment of 22/12/2005 in the *Xenides-Arestis* (application No. 4637/99) case, the "Immovable Property Commission" was set up as part of the mechanism for compensation for and restitution of immovable property. The CM has asked the authorities to confirm that the deadline for applications to the Commission, originally set as 22/12/2009, had been extended to 22/12/2011.

– In respect of the **need for protective measures**, in February 2006 the Cypriot authorities expressed concern that the properties of displaced persons were affected by either transfers of title or building works.The CM has regularly asked for information about transfers of and alterations to the immovable properties to which the judgment refers, and about the measures taken or planned. On both questions, the CM has noted the inadmissibility decision adopted in the *Demopoulos* case of 05/03/2010 (application No. 46113/99), published just after its DH meeting of March 2010, in which the Court concluded that Law No. 67/2005, which set up the "Immovable Property Commission" in the northern part of Cyprus, "provides an accessible and effective framework of redress in respect of complaints about interference with the property

owned by Greek Cypriots". The consequences of the Court's decision are under examination.

– **In respect of the demolition since April 2007 of several houses situated in the Karpas region**, the Turkish authorities indicated that these measures were intended to ensure public safety, since the houses concerned had been abandoned and represented a danger to the population. They supplied information about the legal framework applicable and the procedure followed prior to the authorisation of demolition. The CM was told that this question did not seem to raise separate issues from those examined in connection with displaced persons.

Property rights of Greek Cypriot living in the northern part of Cyprus: when this question was examined in March 2010, the CM noted that the delegation of Cyprus considered that it needed additional documents to enable it to make an assessment of this question. In May 2010, the delegation of Cyprus submitted information about the reasons for its request. Examination of the questions raised is continuing.

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