

# Supervision of the execution of judgments and decisions

of the European Court of Human Rights



6th Annual Report of the Committee of Ministers  
**2012**



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

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COMMITTEE OF MINISTERS**

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## **I. Foreword by the 2012 Chairs of the “Human Rights” meetings**

As our predecessors, we wish to stress at the outset the vital role of the Council of Europe in ensuring a common understanding of human rights throughout Europe, and this in particular in times such as the present of continuing and strong economic stress on governments and peoples, sometimes coupled with reactions incompatible with the collective guarantee of human rights which is the heart of the Council of Europe’s *raison d’être*.

The Brighton High Level Conference on the future of the European Court of Human Rights has reaffirmed the member States deep and abiding commitment to the European Convention on Human Rights and to their fulfilment of their obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.

The declaration adopted, which was unanimously endorsed by the member States at the ministerial session in May 2012, also underlined the crucial role which the Convention entrusts the Committee of Ministers. Through its supervision of the execution of the judgments of the Court, the Committee of Ministers ensures that proper effect is given to the judgments. The Conference stressed in this context that the Committee must effectively and fairly consider the adequacy of measures adopted and also that it should be able to take effective measures in respect of a State Party that fails to comply with its obligation to abide by the final judgments of the Court.

As Chairs of the Human Rights meetings we have been able to measure the importance of the new working methods adopted by the Committee of Ministers already in the context of the reforms engaged following the Interlaken Declaration. These working methods, which anticipated the calls made to the Committee of Ministers in the Brighton Declaration, have allowed the Committee to improve the prioritisation of its work and its dialogue with respondent States, and also its capacity to respond quickly to developments.

During our chairmanships, we have seen constant expressions of the member States’ commitment to ensure proper execution of the Court’s judgments and their determination to address the challenges that execution may pose on national level.

The picture is, however, not bright in all respects. The decrease in the number of new repetitive cases has thus not prevented that high numbers of such cases pile up before the Court. This situation underlines how important it is that states translate their commitments to the Convention into concrete action so that relevant pilot or

other judgments revealing important structural problems are rapidly and properly executed. For its part the Committee of Ministers has given particular attention to the supervision of the execution of these judgments. The statistics also reveal other challenges, notably a continuing increase in the number of pending cases, in particular cases concerning important structural and/or complex problems, awaiting comprehensive reforms capable of providing long term solutions.

The Brighton Conference provided a major impetus to move forward in the reform process engaged at Interlaken in 2010. Of immediate interest is the fact that the Conference encouraged the Court to go forward with the pilot judgment procedure, whilst requesting the CM to fine tune its supervision procedure and to consider whether the “tools” at its disposal were sufficient to ensure the timely execution of the Court’s judgments.

In line herewith, we have ourselves continued the efforts of earlier Chairs to streamline the examination of cases at the Committee of Ministers’ Human Rights meetings. The Committee itself addressed rapidly the above mentioned “tools” question. After a first examination in September 2012, the matter was considered in more depth in its December 2012 meeting where it was decided to entrust in parallel the Steering Committee for Human Rights (the CDDH) with the examination of this question. The results of the first discussions in the Committee of Ministers are appended to the present report.

Taking these into account the Committee of Ministers decided in January 2013 as first measures to improve the publicity of its Human Rights meetings by publishing in advance the list cases proposed for examination and to ensure that the positive results achieved in the execution process receive better visibility. The results of the CDDH’s reflection are expected by the end of the year.

All in all, 2012 has been a rich year full of contrast. It has clearly been a rewarding year as progress has been achieved on many fronts and the positive dynamics between all involved strengthened. Still, statistics and actual cases before the Committee of Ministers demonstrate that considerable challenges lay ahead.

Albania

Andorra

Armenia

## II. Remarks by the Director General of the Directorate General of Human Rights and Rule of Law

### Introduction

As the Chairs of the Committee of Ministers’ “Human Rights” meetings have noted in their foreword, 2012 has been a rich year with many positive developments, despite the difficult economic situation of many European states. This is confirmed by the statistics and also by the member States’ continued commitment to improve execution and the Committee of Ministers’ supervision thereof, commitment reiterated at Brighton in April 2012. The Brighton Conference was also the starting point for a series of new reflections on possible new improvements to the Committee of Ministers’ supervision of execution. 2013 should also be full of developments.

Below, I would like to highlight some trends visible in the 2012 statistics as well as the main features and challenges facing the Committee of Ministers’ supervision of execution.

### Statistics – positive developments but workload increase

Among the positive developments, there is a continued *decrease in the number of repetitive, well-founded, cases in which the Court has rendered a judgment.*

This trend is also evidenced by the “Protocol 14 statistics”: both the number of committee judgments and of friendly settlements has decreased.<sup>1</sup>

This development appears closely linked to the successful application of the pilot judgment procedure, in particular through the “freezing” of the examination of new and pending applications similar to the one dealt with in the pilot judgment, and the stress laid on the need to ensure the effectiveness of domestic remedies as an ordinary part of any execution process.

Notwithstanding these measures, significant numbers of repetitive applications continue to pile up before the Court. The long term success of the current efforts thus hinges on the capacity of member States to continue to ensure that pilot judgments and other judgments revealing important systemic problems are rapidly and adequately executed – a priority under the new working methods.

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1. Also the number of decisions accepting unilateral declarations appears to have decreased. Based on HUDOC the number of such decisions in 2012 was 159 as compared to 167 in 2011 and 197 in 2010.

Another positive development since the entry into force of the new working methods is the increase in the number of *leading cases closed*, even if this increase is still insufficient to stop the growth of pending cases.

A particular aspect of this last development is that *new judgments* which became final after 2011, – and which from the outset have accordingly been dealt with under the new working methods – *appear to be more rapidly executed and closed than older judgments*. The number of leading cases which have been pending before the Committee of Ministers for less than two years has thus decreased and this is despite a constant, high, influx of new leading cases over the same period. This suggests that domestic capacities to deal rapidly with these new cases have improved.<sup>2</sup>

In addition there are improvements in *the payment of just satisfaction*. The ratio of payments made in time during the year has remained at a high level of 81%, and, is even slightly better than the previous year. The number of cases awaiting confirmation of payment has also decreased.

The *total amount of just satisfaction* awarded by the Court in 2012 merits a particular remark as it is considerably higher than previous years: 176,8 million euros against 72,3 million euros in 2011. This significant increase appears to be mainly explained by three exceptional cases against Italy [*Sud Fondi S.r.l.* and others:<sup>3</sup> 49 million euros – confiscation of certain properties), (*Immobiliare Podere Trieste S.r.l.*:<sup>4</sup> 47,7 million euros – expropriation under special emergency regulations). (*Centro Europa 7 S.r.l. and Di Stefano*:<sup>5</sup> 10 million euros – broadcasting rights of a TV station) which account for a total of 107,7 million euros as just satisfaction. This amount thus covers the entire difference as compared to 2011.

Despite the positive developments described above, *the Committee of Ministers' overall case-load is increasing*, posing important challenges to both the Committee and the Secretariat, and to the national authorities.

Pending cases include in particular 13 *pilot judgments under enhanced supervision* (of which one not yet final when drafting the present remarks) as compared to 9 last year. There is also *a continuous increase in the number of other leading cases pending*, and in particular those under enhanced supervision (some 13% – from 272 in 2011 to 307 in 2012)). There is moreover *a continuing increase in the number of pending leading judgments* which still remain to be fully executed after a considerable time.

As I noted last year, many cases show the persistence of major problems. In order to better understand this phenomenon, the 2012 statistics have been refined, separating “leading” cases from other cases. It appears that the biggest increase in numbers

2. This trend appears to be confirmed by a more detailed look at the closure of new leading cases. As regards cases where judgments became final in 2010, i.e. before the new working methods, only 19 have been fully executed the same or the following years. As regards cases where judgments became final in 2011, i.e. after the new working methods, 55 led to final resolutions in 2011-2012.

3. *Sud Fondi Srl and Others v. Italy*, judgments of 20/01/2009 and 10/05/2012 (Article 41).

4. *Immobiliare Podere Trieste Srl v. Italy*, judgments of 16/11/2006 and 23/10/2012 (Article 41).

5. *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, judgment of 07/06/2012.

of cases can be seen in the standard supervision procedure. This situation is being examined by the Secretariat in co-operation with states concerned.

As regards the cases or group of cases under enhanced supervision, most are included in the main groups presented in appendix 1 (table C 2) of the present report and are thus already subject to close scrutiny by the Committee of Ministers as evidenced by the thematic overview.

In conclusion, I would like to highlight the *positive statistics regarding the results of the new working methods* which have been designed notably to allow the Committee of Ministers to concentrate on important and/or complex structural problems.

All new cases have been immediately classified in one or the other of the two supervision procedures. The system of action plans has worked well and wherever needed such plans have been submitted to the Committee of Ministers. Thus, no case has necessitated special Committee of Ministers attention because of the absence of an action plan. In addition, in 2012, almost all countries with cases under enhanced supervision have had cases or groups of cases on the Committee of Ministers' order of business for more in depth examination. Also the total number of cases or groups of cases examined in more detail has increased and, consequently, the number of decisions and interim resolutions providing encouragement, recommendations or other form of guidance on execution.

The *picture emerging from the statistics is mixed but globally positive*. On the one hand there is a continuation of the clearly positive developments from 2011, linked to the entry into force of the new working methods. On the other there is a continued increase in the Committee of Ministers' workload, in particular because of the absence of comprehensive solutions to certain important structural problems. This situation evidently calls for increased action by competent domestic authorities. It also increases pressure on the Committee of Ministers and the Secretariat, with the Department for the execution of the Court's judgments in the front line, to assist in all ways possible.

## Recent developments and trends

The experiences gained over the last few years of the Committee of Ministers' work have highlighted the major challenges in the supervision of execution, namely the existence of repetitive cases and the persistence of certain major structural problems.

Many of these problems have their roots in domestic practices or traditions that have remained unaffected both by the existence of well-established, and in some cases also longstanding, case law from the Court and by the existence of different recommendations from the Committee itself and indications of good solutions from different monitoring and expert bodies within the Council of Europe.

This situation suggests, on a general level, that many national mechanisms for the reception/integration of the Convention and the Court's case law need to be further



reinforced. As regards the specific problems evidenced by the Court's judgments, successful execution will frequently require substantial national efforts, supported by an adequate mix of dialogue and peer pressure on the part of the Committee of Ministers and the availability of different targeted co-operation and assistance programs. The interaction with the Court is frequently central as is the capacity to develop synergies with other bodies and institutions, and the involvement of civil society.

I will now address some of the more important developments in these areas during 2012.

### **Dialogue and peer pressure: improving the supervision procedure**

In order to meet the important challenges which continue to face the Committee of Ministers' supervision of execution, the Committee has, in accordance with the invitation made at Brighton, started an examination of whether the "tools" at its disposal to ensure the timely execution of the Court's judgments are sufficient or whether further tools are required.

A summary of the discussions in the Committee of Ministers so far is appended to the present report. Among immediate results figures the Committee of Ministers' decision to further increase the transparency of the supervision process by publishing the list of cases proposed for examination at its HR meetings. This decision should enable national authorities, civil society, applicants and other interested to follow more easily the process. The Secretariat has also been invited to improve the visibility of achievements made in the course of execution. In this respect, the ongoing IT developments will be very useful.

Discussions in the Committee of Ministers continue. The improvement of the supervision procedure is presently being examined by a rapporteur group GT-REF.ECHR with a view to submitting a report to the Ministerial session on 16th May 2013.

In parallel, the Committee of Ministers has given a mandate to the Steering Committee for Human Rights ("the CDDH") to examine the "tools" issue. The CDDH has also received a number of additional mandates of relevance for the Committee of Ministers' execution supervision. These are described in part IV. I will, thus, not go into details here but limit myself to a few remarks.

The new procedure provided for by the draft Protocol No. 16 (which will allow the highest domestic courts to seek advisory opinions on questions of principle relating to the interpretation or application of the Convention in cases brought before them), may have considerable implications for the execution process. Indeed, such issues frequently arise in the context of execution. Once the new protocol has entered into force, it would appear natural for the Committee of Ministers to await possible advisory opinions from the Court rather than proceeding on the basis of its own assessments.

The completion of the different mandates of the CDDH, linked to the handling of repetitive cases in situations implying important structural problems, may also have repercussions on the supervision of execution. As regards the advisability of a "representative application procedure" (working group "C"), the CDDH concluded, however, that existing possibilities to handle situations involving numerous applications alleging the same violation of the Convention were sufficient and that, at least for the time being, no new procedures were called for.

### **Targeted co-operation and assistance**

Targeted co-operation programs continue to be of crucial importance.

Projects have thus been implemented primarily in key areas where States faced important structural problems generating high numbers of repetitive cases: non-enforcement of domestic judicial decisions, excessive length of proceedings, detention on remand and detention conditions.

The support given by the HRTF has been invaluable for the implementation of these projects. It is a source of satisfaction that this support continues.

2012 saw the completion of the two first projects supported by HRTF (HRTF 1 concerning the non-execution of domestic court judgments and HRTF 2 concerning violations committed in the context of action of security forces in the Chechen Republic of the Russian Federation – see part IV of the present annual report).

As regards other activities, the Department for the execution of the Court's judgments organised, under the ordinary budget, a Round Table, hosted by the Turkish authorities in Antalya, devoted to one of the major problems before the Court and the Committee of Ministers – namely the excessive length of judicial proceedings. This Round Table, attended by representatives of 18 states, allowed an in depth exchange of views and experiences, with the contribution of the CEPEJ, on ways and means to resolve this important structural problem. The Antalya Round Table came just at the right moment and I have noted with satisfaction all the positive comments made by the participants. The conclusions of the Round Table are appended to the present report.

The new projects supported by the HRTF currently being implemented relate for the first one, to Freedom of expression and the Media in Turkey and, for the second one (multi-lateral project), to detention on remand and effective remedies to challenge detention conditions. In early 2013, the Department for the execution of judgments organised an important High Level Conference in Ankara in the context of the first project, with the participation of, amongst others, the Secretary General of the Council of Europe, the Turkish Minister of Justice, members of the Turkish Parliament, journalists, representatives of the judiciary and the OSCE Representative on Freedom of the Media. Numerous encouraging declarations were made demonstrating the Turkish authorities' determination to move forward and solve the problems revealed by the Court's judgments.

Experience suggests that targeted co-operation programs and activities in areas with important structural problems are of considerable assistance to the domestic execution processes. A major benefit is that they allow valuable exchanges of experience with the participation of different expert bodies. In addition, the close links with the supervision process ensure that results can be frequently monitored and the necessary changes rapidly put in place.

The Department has also continued to offer a variety of punctual support to address specific issues. The feedback I have received as to the positive effects of this support in catalysing domestic procedures has been most encouraging.

There is nevertheless a need to develop within the Department for the execution of the Court's judgments, better capacity to respond rapidly to requests from respondent States for such programs and activities. In many situations there is a window of opportunity for change and if it cannot be seized immediately it is lost (e.g. the opportunity to participate in the assessment of draft legislation before it is passed, perhaps in a rush, through parliament). Innovative solutions will have to be considered to respond adequately to this need.

## Interaction with the Court

Interaction may take many forms. A major one is the pilot judgment procedure. Real pilot judgment procedures, including the freezing of repetitive applications, remained rare in 2012, although the number of such judgments increased considerably from 2 in 2011 (3 became final the same year) to 7 (of which 5 became final in 2012). Judgments in which the Court has assisted the execution process by providing recommendations or other indications relevant to execution – the so-called “Article 46 judgments” – have been more frequent.

The Committee of Ministers has continued to give top priority to the execution of pilot judgments. Developments are thus regularly examined at the Committee of Ministers' HR meetings to ensure that necessary measures are adopted within deadlines set. Special attention has also been given, as foreseen by the new working methods, to all cases revealing important structural or complex problems or calling for urgent individual measures.

The main problem so far has been the pilot judgment *Yuriy Nikolayevich Ivanov v. Ukraine*,<sup>6</sup> where the authorities, whilst expressing their commitment to execute the judgment as rapidly as possible, have indicated that it has not been possible to respect the deadlines set by the Court. They have referred to the complexity of the problem of non-execution of judicial decisions in Ukraine, including budgetary aspects. In response to the Committee of Ministers' repeated decisions and interim resolutions, Ukraine eventually adopted legislation at the end of 2012 which partly heeded the indications given by the Court. The law limits the application of the new remedy set up to domestic judgments delivered after January 2013. Older,

6. Judgment of 15/10/2009.

non-executed, domestic judgments will only be dealt with from 2014. In view of this situation, the Committee of Ministers reiterated at its last examination of the matter in March 2013, its deep regret and consequently encouraged the Ukrainian authorities to adopt with the utmost urgency the reforms still required, and to develop a viable practice of friendly settlements and unilateral declarations in respect of applications pending before the Court.

In response to the continuing massive influx of new applications, the Court has, for its part, adopted a special procedure for the speedy handling of old cases not covered by the new remedy relying on the committees set up under Protocol No. 14. The primary aim is to obtain viable unilateral declarations (based on the standards established by the Court in the *Kharuk* case<sup>7</sup>). In the absence of such declarations, summary judgments will be rendered. An agreement was concluded between the Ukrainian authorities and the Registry aimed at handling some 250 such applications a month.<sup>8</sup>

This experience of the pilot judgment procedure, even if exceptional, merits careful consideration by all involved, especially in the light of the increased use of this procedure in 2012. Pilot judgments concern difficult questions such as the excessive length of judicial proceedings, prison conditions or the implementation of schemes for the restitution or compensation for properties nationalised under former communist regimes (frequently including important problems of non-execution of domestic judicial decisions). It is evident, as I have already underlined, that the solution of many of these problems require concerted action by all involved.

In this context it is interesting to note that the interaction with the Court has taken on a new dimension in 2012 with more and more frequent use of letters to the Committee of Ministers to provide information and observations on issues of concern, such as the development of the number of repetitive cases pending before it or other developments of importance for the Committee of Ministers' supervision. This new practice allows better exchange of relevant information in real time and is thus an interesting contribution to the efficiency of the Committee of Ministers' supervision procedure.

Even if there are frequent contacts between the Registry of the Court and the Department for the execution of judgments in order to exchange information as regards repetitive cases or the execution process, it might be worth considering a more structured framework for such contacts.

## Synergies with other bodies

Further synergies have been developed with the Parliamentary Assembly, notably through its regular reports and debates on the execution of judgments. These were also welcomed by the Brighton Conference. Following the conclusion in 2011 of the

7. *Kharuk and Others v. Ukraine*, committee judgment of 26/7/2012.

8. See DH-GDR(2013)R3, Addendum III.

last global examination of progress made in the execution of main cases or groups of cases,<sup>9</sup> in January 2012 the Parliamentary Assembly adopted two new texts<sup>10</sup> aimed at guaranteeing the authority and effectiveness of the European Convention on Human Rights. In this connection, the Parliamentary Assembly reiterated its call for national parliaments to establish appropriate internal structures to ensure rigorous and regular monitoring of States' compliance with international human rights obligations<sup>11</sup> and, in particular, effective parliamentary oversight of the implementation of the Court's judgments<sup>12</sup>. Recently the Parliamentary Assembly has also looked more in depth into the viability of the Strasbourg Court in the light of the persistence of a number of structural deficiencies in the States Parties<sup>13</sup> and made a number of recommendations to the States parties and to the Committee of Ministers.<sup>13</sup>

Other synergies may also exist and deserve attention. Because of the variety of situations before the Committee of Ministers, it is only possible to give some examples here. The first example which can be mentioned is the report from the Human Rights Commissioner following his visit to Italy and published shortly before the HR meeting in March 2013. This report contained information on his contacts with the Italian authorities on the longstanding problem of excessive length of judicial proceedings. It provided thus valuable input for delegations when the Committee of Ministers examined the question at the HR meeting. The Venice Commission may also play an important role, notably through its opinions and legal expertises. For example, Azerbaijan sought in 2012, with the Committee of Ministers' support, the Venice Commission's assistance in preparing new legislation regarding freedom of expression necessary for the implementation of the *Mahmudov and Agazade* group of cases.<sup>14</sup>

More generally, the development of synergies is of particular concern today, notably to take advantage of all the European experience enshrined in the different opinions and recommendations prepared by the Council of Europe's expert and monitoring bodies. Increased attention is paid to the inclusion of the "execution perspective" in the different co-operation programs as well as in the co-ordination of these programs within the ones specifically targeted to the execution context.

9. See Resolution 1787(2011) and Recommendation. 1955(2011). "Implementation of judgments of the European Court of Human Rights".

10. Resolution 1856(2012) and Recommendation 1991(2012) "Guaranteeing the authority and effectiveness of the European Convention on Human Rights".

11. Resolution 1823 (2011) on national parliaments: guarantors of human rights in Europe.

12. Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights.

13. Resolution 1914 (2013) Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties" with a number of calls for action on the part of the Contracting States and Recommendation 2007 (2013) to the CM "Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties".

14. Judgment of 18/12/2008.

## Participation of civil society

A notable development over the last two years is the increased participation of civil society in the supervision process since the adoption of the new working methods. Submissions were made in almost 50 cases in 2011 and 2012. These submissions frequently allow the Committee of Ministers to take better informed decisions and resolutions.

In this context the present prohibition for applicants to address general measures (Rule 9 § 1) raises certain questions. Indeed, in contrast to the Committee of Ministers Rules, the Court allows, the applicant to address all execution issues including those relating to general measures in the context of pilot judgment procedures or otherwise when examining Article 46 of ECHR's issues. Possibly, this matter requires closer attention.

Mention should also be made in this context of the seminar organised in December 2012 by the Open Justice Society, with participation of many NGO's, Permanent representations of member states and the Department for the execution of the Court's judgments. This seminar allowed a very interesting exchange of views and experiences.

## Conclusion

The perspectives for the Committee of Ministers' supervision of execution are encouraging as evidenced by the statistics, the commitment demonstrated by the member States at the Brighton Conference, the improvement of the execution of the Court's judgments and the positive dynamics which have emerged between all concerned by the execution of the Court's judgments.

However, a lot still remains to be done. Promoting and further developing the present dynamics must be a priority, both domestically and in Strasbourg, in order to allow the Committee of Ministers and the member States to meet the important challenges which continue to face the Convention system.

My remarks have centred on two key challenges – the problem of repetitive cases and the persistence of important structural problems in many states. However, among challenges, also figure the economic constraints which are felt throughout Europe today. The economic constraints offer, however, an opportunity to move certain reforms forward. I am thinking for example of those needed to solve the longstanding problem of unnecessarily lengthy judicial proceedings in many states. The present crisis should be a major impetus for reform to make the judicial systems cost effective and also to avoid the necessity of compensating litigants for inefficiencies.

### **III. The Committee of Ministers' supervision of the execution of judgments and decisions – scope and new modalities**

#### **Introduction**

1. The efficiency of execution of judgments and of the Committee of Ministers' supervision thereof (generally, carried out at the level of the Minister's Deputies) have been at the heart of the efforts over the last decade to guarantee the long term efficiency of the Convention system (see also Chapter IV). The Committee of Ministers thus reaffirmed at its 120th session in May 2010, in the pursuit of the Interlaken process started at the Interlaken High Level Conference in February 2010 (see Chapter IV), *“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.”* The Committee added that “this requires the joint efforts of member states and the Committee of Ministers”.

2. As a consequence, the Committee of Ministers instructed its Deputies to step up their efforts to make execution supervision more effective and transparent. In line herewith the Deputies adopted new modalities for the supervision process as from 1 January 2011 (see section B below). As noted in the Annual Report 2011, these new modalities have proven their value and the Deputies confirmed them in December 2011.

3. The above efforts and developments have not changed the main elements of the obligation to abide by the Court's judgments. These have thus largely remained the same: redress must be provided to the individual applicant and further similar violations prevented. Certain developments have, nevertheless taken place. The continuing problem of repetitive cases has e.g. attracted the attention on the importance of rapid prevention of new violations, including by rapidly setting up effective remedies.

4. The necessity of further developments of the Committee of Ministers' supervision procedure has been discussed at the High Level Conference in Brighton in April 2012.

5. As a first follow-up to this conference the Committee of Ministers considered the issue of tools at its disposal in order to ensure timely execution of the Court's judgments and the possible need of more efficient tools. The first results of the

Committee's examination became available in December 2012 (see Appendix 3, item 4). More details regarding the on-going reforms are found in Chapter IV.

6. Moreover, the Committee of Ministers has evaluated the effects of the new working methods. This evaluation has highlighted that the setting of priorities for examination of cases, inherent to the new twin-track supervision procedure, enables the CM to focus its supervision effort, at the same time as it allows the examination of an increasing number of cases, concerning more states than before. In fact, as of 1st December 2012, 22 % out of 1,335 reference cases pending before the Committee of Ministers for supervision of their execution were classified under enhanced supervision. The importance of this supervision procedure was underlined by the fact that these 22% were generating a significant number of repetitive cases, i.e. 62% (6,488) out of the total number of pending cases (10,407). Further statistics are presented in Appendix 1.

### A. Scope of the supervision

7. The main features of the Contracting States' undertaking "to abide by the final judgment of the Court in any case to which they are parties" are defined in the Committee of Ministers' Rules of Procedure<sup>15</sup> (Rule 6.2). The measures to be taken are of two types.

8. The first type of measures – **individual measures** – concern the applicants. They relate to the obligation to erase the consequences suffered by them because of the violations established so as to achieve, as far as possible, *restitutio in integrum*.

9. The second type of measures – **general measures** – relate to the obligation to prevent 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 (see also §36).

10. The obligation to take individual measures and provide redress to the applicant has two aspects. The first is, for the state, to provide any just satisfaction – normally a sum of money – which the Court may have awarded the applicant under Article 41 of the Convention.

11. The second aspect relates to the fact that the consequences of a violation for the applicants are not always adequately remedied by the mere award of a just satisfaction by the Court or the finding of a violation. 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 reopening 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 against an alien despite a real risk of torture or other forms of illtreatment in the country of destination. The Committee of Ministers

15. Currently called, since 2006, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements".

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)<sup>16</sup>.

12. The obligation to take general measures aims at preventing violations similar to the one(s) found and may, depending on the circumstances, imply a review of legislation, regulations and/or judicial practice. 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 procedures.

13. When examining general measures today, the Committee of Ministers pays particular attention to the efficiency of domestic remedies, in particular where the judgment reveals<sup>17</sup> important structural problems (see also as regards the Court Section C below). The Committee also expects competent authorities to take different provisional measures, notably to find solutions to possible other cases pending before the Court<sup>18</sup> and, more generally, to prevent as far as possible new similar violations, pending the adoption of more comprehensive or definitive reforms.

14. These developments are intimately linked with the efforts to ensure that execution supervision contributes to limit the important problem of repetitive cases in line with Recommendations CM/Rec(2004)6 and CM/Rec(2010)3 on domestic remedies and the recent developments of the Court's case-law as regards the requirements of Article 46, notably in different "pilot judgments" adopted to support on-going execution processes (see Section C below).

15. In addition to the above considerations, the scope of the execution measures required is defined in each case on the basis of the conclusions of the European Court in its judgment, considered in the light of the Court's case-law and Committee of Ministers practice<sup>19</sup>, and relevant information about the domestic situation. In certain situations, it may be necessary to await further decisions by the Court clarifying outstanding issues.

16. As regards the payment of just satisfaction, the execution conditions are usually laid down with considerable detail in the Court's judgments (deadline,

16. 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.

17. 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.

18. Measures accepted by the Court include, besides the adoption of effective domestic remedies, also practices aiming at the conclusion of friendly settlements and/or adoption of unilateral declarations (see also the Committee of Ministers' resolution Res(2002)59 concerning the practice in respect of friendly settlements).

19. See e.g. the judgments of the Court in the case of *Broniowski v. Poland*, judgment of 22/06/2004, § 194, in *Ramadhi v. Albania*, judgment of 13/11/2007, § 94, in *Scordino v. Italy*, judgment of 29/03/2006, § 237.

recipient, currency, default interest, etc.). Payment may nevertheless raise complex issues, e.g. 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 memorandum prepared by the Department for the execution of judgments of the Court (document CM/Inf/DH(2008)7final).

17. As regards the nature and the scope of other execution measures, whether individual or general, the judgments are generally silent. As stressed by the Court on numerous occasions, it belongs in principle to the respondent State to identify these measures under the Committee of Ministers' supervision. In this respect, national authorities may, in particular, find inspiration in the important practice developed over the years by other states, and in relevant Committee of Ministers recommendations. In an increasing number of cases, the judgment of the Court will also seek to provide assistance – so called Article 46 judgments. In certain situations, the Court will even indicate specific execution measures (see below section C).

18. This situation can be explained by the principle of subsidiarity, according to which respondent states are, in principle, free to choose the means to be put in place in order to meet their obligations under the Convention. However this freedom goes hand-in-hand with the Committee of Ministers' control. As a consequence, in the course of its execution supervision, the Committee of Ministers, may adopt, if necessary, decisions or Interim Resolutions in view of taking stock of the execution progress, and, where appropriate, encourage or express its concerns, make recommendations or give directions with respect to execution measures required.

19. The direct effect more and more frequently granted to the European Court's judgments by the domestic courts and national authorities, greatly facilitates the adoption of the necessary execution measures, both as regards adequate individual redress and rapid development of domestic law and practices to prevent similar violations, including by improving the efficiency of domestic remedies. Where execution through such direct effect is not possible, other avenues will have to be pursued, most frequently legislative or regulatory.

20. The Directorate General of Human Rights and Rule of Law, represented by the Department for the Execution of Judgments of the European Court, assists the Committee of Ministers with the supervision of the measures taken by the states in the execution of the Court's judgments<sup>20</sup>. The states can, in the context of their reflection on the needed execution measures, request different forms of support

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

from the Department (advice, legal expertise, round tables and other targeted cooperation activities).

## **B. New supervision modalities: a twin-track approach to improve prioritisation and transparency**

### **Generalities**

21. The new modalities for the Committee of Ministers' supervision, developed in response to the Interlaken process, fall within the more general framework set by the Rules adopted by the Committee of Ministers in 2006<sup>21</sup>. They bring important changes to the working methods applied since 2004 to improve efficiency and transparency of the supervision process<sup>22</sup>.

22. The new 2011 modalities stress the subsidiary nature of the supervision and thus the leadership role that national authorities, i.e. governments, courts and parliaments must play in defining and securing rapid implementation of required execution measures.

### **Identification of priorities: twin track supervision**

23. In order to meet the call for increased efficiency the new modalities provide for a new twin track supervision system allowing the Committee to concentrate on deserving cases under what is called "enhanced supervision". Other cases will be dealt with under "standard supervision". The new modalities thus also give more concrete effect to the existing priority requirement in the Rules (Rule 4).

24. The cases which from the outset are liable to come under "enhanced supervision" are identified on the basis of the following criteria:

- Cases requiring urgent individual measures;
- Pilot judgments;
- Judgments otherwise disclosing major structural and/or complex problems as identified by the Court and/or by the Committee of Ministers;
- Interstate cases;

The classification decision is taken at the first presentation of the case to the Committee of Ministers.

21. 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.

22. 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 Department for the Execution of Judgments and decisions of the European Court (see notably CM/Inf/DH(2010)37 and CM/Inf/DH(2010)45 final).

25. The Committee of Ministers may also decide at any phase of the supervision procedure to examine any case under the enhanced procedure upon request of a member state or the Secretariat (see also paragraph 32 below). Similarly, a case under enhanced supervision may subsequently be transferred to standard supervision when the developments of the national execution process no longer justify an enhanced supervision.

### Continuous supervision based on action plans/reports

26. The new working methods of 2011 have introduced a new, continuous supervision of the execution process. Indeed, all cases are under the permanent supervision of the Committee of Ministers which should receive, in real time, relevant information concerning the execution progress. Insofar as, in addition, all cases are now considered as being inscribed on the agenda of all Human Rights meetings and may also be inscribed on the agenda of ordinary meetings, the Committee can respond rapidly to developments where necessary.

27. The new modalities also confirm the development that the Committee of Ministers' supervision is to be based on *action plans* or *action reports* prepared by competent state authorities<sup>23</sup>. The action plans / reports present and explain the measures planned or taken in response to the violation(s) established by the European Court and should be submitted as soon as possible and, in any event, not later than 6 months after a judgment or decision has become final.

### Transparency

28. In response to the call for increased transparency, the Committee of Ministers has decided that such plans and reports, together with other relevant information provided *will be promptly, made public (...), except where a motivated request for confidentiality is made at the time of submitting the information*, in which case it may be necessary to await the next Human Rights meeting to allow the Committee to decide the matter (see Rule 8 and decision taken at the 1100th Human Rights meeting, item "e").

29. The information received is in principle published on the web. This rule allows national parliaments, different state authorities, lawyers, representatives of civil society, national institutions for the promotion and protection of human rights, applicants and other interested persons to follow closely the development of the execution process in the different cases pending before the Committee. The applicants' submissions should in principle be limited to matters relating to the payment of just satisfaction and to possible individual measures (Rule 9).

23. This system was partially put in place already in June 2009 as the Committee of Ministers formally invited States to henceforth provide, within six months of a judgment becoming final, an action plan or an action report as defined in document CM/Inf/DH(2009)29rev.

30. As from 2013, the Committee of Ministers publishes also the indicative list of cases to be inscribed for detailed examination at its HR meetings.

### Practical modalities

31. Under the framework of the "*standard supervision*" procedure, the Committee of Ministers' intervention is limited. Such intervention is provided for solely to confirm, when the case is first put on the agenda, that it is to be dealt with under this procedure, and, subsequently, to take formal note of action plans/reports. Developments are, however, closely followed by the Department for execution of judgments. Information received and evaluations made by the Department are rapidly circulated in order to ensure that the Committee of Ministers can promptly intervene in case of need and transfer the case to the "enhanced supervision" procedure to define appropriate responses to new developments.

32. The classification under the "*enhanced supervision*" procedure, ensures that the progress of execution is closely followed by the Committee of Ministers and facilitates the support of domestic execution processes, e.g. in the form of adoption of specific decisions or interim resolutions expressing satisfaction, encouragement or concern, and/or providing suggestions and recommendations as to appropriate execution measures (Rule 17). The Committee of Ministers' interventions may, depending on the circumstances, take other forms, such as declarations by the Chair or high-level meetings. The necessity of translating relevant texts into the language(s) of the state concerned and ensuring their adequate dissemination is frequently underlined (see also Recommendation CM/Rec(2008)2).

33. At the request of the authorities or of the Committee, the Department may also be led to contribute through various targeted cooperation and assistance activities (legislative expertise, consultancy visits, bilateral meetings, working sessions with competent national authorities, round-tables, etc.). Such activities are of particular importance for the cases under enhanced supervision.

### Simplified procedure for the supervision of payment of just satisfaction

34. As regards *the payment of just satisfaction*, supervision has been simplified under the new working methods of 2011 and greater importance has been laid on applicants' responsibility to inform the Committee of Ministers in case of problems. This way, the Department for the execution of the Court's judgments limits itself in principle to register the payments of the capital sums awarded by the Court, and, in case of late payment, of the default interest due. Once this information has been received and registered the cases concerned are presented under a special heading on the Department's website ([www.coe.int/execution](http://www.coe.int/execution)) indicating that the applicants now have two months to bring any complaints to the attention of the Department. Applicants have before had been informed through the letters accompanying the European Court's judgments that it is *henceforth their responsibility to rapidly react to any apparent shortcoming* in the payment, as registered and published. If such

complaints are received, the payment will be subject to a special examination by the Department, and if necessary, the Committee of Ministers itself.

35. If no complaint has been received within the two months deadline, the issue of payment of just satisfaction is considered closed. It is recalled that the site devoted to payment questions is now available in different languages (Albanian, French, Greek, Romanian, Russian and English- further language versions are under way).

### Necessary measures adopted: end of supervision

36. When the defendant state considers that *all necessary execution measures have been taken*, it submits to the Committee a final action report proposing the closure of the supervision. Then starts running a six month period within which other states may submit possible comments or questions as regards the measures adopted and their ability to fully ensure the execution. To assist the Committee, the Secretariat also makes a detailed evaluation of the action report. If its evaluation is consistent with the one submitted by the authorities of the respondent state, a draft final resolution will thereafter be presented to the Committee for its adoption. If a divergence remains, it is submitted to the Committee for consideration of the issue(s) raised. When the Committee considers that all the necessary execution measures have been taken, the supervision concludes with the adoption of a *final resolution* (Rule 17).

### C. Increased interaction between the Court and the Committee of Ministers

37. The European Court's interaction with the Committee of Ministers, in implementing Article 46, is constantly evolving. For several years now, the Court contributes to the execution process more and more frequently and in various ways, e.g. by providing, itself, in its judgments, recommendations as to relevant execution measures (so called *quasi-pilot* judgments or "Article 46 judgments") or more recently by providing relevant information in letters addressed to the Committee of Ministers.

38. Today, the European Court provides such recommendations in respect of individual measures in a growing number of cases. Pursuant to Article 46, it may in certain circumstances, also decide the effect that should be given to the violation finding, order directly the adoption of relevant measures and fix the time limit within which the action should be undertaken. For example, in case of arbitrary detention, *restitutio in integrum* will necessarily require, among other things, release from detention. Thus, in several cases, the Court has ordered immediate release of the applicant<sup>24</sup>. Moreover, in the context of general measures, notably in the "pilot" judgment procedure, the Court examines nowadays in more detail the

24. 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.

causes behind the structural problems, with a view to making, where appropriate, recommendations or more detailed indications as to the general measures, and even require the adoption of certain measures within specific deadlines (see Rule 61 of the Rules of Court). In this context, to support more complex execution processes, the Court has used the "pilot" judgment procedure across a range of contexts<sup>25</sup>, generating, or risking to generate, an important number of repetitive cases, notably in order to insist on the rapid setting up of effective domestic remedies and to find solutions for already pending cases<sup>26</sup>.

39. The improved prioritisation in the framework of the new working modalities and the development of the Court's practices, in particular as regards "pilot" judgment procedures, appear to make it possible to limit significantly the number of repetitive cases linked to important structural problems (especially where "pilot" judgment procedures are combined with the "freezing" of the examination of all similar pending applications).

### D. Friendly settlements

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

25. 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).

26. See e.g. *Burdov No. 2 v. Russian Federation*, judgment of 15/01/2009; *Olaru v. Moldova*, judgment of 28/07/2009 and *Yuriy Nikolayevich Ivanov v. Ukraine*, judgment of 15/10/2009.



## **IV. Improving the execution process: a permanent reform work**

### **A. Guaranteeing long term effectiveness: main trends**

1. The main developments affecting the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), 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 has, however, led to further efforts to ensure the longterm 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 domestic implementation of the Convention in general;
- the efficiency of the procedures before the European Court of Human Rights (the Court);
- the execution of the Court’s judgments and its supervision by the Committee of Ministers.

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<sup>27</sup>, including in the context of execution of judgments of the Court;

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27. 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.

- adopt Protocol No. 14<sup>28</sup>, both improving the procedures before the Court and providing the Committee of Ministers with certain new powers 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) ;
  - adopt new rules for the supervision of the execution of judgments and of the terms of friendly settlements (adopted in 2000, with further important amendments in 2006) in parallel with the development of the Committee of Ministers' working methods;
  - reinforce subsidiarity by inviting states in 2009 to submit (at the latest six months after a certain judgment has become final) action plans and/or action reports (covering both individual and general measures), today regularly required in the context of the new 2011 supervision modalities agreed.
4. Relevant texts are 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 Interlaken process – Izmir and Brighton

5. Shortly after adoption of Protocol no. 14, a Group of Wise Persons was invited to report to the Committee of Ministers on the long-term effectiveness of the Convention control mechanism. Follow-up to this report, presented in November 2006, was impaired by the continuing non-entry into force of Protocol no. 14. Fresh impetus was, however, received as a result of the High Level Conference in Interlaken on the future of the Court, organised by the Swiss Chairmanship of the Committee of Ministers in February 2010, on the eve of which the final ratification was received, necessary for the entry into force of Protocol no. 14. The declaration and action plan adopted at the Interlaken Conference have had an important follow up, supported and developed by the Izmir Conference, organised by the Turkish

The status of implementation of these five recommendations has been evaluated by 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 Court;
- Resolution Res(2002)59 concerning the practice in respect of friendly settlements;
- Resolution Res(2004)3 on judgments revealing an underlying systemic problem.

28. This Protocol, now ratified by all contracting parties to the Convention, entered into force on 1st June 2010. A general overview of major consequences of the entry into force of the Protocol No. 14 is presented in the information document DGHL-Exec/Inf(2010)1.

Chairmanship of the Committee of Ministers, and the Brighton Conference, organised by the Chairmanship of the United Kingdom. The results of these conferences have been endorsed by the Committee of Ministers at its ministerial sessions. The national dimension of this development has been underlined by the special conferences organised, most recently, by the Ukrainian Chairmanship (Kiyv Conference, see AR 2011) and the Albanian Chairmanship (Tirana Conference 2012).

6. The new reform process set in motion has considered a wide range of issues such as 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 co-ordination with other mechanisms, activities and programmes of the Council of Europe); the scope of the right of individual petition (including access to the Court and the admissibility criteria); the functioning of the Court (notably the filtering of applications and the pursuit of the policy of identifying priorities for the dealing with cases and of identifying in the judgments structural problems); the handling of repetitive applications by the States (including the facilitation of friendly settlements and unilateral declarations, good co-operation with the Committee of Ministers in order rapidly to adopt the general measures required and, the Committee of Ministers bringing about a cooperative approach including all relevant parts of the Council of Europe); 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. Among the first results of the process launched was the Minister's Deputies' adoption in December 2010 of new working methods as from 1 January 2011 fixing new modalities for the supervision of the Court's judgments, notably resting on a new twin-track system for the prioritisation of cases, in particular judgments revealing important structural problems and in particular pilot judgments. Further details about the new modalities are given in Chapter III, Section B above<sup>29</sup>.

8. In parallel, the CDDH presented in December 2010 its final report "on measures that result from the Interlaken Declaration that do not require amendment of the Convention"<sup>30</sup>. Among these figured a number of issues related to the execution of judgments and the Committee of Minister's supervision thereof; notably 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. This proposal was, however, not taken up by the Committee.

9. As regards issues possibly requiring amendments to the Convention, these were addressed by the CDDH in an interim activity report adopted in April 2011. The proposals made related to the possibility of filtering applications, the Court's

29. The documents at the basis of the reform are available on the Committee of Ministers web site and on the web site of the Department for the Execution of Judgments and decisions of the Court (see notably CM/Inf/DH(2010)37 and CM/Inf/DH(2010)45 final).

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

handling of repetitive applications, the introduction of fees for applicants, the introduction of a simplified procedure for amending certain provisions of the Convention and allowing the Court to render advisory opinions. A final report was adopted in February 2012.

10. At the same time as the CDDH issued its above final report, it presented its contribution to the preparation of the Brighton Conference, grouping together the different questions dealt with and proposals made in its two earlier reports and presenting them in a larger perspective, along with a section on long-term thinking on the Court and the Convention. A number of proposals were made with respect to the execution of the Court's judgments and the Committee of Ministers supervision thereof.

11. Following the political guidance given at the Brighton Conference the CDDH's work on measures requiring amendments to the Convention has continued. One draft protocol has been prepared end 2012<sup>31</sup> (Protocol No. 15), concerning notably the principle of subsidiarity and the States' margin of appreciation in implementing the Convention, certain admissibility criteria (reduction of the time limit for submitting applications, the conditions surrounding the notion of « significant disadvantage ») and questions related to the Court (age limits for judges, relinquishment of jurisdiction in favour of the grand chamber). A second draft protocol, Protocol No 16, relating to the advisory opinions, is expected from the CDDH for April 2013.

12. The CDDH has also presented two further reports end 2012<sup>32</sup>. The first report concerns the measures taken by the member States to implement the relevant parts of Interlaken and Izmir declarations, including a series of recommendations as regards notably awareness raising, effective remedies and the execution of the Court's judgments, including pilot judgments, the drawing of conclusions from judgments against other states and provision to applicants of information on the Convention and the Court's case-law. The recommendations directly addressing the execution of the Court's judgments are reproduced in appendix 3 item 2. The second report relates to the effects of Protocol No. 14 and the implementation of the Interlaken and Izmir Declarations on the situation of the Court. Certain statistics regarding the impact of this Protocol on the CM are presented in the statistical part of this report - see appendix 1, table C.4.

13. Following the Brighton Conference, the Committee of Ministers has also decided to organise a number of procedures to examine more in depth the ideas and proposals that emerged from the Conference. The Committee has notably decided to examine the question whether more efficient measures are required vis-à-vis states that fail to implement judgments in a timely manner. It has started the examination of these issues at its September meeting 2012. In parallel, the Committee has given a mandate to the CDDH to also examine this issue. The

31. See CDDH report CDDH (2012)R76

32. See DH-GDR(2012)R2Add.I and DH-GDR(2012)R2Add.II appended to the CDDH report (2012)R76.

results of the Committee's first examination (December 2012) have been communicated to the CDDH to assist the special working group set up for the purpose (GT-GDR-E) – the information provided to the CDDH is presented in appendix 3 item 4. The Committee itself continues its examination in the framework of one of its own working groups, GT-REF.ECHR.

14. The Committee of Ministers has also given mandates to the CDDH to examine a series of other questions with links to execution and the Committee of Ministers' supervision thereof. A number of other working groups examine these questions: the advisability and modalities of a representative application procedure before the Court in case of numerous complaints alleging the same violation of the ECHR against the same state (GT-GDR-C); means to resolve large numbers of applications resulting from systemic problems and measures aimed at ensuring the execution of judgments in a timely manner (GT-GDR-E, see above). Results are expected in 2013. The CDDH adopted its report on the advisability and modalities of a representative application procedure in March 2013. The conclusion was that, taking into account in particular the Court's existing tools, there would be no significant added value to such a procedure in the current circumstances.

15. Awaiting the final results of the on-going work, the Committee of Ministers considered a first round of results at its meeting on 16 January 2013. It notably decided to make public the list of cases proposed for examination in the order of business of the HR meetings and to improve the visibility of the positive results achieved in the execution of the Court's judgments and decisions. It also endorsed the CDDH's different recommendations based on its examination of the national implementation of the Interlaken and Izmir declarations, notably as regards the execution of the Court's judgments. The Committee of Ministers invited the CDDH to take these results into account, as it deems appropriate, in preparing its proposals for possible future work 2014-2015.

### C. Specific issues

16. 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<sup>33</sup>. The Committee of Ministers has also developed its responses to such situations, in particular by developing its practices as regards Interim Resolutions and detailed decisions supporting the pursuit of reforms or setting out the Committee of Ministers' concerns. The Committee has furthermore, notably inspired by a number of proposals from the CDDH<sup>34</sup>, taken or supported a number of preventive measures to ensure, to the extent possible, that such situations do not occur.

33. 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.

34. 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.

17. In this latter context, the Committee of Ministers has since 2006 provided special support for the further development of the special targeted co-operation activities developed by the Department for the execution of judgments to support domestic execution processes in different ways (comprising for example legal expertise, round tables and training programmes). As part of these activities, an important multilateral conference was held in October 2012, in Antalya (Turkey), to allow states to share experiences, including with the CEPEJ, as to ways and means to resolve the important and complex problem of excessive length of proceedings. The conclusions of this conference are available on the Department's web site. These activities receive since 2009 important support from the Human Rights Trust Fund – see section D below. These activities are supplemented by regular visits to Strasbourg by officials from different countries, in order to take part in specific activities such as study visits, seminars or other events where the work of the Committee of Ministers on execution supervision is presented and/or specific questions on execution problems are discussed. These activities have continued and have been further developed in 2012.

18. The Committee of Ministers' recommendation – Recommendation CM/Rec(2008)2 – to the member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, continued to be – together with the other Committee recommendations cited above – an important element of its 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<sup>35</sup>.

19. These matters are now also being discussed in the context of the follow-up given to the Brighton Conference – see notably section B above.

#### **D. The support provided by the Human Rights Trust Fund**

20. Targeted co-operation projects to assist on-going domestic execution processes have been widely 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.

21. The first execution projects, which started in 2009, also include experience sharing between states in certain areas of special interest: non-execution of domestic

<sup>35</sup> Important positive developments in the different areas covered by this recommendation were noted at the multi-lateral conference organised in Tirana in December 2011 (see further below under D). The conclusions are available on the Department's web site.

court decisions (HRTF 1) and actions of security forces (HRTF 2). The HRTF 1 aims at supporting the beneficiary countries' efforts to design and adopt effective norms and procedures at national level for a better enforcement of national court's judgments. The project has been implemented in Albania, Azerbaijan, Bosnia and Herzegovina, the Republic of Moldova, Serbia and Ukraine. The HRTF 2 project aims at contributing to the execution of judgments of the European Court of Human Rights finding violations of the Convention concerning actions of security forces in the Chechen Republic (Russian Federation).

22. Activities organised in the framework of these two projects have developed from 2010 to 2012, including notably the organisation of several important round tables concerning effective remedies against non-execution or delayed execution of domestic court decisions; restitution/compensation for properties nationalised by former communist regimes; and the development of effective domestic capacity to ensure the rapid execution of the judgments of the European Court, a particularly important problem when structural shortcomings such as non-execution of domestic court judgments are revealed by the Court's judgments. These projects are now finished.

23. Further projects are being developed, notably one with the Turkish authorities on Freedom of expression and the Media in Turkey (HRTF 22) and another, multi-lateral, relating to detention on remand and effective remedies to challenge detention conditions (HRTF 18). The HRTF 22 project aims at enhancing the implementation of the Convention in the field of freedom of expression and media. In particular, it is expected that the project will contribute to change the practice of domestic courts, in particular of the Court of Cassation, in the interpretation of Turkish law in line with the Convention requirements concerning freedom of expression and to prepare the ground to ensure legislative changes in order to align Turkish law with the Convention standards. The HRTF 18 will enable the beneficiary states to share good practice in the areas concerned by the project which will be instrumental for the execution of the Court's judgments at domestic level.

## Appendix 1: Statistics 2012

### Introduction

The data presented in this appendix are those of the calendar year, from 1st January to 31 December 2012, and are based on the internal database of the Department for the Execution of Judgments of the European Court of Human Rights.

Cases referred to the CM can be classified into three categories: leading, repetitive and isolated cases.

**Leading cases** are, for the purposes of the execution of supervision, cases which have been identified – either by the Court already in its judgment or, by the Committee of Ministers – as revealing a new structural or 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.

Other cases include mainly “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 of Minister’s examination. Other cases also include the so-called “isolated” cases. These are, in particular, cases where the violations are so closely linked to the specific circumstances of the case that no general measures are required.

The number of leading cases 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:

- 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. Cases raising complex or important problems are, in principle, examined under the enhanced supervision procedure;
- Leading cases refer to the general measures and do not, normally, take into account individual measures issues;
- 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.

In the light of this last consideration, isolated cases are only identified in the statistics below in connection with the closure of the supervision process. Their status as isolated cases is here clear.

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

It should be noted that, as from the entry into force of Protocol No. 14 on 1st 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 has transmitted the case to the Committee of Ministers for such supervision.

**A. Overview of developments in the number of cases from 1959 to 2012**

The data presented include (as far as figures 1, 2 and 3) also cases decided by the Committee of Ministers itself under former Article 32 of the Convention (even if this competence disappeared in connection with the entry into force of Protocol No. 11 in 1998, as far as new cases were concerned, but a number of such cases remain pending<sup>36</sup>).

36. Mainly Italian excessive length of procedure cases

Figure 1. Development in the number of new cases that became final from 1959 to 2012

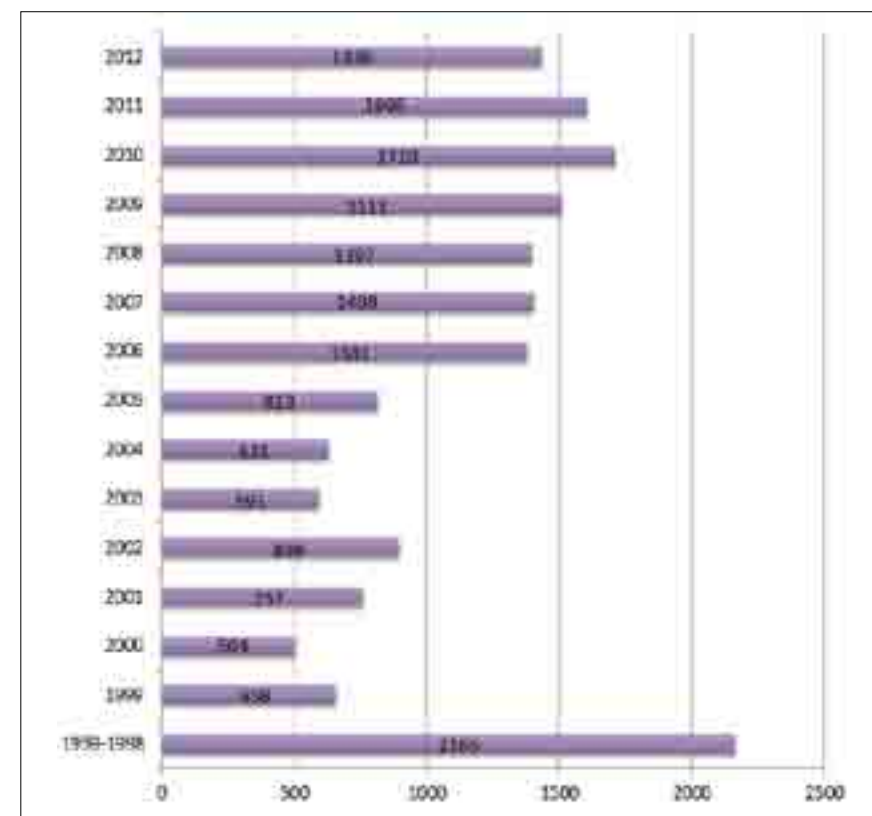
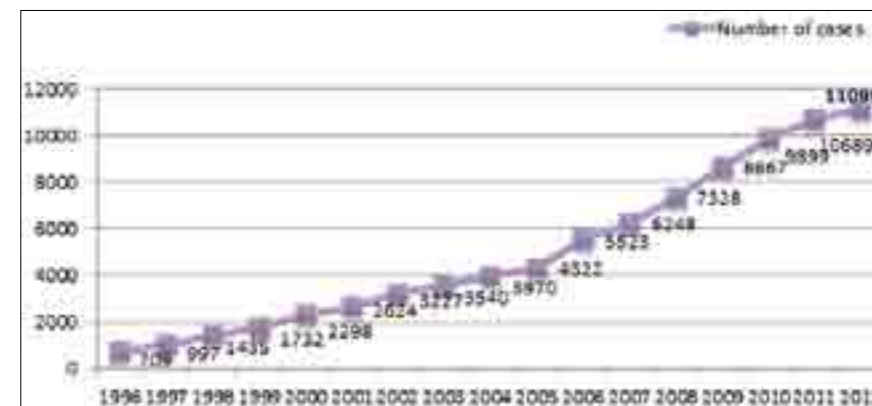


Figure 2. Development in the number of cases pending at the end of the year, from 1996 to 2012



## B. General statistics

### B.1. Pending cases<sup>37</sup>

The statistics reveal that the number of pending cases has continued to increase in 2012 less quickly than in the previous years. The total number of cases pending at 31 December 2012 has thus only increased by some 4 % as compared to 2011, whereas the increase was 8% from 2010 to 2011 and 14% from 2009 to 2010 (see below, Figure 3). At the same time the proportion of reference cases has increased. The total number of such cases has thus increased with some 7 % as compared to 2011. The increase in 2011 as compared to 2010 was only approx. 4 %.

Figure 3. Evolution of pending cases at 31 December 2012



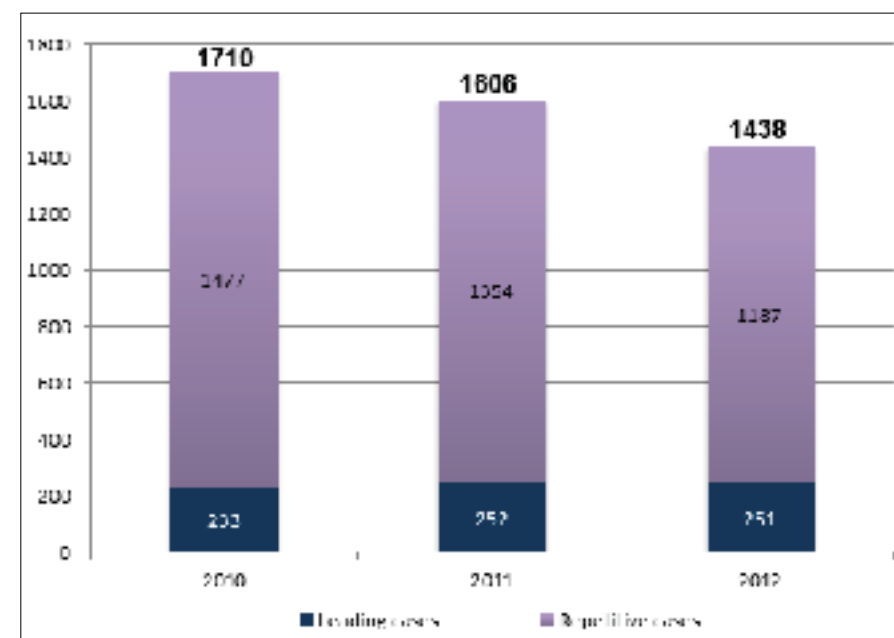
37. The number of pending cases does not necessarily follow the development of the exact number of new cases and that of closed cases. The classification of a case may change in the course of the year depending on the information available regarding the domestic situation/circumstances – see also the introduction. Moreover, some variations may also exist between statistics from year to year due to uncertainties caused by the fact that it can sometimes be unclear when certain cases have become final. Indeed, a referral to the Grand Chamber may sometimes take time before being sent to the Registry, recorded and sent to the Department for the execution of judgments.

It should be underlined, as regards the 2010 statistics relating to reference cases, that these are not directly comparable to the following years as isolated cases were grouped in 2011 with the reference cases – in 2010 they were still for the purpose of the annual report grouped with repetitive cases. Moreover, the implementation of the new working methods in 2011 led to an important reorganisation of cases and groups of cases in view of their classification in one or the other of the two tracks provided for under the new supervision procedure : enhanced or standard.

### B.2. New cases

The number of new cases for execution supervision has been marked by a **new important decrease** for the second time in ten years, decreasing by some 10 % as compared to 2011. The decrease in 2011 as compared to 2010 was 6 %. The trend is similar if available information as regards unilateral declarations is added<sup>38</sup>. The number of new leading cases declined slightly.

Figure 4. New cases which became final between 1st January and 31 December 2012

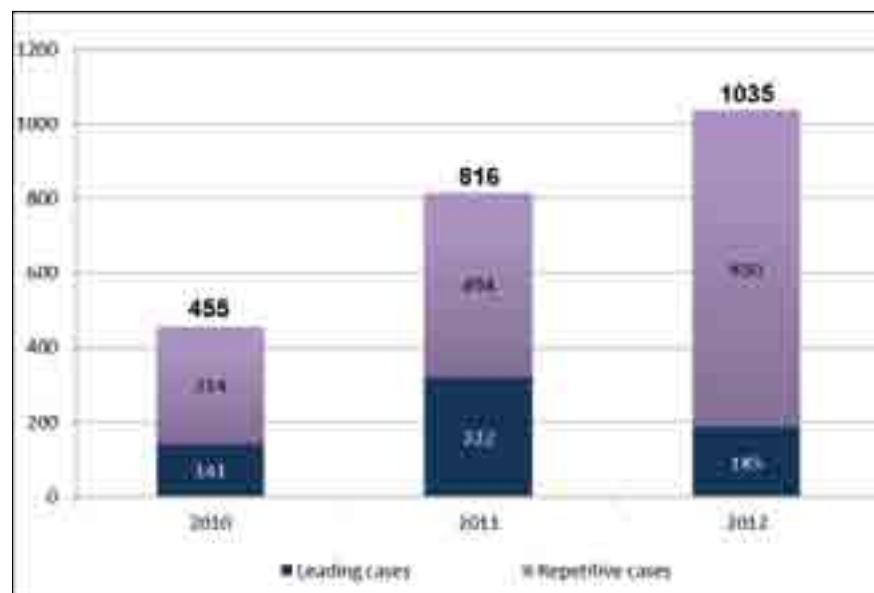


### B.3. Cases closed

The number of cases closed by a final resolution continued to increase. In 2012 the increased amounted to almost 27 % as compared to 2011. The increase in 2011 as compared to 2010 was some 80% (see figure 5 below). The positive trend engaged already in 2009-2010 is thus continuing. As regards the number of leading cases closed, 2012 demonstrated a decrease as compared to 2011, although the figures are still higher than in 2010 (by some 31 %) and earlier years.

38. The execution of undertakings contained in unilateral declarations does not fall under the CM's supervision competence. That being said, unilateral declarations are, together with friendly settlements, one of the main avenues for handling repetitive cases. Available information indicates that a total of 197 decisions based on such declarations were taken in 2010, against 167 in 2011 and 159 in 2012 (data taken from HUDOC, the statistics published by the Court are not encompassing this element).

Figure 5. Cases closed by the adoption of a final resolution in 2012



## C. Detailed statistics by state for 2012

### C.1. Development of case load, by state

The table below presents the total number of cases and specifies the number of “leading cases”, i.e. cases revealing structural problems. Certain additional statistics can be found in table C.3. and C.4.

State	New cases				Final resolutions				Pending cases			
	Total No. of cases		In which Leading cases <sup>(i)</sup>		Total No. of cases		In which Leading cases <sup>(ii)</sup>		Total No. of cases		In which Leading cases <sup>(i)</sup>	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
Albania	5	5	1	1	2	2	2	2	25	29	16	17
Andorra	0	1	0	1	2	2	1(1)	1(1)	0	1	0	1
Armenia	1	11	1	4	4	4	4	4	20	31	9	14
Austria	10	14	4	4	42	7	10	6(1)	48	54	21	19
Azerbaijan	14	19	3	2	0	1	0	1	45	63	24	25
Belgium	4	6	2	3	28	11	5	7	53	48	22	17
Bosnia and Herzegovina	6	15	4	9	4	8	3	2	17	24	11	18
Bulgaria	62	62	23	12	20	41	9(1)	21(4)	344	366	116	108
Croatia	31	32	11	7	21	19	9(2)	5(1)	110	122	42	46
Cyprus	1	1	1	1	4	1	3	3	33	32	8	8
Czech Republic	29	14	7	7	19	10	8	6	109	111	20	20
Denmark	1	7	1	1	6	4	5(1)	3	4	7	3	3



State	New cases				Final resolutions				Pending cases			
	Total No. of cases		In which Leading cases <sup>(i)</sup>		Total No. of cases		In which Leading cases <sup>(ii)</sup>		Total No. of cases		In which Leading cases <sup>(i)</sup>	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
Estonia	2	5	0	4	3	1	0	1(1)	4	8	3	6
Finland	8	10	0		15	39	8	5(3)	83	54	16	11
France	34	28	21	20	60	39	23(1)	25(6)	75	64	46	42
Georgia	4	6	4	2	11	4	9	3	22	24	19	18
Germany	29	17	5	5	17	2	7	2	88	103	14	17
Greece	79	56	10	7	21	20	9	12	442	478	63	59
Hungary	80	75	12	6	10	83	5	10	260	251	25	24
Iceland	4	2	0	1	4		1		7	6	3	5
Ireland	0	3	0		1		1		4	11	4	3
Italy	58	49	10	6	43	2	13	1	2522	2569	59	62
Latvia	12	7	3	4	7	3	1		28	33	18	24
Liechtenstein	0		0		1		1		0		0	
Lithuania	9	5	3	3	17		8		26	31	10	13
Luxembourg	1	2	0	2	8	7	5	4	16	11	5	3
Malta	3	7	2	2	3		3		17	24	12	14
Republic of Moldova	41	39	3	12	5	9	0	1	202	233	59	70
Monaco	0	1	0		1		1		0	1	0	
Montenegro	2	5	2	4	1		1		4	9	4	8
Netherlands	5	6	2	3	3	4	2	3(1)	13	14	8	9
Norway	1	1	0	1	5		4		1	2	0	2

State	New cases				Final resolutions				Pending cases			
	Total No. of cases		In which Leading cases <sup>(i)</sup>		Total No. of cases		In which Leading cases <sup>(ii)</sup>		Total No. of cases		In which Leading cases <sup>(i)</sup>	
	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012	2011	2012
Poland	211	145	6	9	58	163	31	5(1)	924	908	72	76
Portugal	38	31	2	6	12	21	9(1)	3(1)	113	123	12	15
Romania	84	77	12	12	80	44	25(2)	12(1)	636	667	88	88
Russian Federation	143	125	16	20	7	3	6	1	1087	1211	134	157
San Marino	1	2	0		1	3	1		4	3	1	1
Serbia	52	56	4	13	15	46	1		95	105	18	32
Slovak Republic	58	32	11	7	29	175	18	12(1)	191	48	20	14
Slovenia	7	17	1	5	0	5	0		228	241	9	16
Spain	7	10	4	4	5	11	4	3(1)	27	26	15	15
Sweden	1	4	1	3	4	1	2	1	6	9	6	8
Switzerland	4	6	4	6	17	8	9	8	10	8	10	8
“the former Yugoslav Republic of Macedonia”	35	52	2	3	14	37	1		107	122	18	21
Turkey	254	244	20	13	119	166	19(3)	8(2)	1780	1861	164	178
Ukraine	156	114	25	13	19	23	2		819	910	85	106
United Kingdom	19	13	9	5	48	14	33	14	40	39	25	17
<b>Total</b>	<b>1606</b>	<b>1438</b>	<b>252</b>	<b>251</b>	<b>816</b>	<b>1035</b>	<b>322 (12)</b>	<b>185 (24)</b>	<b>10689</b>	<b>11099</b>	<b>1337</b>	<b>1431</b>

(i) The figures also include potentially isolated cases. As indicated in the introduction, such cases are, for the time being, only specifically identified in the context of the closure of the CM's supervision.

(ii) The figures within parenthesis correspond to the number of cases, included in the global figure, accepted as isolated in the context of the CM's closure of its supervision..

### C.2. Main cases or groups of cases before the CM under enhanced supervision and involving important structural or complex problems<sup>39</sup> (by state at 31 December 2012)

- The structural or complex problems described in the table have been identified either by the Court in its judgments or by the Committee of Ministers in the course of the supervision procedure. All cases or group of cases are under enhanced supervision. It shall be stated that the fact that some groups are small does not prevent the underlying structural problems are considered important, in particular in view of their potential to generate repetitive cases, or when a domestic remedy has been set up, because of the lack of a global solution of the substantive problem (i.e. the excessive length of judicial proceedings). The situation described is the one at the end of 2012.
- Information on major developments, which occurred over the past year in these cases or groups of cases, are described in Appendix 2 « Thematic overview ».

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Albania	Caka group	44023/02	08/03/2010	5	Unfair criminal proceedings
	Driza group Manushaqe Puto and others – <i>pilot judgment</i>	33771/02	02/06/2008	12	Various structural problems linked to the restitution of properties nationalised under former communist regimes
	Dybeku/Grori	41153/06	02/06/2008	2	Poor detention conditions in prison and unlawful detention
Armenia	Kirakosyan group	31237/03	04/05/2009	4	Degrading treatment on account of bad detention conditions in police detention facilities
	Minasyan and Semerjyan group	27651/05	07/09/2011	3	Expropriations or termination of leases without legal basis.

39. The table is limited to cases originally in individual applications.

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Azerbaijan	Mahmudov and Agazade group	35877/04	18/03/2009	2	Unjustified convictions for defamation and/or unjustified imposition of prison sanctions for defamation; arbitrary application of anti-terror legislation
	Mammadov/ Muradova/Mikayil Mammadov	34445/04	11/04/2007	3	Action of security forces (police); excessive use of force or ill-treatment by the police and/or absence of effective investigations
	Mirzayev group	50187/06	03/03/2010	12	Non-execution of final judicial decisions ordering the eviction of internally displaced persons unlawfully occupying apartments to the detriment of the rights of lawful tenants or owners
	Namat Aliyev	18705/06	08/07/2010	9	Various breaches of the right to stand freely for elections
	Colic	1218/07	28/06/2010	2	Non-enforcement of final judgments ordering the state to pay certain sums in respect of war damage
Bosnia and Herzegovina	Sejdic and Finci	27996/06	22/12/2009	1	Ethnic-based discrimination: ineligibility of persons non-affiliated with one of the “constituent peoples” (Bosnians, Croats or Serbs) to stand for election to the House of Peoples (the upper chamber of Parliament) and the Presidency
	Al-Nashif group	50963/99	20/09/2002	11	Lack of sufficient procedural guarantees against arbitrary expulsion/deportation decisions taken on national security grounds
Bulgaria	Djanzov Group Finger – <i>pilot judgment</i>	37346/05	10/08/2011	117	Excessive length of criminal (Kitov) and civil (Djanzov) proceedings; absence of an effective remedy
	Kitov Group Dimitrov – <i>pilot judgment</i>	37104/97	03/07/2003		

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Bulgaria	Ekimdjiev group	62540/00	30/01/2008	4	Insufficient guarantees against arbitrary use of the powers accorded by the law on special surveillance means; absence of an effective remedy
	Kehayov group	41035/98	18/04/2005	19	Poor detention conditions in prisons and remand centres; absence of an effective remedy
	Nachova/Velikova group	43577/98	06/07/2005	26	Excessive use of fire-arms by police officers during arrests; ineffective investigations
	Stanev	36760/06	17/01/12	1	Placement in a social care home for people with mental disorders : lawfulness, judicial review, conditions of placement
Croatia	Skendzic and Krznic group	16212/08	20/04/2011	2	Lack of effective and independent investigations into crimes committed during the Croatian Homeland War (1991-1995)
Czech Republic	D.H. and others	57325/00	13/11/2007	1	Discriminatory assignment of Roma children to special schools intended for pupils displaying mental disabilities, without any objective and reasonable justification
Georgia	Gharibashvili/ Khaindrava and Dzamashvili/ Enukidze and Girgvliani	11830/03	20/10/2008	3	Ineffective investigations into allegations of excessive use of force by the police
Germany	M. group	19359/04	10/05/2010	13	Unjustified extension of preventive detention; violation of the prohibition of retroactive application of criminal law
Greece	Diamantides No. 2 Michelioudakis – <i>pilot judgment</i>	71563/01 54447/10	19/08/2005 03/07/2012	77	Excessively lengthy proceedings before criminal courts; absence of an effective remedy

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Greece	Konti Arvaniti group <i>Glykantzi – pilot judgment</i>	53401/99 40150/09	10/07/2003 30/01/2013	54	Excessively lengthy proceedings before civil courts; absence of an effective remedy
	Manios group Vassilios Athanasios – <i>pilot judgment</i>	70626/01	11/06/2004	184	Excessively lengthy proceedings before administrative courts and the Council of State; absence of an effective remedy
	M.S.S.	30696/09	21/01/2011	10	Shortcomings in the examination of asylum requests, including of the risks involved in case of direct or indirect return to the country of origin; poor detention conditions of asylum seekers and absence of adequate support when not detained; absence of an effective remedy
	Nisiotis	34704/08	20/06/2011	3	Inhuman and degrading treatment on account of poor conditions of detention in prison
Hungary	Bekir-Ousta and other similar cases	35151/05	11/01/2008	3	Refusals to register or dissolution of associations
	Timar group	36186/97	09/07/03	175	Excessive length of civil and criminal proceedings and lack of an effective remedy.
Ireland	A.B.C.	25579/05	16/12/2010	1	Lack of any legislative or regulatory implementation regime providing an accessible and effective procedure to establish possibilities for lawful abortion where there is a risk to the mother's life

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Italy	Ceteroni group	22461/93	15/11/1996	2185	Longstanding problem of excessive length of civil (including bankruptcy proceedings), criminal and administrative proceedings; problems related to the functioning of the domestic remedy put in place in 2001: insufficient amounts and delays in the payment of compensation, excessively lengthy compensation proceedings
	Luordo group	32190/96	17/10/2003	24	
	Mostacciuolo (Pinto) group	64705/01	29/03/2006	144	
Italy	Di Sarno	30765/08	10/04/2012	1	Prolonged inability of the authorities to ensure the proper functioning of the waste collection, treatment and disposal service in Campania and lack of an effective remedy in this respect
	Sulejmanovic Torreggiani – pilot judgment rendered on 8/11/2013, not yet final when AR prepared	22635/03	06/11/2009	1	Inhuman or degrading treatment suffered on account of overcrowding in prison
Republic of Moldova	Becciev group	12066/02	19/09/2007	3	Poor conditions of detention in facilities under the authority of the Ministries of Justice and of the Interior; absence of an effective remedy
	Ciorap group	18944/02	04/07/2006	11	III-treatment and torture in police custody; ineffective investigations; absence of an effective remedy.
	Corsacov group	2916/02	15/09/2004	18	Failure or substantial delay by the administration or state companies to abide by final domestic judgments; absence of an effective remedy
	Luntre group	476/07	28/10/2009	54	III-treatment and torture in police custody; ineffective investigations; absence of an effective remedy.
	Olaru and Others (pilot judgment)				Failure or substantial delay by the administration or state companies to abide by final domestic judgments; absence of an effective remedy

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Republic of Moldova	Sarban group	3456/05	04/01/2006	11	Different problems related to detention on remand (lawfulness, duration, justification)
	Fuchs group	33870/96	11/05/2003	83*	Excessive length of civil, criminal and administrative proceedings; absence of an effective remedy
Poland	Kudla group	30210/96	26/10/2000	67*	Inhuman and degrading treatment in different detention facilities (police custody, remand centres and prisons), mainly due to lack of adequate medical care
	Podbielski group	27916/95	30/10/1998	236*	
	Kaprykowski group	23052/05	03/05/2009	7	Poor detention conditions in prisons, particularly due to overcrowding
	Orchowski group	17885/04	22/01/2010	4	Excessive delay in determining and paying compensation following the expropriation of agricultural properties within the framework of the 1975 agrarian reform
Portugal	Carvalho Acabado group	30533/03	15/02/2006	31	Excessive length of civil, criminal, administrative and enforcement proceedings;
	Martins Castro group Oliveira Modesto group	33729/06 34422/97	10/09/2008 08/09/2000	19 35	Ineffectiveness of the compensatory remedy (procedures too lengthy, problem with moral damages and case-law in need of harmonisation)
Romania	Association “21 December 1989” and others group	33810/07	28/11/2011	2	Action of security forces : Ineffectiveness of criminal investigations into the violent crackdowns of the anti-governmental protests which surrounded the fall of the communist regime; lack of safeguards in the statutory framework governing secret surveillance

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Romania	Barbu Anghelescu group	46430/99	05/01/2005	21	Inhuman or degrading treatment or torture by the police; ineffective investigations
	Bragadireanu group	22088/04	06/03/2008	44	Poor conditions in police detention facilities and prisons, including failures to secure adequate medical care
	Nicolau group Stoianova et Nedelcu group	77517/01	04/11/2005	68	Excessive length of civil and criminal proceedings; absence of an effective remedy
	Strain group Maria Atanasiu – <i>pilot judgment</i>	57001/00 15204/02	30/01/2005 17/04/2008	266	Different structural problems connected with the ineffectiveness of the mechanism set up to afford restitution or compensation for properties nationalised during the communist period.
	Kalashnikov group Ananyev and others – <i>pilot judgment</i>	47095/99 42525/07 and 60800/08	01/10/2002 10/04/2012	87	Poor conditions of pre-trial detention, including lack of adequate medical care; absence of an effective remedy
Russian Federation	Khashiyev and Akayeva group	57942/00+	30/01/2008	192	Actions by security forces during anti-terrorist operations in Chechnya in 1999-2004 (mainly excessive use of force, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search)
	Klyakhin group	46082/99	30/11/2004	71	Different violations related to detention on remand (lawfulness, procedure, length)
	Mikheyev group	77617/01	26/04/2006	51	Ill-treatment in police custody and ineffective investigations; excessive length of detention on remand
	Ryabykh group	52854/99	03/12/2003	89	Non-respect of final character of judgments as a result of the use of supervisory review procedures (civil cases)

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Serbia	EVT Company group	3102/05	21/09/2007	17	Unfair trials and failure to enforce final court decisions against “socially owned companies”
Slovak Republic	Urbarska group	74258/01	27/04/2009	4	Deprivation of possessions as a result of the transfer of the applicants’ land to the tenants without adequate compensation under land consolidation proceedings
“The former Yugoslav Republic of Macedonia”	Association of citizens Radko and Paunkovski	74561/01	15/04/2009	1	Unjustified dissolution of an association
Turkey	Bati group	33097/96	03/09/2004	85	Ill-treatment by the police and gendarmerie; ineffective investigations
	Demirel group	39324/98	28/04/2003	166	Excessive length of detention on remand and lack of an effective remedy; unfair and lengthy criminal proceedings
	İncal group	22678/93	09/06/1998	100	Unjustified interferences with freedom of expression owing notably to criminal convictions by state security courts
	Ormanci group Ümmühan Kaplan – <i>pilot judgment</i>	43647/98 24240/07	21/03/2005 20/06/2012	254	Excessive length of judicial proceedings; absence of an effective remedy
	Kaverzin / Afanasyev group	38722/02	05/07/2005	25	Ill-treatment by police; lack of an effective investigation and/or of an effective remedy
Ukraine	Kharchenko group	40107/02	10/05/2011	29	Different violations related to detention on remand
	Naumenko Svetlana/Merit groups	41984/98	30/03/2005	234	Excessive length of judicial proceedings; absence of an effective remedy

State	Main case, including the pilot judgment when appropriate	Appl. No. (of the first case)	Date of final judgment	Number of cases pending before the CM	Case description
Ukraine	Nevmerzhitsky / Yakovenko / Melnik / Logvinenko / Isayev groups	54825/00 15825/06 72286/01 13448/07 28827/02	12/10/2005 25/01/2008 28/06/2006 14/01/2011 28/08/2009	21	Poor detention condition in various facilities, including medical care issues
	Zhovner group Yuriy Nikolayevich Ivanov – <i>pilot judgment</i>	56848/00 40450/04	29/09/2004 15/01/2010	391	Failure or serious delay by the state administration or state companies in abiding by final judicial decisions; absence of an effective remedy
United Kingdom	Hirst Greens and M.T. – <i>pilot judgment</i>	60041/08 74025/01	11/04/2011 06/10/2005	2	Blanket ban on voting imposed automatically on convicted offenders detained in prison

### C.3. Additional statistics at 31 December 2012: Respect of payment deadlines and just satisfaction amounts.

State	Respect of payments deadlines						Just satisfaction	
	Payments within deadline (during the year) <sup>(i)</sup>		Payments outside deadline (during the year) <sup>(i)</sup>		Total of pending cases waiting for confirmation of payment at 31.12. <sup>(ii)</sup>		Total awarded (euros)	
	2011	2012	2011	2012	2011	2012	2011	2012
Albania	1	4	3	4	12	8	1 914 200	3 014 750
Andorra						1	0	20 000
Armenia	1	7			11	7	53 045	137 433
Austria	9	9	3	5	4	2	79 493	119 689
Azerbaijan	14	8		2	9	13	310 650	308 805
Belgium		6	1	2	7	1	46 269	156 150
Bosnia and Herzegovina	3	11	1	2	3	4	124 600	539 424
Bulgaria	105	48	37	11	7	9	731 302	1 404 532
Croatia	30	24		3	3	6	190 543	325 950
Cyprus	1			1	5	3	3 200	0
Czech Republic	16	10	1		17	19	276 396	193 530
Denmark		7			1	1	21 000	223 178
Estonia	2	5					8 000	28 118
Finland	21	4		1	9	13	105 114	70 150
France	14	17	24	22	16	3	2 183 236	7 667 647
Georgia	5	3	1		1	2	69 435	73 507

State	Respect of payments deadlines						Total of pending cases waiting for confirmation of payment at 31.12. <sup>(ii)</sup>		Just satisfaction	
	Payments within deadline (during the year) <sup>(i)</sup>		Payments outside deadline (during the year) <sup>(i)</sup>		Total of pending cases waiting for confirmation of payment at 31.12. <sup>(ii)</sup>		Total awarded (euros)			
	2011	2012	2011	2012	2011	2012	2011	2012		
Germany	27	19			8	7	348 922	502 026		
Greece	56	52	27	17	38	29	7 061 189	1 659 800		
Hungary	24	154		2	59	9	1 143 510	674 000		
Iceland	1	1	1		1	2	0	59 290		
Ireland	1	1			5	5	38 800	168 035		
Italy	41	22	20	11	79	91	8 414 745	119 558 467		
Latvia	13	5					101 364	57 000		
Liechtenstein	1						0	0		
Lithuania	5	4			2	2	42 995	60 738		
Luxembourg	3	1					0	37 885		
Malta					4	8	170 500	90 800		
Republic of Moldova	43	38			20	21	221 291	718 074		
Monaco	1						0	7 500		
Montenegro	2	3	1	1	1	1	2 400	60 215		
Netherlands	1	6		1	6	1	8 340	62 283		
Norway						1	0	222 470		
Poland	301	112	9		159	158	803 223	570 040		
Portugal	10	5	17	14	28	22	3 618 619	1 029 170		
Romania	60	162	10	77	189	37	1 765 401	1 349 518		

State	Respect of payments deadlines						Total of pending cases waiting for confirmation of payment at 31.12. <sup>(ii)</sup>		Just satisfaction	
	Payments within deadline (during the year) <sup>(i)</sup>		Payments outside deadline (during the year) <sup>(i)</sup>		Total of pending cases waiting for confirmation of payment at 31.12. <sup>(ii)</sup>		Total awarded (euros)			
	2011	2012	2011	2012	2011	2012	2011	2012		
Russian Federation	93	98	107	39	155	125	8 727 199	7 150 521		
San Marino	2	2			1		0	26 500		
Serbia	48	35	2	3	9	28	411 246	1 633 120		
Slovak Republic	97	23	8		1	2	425 363	349 817		
Slovenia	120	14	3	3	15	5	36 830	263 362		
Spain	6	7	2	6	1	3	331 000	156 840		
Sweden	1		1			3	5 500	20 240		
Switzerland	4	4				1	50 052	148 397		
“the former Yugoslav Republic of Macedonia”	25	58	10	7	11	4	165 084	337 150		
Turkey	224	182	6	4	158	170	30 887 568	23 424 794		
Ukraine	72	177	5	10	236	148	948 571	1 699 753		
United Kingdom	8	15		6	10	2	454 457	418 220		
Total	1 511	1 363	300	254	1 301	976	72 300 652	176 798 888		

(i) For the years 2011 and 2012, the statistics are no longer based on the cases in which the deadline for payment has expired in 2011 or in 2012, but on the payments effectively registered during the year. This allows a better reflection of the respect of deadlines as well as of the number of cases awaiting payment confirmation.

(ii) Based on all the pending cases waiting for information of payment

C.4. Additional statistics at 31 December 2012: Respect of payment deadlines, average execution time and new cases decided under Protocol No. 14.

State	Pending cases: average execution time										Protocol No. 14 new cases <sup>(1)</sup>					
	Leading cases pending < 2 years		Leading cases pending 2-5 years		Leading cases pending > 5 years						Committee cases (Art. 28§1.b)		Friendly Settlements (Art. 39§4)			
					2011		2012		ENHA		STAND		2011		2012	
	2011	2012	2011	2012	ENHA	STAND	ENHA	STAND	2011	2012	2011	2012	2011	2012		
Albania	6	2	10	13					1							
Andorra		1														
Armenia	5	5	4	9												
Austria	11	7	8	8		2		4		1		1	2	1		
Azerbaijan	11	4	13	16				2		3		2	6	1		
Belgium	5	6	11	6	3	3	1	4				1				
Bosnia and Herzegovina	6	13	5	5									4	8		
Bulgaria	43	30	46	46	14	13	10	18	15	16	10	15	10	15		
Croatia	19	19	17	17		6	1	9	2	4	10	18				
Cyprus	4	1	2	5		2		2								
Czech Republic	10	9	7	6		3	1	4	3	1	9	3				
Denmark	1		2											7		
Estonia	1	4	2	2									2			
Finland	3		10	6		3		5	1		2	8				
France	26	31	16	7		4		4	1		7	2				
Georgia	9	4	8	10		2		4			2	4				

State	Pending cases: average execution time										Protocol No. 14 new cases <sup>(1)</sup>					
	Leading cases pending < 2 years		Leading cases pending 2-5 years		Leading cases pending > 5 years						Committee cases (Art. 28§1.b)		Friendly Settlements (Art. 39§4)			
					2011		2012		ENHA		STAND		2011		2012	
	2011	2012	2011	2012	ENHA	STAND	ENHA	STAND	2011	2012	2011	2012	2011	2012		
Germany	11	9	2	7	1					1	13		1	2		
Greece	19	15	29	24	6	9	6	14	43	30	12	3				
Hungary	15	14	9	9		1	1		17	9	45	53				
Iceland	1	1	2	2		1		2								
Ireland	2			2		1		1	1	1	2	1				
Italy	17	14	11	15	15	16	14	19	8	17	2	17				
Latvia	5	9	9	8		4		7	1		3	1				
Liechtenstein																
Lithuania	6	6	3	5		1		2	4	1						
Luxembourg			4			1		3		1						
Malta	6	4	2	6		4		4								
Republic of Moldova	15	15	33	34	7	4	10	11	9	2	14	14				
Monaco														1		
Montenegro	3	6	1	2										1		
Netherlands	4	3	2	3		2		2			1	1				
Norway																
Poland	26	13	31	36	8	7	8	19	19	7	153	111				
Portugal	5	7	3	4	2	2	2	2	12	12	11	10				
Romania	29	21	39	39	7	13	8	20	12	11	17	17				

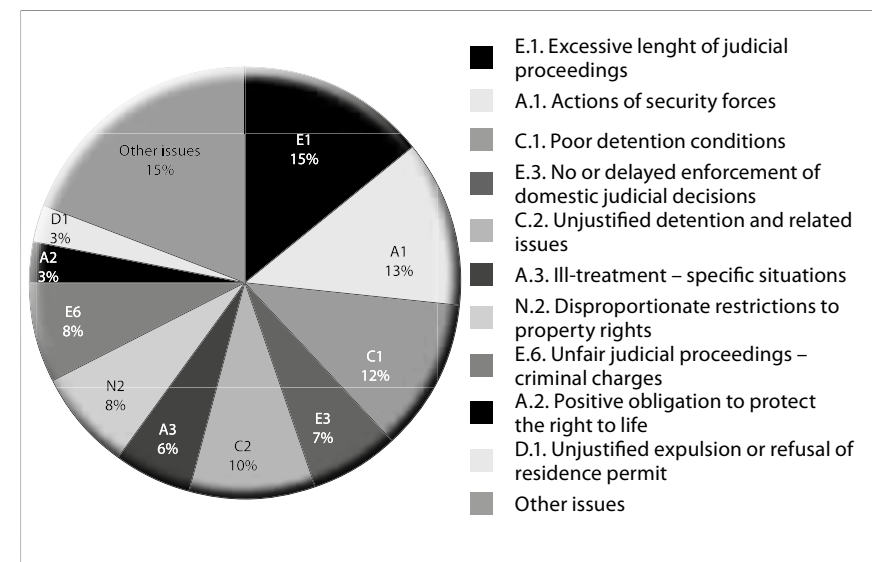


State	Pending cases: average execution time										Protocol No. 14 new cases <sup>(i)</sup>			
	Leading cases pending < 2 years		Leading cases pending 2-5 years		Leading cases pending > 5 years				Committee cases (Art. 28§1.b)		Friendly Settlements (Art. 39§4)			
	2011	2012	2011	2012	ENHA	STAND	ENHA	STAND	2011	2012	2011	2012		
	2011	2012	2011	2012	ENHA	STAND	ENHA	STAND	2011	2012	2011	2012		
Russian Federation	36	38	72	70	15	11	19	30	12	4	7	5		
San Marino						1		1			1	1		
Serbia	7	17	11	10			3	2	1		45	47		
Slovak Republic	13	12	6	1	1			1	3	8	29	9		
Slovenia	2	7	4	4		3		6	2	5		1		
Spain	10	7	3	7		2		1		1				
Sweden	4	4	1	4		1						1		
Switzerland	7	4	2	3		1		1						
“the former Yugoslav Republic of Macedonia”	9	5	8	13		1		3	3		30	46		
Turkey	45	33	65	74	20	34	23	48	20	34	97	98		
Ukraine	41	44	28	36	9	7	10	16	57	25	36	35		
United Kingdom	16	8	4	4	2	3	2	3			10	5		
<b>Total</b>	<b>514</b>	<b>454</b>	<b>545</b>	<b>578</b>	<b>110</b>	<b>168</b>	<b>122</b>	<b>277</b>	<b>262</b>	<b>199</b>	<b>565</b>	<b>547</b>		

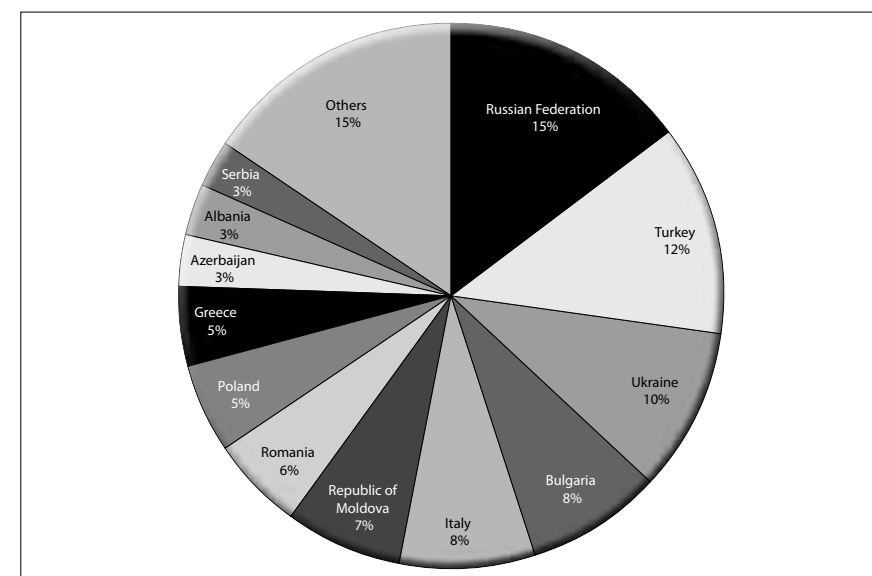
(i). This table is presented to allow an overview of the impact of Protocol No. 14. Indeed, one of the goals of this Protocol is to expedite the processing of repetitive cases, either through the possibility of allowing Committees of three judges to deal with cases concerning questions for which there is an established case-law, or through the Court's new competence to accept friendly settlements with a simple decision.

### C.5. Main themes under enhanced supervision (On the basis of the number of leading cases)

The themes used correspond to the main themes used in the thematic overview.



### C.6. Main states with cases under enhanced supervision (On the basis of the number of leading cases)



### C.7. New working methods: additional statistical elements.

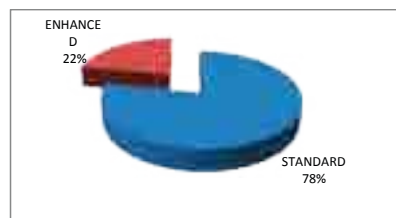
*NB : In view of the fact that the figures below refer to the situation at the time of the last HR meeting of the year – beginning of December, they differ from the ones presented in the other sections of this appendix which refer to the situation at the end of the year (31 of December).*

#### A. Results of the classification

After the last meeting of the year, which ended on the 6th of December these 2 years, the distribution of cases between the two supervision tracks is as shown below. It is important to note that the interesting statistic concerns the reference cases insofar as the repetitive cases only follow the reference case to which they are attached.

Classification	Reference cases				Total cases			
	After the last meeting of 2011		After the last meeting of 2012		After the last meeting of 2011		After the last meeting of 2012	
Standard	1019	79%	1101	78%	3976	38%	4155	39%
Enhanced	272	21%	303	22%	6581	62%	6577	61%
Total	1291	100%	1404	100%	10736	100%	10732	100%

#### Graphs for 2012 situation



Reference cases



Total cases classified (reference cases + repetitive cases)

After the last 2012 meeting, 18<sup>40</sup> out of 47 states had no cases at all classified under the enhanced procedure (21<sup>41</sup> after the last meeting in 2011). Thus, 29<sup>42</sup> states had cases under standard supervision (26<sup>43</sup> in 2011).

#### B. Transfers

**Standard Procedure to Enhanced Procedure:** In 2012, 1 group of 169 cases (Timar v. Hungary) – no case in 2011.

**Enhanced Procedure to Standard Procedure:** In 2012, 9 reference cases concerning 6 states (Croatia, Spain, Republic of Moldova, Poland, Russian Federation and United Kingdom). In 2011, 4 reference cases concerning 4 states (Poland, Georgia, Germany and France).

#### C. Action plans / reports

From 1<sup>st</sup> January to 31<sup>st</sup> December 2012, 158 action plans (114<sup>44</sup> in 2011) and 262 action reports (236<sup>45</sup> in 2011) had been submitted to the Committee.

According to the new working methods, when the six-month deadline for States to submit an action plan/report has expired and no such document has been transmitted to the Committee, the Department for the Execution sends a reminder letter to the delegation concerned. If a member State has not submitted an action plan/report within three months after the reminder, and no explanation of this situation is given to the Committee of Ministers, the Secretariat is charged with proposing the case for consideration under the enhanced procedure (see CM/Inf/DH(2010)45final, item IV).

In 2012, reminder letters have been addressed to 27 states (17 in 2011) concerning 97 cases/groups of cases (45 in 2011). For 45 of these cases/groups of cases (15 in 2011), an action plan/report has been sent to the Committee of Ministers. For the remaining cases/groups of cases, the deadline of three months has not yet expired. It can be noted that, that since the entry into force of the new working methods, no proposal to transfer any case has been made.

40. 2012: Andorra, Austria, Denmark, Estonia, Finland, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Malta, Montenegro, Netherlands, Norway, San Marino, Spain and Sweden.

41. 2011: Andorra, Austria, Denmark, Estonia, Finland, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Malta, Montenegro, Netherlands, Norway, San Marino, Slovenia, Spain, Sweden and Switzerland.

42. 2012: Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Republic of Moldova, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

43. 2011: Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Georgia, Germany, Greece, Ireland, Italy, Republic of Moldova, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

44. 39 were related to cases which became final after the entry into force of the new working methods.

45. In which 13 not clearly specifying if there were action plans or action reports.

Thus, since the entry into force of the new working methods, there was no need to propose the transfer of a case.

#### D. Cases closed by final resolution in 2012

Including the resolutions adopted at the last meeting of the year (beginning of December), 1035 final resolutions have been adopted in 2012 (816 in 2011).

#### E. Cases/groups of cases examined during a meeting – Results

In 2012, 26 states<sup>46</sup> have had cases included in the Order of Business of the Committee of Ministers for detailed examination (24<sup>47</sup> in 2011) – initial classification issues excluded. This, out of a total of 28 states with cases under enhanced supervision (26 in 2011).

The following figures recorded on the basis of an analysis of the orders of business from 2009 to 2012 are:

Year	Number of cases or group of cases examined during the HR meetings	States concerned	Total of states with cases under enhanced supervision
2012	110	26	29
2011	97	24	26
2010	75	21	-
2009	86	20	-

46. 2012: Albania, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Georgia, Germany, Greece, Hungary, Ireland, Italy, Republic of Moldova, Poland, Romania, Russian Federation, Slovak Republic, Serbia, Slovenia, “the former Yugoslav Republic of Macedonia”, Spain, Turkey, Ukraine and United Kingdom.

47. 2011: Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Georgia, Germany, Greece, Ireland, Italy, Poland, Republic of Moldova, Romania, Russian Federation, Serbia, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

#### F. Distribution of reference cases classified under enhanced supervision, by State

State	Number of reference cases under enhanced supervision	
	2011	2012
Albania	9	9
Armenia	3	3
Azerbaijan	10	10
Belgium	6	5
Bosnia and Herzegovina	4	5
Bulgaria	25	25
Croatia	4	4
Cyprus	1	1
Czech Republic	1	1
France	3	2
Georgia	6	5
Germany	4	2
Greece	13	14
Hungary		3
Ireland	1	1
Italy	20	24
Republic of Moldova	19	21
Poland	17	16
Portugal	3	3
Romania	15	17
Russian Federation	34	45
Serbia	7	8
Slovak Republic	2	2
Slovenia		2
Switzerland		1
“the former Yugoslav Republic of Macedonia”	1	1
Turkey	35	38
Ukraine	22	29
United Kingdom	7	6
<b>Total</b>	<b>272</b>	<b>303</b>

## **Appendix 2: Thematic overview of the most important events occurred in the supervision process in 2012**

### **Introduction**

The thematic overview presents the major developments that occurred in the execution of different cases in 2012, on the basis of the same themes used in the previous annual reports. Events presented include interventions of the Committee of Ministers in the form of:

- **Final resolutions** closing the supervision process as the Committee of Ministers finds that adequate execution measures have been adopted, both to provide redress to individual applicants and to prevent similar violations;
- **Committee of Ministers decisions or interim resolutions** adopted in order to support the ongoing execution process;
- **Transfers** from enhanced to standard supervision or vice versa.

In addition, the overview presents important information received from States:

- **Action plans** detailing the execution measures planned and/or already taken;
- **Action reports** indicating that the respondent government considers that all relevant measures have been taken and inviting the Committee of Ministers to close its supervision;
- **Information supplied** or expected in other forms.

The main emphasis is on cases requiring important general measures, individual measures being less detailed. Indeed, in almost every member states of the Council of Europe, the violations found can today be redressed by reopening criminal proceedings, or even civil proceedings, to the extent possible, taking into account the right to legal certainty and *res judicata*. Where reopening of civil proceedings is not possible, compensation for loss of opportunity remains the main alternative, whether awarded by the European Court or through domestic proceedings. Besides reopening, there are, in most of cases, important possibilities to obtain a re-examination of the matter incriminated by the European Court in order to obtain redress.

Standard measures, such as the payment of just satisfaction or the publication and dissemination of judgments to competent authorities (without special instructions), taken in order to ensure, through the direct effect accorded by domestic authorities

to the judgments of the Court, adaptations of domestic practices and case-law, are not specially mentioned.

This presentation takes into account the grouping of cases as indicated in the Committee of Ministers' order of business and in table C.2 above. Consequently, indications are limited to the reference cases in the groups.

The Human Rights meetings of the Committee of Ministers are referred to by the indication of the month they were held:

March: 1136th meeting of the Ministers' Deputies – start 6 March 2012

June: 1144th meeting of the Ministers' Deputies – start 4 June 2012

September: 1150th meeting of the Ministers' Deputies – start 24 September 2012

December: 1157th meeting of the Ministers' Deputies – start 4 December 2012

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

### A.1. Actions of security forces

#### BGR / Nachova Group

Appl. No. 43577/98, Judgment final on 06/07/2005, Enhanced supervision

*Unjustified use of fire-arms during an arrest and lack of effective investigations: deficiency of the legal framework and practices governing the use of fire-arms by the police and the military police, lack of effective investigations, failure to inquire whether or not possible racist motives may have played a role in the events (Article 2, Article 3 and Article 14 taken in conjunction with Article 2)*

**Revised action report:** An updated action report of November 2012 provides an overview of the different individual and general measures taken in response to the violations found in this group of cases. As regards the use of fire-arms by the police, the authorities have indicated that an amendment to the Interior Ministry Act was adopted by the Bulgarian Parliament and came into force in July 2012. This amendment introduces the principle of absolute necessity in the use of fire-arms, physical force and auxiliary devices by police officers. An explicit provision was adopted in order to guarantee the pre-eminence of respect for human life as a fundamental value. As regards the rules governing the military police, the Military Police Act has been promulgated, but needs to be amended in order to fully take into account the requirements of the Court's case-law on Article 2 and 3. A further bill is under preparation. Moreover, training and awareness-rising measures concerning the use of fire-arms and correct application of the legislative amendments are being organized. The report also refers to a legislative amendment to the Criminal Code notably introducing racist motive as an aggravating circumstance in case of homicide or bodily injury. This measure is considered of a particular importance as it would allow investigative authorities to examine whether or not

possible racist motives have been at the origin of an excessive use of force during arrest. The government specifies that it is determined to pursue zero tolerance policy and take all necessary measures for its implementation.

#### CRO / Skendžić and Krznarić

#### CRO / Jularić

Appl. Nos. 16212/08 and 20106/06, Judgments final on 20/04/2011 and on 20/04/2011, Enhanced procedure

*Crimes committed during the Croatian Homeland War: lack of an adequate, effective and independent investigation into crimes committed during the Croatian Homeland War (1991-1995) (Article 2, procedural limb).*

**CM Decision:** A series of general and individual measures have already been taken by the authorities in 2011 and an updated action plan has been submitted on 20 August 2012. At its HR meeting in September 2012, the CM noted with interest the various reforms adopted to ensure effective investigations and the authorities' strong commitment to resolve all open war crime cases. It invited the authorities to provide further information on the experience gained in the implementation of the measures adopted (in particular as regards the requirements of independence, expedition, promptness and public scrutiny, as well as on the special institutional arrangements put in place, and also more detailed statistics regarding the prosecution and convictions for war crimes). As regards individual measures, the CM noted with interest the steps taken to ensure the independence of the investigation in the case of Skendžić and Krznarić and strongly encouraged the authorities to ensure that the ongoing criminal investigations are rapidly concluded and invited them to continue providing regular information on their progress.

#### GRC / Makaratzis and other similar cases

Appl. No. 50385/99, Judgments final on 20/12/2004, Enhanced supervision

*Excessive use of firearms and lack of an effective investigation: use of potentially lethal force by police officers in the absence of an adequate legislative and administrative framework governing the use of firearms; ill-treatment and treatment by coastguards amounting to an act of torture and lack of effective investigations; in some cases – failure to effectively investigate whether racist motives on the part of the police may have played a role; excessive length of criminal proceedings (Articles 2, 3, 6§1 and 14 in conjunction with Article 3)*

**CM decision:** Continuing its examination of the execution of the measures set out in this judgment, the CM endorsed, in its December 2012 decision, the memorandum prepared by the Secretariat (CM/Inf/DH(2012)40) containing an assessment of the measures taken and/or envisaged by the Greek authorities in this group of cases. It welcomed the abolition of the law on the use of firearms which had been criticised by the Court, noting the new modern and comprehensive legislative framework for the use of firearms by the police. The CM therefore decided to close its supervision of this aspect of the execution. The CM also welcomed the establishment,

through legislation, of a committee competent both for assessing the possibility of opening administrative investigations in cases where shortcomings had been identified by the European Court and for handling new complaints concerning abuse. With regard to the lack of effective investigations in this group of cases, the CM stressed the importance of interpretation and implementation of the law by the said Committee as well as by the competent investigating authorities bearing in mind the Convention and the Court's case-law. In this regard, the CM invited the authorities to keep it updated on the establishment and effective functioning of the Committee, in particular with regard to an expected deterrent and preventive effect as regards potential future violations of Article 3 by members of the police force. The authorities were also invited to provide information on the outstanding issues identified in the summary of the assessment presented in the memorandum.

#### **GEO / Enukidze and Girgvliani**

Appl. No. 25091/07, Judgment final on 26/07/2011, Enhanced supervision

*Abduction and beating to death of a person by a group of senior officers of the Ministry of Interior: lack of an effective investigation into the abduction and death of the applicants' son by a group of senior law enforcement officers (Article 2, procedural aspect)*

**Action plan:** The Government stated in its action plan submitted in December 2012 that a new criminal investigation would be conducted to remedy the violations committed by the Ministry of the Interior and the Prosecutor's Office, including the setting-up of an ad hoc body within the Prosecutor's Office and the appointment of an independent investigator. The authorities also indicated that the violations identified at the domestic court level would be remedied by the judiciary and the High Council of Justice as a disciplinary body. Discussions are also under way with regard to the legal and constitutional status of presidential pardons.

#### **ROM / Association "21 December 1989" and others**

Appl. Nos. 33810/07 and 18817/08, Judgments final on 28/11/2011, Enhanced supervision

*Statutory limitation of criminal liability: lengthy delay in conducting an investigation into the violent crackdown on the anti-government protests of December 1989, leading to a risk of statutory limitation; lack of statutory safeguards in the field of secret surveillance measures in cases of alleged threat to national security (Article 2, procedural aspect, Article 8).*

**CM decisions:** At its March meeting, the CM took note of an initial action plan submitted in January 2012, informing it of the adoption by the Romanian parliament of a draft law repealing the statutory limitations in respect of certain intentional offences against life.

In December, the CM noted the revised action plan provided in October 2012. Expressing its concern at the lack of progress in the investigation at issue in the instant case, the CM urged the authorities to provide their assessment on the

obstacles in the investigation, as well as information on the measures taken to speed up the investigation. It also invited the authorities to ensure that the victims' next-of-kin continued to be involved in this investigation. The CM further noted with interest the amendments envisaged to the statutory framework in the field of secret surveillance measures, while pointing out that these remain to be assessed in detail. The CM also invited the authorities to provide an indicative timetable for the adoption of these amendments.

#### **ROM / Barbu Anghelescu and other similar cases**

Appl. No. 46430/99, Judgment final on 05/01/2005, Enhanced supervision

*Death resulting from actions of the police: excessive use of force by the police resulting in death and lack of effective remedy; in some cases – racially motivated ill-treatment; ineffective investigations into possible racial motives (substantive violations of Articles 2 and 3, procedural violations of Articles 2 and 3, Article 13, Article 14 taken in conjunction with Articles 3 and 13)*

**Action plan:** In accordance with the previous request of the CM (cf. Annual Report 2011), the authorities have submitted an action plan providing an extensive summary of the individual measures taken, notably in the form of reopened investigations into the events at the basis of the violations found, and of the general measures taken to improve the organization of the police and the efficiency of investigative proceedings, improve awareness of the Convention requirements. A special chapter deals with measures adopted to prevent racially motivated ill-treatment.

#### **RUS / Khashiyev and Akayeva and other similar cases**

##### **RUS / Isayeva**

##### **RUS / Abuyeva and others**

Application Nos. 57942/00, 57950/00 and 27065/05, Judgments final on 06/07/2005, 06/07/2005 and 11/04/2011, Interim Resolution CM/ResDH(2011)292, Enhanced supervision

*Anti-terrorist operations in Chechnya: violations resulting from unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, lack of effective investigations into the alleged abuses and absence of an effective domestic remedy, failure to co-operate with the Court, unlawful search, seizure and destruction of property, (Articles 2, 3, 5, 6, 8 and Article 14 of the Protocol No. 1)*

**CM Decisions:** The CM examination of the present group of cases has encompassed both training and awareness rising of Russian military and security forces, the revisiting of certain instructions and the legislative, regulatory and practical framework surrounding the effective investigations required by the Convention in case of abuses or allegations of abuse. More recently, the CM has concentrated its attention on the latter question and notably on the progress made in the domestic investigations into the grave human rights violations established in Court's judgments in the vast majority of the cases. At its meetings in June and September, the CM expressed anew its deep concern that no decisive progress had been made in these investigations and stressed the need for priority and comprehensive action

to increase the effectiveness of the investigations, and recalled the risk that with the passage of time the prosecution of those responsible may become time-barred.

At the June meeting, the CM stressed the need to take rapidly measures to enhance the search for disappeared persons and invited the authorities to provide information on the use of DNA tests in the framework of investigations into the fate of such persons. It also sought clarifications regarding the means used to overcome such problems as the destruction of archives and other evidence, the impact of the expiry of statutes of limitations and on the conditions under which the Amnesty Act could be applied. At the September meeting, the CM drew the attention of the Russian authorities to the CM's Guidelines on eradicating impunity for serious human rights violations and expressed grave concern about the application of acts of amnesty to certain situations. The CM called upon the authorities to reshape their strategy for dealing with these cases in order to make it more global and co-ordinated. Such a strategy should necessarily address: the impact of the expiry of the statute of limitations on the domestic investigations and the possibilities of providing redress to victims; the application of the Amnesty Act; the measures taken to enhance the search for disappeared persons; the measures aimed at overcoming the absence of the necessary documents in the archives; the evaluation of the impact of the already adopted measures on the effectiveness of domestic investigation together with concrete examples and relevant statistics.

As regards the *Isayeva* and *Abuyeva and others* cases, the CM underlined in the September decision, that in the second judgment, the Court's main conclusion under Article 46 of the Convention was that a new, independent investigation, aiming at attributing individual responsibility for the aspects of the operation appeared inevitable. It noted, in this respect, that a new third investigation had been carried out by the Russian authorities following the *Abuyeva and others* judgment and that the decision to close this investigation had recently been quashed and the case sent back for additional investigations. The CM called upon the Russian authorities to ensure that this additional investigation will eventually address all the shortcomings repeatedly identified by the Court and invited them to provide detailed information in this respect so as to enable the CM to ascertain that this investigation has effectively paid due regard to all the Court's conclusions.

#### **TUR / Bati**

Appl. No. 33097/96, Judgment final on 03/09/2004, Enhanced supervision

*Ineffective investigations: Ineffectiveness of national procedures for investigating alleged abuses by members of the security forces (Articles 2, 3, 5 §§3, 4, 5 and Article 13)*

**Other developments:** Following the measures already taken in this group of cases, particularly in terms of awareness-raising, the CM was informed that the Ministry of Justice had held an international seminar on the execution of judgments of the European Court in November 2011. A comprehensive action plan, setting out further measures required to resolve the various issues under CM supervision, is

being prepared by the authorities. This plan will deal in particular with outstanding measures as regards organising effective investigations in situations of the kind referred to here. A partial action report was submitted by the authorities in January 2012 providing information on the principles to be observed when preparing medical reports in investigations of this type.

#### **UK / Al-Jedda**

Appl. No. 27021/08, Judgment final on 07/07/2011, Enhanced supervision

*Internment of an Iraqi civilian in Iraq: preventive detention without basis in law of an Iraqi national from 2004-2007 in a detention centre run by British forces in Iraq, attributable to the UK as the occupying power (Article 5§1)*

**CM Decision:** The Action plan submitted in March 2012 by the authorities was examined by the CM at its June HR meeting. Noting that the applicant had been released already in 2007 the CM considered that no other individual measures were required. Moreover, as there were a significant number of legal claims pending at the domestic level from former detainees who were interned in Iraq on security grounds under the authority of the occupying power, the CM noted with interest the settlement negotiations that are ongoing at the domestic level and their undertaking to provide further updates in this respect. The CM also noted the authorities' position that the judgment relates to the factual circumstances of the UK's past operations in Iraq and that the Court's findings in this case have no implication for its current operations that are conducting elsewhere, including detention operations in Afghanistan. The CM invited the authorities to clarify this question with the Secretariat in the context of bilateral consultations. Further to these consultations a revised action plan was submitted early 2013.

#### **UK / Al-Skeini**

Appl. No. 55721/07, Judgment final on 07/07/2011, Enhanced supervision

*Failure to conduct investigations into acts committed by British soldiers in Iraq: territorial jurisdiction of the United Kingdom as occupying power and failure to hold fully independent and effective investigations into deaths of Iraqi nationals which occurred in May-November 2003 during the occupation of southern Iraq by British Armed Forces (Articles 1 and 2§1)*

**CM decision:** An action plan was received in March 2012. At its June 2012 meeting, the CM noted with interest the establishment in March 2010 of the Iraqi Historic Allegations Team (IHAT) to investigate alleged inhuman or degrading treatment of individuals by British forces in Iraq during the period March 2003-July 2009. The CM also welcomed the creation of a new team in 2012 within the IHAT to investigate the individual cases in this judgment and other similar cases concerning alleged breaches of Article 2. Moreover, in response to the Court of Appeal's decision which found that the IHAT was not sufficiently independent to satisfy the requirements of the Convention, the CM noted with interest the announcement by the Minister of State for the Armed Forces on 26 March 2012 that the IHAT would

be restructured in response to this judgment. The CM thus invited the authorities to provide further clarification on the structure of the new team in the IHAT, as well as on how the new system will take into account the findings of the European Court in these cases. The CM also invited the authorities to keep it informed of the progress of the new team within the IHAT investigating the individual cases in this judgment and other similar cases. NGO comments were since submitted (Solicitor's International Human Rights group).

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

### UKR / Gongadze

Appl. No. 34056/02, Judgment final on 08/02/2006, Enhanced supervision

*Abduction and death of a journalist: Failure to protect the life of a journalist and effectively investigate his abduction and death; degrading treatment of the journalist's wife on account of the attitude of the investigating authorities; lack of an effective remedy (Articles 2, 3 and 13).*

**CM Decision:** In the pursuit of its supervision of the execution of this judgment, the CM noted in December the regular updates provided as regards the progress of the criminal investigations, as well as the fact that the trial against the superior of the three police officers already convicted continues with a view to elucidate all the facts. It also noted that the domestic courts recently quashed the prosecutor's decision to institute criminal proceedings against L. Kuchma on the grounds that the so-called "Melnychenko" tapes were inadmissible as evidence having been obtained illegally. The CM recalled in this context the Convention requirements and the Court's case-law on the necessity of balancing the right to an effective investigation in order to bring those responsible before justice against other rights and interests, such as the right not to have illegally obtained evidence used at trial. It further invited the Ukrainian authorities to provide information on how Ukrainian law ensures this balancing, including a translation of the Constitutional Court's decision of 20 October 2011 relied upon by the domestic courts when dismissing the prosecutor's decision to institute criminal proceedings against L. Kuchma and on the prosecutors' assessment of the impact of this dismissal on the investigation relating to L. Kuchma. Moreover, the CM insisted on the Ukrainian authorities' obligation to continue their efforts to find the instigators and organisers of the killing of G. Gongadze and, considering the time elapsed, to enhance their efforts to ensure that all necessary investigatory measures to this end are taken as a matter of urgency.

## A.3. Ill-treatment – specific situations

### RUS / Mikheyev and other similar cases

Appl. No. 77617/01, Judgment final on 26/04/2006, Enhanced supervision

*Arbitrary police actions and abuses: ill-treatment in police custody, lack of effective investigation in this respect and lack of effective remedy, particularly with regard to compensation (Articles 3 and 13)*

**Action plans:** The authorities have submitted in the course of the year 2012 several action plans as regards the applicants' situations. Concerning the general measures, the CM is now expecting information on the results of the comprehensive reforms (police and investigative committee) initiated by the authorities since 2010.

### TUR / Ülke and other similar cases

Appl. No. 39437/98, Judgment final on 24/04/2006, Enhanced supervision

*Prosecution of civilian conscientious objectors: Repetitive convictions and prosecutions for refusal to perform compulsory military service based on religious beliefs or convictions as pacifists and prosecution of civilians by military courts (Articles 3 and 6§1)*

**CM Decisions:** When pursuing, at its September HR meeting, its examination of the execution of the Ülke case, the CM noted as regards the outstanding issues relating to individual measures that the applicant's name had been removed from the list of persons searched for by the police. The Turkish authorities gave assurances that the applicant could exercise his civic rights without hindrance, obtain a passport and travel abroad. However, an investigation was still pending for desertion as a result of the legislation in force regarding the obligation to carry out military service, and a theoretical possibility of further prosecution and conviction remains.

In December, three further recent Court judgments were joined with the Ülke case. The CM noted in respect of these that no arrest warrants had been issued for any crimes related to the failure to carry out military service, but expressed concern that the applicant in one of the new case (*Erçep*) was still under the obligation to pay an administrative fine for evading, and that the applicant in another case (*Feti Demirtas*) was convicted and sentenced to imprisonment for disobedience to a military order, although his conviction was not final yet. In the light hereof, the CM urged the Turkish authorities to take the necessary measures to ensure that the consequences of the violations found by the Court in these cases are completely erased for the applicants. As regards general measures, the CM reiterated its call to the authorities to take the necessary legislative measures with a view to prevent repetitive prosecution and conviction of conscientious objectors and to ensure that an effective and accessible procedure is made available to them in order to establish whether they are entitled to conscientious objector status. The CM also invited the authorities to provide information on the measures taken or envisaged in order to ensure that conscientious objectors are not tried before military courts.

## B. Prohibition of slavery and forced labour

### CYP and RUS / Rantsev

Appl. No. 25965/04, Judgment final on 10/05/2010, Enhanced supervision

*Ineffective investigations into the death of a possible trafficking victim: failure to conduct effective investigations into the death circumstances of a victim of trafficking,*



*failure to provide practical and effective protection against human trafficking and exploitation, different problems linked to the fight against trafficking (Articles 2, 4 and 5§1).*

**CM Decisions:** In the pursuit of its examination of the individual measures part of this case, the CM noted in March that the file relating to the new investigations had been transferred to Attorney General of the Republic of Cyprus. The CM strongly encouraged the Cypriot authorities to ensure that all necessary means were in place for an effective investigation, including the possibility to involve the applicant. The CM also noted that the Russian authorities had suspended their investigations but that these may be reopened following the Cypriot authorities' response to the Russian authorities' request for legal assistance. It stressed again the importance of close co-operation between the Cypriot and Russian authorities.

When examining the issue of general measures at its meeting in June, the CM noted the new action plan presented by Cyprus and of the further information submitted both by Cyprus and the Russian Federation, regarding in particular measures aimed at preventing human trafficking and at ensuring prosecutions in cases of human trafficking. It also noted the Cypriot authorities' commitment to give due consideration to the recommendations of the monitoring bodies under the Council of Europe Convention on Action against Trafficking in Human Rights, with whom they would continue to work closely. In the light of the above, the CM decided to close its examination of general measures in respect of Cyprus and of the Russian Federation.

In September, the CM noted with interest the information provided by the Cypriot authorities that the criminal investigators submitted their report and investigation file to the Attorney General, who shall decide whether to proceed with a criminal prosecution, and expressed its hope that this decision will be taken as soon as possible. The CM also noted that the applicant had been informed of these developments. It further noted that the investigation carried out by the Russian authorities into Ms Rantseva's alleged recruitment was concluded by a decision of refusal to initiate a criminal case, and that the applicant was informed of this decision and had the possibility to appeal against it. Finally, the CM invited the Russian authorities to indicate whether, in the light of the close link between the Cypriot and Russian investigations, the investigation into Ms Rantseva's alleged recruitments could be reopened, in the event that the Cypriot investigation reveals any new information.

## C. Protection of rights in detention

### C.1. Poor detention conditions

#### **ALB / Dybeku**

#### **ALB / Grori**

Appl. No 41153/06 and 25336/04, Judgments final on 02/06/2008 and 07/10/2009, Enhanced supervision

*Inappropriate medical care for seriously ill prisoners: ill-treatment in prison due to the lack of appropriate medical treatment for prisoners requiring special care;*

*unlawful detention pending trial, unjustified non-compliance with the European Court's interim measure regarding the transfer of the applicant to a civilian hospital (Grori case)(Articles 3, 5§1 and 34)*

**Communication from the authorities:** Further to the action plan submitted in November 2011 and in reply to the CM's previous decisions requesting information on the applicants' situation, the Albanian authorities have provided, in July 2012, information on the applicant's state of health in Dybeku case. This information is being assessed.

#### **BGR / Stanev**

Appl. No. 36760/06, Judgment final on 17/01/2012, Enhanced supervision

*Placement in a psychiatric institution and inhuman conditions of detention: irregular placement in a psychiatric institution, impossibility to appeal and to seek legal redress for unlawful placement, inhuman and degrading conditions of detention (2002 and 2009) and lack of an effective remedy in this respect; lack of access to a court to seek restoration of legal capacity (Articles 5§§1-4-5, 3, 13 and 6§1)*

**Action plan:** In the action plan submitted by the Bulgarian authorities in February 2012 in the wake of this judgment (including certain recommendations made by the European Court concerning individual and general measures), the authorities stated that the applicant was no longer in the psychiatric institution in question and had been placed, at his request and with the consent of his guardian, in sheltered housing. The authorities also indicated that draft legislative reforms were currently under discussion, in particular with regard to the procedure for reviewing placement under partial guardianship measures and with regard to extending the procedure for revoking incapacity to persons under partial guardianship. The individual and general measures taken or envisaged by the authorities are currently being assessed.

#### **GRC / Nisiotis and other similar cases**

#### **GRC / Taggatidis and others**

#### **GRC / Samaras and others**

Appl. Nos. 34704/08, 2889/09 and 11463/09, Judgments final on 20/06/2011, 08/03/2012 and 20/06/2012, Enhanced supervision

*Prison overcrowding: inhuman and degrading treatment by reason of the poor conditions in which the applicants were held in Ioannina prison, mainly because of severe overcrowding (Article 3)*

**Action plan:** In the action plan submitted in January 2012, the Greek authorities stated that alongside the construction of new detention facilities and work to extend existing prisons, legislative amendments were being prepared with regard to the need for and the length of prison sentences. Concerning the applicants' situation, in the Taggatidis case, the authorities stated in a letter dated May 2012 that only one applicant (Panagiotis Georgiadis) was still in Ioannina prison, the others having been either released or transferred to other prisons. These measures are currently being assessed.

**ITA / Sulejmanovic**

Appl. No. 22635/03, Judgment final on 06/11/2009, Enhanced supervision

*Detention conditions in prison: degrading treatment due to the excessively confined cell space resulting from overcrowding (Article 3)*

**CM Decisions:** The comprehensive action plan presented by the Italian authorities in November 2011 was examined by the CM at its March meeting, in particular the development of a penitentiary policy aiming at promoting better conditions of detention and alternative measures to detention as well as the expected construction of new facilities (Piano Carceri). The CM invited the authorities to provide further information on the impact of these measures. In addition, the CM noted the judicial recognition of the right to compensation for detention in an overcrowded cell, but recalled that an effective remedy has also to be capable of bringing about improvements of detention conditions when the applicant is still detained and invited the authorities to indicate whether the Italian judicial system provides for this option.

At its September meeting, having regard to the updated action plan presented, the CM noted with interest the progress made with respect to the new penitentiary policy and welcomed the priority given by the Minister of Justice to the fight against prisons' overcrowding. The CM also noted the efforts made by the Italian authorities in the framework of the updated "Piano Carceri" to increase prison capacity and invited them to provide some clarifications as regards the expected result of this plan. Concerning the minimum living space that should be available to a detainee, the CM invited the authorities to clarify the national applicable standards and to indicate how the total capacity of the prison establishments was calculated. As regards the developments of alternatives of detention, the CM noted the draft law on decriminalization of petty offences and the widening of the recourse to probation sentences. Concerning the monitoring carried out on detention conditions, the CM invited the authorities to provide further information. In conclusion the CM strongly encouraged the authorities to redouble their efforts to find a lasting solution to the problem of prison population inflation. Noting the positive developments in the practice of the relevant domestic courts, confirmed by the Court of Cassation, the CM stressed the importance of the existence, both in theory and practice, of effective domestic remedies. Finally, the CM requested information on further developments of the practice of the Court of Cassation as well as on proceedings currently pending before the Constitutional Court on a conflict of competence between the judiciary and the prison administration.

**MDA / Becciev and other similar cases****MDA / Ciorap**

Appl. Nos. 9190/03 and 12066/02, Judgments final on 04/01/2006 and 19/09/2007, Enhanced supervision

*Poor detention conditions amounting to degrading treatment: Poor detention conditions in the temporary detention facilities under the authority of the Ministry of*

*the Interior and lack of an effective remedy in this respect; unlawful and groundless detention (Articles 3 and 13, and Article 5 §§3 and 4).*

**Developments:** In the framework of the execution supervision process, a co-operation program, aiming at implementing judgments revealing systemic and structural problems in the field of detention on remand, has been launched in 2012 with the support of the Human Rights Trust Fund. This program aims at providing support, amongst other states, to the Republic of Moldova, in view of bringing its current legislative and regulatory framework in line with the Convention requirements, notably as regards the available remedies to challenge detention conditions. During the December expert mission in Chisinau, several consultations took place, namely with the representatives from the Ministries of Justice and of the Interior, the Supreme Court of Justice and the Prosecutor General.

**POL / Kaprykowski and other similar cases**

Appl. No. 23052/05, Judgment final on 03/05/2009, Enhanced supervision

*Inadequate medical care in prison: structural problem of prison hospital services – ill-treatment due to lack of adequate medical care (Article 3)*

**Additional information:** In the context of the ongoing examination of the individual and general measures demanded by these judgments, the Polish authorities submitted additional information concerning Mr Kaprykowski's release in January 2012. They also provided further details on the implementation of the health programme concluded between the Ministry of Health and the prison services in 2010, not least through the entry into force in July 2012 of a Ministry of Justice ordinance on the placement of persons deprived of their liberty in psychiatric hospitals.

**POL / Orchowski****POL / Norbert Sikorski**

Appl. Nos. 17885/04 and 17599/05, Judgments final on 22/10/2009 and 22/01/2010, Enhanced supervision

*Prison overcrowding: inadequate detention conditions in prisons and remand centres, due in particular to overcrowding, aggravated by the precarious hygienic and sanitary conditions and the lack of outdoor exercise (Article 3)*

**Additional information:** On examining the action plan submitted in 2011, the CM had stated (cf. RA 2011) that this plan was incomplete with regard to the measures taken or envisaged to remedy the structural problem of prison overcrowding. Pending a revised action plan, the authorities have provided some additional information concerning the situation of the applicants.

**ROM / Bragadireanu and other similar cases**

Appl. No. 22088/04, Judgment final on 06/03/2008, Enhanced supervision

*Overcrowding and absence of medical care: overcrowding and poor material and hygiene conditions in prisons and police detention facilities, inadequacy of medical*

care and several other dysfunctions regarding the protection of the prisoners' rights; lack of an effective remedy (Articles 3 and 13).

**CM decision:** At its June meeting, the CM noted with interest the revised action plan (of 29 March 2012) detailing the measures taken by the authorities to remedy the issues at the origin of these cases. The CM welcomed the fact that the National Prisons Administration improved the monitoring mechanism of the population situation in prisons and encouraged the Romanian authorities to ensure the setting-up of a similar mechanism as regards the police detention facilities. However, the CM noted with concern that the national standards of minimum individual living space cannot be observed in most detention facilities. In this context, the authorities were encouraged to intensify their efforts to identify and implement additional measures in order to tackle the overcrowding in detention facilities and to keep the CM regularly informed of the progress achieved. Moreover, as regards the setting up of effective remedies, the CM invited the Romanian authorities to provide information on the concrete measures taken in response to the issues raised in the Secretariat's Memorandum CM/Inf/DH(2012)13, as well as on their effects in practice. The CM also invited the authorities to urgently provide clarifications concerning four applicants who are still in prison and decided to resume the examination of all these issues in the light of a revised action plan to be provided by the Romanian authorities.

#### **RUS / Ananyev and others (pilot judgment)**

Appl. No. 42525/07, Final on 10/04/2012, Enhanced supervision

*Detention in remand centres (SIZO): Poor conditions of detention in various remand centres pending trial and lack of effective remedy in this respect (Articles 3 and 13)*

**CM decisions:** This pilot judgment was adopted in the context of the execution process engaged to overcome an important structural problem relating to inadequate detention conditions and deficient domestic remedies (see the Kalashnikov group of cases). In the pilot judgment, the Court held that the Russian Federation must produce in co-operation with the CM, within 6 months, a binding time frame in which to make available a combination of effective remedies having preventive and compensatory effects and also grant redress, within twelve months, to all victims who had lodged their complaints to the Court prior to this judgment.

When examining the case at its June HR meeting, the CM noted that the setting up of domestic remedies should be done within a more general framework of a search for solutions aimed at reducing the level of prison population, and that the Russian authorities thus had an obligation to provide a comprehensive action plan on the measures aimed at resolving the present structural problem.

When resuming consideration at its September HR meeting, the CM noted with satisfaction that the Russian authorities were in the process of elaborating, with the support of the Human Rights Trust Fund, a binding time frame for the introduction

of domestic remedies and an action plan regarding the other necessary general measures.

At its December meeting, the CM welcomed the submission by the Russian authorities of an action plan as required by the pilot judgment. The CM also noted with satisfaction that the plan was based on a comprehensive and long-term strategy for the resolution of the structural problem at issue and encouraged the Russian authorities to implement all measures outlined in the plan, and in particular the measures aimed at the introduction of domestic remedies. In addition, the Russian authorities were encouraged to continue their efforts with a view to resolving similar applications pending before the Court.

#### **UKR / Nevmerzhitsky**

#### **UKR / Yakovenko**

#### **UKR / Melnik**

#### **UKR / Logvinenko**

#### **UKR / Isayev**

Appl. Nos. 54825/00, 15825/06, 72286/01, 13448/07 and 28827/02, Judgments final on 12/10/2005, 25/01/2008, 28/06/2006, 14/01/2011 and 28/08/2009, Enhanced supervision

*Poor detention conditions: violations mainly resulting from poor detention conditions, inadequate medical care in various police establishments, pre-trial detention centres and prisons and lack of an effective remedy; other violations – unacceptable transportation conditions; unlawful detention on remand; abusive monitoring of correspondence by prison authorities, impediments in lodging a complaint with the Court; excessively lengthy proceedings (Articles 3, 5 §§1, 4 et5, 6§1, 8, 34, 38§1(a) and 13)*

**CM Decision:** When pursuing its supervision of the execution process at its HR meeting in June, the CM recalled that the Court delivered its first judgment in these groups of cases already in 2005. It therefore invited the Ukrainian authorities to provide urgently a comprehensive action plan addressing the structural problems revealed by the judgments, notably in respect of conditions of detention and medical care, and setting up effective remedies. The CM also noted that this action plan should address the other problems identified in these judgments. It further invited the Ukrainian authorities to provide their assessment on the impact of the measures adopted so far and the results achieved by these measures. The CM also noted that information was awaited on outstanding individual measures.

## **C.2. Unjustified detention and related issues**

#### **FRA / Patoux**

Appl. No. 35079/06, Final on 14/07/2011, CM/ResDH(2012)178

*Time taken to give a decision on an application for immediate release: violation of the right to obtain a speedy judicial decision concerning the lawfulness of*

*detention, the civil judge having taken 46 days to give a decision on an application for immediate release filed by a person who had been compulsorily admitted to hospital (Article 5 § 4)*

**Final resolution:** The Law of 5 July 2011 on the rights and protection of persons subject to psychiatric treatment and the procedures governing their care, as well as the decree of 18 July 2011 on the judicial procedure for the termination or review of psychiatric treatment measures amended the Public Health Code to ensure that applications for release were dealt with speedily by the “liberties and detentions judge” (*le juge des libertés et de la détention*). Furthermore, in cases where an expert opinion is required, the experts are to submit their report within the time-limit stipulated by the judge, which may not exceed fifteen days following their appointment. Once this 15-day time-limit has expired, the judge must give an immediate ruling.

#### **MDA / Sarban and other similar cases**

Appl. No. 3456/05, Judgment final on 04/01/2006, Enhanced supervision

*Pre-trial detention: unlawful detention; lack of sufficient reasons; impossibility to communicate directly with lawyers; access refused to the case-files; failure to provide basic medical assistance to a detainee requiring special medical care; poor detention conditions (Articles 5 §§1, 3 and 4 and Article 3)*

**Other developments:** Following the measures taken earlier in this group of cases – notably the amendments brought to the Code of Criminal Procedure, the guidance as to their application provided in decisions by the Plenary of the Supreme Court of Justice and the instructions given by the Prosecutor General’s Office, as well as numerous training activities – the execution process continued in 2012 with the participation of the Republic of Moldova in a co-operation programme relating to detention on remand supported by the Human Rights Trust Fund. The aim of the project is to provide support to a number of countries, among which the Republic of Moldova, to execute Court judgments revealing systemic and structural problems in the field of detention on remand and to put in place remedies to challenge detention conditions.

#### **NLD / S.T.S.**

Appl. No. 277/05, Judgment final on 07/09/2011, CM/ResDH(2012)131

*Judicial review of placement of minor in a confined institution: lack of speedy examination of the lawfulness of the detention and proceedings unduly discontinued on the mere basis of the applicant’s liberation (Article 5§4)*

**Final Resolution:** In line with the direct effect given to the judgments of the European Court, the Supreme Court of the Netherlands reversed its case-law shortly after this judgment. Henceforth, an action brought on the lawfulness of the detention cannot be declared inadmissible, as having become devoid of interest, solely because the period for which the detention order applied has already

elapsed. To ensure the speediness of such proceedings, the Supreme Court has also adjusted its internal work process by introducing a screening system, filtering civil cases in which an appeal in cassation has been lodged against an order for deprivation of liberty. Incoming cases of this type are immediately sent to the responsible Advocate General to avoid delays.

#### **POL / Trzaska and other similar cases**

##### **POL / Kauczor and other similar cases**

Appl. Nos. 25792/94 and 45219/06, Judgment final on 11/07/2000 and on 03/05/2009, Transfer to standard supervision

*Pre-trial detention: excessive length of detention pending trial and deficiencies in the procedure for reviewing the lawfulness of pre-trial detention (Articles 5§3 and 5§4).*

**CM Decision:** At its March meeting, the CM noted with satisfaction the progress achieved by the Polish authorities, since the adoption of the first judgment in this group of cases, notably reflected in the positive trends visible in the recent statistics and the increased application of measures alternative to detention by Polish courts. It further welcomed the authorities’ commitment, as evidenced by the continued monitoring of the length and grounds for pre-trial detentions, as well as by the training activities organised for judges and prosecutors. The CM invited the authorities to continue their efforts in relation to these training activities and decided, in the light of the significant progress achieved and the commitment of the authorities, to continue the supervision of the execution of this group of cases under the standard procedure.

#### **TUR / Demirel**

Appl. No. 39324/98, Judgment final on 28/04/2003, Enhanced supervision

*Detention on remand: Excessive length of detention on remand, lack of an effective remedy to challenge the detention and lack of a right to compensation (also length of criminal proceedings; lack of independence and impartiality of the state security courts; failure to communicate the prosecutor’s opinion; ill-treatment and lack of an effective remedy) (Article 3, Article 5 §§3, 4 and 5, Art.6 §1 and Article 13)*

**Other developments:** Further to the measures already taken in this group of cases, in particular with regard to awareness-raising, the Turkish authorities informed the CM that a working group had been set up within the Ministry of Justice to examine the legislative amendments required for the execution of these judgments. Later, the Ministry of Justice held an international seminar on the execution of judgements of the European Court in November 2011. Following on from these efforts, a comprehensive action plan setting out further measures required to resolve the various problems under CM supervision is being prepared. This plan will deal in particular with outstanding measures to address the problems related to detention on remand (it should be noted with regard to the other issues raised in this group of cases that some are being examined in the context of other groups of cases against Turkey (e.g. length of criminal proceedings) while others have already

been resolved and CM supervision closed (e.g. independence and impartiality of the state security courts).

#### **UK / Allen**

Appl. No. 18837/06, Final on 30/06/2010, CM/ResDH(2012)64

*Review of the lawfulness of the detention: refusal, in 2005, to allow the applicant to attend the prosecution's appeal against the grant of bail (Article 5§4).*

**Final resolution:** In England and Wales, an amendment has been made to Criminal Procedure Rule 19(17) which governs the right of the defendant to be present at the hearing of a prosecution appeal against the grant of bail was amended and came into force in October 2010. In Scotland, in November 2010, the Lord Justice General passed an Act of Adjournment amending the Criminal Procedure Rules to grant the accused an express right to attend Crown bail appeal hearings. The respective amendments were widely disseminated to court staff and prosecutors. In Northern Ireland, the current practice is that defendants are routinely present for the hearing of prosecution appeals against the grant of bail in the High Court. Additionally, a guidance document containing a specific note on the implications of the judgment was issued in June 2010 to all judges with a criminal jurisdiction

### **C.3. Detention and other rights**

#### **FRA / Khider**

Application No. 39364/05, Judgment final on 09/10/2009, CM/ResDH(2012)82

*Security measures in prison: Regular full body searches, prolonged periods in solitary confinement, repeated transfers from one prison to another and lack of any effective remedy for these (Article 3 and Article 3 combined with Article 13).*

**Final Resolution:** Where body searches and complaints about them are concerned, the necessary execution measures were adopted in the Frérot case (CM/ResDH(2012)81). Measures placing prisoners in solitary confinement were revised by the decree of 23 December 2011 and may now be the subject of an appeal to the administrative court on grounds of abuse of authority. Where transfers are concerned, a Ministry of Justice note of 2003, on which basis were ordered the contentious transfers, has been repealed. The transfers which are not unconventional per se may be made only if justified by a change in the prisoner's situation, and they are subject to supervision by the administrative judge.

#### **GER / Hellig**

Appl. No. 20999/05, Judgment final on 07/10/2011, CM/ResDH (2012)126

*Security measures in prison: placement of a detainee, completely naked, in a security cell for seven days (Article 3).*

**Final Resolution:** The case was immediately communicated to all prison authorities of the Land of Hesse, where the violation took place. In addition, it was translated

and published on the website of the Federal Ministry of Justice. The Ministry of Justice of the Land of Hesse ordered that prisons be provided with underwear and blankets made of non-woven paper, in addition to the already existing easy-tear non-woven paper covers. A survey carried out showed that most of the Länder perceived a much lesser danger in the provision of garments to detainees at risk of suicide or that they already provided security garment.

#### **ROM / Predica**

Appl. No. 42344/07, Judgment final on 07/09/2011, Enhanced supervision

*Violent death of a prisoner: death while in custody in a high security prison; investigations which failed to provide any explanation and lack of an effective remedy (Article 2 (substantial and procedural limbs) and Article 13).*

**CM decision:** Action plans were submitted in June and October 2012 and examined by the CM at its December meeting. As regards individual measures, the CM noted that the information submitted, while indicating positive developments, did not offer any clear perspective as regards the completion of the ongoing investigation into the circumstances of the death. The authorities were therefore encouraged to rapidly identify and implement the measures that could still be taken to this purpose, and to ensure that the applicant was involved in the investigation to the full extent necessary safeguard his legitimate interests. As regards general measures, the CM noted that, at that stage, additional information was awaited on the measures needed to remedy the dysfunctions established in the judgment.

#### **UK / Hirst No. 2**

#### **UK / Greens and M.T (pilot judgment)**

Appl. Nos. 74025/01 and 60041/08, Judgments final on 06/10/2005 and 11/04/2011, Interim Resolution CM/ResDH(2009)160, Enhanced supervision

*Voting rights of convicted prisoners: Blanket ban on voting imposed automatically on convicted offenders detained in prison (Article 3 of Protocol No. 1)*

**CM Decisions:** At its meeting in September, the CM recalled that the question of voting rights of convicted prisoners in prison has been pending before it for almost seven years and that the absence of concrete measures gave rise to the adoption of an interim resolution (CM/ResDH(2009)160), as well as the adoption of the *Greens and M.T.* pilot judgment. It further noted that the European Court granted an extension to the initial six-month deadline set in the pilot judgment linked to the delivery of the Grand Chamber judgment in the case of *Scoppola No. 3* against Italy. In the light of the date of delivery of this judgment the UK had until the 23 November 2012 to bring forward necessary legislative proposals. At its meeting in December, the CM noted with great interest that on 22 November 2012 the authorities have introduced legislative proposals to amend the relevant electoral law, which include a range of options for a Parliamentary Committee to consider. It further welcomed and strongly supported the announcement made by the Lord Chancellor and Secretary of State for Justice when presenting the legislative proposals to Parliament that “the

Government is under an international legal obligation to implement the [European] Court's judgment" and "the accepted practice is that the United Kingdom observes its international obligations". In this respect, the CM endorsed the view expressed in the Explanatory Report to the draft bill presenting the legislative proposals, that the third option aimed at retaining the blanket restriction criticised by the European Court cannot be considered compatible with the Convention. The CM also recalled that the pilot judgment states that the legislative proposals should be introduced "with a view to the enactment of an electoral law to achieve compliance with the Court's judgment in *Hirst No. 2* according to any time-scale determined by the Committee of Ministers", and invited the authorities to keep it regularly informed of progress made and on the proposed time-scale.

## D. Issues related to foreigners

### D.1. Unjustified expulsion or refusal of residence permit

#### BEL / Mubilanzila Mayeka and Kaniki Mitunga

Application No. 13178/03, Judgment final on 12/01/2007, Standard supervision

**Deportation of a minor:** *Detention in a transit centre for adults of a foreign child aged five, separated from her family, followed by deportation to her country of origin, without her mother, a refugee in Canada, being informed (Articles 3, 8, 5§1 and 5§4).*

**Action report:** A new law of 12 January 2007 brings to a definitive end the detention of unaccompanied foreign minors not meeting the conditions for admission to the country, but in respect of whom there is no doubt as to their status as minors. The care of such minors has changed, thanks to the setting up of a specific pool of guardians tasked with acting as their legal representatives from the time at which they are intercepted at the border. A guardianship department co-ordinates and supervises the material arrangements for the guardians' work. The reception of such minors has also been altered through the setting up of observation and guidance centres (COO). Unaccompanied foreign minors arriving at borders are given priority for the provision of appropriate care. The law henceforth states that deportation may be carried out only in the minor's higher interest and for the purpose of family reunification. No expulsion measure may be adopted unless the minor's guardian has been involved in the search for a lasting solution for his or her ward. If necessary, the guardian may object to such a measure by lodging an appeal against the removal order. The law of 19 January 2012 also specifies that the enforcement of such a decision may take place only after the Aliens Office has verified the guarantees that the minor will be received and cared for in his or her country of origin or in the country where he or she is authorised to reside.

Lastly, the law of 2007 provides for unaccompanied foreign minors to be detained at the border only if there is a doubt as to their minor status, and also specifies the arrangements for the care of such minors who request asylum. *The CM is currently assessing these measures.*

#### BEL and GRC / M.S.S.

Appl. No. 30696/09, Judgment final on 21/01/2011, Enhanced supervision

#### *Transfer by Belgium of an asylum seeker to Greece under Dublin II regulation:*

*Concerning Belgium: the applicant's transfer to Greece exposed him to the risks arising from deficiencies in the asylum procedure in Greece and to detention and living conditions in Greece that amounted to degrading treatment; lack of an effective remedy to challenge the transfer decision (Articles 3 and 13)*

*Concerning Greece: degrading conditions of detention and subsistence once in Greece, deficiencies in the Greek asylum procedure and risk of expulsion, without any serious examination of the merits of asylum applications or access to an effective remedy (Articles 3 and Article 13 in conjunction with Articles 2 and 3)*

**CM decisions:** Following its last detailed examination of the progress achieved in the execution of the Court's judgment (December 2011), the CM resumed its examination of outstanding issues at its June 2012 HR meeting, on the basis of a memorandum, prepared by the Secretariat at its request (CM/Inf/DH(2012)19).

- As concerns Belgium, the CM noted that the authorities had granted the applicant refugee status and had stopped transferring asylum seekers to Greece by virtue of a new practice as regards the application of the "sovereignty" clause of the Dublin II Regulation. The CM thus decided to close its supervision of these matters. However, as regards the lack of an effective remedy, the CM requested the Secretariat to make an assessment of the measures taken by Belgium, in particular regarding the recent case-law of the Aliens' Appeals Board (CCE)'s, for its next meeting in September 2012. At this meeting, in the light of the Secretariat's new memorandum (CM/Inf/DH(2012)26) the CM took note of the positive developments observed in the recent CCE case-law providing for a stay of execution also under the "extremely urgent procedure" used in the applicant's case, but found certain outstanding questions (concerning the burden of proof as regards the risk of degrading treatment; the timing of the assessment; and the suspensive character of the remedy). The CM invited the authorities to provide clarifications.
- As concerns Greece, the CM noted with satisfaction the efforts aimed at remedying the shortcomings concerning conditions of detention as well as the progress made under the new legislative framework on asylum, but urged the authorities to intensify their efforts aiming at restoring the asylum procedure and, as regards detention conditions, to pay particular attention to the recommendations made by national and international actors active in the field. The CM noted, however, that a number of issues were still outstanding (cf. CM/Inf/DH(2012)19 – i.e. systematic placement of asylum seekers in detention, conditions of detention in holding centres, measures envisaged to address living conditions of asylum seekers following their release, situation of unaccompanied minors, implementation of the new legislative framework, functioning of the asylum procedure).

The CM decided to revert to outstanding matters at the latest at the March 2013 meeting.

#### **BGR / AI-Nashif and others and other similar cases**

Appl. No. 50963/99, Judgment final on 20/09/2002, Enhanced supervision

*Expulsion on national security grounds: absence of adequate safeguards against arbitrariness in proceedings concerning expulsion measures or orders to leave the territory based on grounds of national security; also inadequate taking into account of risks of ill-treatment and of the right to respect for family life; unlawful detention as the expulsion proceedings were not pursued with diligence (Articles 3, 5, 8, 13 and Article 1 of the Protocol No. 7)*

**CM decision:** When examining the action reports presented by the authorities in February 2012 at its March meeting, the CM expressed serious concerns about the applicants' situation in two of the cases in the group, *M. and others* and *Auad*, and called on the Bulgarian authorities to ensure that no expulsion order would be executed without a fresh judicial review. The CM also encouraged the authorities to provide clarifications on the applicants' situation in the remaining cases of this group.

As regards the general measures, the CM noted with satisfaction the evolution of the domestic court's practice and the legislative amendments introducing judicial review of expulsion orders based on considerations of national security and reforming the system of detention pending such expulsion. The CM noted, however, that outstanding issues remained in this area, as indicated by the Court in the judgments of *M. and others* and *Auad*, and invited the Bulgarian authorities to present a revised action plan covering these issues with a view to a detailed examination of the matter at one of the Committee's forthcoming meetings.

#### **BIH / AI -Husin**

Application No. 3727/08, Judgment final on 09/07/2012, Enhanced procedure

*Deportation to Syria: Risk of ill-treatment in the event of deportation to Syria and arbitrary detention "on security grounds" before the issuing of the deportation order (Article 5§1 and potential violation of Article 3).*

**CM decision:** The CM welcomed the authorities' rapid assurances regarding the applicant's non-deportation to Syria given by the authorities during the September meeting. The CM requested notably to be regularly informed on the developments concerning the identification of a safe third country for the possible deportation of applicant, including on the assurances obtained from the third country against his repatriation to Syria. It further noted the adoption by the Parliamentary Assembly of Bosnia and Herzegovina in first reading of legislative amendments to the 2008 Aliens Act, making possible the detention of aliens on security grounds only after the issue of a deportation order. In this respect, the CM invited the authorities to provide more detailed information on the content of the new legislative reforms.

#### **DNK / Osman**

Appl. No. 38058/09, Judgment final on 14/09/2011, Final Resolution CM/ResDH(2012)117

*Return of a minor after a "forced" stay abroad: refusal to renew the expired residence permit of a Somali minor upon her return to Denmark after a more than two years long "re-education" stay in Kenya decided by her parents (Article 8)*

**Final Resolution:** Following the judgment, the Danish Ministry for Refugee, Immigration and Integration Affairs (Ministry of Integration) reinstated the applicant's residence permit. The judgment was largely disseminated to the relevant Danish authorities, including the Ministry of Integration, the Supreme Court, the High Court of Eastern Denmark and the City of Copenhagen. Furthermore, a memorandum, interpreting and explaining the legal consequences of the judgment, was published in July 2011 on the website of the Ministry of Integration. The memorandum notably provides explanations on possibilities to reconsider decisions regarding residence permits in case of prolonged stays abroad decided by the parents in the framework of so-called "re-education journeys".

#### **FRA / I.M.**

Appl. No. 9152/09, Judgment final on 02/05/2012, Enhanced supervision

*Limited effectiveness of remedy available to an asylum seeker to challenge a removal order: challenge concerning the effectiveness of the domestic remedies available to a Sudanese national to contest a removal order in view of the fact that his asylum application was dealt with under the fast-track procedure, solely on the ground that the application was lodged after he had been placed in detention (Article 13 in conjunction with Article 3)*

**Action plan:** In its action plan submitted in October 2012, the Government stated that the applicant had been granted political refugee status. With regard to the general measures envisaged, the first involved amending the code of administrative justice to ensure that a foreigner who, after being placed in administrative detention, lodged an application for asylum or was planning to do so, had an effective remedy by which to obtain a temporary residence permit, to be issued by the administrative court and under its supervision. The authorities are also planning to send out a circular to the Prefects, instructing them, where they decide to fast-track an asylum application, to individually examine any application for asylum made while in detention and to apply this procedure only in cases where the application does in fact constitute an abuse of the asylum procedures or has been lodged solely for the purpose of circumventing a removal order. These measures are currently being assessed by the CM.

#### **RUS / Alim**

Appl. No. 39417/07, Judgment final on 27/12/2011, Enhanced supervision

*Risk of expulsion: breach of the right to family life in the event of enforcement of an expulsion order, following his arrest in January 2007 for breaching regulations*

for foreigner, and which would result in his separation from his children, born and living in the Russian Federation (Article 8).

**CM decision:** As regards individual measures, the CM noted at its December HR meeting that the judicial decision ordering the applicant's expulsion from Russia had been quashed. The CM noted however with concern that it was still unclear whether concrete measures had been taken to regularise the applicant's situation with a view to eliminating any risk of his removal from the Russian territory in violation of the requirements of the Convention. Consequently, the CM urged the authorities to take necessary measures and to inform it without delay. In the light of the foregoing, the CM decided to pursue the supervision of the execution of this judgment under the enhanced procedure.

#### **RUS / Garabayev and other similar cases**

Appl. No. 38411/02, Judgment final on 30/01/2008, Enhanced supervision

*Extradition and disappearances of persons under Rule 39 protection: Extradition without assessment of the risk of ill-treatment, unclear legal provisions for ordering and extending detention with a view to extradition, absence of judicial review of the lawfulness of detention (Articles 3, 5§§3-4 and 13); kidnapping and forcible transfers to Tajikistan of the applicants by the Russian State agents (Article 34 - (Iskandarov case)).*

**CM Decisions:** In the action plan submitted in February 2012 the authorities summarised the measures taken and planned so far. When examining the plan at its HR meeting in March, the CM noted that the Russian Constitutional Court, the Supreme Court and Prosecutor General Office had promptly reacted to the judgments of the Court by issuing guidelines and instructions. It noted further with satisfaction that the Russian authorities recognized the need for legislative amendments of the Code of Criminal procedure and that a draft law was expected before the end of 2012. As regards the kidnapping of the applicant in the Iskandarov case, the CM noted with profound concern that similar incidents were reported to recently have taken place in respect of four other applicants while their cases were pending before the Court and interim measures to prevent extradition applied. The CM noted that the Russian authorities were addressing these incidents and were committed to present the results to the Court and the CM. The CM urged the authorities to continue their efforts in view of elucidating the circumstances of Mr. Iskandarov's kidnapping and to ensure that similar incidents will not occur in future.

In June, the CM deplored the fact that, notwithstanding the serious concerns expressed earlier, yet another applicant had disappeared after its March meeting and had shortly after been found in custody in Tajikistan. The CM noted the information that the investigation in the Iskandarov case was still ongoing and had not so far established the involvement of state agents, but regretted that, neither in that case nor in any of the other cases, had the authorities been able to make tangible

progress in the investigations. It further noted that, according to the information given by the authorities, no other incidents of this kind had taken place after the dissemination in April 2012 of the CM's decision to relevant authorities. The CM further invited the authorities to provide information on the concrete steps taken with a view to ensuring, to the maximum extent possible, that Mr Iskandarov was not subject to treatment contrary to Article 3 of the Convention.

At its September meeting, the CM noted that certain measures had been taken to prevent the removal from Russia of the applicants in two cases still before the Court and requested further information on the applicants' situation in another case, and also in the Iskandarov case. The CM expressed once again its regret that no responsible had been identified in the latter case. It also noted that no new disappearances had taken place since the last CM's meeting in June. The CM finally welcomed the adoption in June 2012 by the Supreme Court of the Russian Federation of a Ruling providing important guidelines on how to apply domestic legislation in the light of the Convention requirements, in particular with regard to the prohibition of torture and the right to liberty and security.

In December, the CM deeply regretted that notwithstanding the serious concerns expressed, yet another applicant subject to an interim measure under Rule 39 of the Court in connexion with his planned extradition to Tajikistan, had disappeared from Volgograd in October 2012. The CM noted, that such incidents, if confirmed, and the lack of appropriate response thereto by the authorities, would raise a more general issue of the compatibility of this situation with the obligations of the Russian Federation under the Convention. The CM reiterated its regret as regards the absence of progress in the domestic investigations and called upon the Russian authorities to adopt protective measures in respect of other persons subject to interim measures indicated by the Court, and to ensure that any incidents would be effectively investigated in strict compliance with the Convention. It also invited anew the authorities to provide information on the applicant's current situation in the Iskandarov case, in particular as far as guarantees against ill-treatment were concerned.

#### **RUS / Liu and Liu and Liu No. 2**

Appl. Nos. 42086/05 and 29157/09, Judgments final on 02/06/2008 and 08/03/2012 and Enhanced supervision

*Deportation order in violation of family life: deportation ordered on basis of risk to national security without the risk having been adequately established or weighed against the right to respect for family life (Liu no 1), removal subsequently ordered and implemented without the first violations having been rectified (Liu no 2) (Article 8).*

**CM Decision:** At its December meeting, the CM deeply regretted that the authorities' formalistic attitude toward their obligations under the first *Liu and Liu* judgment had given rise to a second judgment finding a new violation in respect of the same applicants. It noted that in *Liu No. 2* case, the Court concluded that the



threat to national security had still not been convincingly established, and that the removal of the first applicant was a disproportionate response to the simple absence of a residence permit. In this respect, the CM considered that it was imperative that the Russian authorities take without delay the necessary measures to eliminate the consequences of the violation for the applicants, and provide an action plan outlining the measures taken and/or envisaged to prevent similar violations. Finally, the CM decided to join the case of Liu and Liu to the case of Liu No. 2 with a view to their examination under the enhanced supervision procedure.

### **UK / Othman (Abu Qatada)**

Appl. No. 8139/09, Judgment final on 09/05/2012, Enhanced supervision

*Deportation to Jordan: deportation to Jordan on basis of state security grounds despite real risk of admission of evidence obtained by torture of third persons at applicant's retrial in Jordan (Article 6).*

**CM Decision:** When examining this judgment at its June HR meeting, the CM noted the assurance given by the authorities of their commitment to comply with the judgment and the statements given by the Secretary of State for the Home Department to Parliament on 17 April and 10 May 2012. In her statement to Parliament of 17 April 2012 the Secretary of State for the Home Department referred to diplomatic assurances received from the Jordanian authorities that the applicant would receive a fair trial, and that the United Kingdom government would undertake his deportation in full compliance with the law and with the ruling of the European Court. In the light of this the CM invited the authorities to keep it updated on developments.

## **E. Access to and efficient functioning of justice**

### **E.1. Excessive length of judicial proceedings**

#### **BGR / Kitov and other similar cases**

#### **BGR / Djangozov and other similar cases**

#### **BGR / Dimitrov and Hamanov (pilot)**

#### **BGR / Finger and other similar cases (pilot)**

Appl. Nos. 37104/97, 45950/99, 48059/06 and 37346/05, Judgments final on 03/07/2003, 08/10/2004, 10/08/2011 and 10/08/2011, Enhanced supervision

### **Excessive length of criminal and civil proceedings and lack of effective remedies (Articles 5, 5§1, 5§3, 5§4, 6§1 and 13)**

**CM Decisions:** At its March 2012 meeting the CM recalled the continuing systemic nature of the problems revealed by these cases and that in its pilot judgments adopted in 2011, the European Court required the introduction, before 10 August 2012, of an effective remedy or a combination of effective remedies against the lengthy proceedings. As regards the question of remedies, the CM took note of

the information submitted for the meeting, but expressed concerns that the time-frame and the action plans dealt with preparatory steps only. Therefore, the CM invited the authorities to provide an interim report presenting the state of play of the ongoing work aimed at implementing these judgments. The CM also took note of the information in the action plans with regard to the impact of the more general reforms undertaken to reduce the length proceedings and, encouraged the authorities to continue their efforts awaiting a detailed assessment.

A revised action report was provided in July 2012 and examined by the CM in September. The CM, concentrating its attention on the issue of effective remedies, noted with interest the introduction of an administrative remedy and a draft bill to set up also a judicial remedy to provide compensation for excessively lengthy proceedings. It approved the Secretariat's assessment – CM/Inf/DH (2012)27 – and invited the Bulgarian authorities to provide certain clarifications. The CM encouraged the rapid adoption of the proposed judicial remedy and certain amendments of the provision on the retrospective effect of the administrative remedy, with due consideration to the requirements flowing from the Court's judgments.

In December, the CM welcomed the recent adoption of the judicial compensatory remedy and inquired about its entry into force. It recalled that the two remedies seemed capable of meeting the main requirements of the Court's case-law, and noted with interest the replies provided in response to the above mentioned Memorandum (CM/Inf/DH (2012)27), in particular the authorities' intention to modify the provision governing the retrospective effect of the administrative remedy. Considering a subsequent information document – CM/Inf/DH (2012)36 –, the CM requested, however, some further clarifications on the functioning of the administrative compensatory remedy. The CM also encouraged the introduction of an acceleratory remedy in criminal matters.

As regards the structural aspect of the problem of excessive length of proceedings, the CM noted with interest the legislative and administrative measures taken, but also the increase of the backlog after 2009, in particular before the most overburdened courts. It invited the authorities to analyse the current situation and to keep the CM informed of the additional measures which might be taken, in particular on the situation of the large courts which seem to be overburdened.

### **DNK / Christensen**

#### **DNK / Valentin**

#### **DNK / Nielsen**

Appl. Nos. 247/07, 26461/06 and 44034/07, Final on 22/04/2009, 26/06/2009 and 02/10/2009, CM/ResDH(2012)73

*Civil proceedings: excessive length of civil proceedings and lack of an effective remedy; an unjustified interference with the right to peaceful enjoyment of possessions resulting from the excessive length of bankruptcy proceedings (Articles 6§1 and 13, and Article 1 of Protocol No. 1)*

**Final resolution:** The general obligation to take positive action to ensure compliance with the reasonable-time requirement is now well established in Danish judicial practice. The Administration of Justice Act and the Bankruptcy Act introduced new acceleratory remedies, making it possible for a party to request that the court fix a date for the hearing. Also, given that the interference in the administration of the applicant's property (*Valentin*) arose directly from the excessive length of the bankruptcy proceedings, the adopted measures described previously will prevent other similar violations.

#### **FIN / Kangasluoma and other similar cases**

Appl. No. 48339/99, Final on 14/06/2004, CM/ResDH(2012)75

*Criminal and civil proceedings: excessive length of criminal and civil proceedings and absence of an effective remedy (Articles 6§1 and 13)*

**Final resolution:** As regards the excessive length of proceedings, the Ministry of Justice negotiated result targets directly with each court. The case-law of the European Court is in parallel discussed as part of the training of judges. The Government also adopted a program in June 2011 on several measures securing legal protection, including the preparation of a program to reduce the total length of legal proceedings and to improve the quality of legal protection. Interaction among police, prosecutors and courts through common database system is under way in order to reduce the length of proceedings, inter alia through common database system. Concerning the absence of an effective remedy, the Parliament adopted in April 2009 the Government's Bill on compensation for excessive length of proceedings and the Act on Compensation for Excessive Duration of Judicial Proceedings entered into force in January 2010. This Act provides for the possibility to obtain reasonable compensation from the State budget in case of excessive length of proceedings when the delay in proceedings has been attributable to the authorities. Moreover, the Code of Judicial procedure has been amended. It contains new provisions on urgent consideration of cases in order to provide a preventive measure against excessive length of proceedings. In this respect, the Supreme Court also adapted its case-law to the legislative changes.

#### **GRC / Manios and other similar cases**

##### **GRC / Vassilios Athanasiou and others similar cases (pilot)**

Appl. No. 50973/08 and 70626/01, Judgments final on 11/06/2004 and 21/03/2011, respectively, Enhanced supervision

*Administrative proceedings: structural problem of excessive length of proceedings before administrative courts and the Council of State, as well as lack of effective remedies (Articles 6§1 and 13)*

**CM Decision:** Following the Court's intervention in the execution of this group of cases through the adoption of a pilot judgment, Vassilios Athanasiou, the CM could welcome, in March, that the Greek Parliament had adopted the law establishing a compensatory remedy in cases of lengthy administrative proceedings before the

administrative courts and the Council of State within the deadline set in the pilot judgment. The CM encouraged the Greek authorities to ensure that the new remedy be implemented in compliance with the Convention requirements and requested to be informed of developments of domestic case-law. In this connection it also noted with interest the authorities' intention to follow the implementation process and to explore, in the light of its functioning, the opportunity for possible adjustments.

The CM also noted with interest the information on further measures introduced by a new law, aiming at reducing the length of the administrative proceedings here at issue and invited the authorities to keep it regularly informed of the impact of this package of measures.

#### **GRC / Diamantides No. 2 Group**

##### **GRC / Michelioudakis (pilot judgment)**

Appl. Nos. 54447/10 and 71563/01, Judgments final on 19/08/2005 and 03/07/2012, Enhanced supervision

*Criminal proceedings: Excessively lengthy criminal proceedings and lack of effective remedy (Articles 6§1 and 13).*

**CM Decision:** Following the Court's intervention in the execution process engaged in the present group of cases through the adoption of the Michelioudakis pilot judgment, the CM noted at its September meeting, that European Court had confirmed the existence of a structural problem. The CM invited Greece to introduce an effective domestic remedy, or a set of remedies within one year – i.e. by 03/07/2013 – and decided to adjourn the proceedings in all similar applications during the same period. The CM underlined the importance of compliance in due course with the pilot judgment and invited the Greek authorities to take into consideration the indications given by the Court. While waiting for the submission of their action plan, the CM requested to be regularly informed of the relevant developments.

#### **HUN / Tímár and other similar cases**

Appl. No. 36186/97, Judgment final on 09/07/2003, Transfer to enhanced supervision

*Excessively lengthy judicial proceedings and lack of effective remedy (Articles 6§1 and 13)*

**CM decision:** At its March meeting, the CM decided to transfer the present group of cases under enhanced supervision. It noted with concern that despite the measures taken by the Hungarian authorities to enhance the effective functioning of the judiciary, the situation as regards length of judicial proceedings did not improve, as a large number of similar applications were still being lodged and pending before the Court. It therefore invited the authorities to take measures to reduce the excessive length of domestic proceedings and to introduce effective compensatory and acceleratory domestic remedies. The CM further invited the authorities to inform it on the measures taken to accelerate the proceedings in this present group of cases.

**ITA / Ceteroni and other similar cases****ITA / Luordo and other similar cases****ITA / Mostacciolo and other similar cases****ITA / Gaglione (quasi-pilot)**

Appl. Nos. 22461/93, 32190/96, 64705/01 and 45867/07, Judgments final on 15/11/1996, 17/10/2003, 29/03/2006 and 20/06/2011, Enhanced supervision

*Excessive length of judicial proceedings and problems related to the effectiveness of remedies: this long-standing problem concerns civil, criminal and administrative courts, as well as bankruptcy proceedings; problems relating to the compensatory remedy (Pinto): insufficient amount and delay in payment of awards and excessively lengthy proceedings (Articles 6§1, 8, 13, Article 1 of Protocol No. 1, Article 3 of Protocol No. 1 and Article 2 of Protocol No. 4)*

**CM decisions:** Continuing its supervision of the execution measures demanded in these groups of cases, at its March and June meetings, the CM noted that, apart from a slight reduction in the length of bankruptcy proceedings and in the backlog of civil proceedings, the situation concerning the excessive length of proceedings and the malfunction of the existing remedy relating thereto remained deeply worrying. It accordingly once again referred to its previous decisions, stressing that this situation constituted a serious threat to the effectiveness of the Convention system. The CM welcomed, however, the renewed commitment expressed by the Italian authorities, in particular towards finding a solution to delays in payment of the amounts awarded under the Pinto law, both domestically and for cases already pending before the Court, including possible modifications to the Pinto remedy. It then invited the Italian authorities to submit concrete proposals in an action plan with a calendar aimed at closely monitoring the effects of the measures already taken and at adopting the other measures envisaged.

In December, with regard to the Pinto remedy, the CM noted with interest the information provided on the ongoing reform of the financing mechanism set up and on the first measures implemented in order to settle amicably the cases pending before the European Court, and encouraged the authorities to bring this reform to a swift conclusion. The CM was concerned to note, however, that recent amendments to the Pinto law, which made access to the remedy provided by this law conditional upon the termination of the main proceedings and which excluded *de plano* the compensation for proceedings which had lasted 6 years or less, might raise issues as to their compatibility with the requirements of the Convention and the Court's case-law.

With regard to administrative proceedings, the CM noted with interest that an overall decrease of the backlog had been registered at the end of 2011 as a result of the entry into force in 2010 of the new Code of Administrative Proceedings and invited the authorities to supplement this information with updated statistical data on the average length of these proceedings and with details on the manner in which the impact of this reform was being monitored and assessed.

With regard to the other types of proceedings, the authorities were also invited to provide information on the impact of the measures already taken and the calendar for the adoption of the other envisaged measures.

The CM pointed out that excessive delays in the administration of justice and the malfunctioning of the Pinto remedy resulted in a denial of the rights enshrined in the Convention and were a serious threat to the effectiveness of the Convention system. The CM underlined again the urgent need to stop the flow of further repetitive applications before the European Court and the urgent need to find a sustainable solution to the structural problem of excessive length of proceedings.

The CM concluded by urging the authorities to provide a consolidated action plan and by encouraging them to co-operate closely in this regard with the Secretariat and also to consider making use of the expertise of the Council of Europe in this area with a view to identifying sustainable solutions.

**LUX / Guill**

Appl. No. 14356/08, Final on 16/02/2012, CM/ResDH(2012)128

*Bankruptcy proceedings: excessive length of civil proceedings to contest claims within the framework of closure of bankruptcy and lack of an effective remedy (Articles 6§1 and 13)*

**Final resolution:** The excessive length of proceedings noted here arose from the procedural complexity of the case. With regard to the lack of an effective remedy to complain about the length of proceedings, a compensatory remedy is now recognised by the courts. The Luxembourg Court of Appeal had already, in a judgment delivered in November 2007, allowed a claim for compensation for damage arising from failure to comply with the reasonable-time requirement and awarded the sum of 15 000 euros. A judgment handed down by the Luxembourg District Court which became final in August 2008 confirmed this decision by recognising a compensatory remedy arising from the action for damages against the State.

**PRT / Oliveira Modesto and other similar cases****PRT / Martins Castro and other similar cases**

Applications Nos. 34422/97 and 33729/06, Judgments final on 08/09/2000 and 10/09/2008, Enhanced supervision

*Excessively lengthy proceedings: Excessive length of proceedings before civil, administrative, criminal, labour and family courts; excessive length of civil proceedings (1993-2002) and non-effectiveness of a compensatory remedy available to victims of excessively lengthy proceedings (Martins Castro) (Articles 6§1 and 13)*

**Action plans:** In 2012, the Portuguese authorities submitted during 2012 several action plans describing the measures taken or envisaged with regard to the applicants' situation. Information was also provided on general measures, and specifically on developments in the case-law of the Portuguese courts with regard to the application of the new system of extra-contractual civil responsibility of the state

and other public entities introduced through legislation in 2007. This information is currently being assessed by the CM.

#### **ROM / Nicolau and other similar cases**

##### **ROM / Stoianova and Nedelcu and other similar cases**

Appl. Nos. 1295/02 and 77517/01, Judgments final on 03/07/2006 and 04/05/2011, Enhanced supervision

#### ***Excessive length of civil and criminal proceedings and lack of an effective remedy (Articles 6§1 and 13)***

**Action plan:** On 27 November 2012 the Romanian authorities submitted a revised action plan, containing statistical data on the current state of the judicial system in Romania, information on the legislative measures taken or envisaged, as well as the administrative measures taken at national level to ensure the effectiveness of the judiciary. The plan also elaborated on aspects of effective domestic remedies for challenging the length of proceedings, including the question of acceleratory remedies provided for in the new Code of Civil Procedure and that of compensatory remedies. This information is currently being assessed.

#### **TUR / Ormançı and others similar cases**

##### **TUR / Ümmühan Kaplan (pilot judgment)**

Appl. Nos. 43647/98 and 24240/07, Judgments final on 21/03/2005 and on 20/06/2012, Enhanced supervision

#### ***Lengthy proceedings: excessive length of proceedings before administrative, civil, criminal, labour, land registry, military and commercial and consumers' courts and lack of an effective remedy (Articles 6§1 and 13)***

**CM Decision:** In the context of the execution process engaged in respect of a structural problem of length of judicial proceedings, the Court rendered in 2012 a pilot judgment (*Ormançı and others*). When examining this judgment at its September meeting, the CM noted that the Court had invited Turkey to introduce, within one year from the date on which this judgment became final, an effective domestic remedy capable of affording adequate and sufficient redress for excessive length of proceedings. The CM requested to be regularly informed of the developments in this respect and invited the authorities to provide a consolidated action plan on the measures taken or envisaged for the execution of this pilot judgment, as well as on the current situation of pending proceedings in the *Ormançı* group of cases. It decided to resume consideration of these cases in March 2013.

#### **UKR / Svetlana Naumenko and other similar cases**

##### **UKR / Merit and other similar cases**

Appl. Nos. 41984/98 and 66561/01, Judgments final on 30/03/2005 and 30/06/2004, Enhanced supervision

#### ***Criminal and civil proceedings: excessive length of civil and criminal proceedings and lack of effective remedies (Articles 6§1 and 13)***

**CM Decision:** At its March HR meeting, the CM recalled the structural problems existing in the administration of justice and expressed its concern that, since the first judgments of the Court in 2004, no tangible progress had been achieved in introducing an effective remedy against excessive length of judicial proceedings. This situation has resulted in a massive influx of repetitive applications lodged with the Court and also that no substantial information on other measures taken or envisaged to reduce the length of proceedings had been transmitted. The CM thus urged the Ukrainian authorities to take concrete measures to solve the structural problem and recalled in this respect its CM Recommendation CM/Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to award compensation to interested parties for damages suffered. Finally, it requested information on the measures taken or envisaged in this respect, as well as of the measures taken to accelerate the still pending proceedings at the domestic level.

## **E.2. Lack of access to a court**

#### **CRO / Majski No. 2**

Appl. No. 16924/08, Final on 19/10/2011, CM/ResDH(2012)72

#### ***Refusal to examine a case on the merits: Wrong information given by State Attorney's Council on the legal remedies available against its decision appointing someone else than the applicant to the post of deputy state attorneys and court's refusal to examine the case on merits instead of having informed him on the remedies available (Article 6§1)***

**Final resolution:** The new law on Administrative Disputes, which entered into force in January 2012, provides that the court shall ensure that the ignorance of parties in administrative dispute does not harm their rights. It also prescribes that when the administrative action is flawed, the court shall remedy this deficiency within a set time limit. Moreover, the Administrative Court's case-law on the remedy available against decisions of the State Attorney's Council on appointment of deputy state attorneys is now established and well known by the public at large (this decision was issued only two months before the applicant brought his action in the same court).

#### **FRA / Ligue du monde islamique et FRA / Organisation islamique du secours islamique**

Applications Nos. 36497/05 and 37172/05, Judgments final on 15/04/2009, CM/ResDH(2012)124

#### ***Access to justice for foreign NGOs: refusal to accept a defamation complaint by such an organisation not having its head office in France (Article 6§1)***

**Final Resolution:** By a judgment of 8 December 2009 (n°09-81.607), the Court of Cassation aligned with the analysis of the European Court by affirming that a foreign association not having its head office or another establishment in France may now take part in legal proceedings.

**FRA / Moulin**

Appl. No 37104/06, Judgment final on 23/02/2011, Enhanced supervision

*Bringing an arrested person promptly before a judge: excessive delays in bringing arrested persons before “a judge or other officer authorised by law to exercise judicial power” where the detention request emanated from a distant jurisdiction (Article 5§3)*

**Action report:** In their action report provided in October 2012, the French authorities indicate that with the entry into force of Law No. 2011-392 of 14 April 2011, it is no longer the prosecutor, but a local judge (the “*juge des libertés et de la détention*”) who authorises the prolongation of police detention in cases where this is requested by a jurisdiction situated more than 200 km away. The local judge may order that the arrested person be released if a clear violation of law is established.

**E.3. No or delayed enforcement of domestic judicial decisions****ALB / Driza and other similar cases****ALB / Manushaqe Puto and others (pilot judgment)**

Appl. Nos. 33771/02, 604/07, 43628/07, 46684/07 and 34770/09, Judgments final on 02/06/2008 and 17/12/2012, Enhanced supervision

*Restitution of nationalised properties: failure to enforce final administrative and judicial decisions relating to restitution of, or compensation for, properties nationalized under the communist regime, and lack of effective remedies (Articles 6§1, 13 and Article 1 of Protocol No. 1)*

**CM decisions:** Given the number of similar applications, the ECtHR made, already in its judgments *Driza* and *Ramadhi*, a number of recommendations as to appropriate general measures, although it did not freeze its examination of pending or new applications. Additional recommendations have since been provided by the CM in the context of the supervision process. The issues raised have also been addressed in a HRTF project, involving inter alia a series of bilateral and multilateral activities (including a major seminar held in Strasbourg in March 2010). A detailed action plan was submitted in 2011.

The developments in this case were examined in detail at three HR meetings in 2012 in the course of which the importance of avoiding new, similar violations, in particular by executing the final domestic decisions relating to restitution, or compensation of nationalised properties, and by putting in place an effective remedy has been constantly stressed.

In June, the CM noted the preparation of global strategy on property rights (2012-2020), integrating the general measures required for the execution of these judgments and insisted on the necessity of rapid concrete progress. The CM invited the authorities to finalise a list of final decisions, to complete the land value map, to calculate, on the basis of these elements, the cost of the execution measures, in order to be able to define the resources needed, adopt the final execution mechanism, and

execute – of their own motion – the decisions at issue. In September, the CM noted the adoption of the global strategy, the finalisation of the list of judicial decisions 1995-2011 awaiting execution as well as the provisional indications concerning the total number of administrative decisions 1993-2011. The CM expressed, however, its concern about the absence of concrete results five years after the first judgment of this group.

In its December decision, the CM anew deplored the lack of progress and noted, in this respect, the eighteen months deadline for the establishment of an effective compensation mechanism, fixed by the Court in the *Manushaqe Puto* pilot judgment (not final at that time). The CM therefore reiterated its calls that necessary steps be rapidly taken. Given the urgency, it invited the authorities to set realistic and binding deadlines and to update their action plan. The CM decided to take stock of progress achieved at its March 2013 meeting.

The pilot judgment *Manushaqe Puto* became final on 17 December 2012. As a result the examination of similar applications has been partially frozen. The deadline for setting up of an effective compensation mechanism expires on 17 June 2014.

**AZE / Mirzayev and other similar cases**

Application No. 50187/06, Judgment final on 03/03/2010, Enhanced supervision

*Non-enforcement of eviction orders (IDP): non-enforcement of judicial decisions ordering the eviction of internally displaced persons (IDP) unlawfully occupying apartments at the expense of the rights of the lawful tenants or owners (Article 6§1 and Article 1 of the Protocol No. 1).*

**CM decision:** At its June 2012 meeting, the CM noted that the ongoing process of finding solutions to the housing problems of IDPs (i.e. the President Order on improving housing conditions of IDPs of February 2011 and the Cabinet of Ministers detailed implementation action plan of June 2011) should contribute to the enforcement of the domestic court decisions ordering the eviction of unlawfully occupied apartments, and so allow the reinstatement of the legal tenants or owners. The CM further invited the authorities to provide information on measures taken to ensure the enforcement of the remaining court decisions and encouraged them to introduce effective remedies for those who are in similar legal situation as the applicants and provide adequate compensation in this respect.

**BIH / Čolić and others****BIH / Runić and others**

Appls. Nos. 1218/07+ and 28735/06, Judgments final on 28/06/2010 and on 04/06/2012, Enhanced supervision

*Judicial awards for war damages: non-enforcement of decisions ordering payment of war damages (Article 6§1 and Article 1 of Protocol No. 1)*

**CM Decision:** Given the different scale of the problem in the two entities of Bosnia and Herzegovina, the authorities of Republika Srpska (“RS”) and of the

Federation of Bosnia and Herzegovina (“Federation”) drew up two action plans setting out the measures to be taken. At its September meeting, the CM noted that the authorities in both entities have taken measures to identify and register all unenforced decisions and to calculate the aggregate debt. However, given the considerably higher number of unenforced decisions in the RS, the CM strongly encouraged the authorities of Bosnia and Herzegovina to ensure that the process of identification and registration in RS as well as the process of full enforcement of all decisions in both entities be brought to an end. It thus requested to be regularly informed of developments, notably on the payment scheme that the RS authorities were planning to introduce. Moreover, the CM stressed that measures should be taken to ensure that compensation be paid in respect of non-pecuniary damages to those who had obtained enforceable court decisions in their favour and invited the authorities to take the necessary measures in this respect. Finally, the CM strongly encouraged the authorities to grant adequate and sufficient redress to all applicants in the pending applications before the European Court, in compliance with the findings made in the case of Čolić.

#### **BIH / Jeličić and three others cases**

Application No. 41183/02, Final on 31/01/2007, CM/ResDH(2012)10

*Legislation impeding the enforcement of final judicial decisions concerning the release of “old savings”: failure by the Administration to abide by final domestic judgments ordering release of “old” foreign savings due to a statutory provision preventing their enforcement (Article 6§1 and Article 1 of Protocol No. 1)*

**Final resolution:** The Republika Srpska paid the whole savings to the applicants awarded by final domestic judgments. The Law on Settlement of Obligations arising from Old Foreign Currency Savings of Bosnia and Herzegovina has been amended to create a legal basis for enforcement of final judgments in any of the Entities concerning old foreign currency savings.

#### **BIH / Karanović**

#### **BIH / Šekerović and Pašalić and other similar cases**

Appl. No. 39462/03 and 5920/04, Final on 20/02/2008 and 15/09/2011, CM/ResDH(2012)148

*Pension rights: non-enforcement of court decisions which ordered, for pensioner returning from Republika Srpska after the war, the transfer of their pension entitlements to the Federation of Bosnia and Herzegovina Pension Fund (Article 6§1 and Article 14 in conjunction with Article 1 Protocol No. 1)*

**Final resolution:** The Federation of Bosnia and Herzegovina Parliament adopted the Amendments to the Pension and Disability Insurance Law in May 2012 (entered into force in June 2012), providing that individuals internally displaced to the Republika Srpska during the war, and who had returned to the Federation of Bosnia and Herzegovina, are eligible to apply to the Federation of Bosnia and Herzegovina Fund Pension.

#### **ITA / Ventorino**

Appl. No. 357/07, Judgment final on 17/08/2011, Standard supervision

*Fees payable by the public administration: Failure by the authorities to pay fees due to a lawyer and to enforce an order to pay issued in her favour (Article 6§1 and Article 1 of Protocol No. 1)*

**Action plan:** The Italian authorities stated in their action plan submitted in May 2012 that the sums awarded by the Court by way of just satisfaction (covering the amount payable by the public administration) had been paid. The authorities also indicated that legislative measures had been taken with the legislative decree of 24 January 2012 concerning the simplification and acceleration of payments of claims in respect of public administrations. A draft law transposing the provisions of an EU directive is also being prepared and is expected to introduce important measures to combat late payment by public administrations. A CM assessment of the measures taken and envisaged by the authorities is currently under way.

#### **MDA / Olaru and others**

Appl. No. 476/07, Judgment final on 28/10/2009, Transfer to standard supervision

*Lengthy judicial and enforcement proceedings: failure to enforce final domestic judgments awarding social housing rights or money in lieu of housing – questions regarding remedies (Article 6 and Article 1 of Protocol No. 1)*

**CM Decision:** In the context of its continued examination of this structural problem (see also the *Luntre* group) and the remedial actions required by the above pilot judgment with respect to pending repetitive cases and effective remedies for the future, the CM recalled at its March meeting, that a domestic remedy had been introduced with effect from 1 July 2011 and that in its inadmissibility decision of 24 January 2012 in the case of *Balan*, the Court found it “significant that the Moldovan Government has passed the legal reform introducing the new domestic remedy in response to the *Olaru* pilot judgment under the supervision of the Committee of Ministers” and accepted that this remedy “was designed, in principle, to address the issue of delayed enforcement of judgments in an effective and meaningful manner, taking account of the Convention requirements”. The CM encouraged the authorities to ensure that the new remedy is implemented in compliance with the Convention’s requirements and invited them to keep it informed of the development of the domestic case-law. The CM also noted the progress made in the *ad hoc* settlement of applications communicated by the Court in the context of the pilot judgment and invited the Moldovan authorities to enhance their efforts to settle the remaining applications, as well as to ensure that the remaining judicial decisions granting social housing are enforced in order to prevent a new influx of repetitive applications to the Court. Finally, the CM decided to transfer the *Olaru* group of cases under the standard procedure.

**ROM / Sacaleanu and other similar cases**

Appl. No. 73970/01, Judgment final on 06/12/2005, Enhanced supervision

*Failure of the administration to abide by final court decisions: Failure or significant delay on the part of public institutions to honour domestic judgments (Articles 6§1 and/or Article 1 of Protocol No. 1).*

**CM Decision:** At its September meeting, when examining the action plan of January 2012, the CM expressed concern that a number of crucial issues remained outstanding, in particular as regards the mechanisms and guarantees set forth in domestic law for ensuring voluntary and prompt implementation of court decisions by the administration and the remedies available. The CM also noted that information and clarifications were still needed in a certain number of cases as regards individual measures. The CM encouraged the Romanian authorities to submit the results of the collection of the necessary information on these issues without delay (cf. Memorandum of the Secretariat CM/Inf/DH(2012)24).

**SER / EVT Company and other similar cases**

Appl. No. 3102/05, Judgment final on 21/09/2007, Enhanced supervision

*Decisions rendered against socially-owned companies: Non-enforcement of final court or administrative decisions, mainly concerning socially-owned companies, implying also interferences with the right to peaceful enjoyment of property and the right to respect for family life; lack of an effective remedy (Articles 6 § 8 and 13, Article 1 Protocol No. 1).*

**CM decision:** In the pursuit of execution supervision of this judgment, the CM noted with concern at its December meeting the recent considerable increase in number of repetitive applications lodged with the Court. It noted further that, despite the efforts deployed by the Serbian authorities, no concrete progress had been achieved in finding a comprehensive solution to the problem. It therefore strongly invited the authorities to intensify their efforts to prevent the influx of new similar applications before the Court, notably by establishing the exact number of unenforced decisions concerning socially-owned companies and the amount of aggregate debt concerned as well as by setting-up a payment scheme by the end of March 2013 at the latest. The CM also requested information on the efficiency of the constitutional remedy, as modified in 2011, in particular as regards the enforcement of decisions against socially-owned companies. As regards other measures needed, the CM encouraged the Serbian authorities (i) to take concrete action to ensure that a solution is found to settle the issue of enforcement of demolition orders, and (ii) to provide concrete information on the impact of the new Enforcement Act (of May 2011) and, in particular, the introduction of the system of private bailiffs, on the enforcement of decisions already rendered. Finally, the authorities were requested to provide information related to the outstanding individual measures, notably the steps taken to enforce the domestic decisions in the cases of EVT Company and Kostić.

**SVK / Jakub and other similar cases**

Appl. No. 2015/02, Final on 28/05/2006, CM/ResDH(2012)59

*Civil proceedings: excessive length of civil proceedings and in certain cases lack of effective remedy; unfair trial (Articles 6§1, 8, 13 and 2)*

**Final resolution:** Most of the proceedings at issued were concluded, but for those still pending the agent of the Government of the Slovak Republic sent letters in March 2011 to the presidents of the domestic courts to request them to accelerate and terminate the proceedings as soon as possible. Concerning the unfair trial, the applicants have the possibility to apply for the reopening of the proceedings. As regards the measures taken to reduce the length of proceedings, the Government increased the numbers of judges and set up nine local courts. A new electronic databases and a central database for the judicial system have also been created. Moreover, legislative amendments have been made to the Code of Civil Procedure to improve the functioning of the courts and harmonize the procedures. In the event of excessively lengthy civil proceedings, the Constitution has been amended in 2002 to introduce a constitutional petition for complaints of violations of human rights protected by international treaties and the compensation amount awarded by the Constitutional Court has increased. Also, a system for following up and implementing the Constitutional Court's decisions finding excessive length of proceedings has been established and is being closely monitored by the Ministry of Justice. In this respect, disciplinary penalties may be imposed on judges and lawyers for the cases of excessive length of proceedings still pending before the courts.

**SVK / Labsi**

Appl. No. 33809/08, Judgment final on 24/09/2012, Enhanced supervision

*Risk of torture – non-compliance with an interim measure of the Court: expulsion, despite a Rule 39 indication from the Court, to Algeria of a person convicted there in absentia of terrorist offences; lack of an effective remedy (Articles 3, 34 and 13).*

**CM decision:** When examining this judgment at its HR meeting in December the CM noted that according to the information submitted by the authorities, the applicant was liberated in May 2012 and that assurances were given that “he is free and enjoying all his constitutional rights”. The CM also took note of the declaration by the authorities that they will respect any other interim measure issued in the future by the European Court and that information about the remedies available against decisions refusing to grant asylum will be provided in an updated Action plan.

**UKR / Zhovner and other similar cases****UKR / Yuriy Nikolayevich Ivanov (pilot judgment)**

Appl. Nos. 56848/00 and 40450/04, Judgment final on 29/09/2004 and 15/01/2010, Enhanced supervision, Interim Resolutions CM/ResDH(2008)1, CM/ResDH(2009)159, CM/ResDH(2010)222, CM/ResDH(2011)184 and CM/ResDH(2012)234

*Non-enforcement of domestic judicial decisions: failure or serious delay by the administration, in abiding by final domestic judgments and lack of effective remedies;*

also special “moratorium” laws providing excessive legal protection against creditors to certain companies (Articles 6§1, 13 and Article 1 of Protocol No. 1)

**CM Decisions and Interim Resolution:** Since 2004, in numerous decisions and interim resolutions, the CM has called upon the Ukrainian authorities to adopt the necessary measures to find a solution to the problem of non-enforcement of domestic judicial decisions. In a pilot judgment (*Yuriy Nikolayevich Ivanov*), the Court fixed a specific deadline, after extension expiring on 15 July 2011, for the setting-up of an effective domestic remedy and the adoption of solutions to the problem of pending repetitive cases. Given that these measures were not adopted within the deadline set, the Court decided in February 2012, to resume the examination of frozen applications and informed the CM in time for its June HR meeting that some 2800 similar applications against Ukraine were pending before the Court. At this meeting, the CM welcomed the adoption of the “Law on State guarantees concerning the execution of judicial decisions”. In September, the CM noted that this law, which entered into force on 1 January 2013, could constitute an effective remedy if certain outstanding questions were addressed, including the allocation of sufficient budgetary means. The CM deeply regretted, however, that this law, notwithstanding the indications made in the pilot judgment, was not applicable to already existing domestic judicial decisions and, thus did not solve the problem of repetitive applications already pending before the Court, nor stop the influx of new such applications.

In a new interim resolution adopted in December, the CM noted that, in response to its previous decision, the Ukrainian authorities drafted a new law “*On amendments to the Law of Ukraine On guarantees of the State concerning the execution of the court decisions*” aimed at resolving the problem of outstanding debts as from 2014, but deeply regretted that this draft law had not been introduced yet. The CM thus urged the authorities to increase their efforts to swiftly bring the legislative process to an end. Profoundly deploring that the pilot judgment therefore still remained to be fully executed, the CM further urged the authorities to adopt as a matter of utmost priority measures to resolve the problem of non-enforcement of domestic judicial decisions and to fully comply with the pilot judgment with no further delay. The Ukrainian authorities were in particular encouraged to make increasingly use of unilateral declarations and friendly settlements in order to resolve the problem of cases pending before the Court.

### E.5. Unfair judicial proceedings – civil rights

#### ROM / Lupaş and others (No. 1)

Appl. No. 1434/02, Final on 14/03/2007, CM/ResDH(2012)208

*Rigid implementation of a case-law rule: dismissal of claims for recovery of property brought by some of the descendants of co-owners of a plot of land, because of a case-law based rule requiring unanimity amongst co-owners (Article 6§1)*

**Final resolution:** As a first step, following the dissemination of the judgment of the European Court, the tribunals have adopted a more flexible interpretation of the case-law based rule, in accordance with the principles arising from the judgment. Thereafter, this rule was abandoned with the entry into force of the new Civil Code on 1 October 2011. Section 643 of the new Civil Code now provides that the co-owners have standing individually in any civil proceedings related to the joint property.

#### SVK / DMD Group A.S

Appl. No. 19334/03, Final on 05/01/2011, CM/ResDH(2012)51

*Re-assignment of a case for judicial decision: the president of a district court re-assigned to himself a case – brought to seek enforcement of a financial claim against another company – and then ruled on it in private the same day (Article 6§1)*

**Final resolution:** The Code of Civil Procedure has been amended in June 2005 to provide the possibility to reopen the domestic proceedings on the basis of a judgment of the European Court. The law has been amended in January 2006 to assign cases by random selection to judges through an electronic registry.

### E.6. Unfair judicial proceedings – criminal charges

#### ALB / Caka

#### ALB / Berhani

#### ALB / Laska and Lika

#### ALB / Shkalla

#### ALB / Cani

Appl. Nos. 44023/02, 847/05, 12315/04, 26866/05, 11006/06, Judgments final on 08/03/2010, 04/10/2010, 20/07/2010, 10/08/2011, 06/06/2012, Enhanced supervision

*Procedural irregularities – defence rights: failure to secure the appearance of certain witnesses, failure to have due regard to the testimonies given in favour of the applicant, lack of convincing evidence justifying criminal conviction, lack of guarantees of criminal proceedings in absentia, denial of the right to defend oneself before the Court of Appeal and the Supreme Court (Article 6§1 and Article 6§3(d)).*

**CM decision:** At its September meeting, the CM noted with interest the latest information regarding the reopening of the impugned proceedings by the Supreme Court, made possible following a decision of the Constitutional Court giving direct effect to the Convention and the Court’s case law. The CM noted, however, that some of the applicants remained detained during the review proceedings as the initial convictions were still considered in force. Recalling the importance of the presumption of innocence, the CM noted that the Albanian legal system contains a possibility for the applicants still detained to request their release until a new final decision and underlined the importance of bringing the review proceedings rapidly to an end. The CM invited the authorities to continue to inform it



of developments, including as regards the legislative process engaged to codify the right to the reopening of proceedings. As regards general measures, the CM recalled that further information is awaited on the adoption of measures to remedy the serious shortcomings revealed by the Court's judgments.

#### **BEL / Cottin**

Appl. No. 48386/99, Final on 2/06/2005, CM/ResDH(2012)7

*Failure to respect the adversarial principle: criminal conviction of the applicant even though he had been prevented from taking part in proceedings before the expert and was thus deprived of the possibility to comment on crucial evidence (Article 6§1)*

**Final resolution:** The applicant did not have to execute his prison sentence, now prescribed. The Belgian law has also offered him the possibility to erase his criminal conviction from his criminal record. The case-law of the Court of Cassation has evolved to ensure that expert opinions in criminal matters respect the adversarial principle. In future, when the expert opinion ordered by the criminal judge relates to the prosecution, it is for the court to determine the arrangements for establishing the opinion, having regard to the rights of the defence and the requirements of the prosecution.

#### **BEL / Poncelet**

Application No. 44418/07, Judgment final on 04/10/2010, CM/ResDH(2012)111

*Breach of the right to the presumption of innocence of a high ranking official: proceedings against a high-ranking official based on minutes of an incriminating administrative inquiry (Article 6§2)*

**Final Resolution:** There are no negative consequences of this violation with respect to the applicant (notably, the criminal proceedings against applicant has been discontinued due to the time-limits for the criminal proceedings and the moral damage has been covered by the just satisfaction awarded by the Court). The local and federal police services have been reformed and training has been provided on respect for human rights, with the training modules incorporating this judgment. The rules of procedure determining the power of the trial courts to examine arguments as to inadmissibility, including that relied on by the applicant in respect of a breach of his right to be presumed innocent, based on public policy, have been clarified following the adoption on 21 December 2009 of the law reforming the Assize Court.

#### **BEL / Taxquet**

Application No. 926/05, Grand Chamber of 16/11/2010, CM/ResDH(2012)112

*Decision of the Assize Court insufficiently reasoned: content of a guilty verdict by an Assize Court lay jury, court decision not enabling an accused person to understand why he had been convicted (Article 6§1)*

**Final Resolution:** The problem has been resolved by the law of 21 December 2009 on reform of the Assize Court. This law modernised Assize Court procedure, requiring guilty verdicts by the jury to be reasoned. Hence the jury firstly deliberates on the question of guilt, without the Court, on the basis of the questions made available to it. Then professional judges withdraw with the jurors and the registrar for a second deliberation in order to draft the reasons (Articles 322 to 338 of the Code of Criminal Procedure).

#### **ESP / Gomez de Liano y Botella**

##### **ESP / Cardona Serrat**

Appl. Nos. 21369/04 and 38715/06, Final on 22/10/2008 and 26/01/2011, CM/ResDH(2012)60

*Partiality of criminal judges: applicant convicted even though the judges on the bench had already had to make a ruling in the case when they upheld his indictment on appeal (case of Gomez de Liano y Botella); conviction by two of the three members of the bench who had ordered the applicant to be placed in detention pending trial (Cardona Serrat case) (Article 6§1)*

**Final resolution:** In the Gomez de Liano case, the applicant was pardoned and allowed to resume his judicial career. In the Cardona Serrat case, the applicant, which had already served the sentence referred to in the judgment, lodged a claim with the Ministry of Justice for compensation under the rule on State liability (these proceedings are still pending). The case-law of the Supreme Court and the Constitutional Court has changed so as to ensure the objective neutrality of criminal court judges. The statutory provisions governing cases of abstention and recusal of criminal court judges are now interpreted in a flexible manner and on a case-by-case basis, in the light of the principles arising from the relevant case-law of the European Court.

#### **BGR / Borisova**

Appl. No. 56891/00, Final on 21/03/2007, CM/ResDH(2012)158

*Excessively expeditious procedure concerning administrative offence: lack of prompt information on the nature and cause of an accusation of minor administrative offence based on simplified proceedings and, lack of adequate time and facilities for the preparation of defence; failure to hear defence witnesses (Articles 6§§1 and 3 (a), (b) and (d) taken together)*

**Final resolution:** The Decree on Combatting Minor Hooliganism has been amended in November 2011 to make the expeditious character of the proceedings of administrative offences compatible with the guarantees of fair trial provided for by the Code of Criminal Procedure. Moreover, the first instance decisions taken under the above-mentioned Decree can now be appealed against before the respective regional court.

**FIN / Marttinen**

Appl. No. 19235/03, Final on 21/07/2009, CM/ResDH(2012)22

**Breach of the right not to incriminate oneself:** *administrative fine imposed for the refusal to co-operate and provide the information requested by the bailiff in debt recovery proceedings (Article 6§1)*

**Final resolution:** The administrative fine ordered by the Helsinki District Court's decision was not paid as the bailiff subsequently waived the enforcement inquiry. The Enforcement Act was amended in March 2004 to introduce a new mechanism prohibiting the use of incriminating information to circumvent provisions on testimony or have the debtor charged with a criminal offence. Moreover, according to the new case-law of the Supreme Court, if information about a debtor's property relates to both a pending criminal case and to enforcement or bankruptcy proceedings, the debtor is entitled to refuse to declare the property.

**FRA / Baucher**

Application No. 53640/00, Judgment final on 24/10/2007, CM/ResDH(2012)122

**Infringement of the rights of the defence:** *impossibility of knowing the reasons for conviction and of assessing the chances of an appeal being successful (Article 6§1 and §3b)*

**Final Resolution:** The judgment has been conveyed to the Court of Cassation for it to remind courts of the need to deliver minutes within the set time limit, particularly in order to enable the defence to assess the advisability of appealing against a decision, as stated in the judgment in question here. Where the ineffectiveness of a precautionary appeal is concerned, particularly on account of the risk of the penalty being increased on appeal, the law of 15 June 2000 amended Article 500-1 of the Code of Criminal Procedure. Henceforth, if an appellant withdraws from his or her main appeal within one month, cross-appeals lapse, including those of the prosecuting authorities.

**TUR / Hulki Güneş and other similar cases**

Appl. No. 28490/95, Judgment final on 19/09/2003, Enhanced supervision

**Unfair criminal proceedings:** *lengthy prison sentences imposed in unfair proceedings; ill-treatment in police custody; lack of independence and impartiality of state security courts; excessively lengthy criminal proceedings and absence of effective remedy (Articles 6§1 and 3 and Articles 3 and 13).*

**CM Decisions:** In 2012 the CM continued to closely follow the only outstanding issue in this group of cases, i.e. the adoption of the draft law announced in 2009 which would allow the reopening of proceedings in the applicants' cases. At its meetings in March, June and September the CM strongly urged the Turkish authorities to translate their political will and determination into concrete action and to provide a clear time-table for the adoption of the necessary legislative amendment. It noted furthermore with satisfaction the information provided by the Turkish

authorities regarding the content of the draft law allowing the reopening of proceedings in the applicants' cases. At its last examination, in December, the CM noted that the draft law would be submitted to the Turkish Parliament before the end of 2012 in the context of the 4<sup>th</sup> package of draft laws, and that it would be brought to the General Assembly after examination in the Justice Committee. It also considered that if adopted, the draft law would constitute an adequate response to the execution of the judgments in the present group of cases, as well as to other cases currently pending before the CM's execution supervision. Finally, the CM finally had strongly encouraged the Turkish authorities to continue to keep it informed of the legislative process and, in any event, to bring it to an end without any further delay.

**F. No punishment without law****GER / M. and other similar cases**

Appl. No. 19359/04, Judgment final on 10/05/2010, Enhanced supervision

**Retroactive application of criminal legislation:** *unlawful retrospective extension or ordering of "preventive detention" ("Sicherungsverwahrung") of dangerous criminals after they had served in full their prison sentences (Articles 5§1 and 7§1)*

**CM Decision:** The CM welcomed, at its HR meeting in March, the measures already taken to ensure that preventive detention is no longer extended (or ordered) retroactively. It welcomed, in particular, the judgment of the Federal Constitutional Court, which settled the outstanding issues and ensured that new, similar violations, could no longer take place. Moreover, it noted with interest the efforts engaged to develop a new legal framework for preventive detention and encouraged the German authorities to continue the timely implementation of the envisaged measures. The CM invited the authorities to keep it informed of further progress, including on outstanding individual measures and on the implementation of preventive detention in practice.

**G. Protection of private and family life****G.1. Home, correspondence and secret surveillance****BGR / Association for European Integration and Human Rights and Ekimdzhiev**

Appl. No. 62540/00, Judgment final on 30/04/2008, Enhanced supervision

**Insufficient guarantees against abuse of secret surveillance measures:** *the Law on Special Surveillance Means does not provide sufficient guarantees against the risk of abuse; lack of effective remedy (Articles 8 and 13)*

**Action report and Additional Information:** The authorities have indicated that the Special Surveillance Means Act (SSMA) was amended in 2008 following the

findings of the Court's judgment. An amendment aiming at introducing external control of the special surveillance measures was also adopted. According to this text, an independent Subcommittee with special powers was established under the Legal Affairs Committee of the National Assembly in December 2009. In February 2010, the National Assembly approved internal Rules of organization and procedure of the subcommittee on the surveillance means. In their action report provided in June 2012, the authorities have indicated that the SSMA was partly amended as regards the Specialized Criminal Court and the Prosecutor's Office. The authorities also provided data concerning the application and use of special intelligence means for the year 2011, based on the annual report of the subcommittee. This information is currently being evaluated by the CM.

#### **FRA / Ravon and others and other similar cases**

##### **FRA / Kandler and others**

##### **FRA / Société IFB**

##### **FRA / Maschino**

Appl. Nos. 18497/03, 18659/05, 2058/04, 10447/03, Final on 21/05/2008, 18/12/2008, 20/02/2009 and 16/01/2009, CM/Res(2012)28

*Search and seizure operations in residential premises: lack of an effective judicial remedy by which to challenge the lawfulness of court orders authorising house searches and seizures within the framework of fiscal proceedings (only cassation appeals were possible, appeals solely on points of law) and disproportionate nature of these measures in relation to the aim pursued (Articles 6§1 and 8)*

**Final resolution:** The Code of Tax Procedure was amended by the Modernisation of the Economy Act of 4 August 2008 and now provides that court orders authorising house searches and seizures can be appealed before the first president of the Court of Appeal. The Code also provides that the appeal may relate both to the merits and lawfulness of the order and to the conduct of the operations, and that the appeal can be the subject of an appeal in cassation.

#### **GER / Anayo and GER / Schneider**

Appl. Nos. 20578/07 and 17080/07, Judgments final on 21/03/2011 and 15/12/2011, Standard supervision

*Right of access to biological children: refusal by the courts, as provided by domestic legislation, to grant a father access to his biological children without consideration of the child's best interests (Article 8)*

**Action plan:** In their last updated action plan submitted in December 2012, the authorities have indicated that the Federal Government adopted a draft bill in October to strengthen the legal position of biological fathers in their access and information rights to children. This legislative process is under way and being followed by the CM.

#### **SWE / Segerstedt-Wiberg and others**

Appl. No. 62332/00, Final on 06/09/2009, CM/ResDH(2012)222

*Storage of personal information in security police records: Unjustified storage, by the police, of information on the applicants' former political activities, and lack of an effective remedy in this regard (Articles 8, 10, 11 and 13)*

**Final resolution:** the *Swedish Commission on Security and Integrity Protection*, () Established in January 2008supervises since March 2012 the processing of personal data by the Swedish Police, including the Swedish Security Service. This Commission can be required, at the request of an individual, to check *inter alia* whether he or she has been subject to secret surveillance by crime-fighting agencies or to the processing of personal data by the Swedish police, in respect with laws and other regulations in force. The statistics of June 2012 showed that the Commission has, in two of the concluded cases, found that personal data may have been processed by the Swedish Security Service in a way that may entail tort liability for the state towards the requesting person. The Chancellor of Justice has in both cases decided that these persons will receive compensation. Moreover, a new Police Data Act entered into force in March 2012, aiming at protecting people from violation of their personal privacy when personal data is processed in the course of law enforcement activities. This Act contains a special chapter regulating the processing of personal data by the Swedish Security Service and provides clearer and more detailed regulations concerning the removal of data.

## **G.2. Respect of physical or moral integrity**

#### **ESP / Martinez Martinez**

Appl. No. 21532/08, Judgment final on 18/01/2012, Transfer to standard supervision

*Noise nuisance: inaction by the local authorities for many years in face of disturbances caused by the level of music from a nearby bar, largely exceeding the level allowed under existing noise regulations (Article 8)*

**CM Decision:** The CM noted with satisfaction, at its June meeting, that measures had been adopted to put an end to the situation criticised by the Court. In view hereof, the CM decided to pursue the supervision of this case under the standard procedure.

#### **HUN / Daróczy**

Appl. No. 44378/05, Final on 01/10/2008, CM/ResDH(2012)187

*Change of name: restriction imposed on the applicant's request to use her married name she had borne for over fifty years, after she lost her identity card and was issued a new one bearing the corrected version of her name (Article 8)*

**Final resolution:** The Act on maternal register, marriage procedure and names was amended in 2009. This change of legislation made it possible to file a petition in order to change the applicant's name. The applicant is now allowed to bear her old married name again.

**HUN / Ternovszky**

Appl. No. 67545/09, Final on 14/03/2011, CM/ResDH(2012)88

*Right to choose to give birth at home: ambiguous legislation dissuading health professionals from assisting home births and thus depriving pregnant mothers of their right to medical assistance (article 8§1)*

**Final resolution:** Rules governing home births have been introduced by Government Decree in April 2011. Mothers free of medical complications and living not farther than 20 minutes' drive from a hospital can now choose to give birth at home. Health professionals helping baby deliveries outside hospitals must have the required qualifications and strict hygienic rules have to be respected. The decree also prescribes that a home birth requires the presence of at least two home births assistants and a paediatrician.

**IRL / A, B and C**

Appl. No. 25579/05, Judgment final on 16/12/2010, Enhanced supervision

*Abortion: absence of any implementing legislative or regulatory regime providing an accessible and effective procedure allowing establishing possibilities for lawful abortion when there is a risk to the mother's life (Article 8)*

**CM Decisions:** The CM welcomed, in March, the authorities' commitment to the expeditious implementation of the present judgment. It strongly encouraged the authorities to ensure that the expert group set up for the purpose would complete its work as quickly as possible. In December, the CM noted with satisfaction that the expert group had submitted its report on 13 November 2012. The CM noted that four options were identified in this report (guidelines, secondary legislation, primary legislation and primary legislation coupled with regulations) and that the authorities will decide on the option to be pursued to implement the judgment before 20 December 2012. Having highlighted the expert group's statement according to which "Ireland has a legal obligation to put in place and implement a legislative or regulatory regime providing effective and accessible procedures whereby pregnant women can establish whether or not they are entitled to a lawful abortion", the CM recalled that the general prohibition on abortion in criminal law constitutes a significant chilling factor for women and doctors due to the risk of criminal conviction and imprisonment. In this context, the CM noted the view of the expert group that only the implementation of a statutory framework would provide a defence from criminal prosecution. The CM underlined again its concern on how the situation of women who are of the opinion that their life may be at risk due to their pregnancy in circumstances similar to those experienced by the third applicant is addressed, and invited the Irish authorities to take all necessary measures in that respect. The CM thus urged the Irish authorities to expedite the implementation of the judgment and asked to be informed of the option to be pursued to implement the judgment as soon as possible.

**UK / S. and Marper**

Appl. No. 30562/04, Judgment final on 04/12/2008, Transfer to standard supervision

*Retention of biometric data: indefinite retention of cellular samples, fingerprints and DNA profiles, on arrest for minor offences which never resulted in a conviction (Article 8)*

**CM Decision:** The CM noted with satisfaction that the legislative proposals for England and Wales which it had welcomed in June 2011 were adopted in the Protection of Freedoms Act 2012. It noted that, when selecting a three year retention period for data taken from minors arrested for serious offences, the authorities had taken into account the particular position of children in society as required by the Court's judgment. Moreover, the CM noted with interest that legislative proposals which replicate the Protection of Freedoms Act 2012 were under consideration in Northern Ireland and strongly encouraged the authorities to progress those proposals as quickly as possible. The CM requested to be updated on the coming into force of the legislation in England, Wales and subsequently Northern Ireland, and on the deletion of DNA profiles and fingerprints not covered by the new legislation. Finally, the CM decided, in view of the developments, to pursue the supervision of this case under the standard procedure.

**G.5. Placement of children in public care, custody and access rights****CZE / Macready**

Appl. No. 4824/06, Final on 04/10/2010, CM/ResDH(2012)21

*International child abduction: failure to ensure father's right of contact during proceedings for return of son who had been taken abroad by the mother (Article 8§1)*

**Final Resolution:** The proceedings relating to the applicant's child is terminated. The Rules of Civil Procedure have been amended in October 2008 to provide a separate scope for the proceedings relating to international child abduction (determination of a special tribunal for the proceedings in case, possibility for the court to take suitable measures in order to secure conditions for a return of a child or to decide on interim arrangements of a complainant's contact with his/her child and implementation of a time limit for delivering a decision on the merits). Besides the legislative amendment, a number of seminars on the issues of international parental disputes have been held for judges and other competent state authorities as well as for the public.

**RUS / Khanamirova**

Appl. No. 21353/10, Judgment final on 14/09/2011, Transfer to standard supervision

*Child custody: failure to enforce a judgment awarding custody (Article 8).*

**CM Decision:** At its meeting in June the CM noted with satisfaction that the urgent individual measures required had been taken and that the applicant had

received custody of her son. In the light of these results the CM decided to pursue the supervision of the execution of this judgment under the standard procedure, with no prejudice to the assessment of general measures.

#### **UK / AD and OD**

Appl. No. 28680/06, Final on 16/03/2010, CM/ResDh(2012)66

*Negligent treatment by social services of a child with brittle bone disease: failings of local authorities in conducting correct assessment to relocate the applicants to a family centre and to place the second applicant in foster care; unreasonable delay in returning the second applicant to his family once the correct assessment had been made; lack of an effective domestic remedy with respect to the first applicant (Article 8 and Article 13 together with a violation of Article 8)*

**Final resolution:** Revised statutory guidance ‘Working Together to Safeguard Children’ was issued in both 2006 and 2010. It provides advice and sets out the assessment processes to be followed in case of concerns about the welfare of a child. The Children Act 1989 Guidance and Regulations on Court Orders was revised in 2008 and sets out the process which should be followed before and after care proceedings. This act also focuses on the power of the Court to give directions it considers appropriate about medical or psychiatric examination.

## **H. Cases concerning environmental protection**

### **I. Freedom of religion**

#### **GRC / Dimitras and others**

#### **GRC / Dimitras and others No. 2**

Appl. Nos. 42837/06, 3237/07, 3269/07, 35793/07, 6099/08, 34207/08 and 6365/09, Final on 03/09/2010 and 03/02/2012, CM/ResDH(2012)184

*Religious convictions: legislation requiring witnesses to reveal their religious convictions in order to be allowed to make a solemn declaration in criminal proceedings (instead of a religious oath) and lack of an effective remedy in this respect (Articles 9 and 13)*

**Final resolution:** Legislation introduced in 2012 amended the Code of Criminal Procedure which now stipulates that a witness appearing before a criminal court can, at his discretion and without other formalities, choose between taking a religious oath and making a solemn declaration.

## **J. Freedom of expression and information**

#### **AZE / Mahmudov and Agazade**

#### **AZE / Fatullayev**

Appl. Nos. 35877/04 and 40984/07, Judgments final on 18/03/2009 and 04/10/2010, Enhanced supervision

*Abusive sanctioning of journalists: use of prison sentences for defamation and arbitrary application of anti-terror legislation to sanction journalists (Articles 10, 6§1 and 6§2)*

**CM Decisions:** Following the applicants’ amnesty in the first case, and the quashing of the applicant’s convictions by the Supreme Court in the second case (a presidential pardon having secured his release), no other individual measures were deemed necessary for the execution of these judgments. The CM has concentrated its supervision on the issue of general measures.

At its March 2012 meeting, the CM noted with satisfaction the signature by the President of Azerbaijan, in December 2011, of the *National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms*, which contains provisions aimed at enhancing the effective execution of the European Court’s judgments in general and of the present judgments in particular. The CM noted further that, according to this program, the Presidential Administration was given the task of elaborating “proposals on improving the legislation in order to decriminalise defamation” within 2012. In this respect, the CM invited the authorities to provide further information, notably on the time-table for the adoption of this legislation and its content, as well as on the legislative changes envisaged to align provisions of the Criminal Code with the Convention’s requirements.

In June, the CM took note of the information provided in response to questions raised in March and called on the Azerbaijani authorities to inform it without further delay of the content of the expected legislative amendments, as well as of the clear calendar for their adoption and entry into force. The CM also encouraged the Azerbaijani authorities to take up the Secretary General’s offer on assistance and advice on how to bring their legislation and practice to the level required of all member States of the Council of Europe. It further urged the Azerbaijani authorities to provide information on the measures envisaged to prevent arbitrary application of domestic law (in particular examples of domestic court decisions demonstrating that domestic legislation is applied by Azerbaijani courts in compliance with the Convention standards) and on the measures taken or envisaged to guarantee the right to presumption of innocence (Fatullayev case).

In September, the CM recalled that information was awaited on the outstanding questions raised since its March decision. It welcomed the request for assistance from the Venice Commission to prepare a law on defamation and encouraged the authorities to pursue this work speedily and in close co-operation with the Secretariat. The CM thus invited the authorities, pending the preparation of this

law, to take the necessary measures to ensure that the current legislation is applied in accordance with the Convention's requirements.

In December, the CM noted that a first meeting between the Venice Commission and the contact persons for Azerbaijan was held in November 2012 on the preparation of the law on defamation and reiterated its call to pursue this work speedily and in close co-operation with the Secretariat, as well as to be regularly informed of all steps in this process. The CM also reiterated its call on the authorities to take the necessary measures, pending the preparation of this law, in order to ensure that the current legislation is applied in accordance with the Convention's requirements. It further invited the authorities to provide a wider sample of domestic decisions demonstrating that national legislation is not arbitrarily applied by the domestic courts. Finally, the CM expressed its strong hope that updated information will be provided on the measures taken or envisaged to prevent violations of Article 6 §§1 and 2, similar to those in the case of *Fatullayev*, in particular on how the measures envisaged in the *National Programme for Action* will guarantee the rights to presumption of innocence.

#### **BEL / Tillack**

Appl. No. 20477/05, Final on 27/02/2008, CM/ResDH(2012)6

*Journalists' right of non-disclosure of their sources: searches and seizures at a journalist's home and workplace on the ground that he was suspected of having bribed a civil servant from the European Anti-Fraud Office (OLAF) in exchange for confidential information concerning investigations in progress in the European institutions for the purpose of writing two articles (Article 10)*

**Final resolution:** The items and documents seized during the searches have been returned to the applicant. The investigation opened by the Public Prosecutor for breach of professional confidence and bribery was closed when it was decided in January 2009 that there was no case to answer. Belgium has also strengthened journalists' right of non-disclosure of their sources through the Protection of Journalistic Sources Act of 7 April 2005 (adopted subsequent to the facts at issue).

#### **SUI / Gsell**

Appl. No. 12675/05, Judgment final on 08/01/2010, CM/ResDH(2012)61

*Journalist subjected to a prohibition which was not prescribed by law: journalist prevented from entering the World Economic Forum in Davos under a prohibition imposed by the police by way of a general measure (Article 10)*

**Final resolution:** This judgment was brought to the attention of the Federal Court and the authorities directly concerned. The cantonal police regulation was amended by the law on the police of the Canton of Graubünden in July 2005.

#### **TUR / İncal**

Appl. No. 22678/93, Judgment final on 09/06/1998, Enhanced supervision

*Violations of freedom of expression: convictions for having disseminated propaganda on behalf of terrorist organisations and/or published articles or books or prepared messages addressed to a public audience and deemed to incite hatred and hostility or to be insulting to the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government, ministries or armed forces.*

**Action report and other developments:** In the context of the supervision of the ongoing reforms to remedy this major problem, a co-operation programme was established with the Turkish authorities in 2012, with the support of the Human Rights Trust Fund. This is a priority project for the Secretary General and the Turkish Ministry of Justice. It is in keeping with the Ministry of Justice's policy of improving the legislation on freedom of expression and its implementation in order to secure the adoption of the further measures required (over and above the reforms already undertaken) to remedy the shortcomings identified by the Court and the Committee of Ministries.

The aim is first and foremost to improve the direct application of the Convention and the case-law of the Court in the field of freedom of expression by the domestic courts, in particular the Court of Cassation, and by prosecutors, and to ensure that domestic law is interpreted in a way that incorporates the principles of the Convention. The attainment of this objective will enable to prevent further similar violations of Article 10 of the Convention. The project also aims to identify those gaps in Turkish legislation that are responsible for most of the violations identified by the Court and to prepare the ground for amending the legislation and for the preparatory legal work to this end. A high-level conference was held in Ankara in February 2013 in connection with this project.

An action report was filed by the authorities in August 2012 in one of the sub-groups of the *İncal* group – the *Ürper and others* group – indicating that Article 6 § 5 of the anti-terrorist law, which was at the origin of the violations addressed in this sub-group, had been repealed.

### **K. Freedom of assembly and association**

#### **GRC / Bekir-Ousta and other similar cases**

Appl. No. 35151/05, Judgment final on 11/01/2008, Enhanced supervision

*Refusal to register or dissolution of associations: refusal to register or dissolution of associations on the ground that they were considered by the courts to be a danger to public order as they promoted the idea of the existence of an ethnic minority in Greece as opposed to the religious minority provided by the Lausanne Treaty (Article 11)*

**CM Decisions:** As regards the issue of individual measures the CM noted at its June and December HR meetings that the Court of Cassation dismissed the appeal of the

association in the Tourkiki Enosi Xanthis case considering that a judgment of the European Court does not fall within the category of “a change in circumstances” allowing, under the Code of Civil Procedure, the revocation or revision of a final domestic judgment in a non-contentious procedure. However, the CM noted that another recent case decided by the Court of Cassation had overturned a refusal to register an association, on the ground that a mere suspicion, resulting from an ambiguity in the title of an association, could not in itself establish a danger to public order. The CM noted the Greek authorities’ position that this decision can have an impact on the registration of associations and ensure a framework in accordance with the requirements of the Convention.

The CM noted at both meetings the authorities’ commitment to implement fully and completely the Court’s judgments. The CM invited them to provide precise and concrete information on the measures taken or envisaged in that respect in view of an examination of these matters at the latest at its June 2013 meeting.

#### **MKD / Association of Citizens Radko & Paunkovski**

Appl. No. 74651/01, Judgment final on 15/04/2009, Enhanced supervision

*Unjustified dissolution of an association: the Constitutional Court dissolved the association shortly after its foundation without any suggestion that the association or its members would use illegal or anti-democratic means to pursue their aims nor “any explanation as to why a negation of Macedonian ethnicity was tantamount to violence, especially to violent destruction of the constitutional order” (Article 11).*

**CM decision:** At its meeting in June, the CM invited the authorities to provide further information on the outcome of the registration proceedings following the decision of the Supreme Court ordering the registration authority to reexamine the applicants’ request for registration in light of the judgment of the European Court in the present case. It further noted that, under the new Law on Associations and Foundations (of 2010), an association or a foundation can be banned if its actions are directed at the violent destruction of the constitutional order. In this respect, the CM invited the authorities to provide information on the application of this new law in practice and, in particular, whether an association or a foundation had been banned on the same grounds that were used in the present judgment since the coming into force of the new law.

## **L. Right to marry**

### **M. Effective remedies – specific issues**

## **N. Protection of property**

### **N.1. Expropriations, nationalisations**

#### **ROM / Strain and others and other similar cases**

#### **ROM / Maria Atanasiu and others (pilot judgment)**

Appl. Nos. 57001/00 and 30767/05, Judgments final on 30/11/2005 and 12/01/2011, Enhanced supervision

*Nationalisation of property during the Communist regime: sale by the State of nationalised property, without securing compensation for the legitimate owners, delay in enforcing, or failure to enforce, judicial or administrative decisions ordering restitution of the nationalised property or payment of compensation in lieu (Article 1 of Protocol No. 1 and Article 6§1)*

**CM decisions:** With regard to the status of execution relating to the important structural problem connected with the ineffectiveness of the Romanian system of restitution or compensation in respect of property nationalised during the Communist period (*Strain* group), the European Court delivered a pilot judgment in October 2010 in the case of *Maria Atanasiu and others*, which became final on 12 January 2011. A time-limit of 18 months was set for adopting measures capable of affording adequate redress to all the persons affected by the restitution laws. This deadline was extended by the Court until 12 April 2013.

At its meeting in June 2012, the CM noted with great interest the draft law aimed at rendering the restitution and compensation process more effective and expressed a number of concerns and requests, taking into account a Secretariat memorandum, CM/Inf/DH(2012)18.

Continuing its examination in December, the CM noted that the Romanian authorities were in the process of making improvements to the draft law, bearing in mind the observations contained in the Secretariat’s memorandum. It reiterated that the envisaged solutions, in particular the level of compensation and the timetable for its payment in instalments, should be justified in an objective manner, on the basis of accurate and comprehensive data. The CM noted also the revised calendar for the adoption of the draft law and underlined that it was absolutely necessary that the authorities comply with it, to ensure that the new time-limit set by the Court for the execution of the pilot judgment was observed. The CM invited the authorities to present to the Committee the final version of the draft law and the justifications of the measures it contained, as soon as possible.

The CM also noted with interest the organisational measures taken or envisaged by the authorities with a view to establishing the current state of the ongoing compensation and restitution process and accelerating the processing of pending claims. It noted, however, with regret, that the authorities were still unable to present to the Committee comprehensive consolidated data on the current state of

this process and reiterated their invitation to the authorities to complete without delay the transmission of these data.

Given the urgent need to make progress in the execution of the judgments in this group of cases, the CM decided to continue its examination at the March 2013 meeting.

#### **TUR / Turgut and others**

Appl. No. 1411/03, Final on 13/01/2010, CM/ResDH(2012)106

*Cancellation of property titles: transfer to the Treasury of a plot of land belonging to the applicants for the purpose of protecting nature and forests and without any compensation being awarded (Article 1§1 of Protocol No. 1)*

**Final resolution:** The Court of Cassation reversed its previous position in October 2011 when it ruled that anyone whose title to property had been annulled and transferred to the Treasury could bring a claim for compensation within 10 years. It also specified that the State incurred strict liability for any irregularities in the land register and that the amount of compensation should be assessed on the basis of the use, nature and value of the property in question.

## **N.2. Disproportionate restrictions to property rights**

#### **FRA / Bowler International Unit**

Appl. No. 1466/07, Final on 23/10/2009, CM/ResDH(2012)174

*Confiscation by customs: lack of remedy enabling the bona fide owner to challenge the confiscation of its goods which had been used to conceal fraud by third parties (Article 1 of Protocol No. 1)*

**Final resolution:** The confiscated goods were returned to the applicant company. The article which had served as a basis for the confiscation by customs was amended by legislation introduced on 22 March 2012 in response to the Constitutional Council decision of 13/01/2012, by specifying that “by depriving the owners of the possibility to claim, in any case, the seized or confiscated things, the provisions of the relevant Section of the Customs Code infringe the property right in a manner disproportionate to the aim pursued. .

#### **GRC / Kokkinis**

#### **GRC / Reveliotis**

Appl. Nos. 45769/06 and 48775/06, Final on 06/02/2009 and 04/03/2009, CM/ResDH(2012)87

*Reassessment of retirement pensions: random criterion used by the Court of Audit to determine the starting point of the retroactive period of reassessment of pensions (Article 1 of Protocol No. 1)*

**Final resolution:** The case-law of the Court of Audit has since evolved. This evolution shows that when pension rights are rejected by the administration and then granted by subsequent judicial proceedings, the starting-point for the time-limit for retroactive payment should be the final decision of the competent administrative authorities rejecting the claim.

#### **SER / Grudić**

Appl. No. 31925/08, Judgment final on 24/09/2012, Enhanced supervision

*Non-payment of pensions: unlawful suspension by the Serbian Pensions and Disability Insurance Fund (SPDIF) of payment of pensions for more than a decade, as it was based on a Government Opinion without any basis in domestic law that the Serbian pension system ceased to operate in Kosovo<sup>48</sup> (Article 1 of Protocol No. 1)*

**CM decision:** In its judgment the Court gave a number of indications to assist the execution process. It notably held that the Government should, within 6 months, take all appropriate measures to ensure that the authorities implement the relevant laws in order to secure the payment of the pensions and arrears in question. At its December meeting, the CM recalled the European Court’s judgment and invited the authorities, bearing in mind the above deadline (which has been prolonged by the Court until 24 September 2013), to provide as soon as possible an action plan setting out the measures taken and / or envisaged, as well as to inform it on payment of pension arrears due together with statutory interest.

#### **SVK / Urbárska Obec Trencianske Biskupice and other similar cases (pilot)**

Appl. No. 74258/01, Judgment final on 02/06/2008, Enhanced supervision

*Compulsory transfer of land at a low compensation: systemic problem highlighted by the Court on account of the compulsory transfer of the applicants’ land to members of a gardening association for disproportionately low compensation and, preceding that transfer, the compulsory letting of their property at a rent at a disproportionately low rent from 1980 to 2005 (violation of Article 1 of Protocol No. 1).*

**Action report:** In their action report, submitted in March 2012, the authorities have indicated that two legislative amendments have been adopted in February 2011 by the National Council and the Ministry of Justice of the Slovak Republic. As a result of these legislative changes, the rental terms for the letting of land in garden allotments is able to take into account the actual value of the land and the current market conditions and compensation for the transfer of ownership of land. These measures are currently being assessed by the CM.

48. All reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo



## O. Right to education

### CRO / Oršuš and others

Appl. No. 15766/03, Judgment final on 16/03/2010, Transfer to standard supervision

*“Roma-only” classes: Roma children placed in special classes owing to their allegedly inadequate command of the Croatian language (Article 14 with Article 2 of Protocol No. 1) and excessively long proceedings before the Constitutional Court (Article 6 § 1)*

**CM Decision:** In the pursuit of its examination of the general measures adopted in response to this judgment, the CM noted, at the March 2012 meeting, with satisfaction that the Croatian authorities had taken a number of measures to address the special problem of poor school attendance and high drop-out rate of Roma children. The CM could also welcome the new working methods adopted by the Constitutional Court to prevent excessive length of proceedings. In the light of these developments, the CM decided to continue its supervision of this case under the standard procedure with a view to assessing, at a later stage, the impact of the measures that are currently being taken by the Croatian authorities, including the concrete results obtained in abolishing “Roma-only” classes.

## P. Electoral rights

### BIH / Sejdić and Finci

Appl. No. 27996/06, Judgment final on 22/12/2009, Enhanced supervision

*Ineligibility to stand for elections – non-affiliation with a constituent people: Impossibility for citizens of Bosnia and Herzegovina of Roma and Jewish origin to stand for election to the House of Peoples and to the Presidency of Bosnia and Herzegovina, due to their lack of affiliation with one of the constituent people (Article 14 taken in conjunction with Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12)*

**CM Decisions and Interim resolutions:** From the beginning of the examination of this case, it was clear before the CM that the execution of this judgment would require a certain number of amendments to the Constitution of Bosnia and Herzegovina and to its electoral legislation. However, the authorities and political leaders of Bosnia and Herzegovina have failed on numerous occasions to reach a consensus on the amendments required despite the CM’s repeated calls to that effect (see, in particular, Interim Resolution CM/ResDH(2011)291). Given the urgent need of general measures, the CM has decided that the supervision of this case will also continue during the CM’s regular meeting in April 2013.

At its regular meeting in March 2012, the CM deeply regretted that the Joint Interim Commission of the Parliament of Bosnia and Herzegovina, which was set up to present proposals for the constitutional and legislative amendments, had failed to make tangible progress in its work before the deadline set, 12 March 2012. In the

light hereof, the authorities were strongly urged to take the necessary measures to execute the Court’s judgment without any further delay.

At the regular meeting in July, the CM took note of the agreement reached on 27 June 2012 by the representatives of the executive authorities and main political parties to present draft constitutional amendments to the Parliamentary Assembly by 31 August 2012 and to amend the Constitution by 30 November 2012. The authorities were encouraged to submit the draft constitutional amendments in good time to the CM before their submission to the Parliamentary Assembly of Bosnia and Herzegovina for prior assessment of their compliance with the requirements of the *Sejdić and Finci* judgment.

The draft constitutional amendments were however not presented as requested so that the CM had to note, at its September HR meeting, with deep regret, despite their commitment, the executive authorities and political leaders have, once again, failed to reach a consensus. In view hereof, the CM reiterated its call to amend the Constitution by 30 November 2012 at the latest.

As no consensus had been reached by the above-mentioned date, the CM expressed in December, in a new Interim Resolution (CM/ResDH(2012)233) its profound disappointment at the failure of the executive authorities and political leaders of Bosnia and Herzegovina to ensure the necessary amendments to the Constitution and the electoral legislation. The CM reiterated that, in becoming a member of the Council of Europe in 2002, Bosnia and Herzegovina had undertaken to review within a year its electoral legislation with the assistance of the Venice Commission. In this respect, the CM reiterated the continued willingness of the Council of Europe to assist the authorities in meeting this commitment. The CM also underlined that already in September 2012, the EU Commissioner responsible for enlargement and neighbourhood policy and the Secretary General of the Council of Europe had stressed that reaching a political consensus was an indispensable condition for the necessary reforms and had expressed their great disappointment that the executive authorities and political leaders had, despite their commitments, failed to reach such a consensus.

The CM strongly urged the authorities and political leaders to amend the Constitution and the electoral legislation and to bring them in conformity with the Convention requirements without any further delay. The CM also decided to examine the present case at each of its HR meeting until the political leaders and authorities of Bosnia and Herzegovina have reached a consensus on the measures required for the execution of this judgment.

### HUN / Alajos Kiss

Appl. No. 38832/06, Judgment final on 20/08/2010, Standard supervision

*Constitutional restriction of voting rights for persons placed under partial guardianship: automatic removal of voting rights, without an individualised judicial evaluation and solely based on a mental disability necessitating partial guardianship (Article 3 of Protocol No. 1)*

**Action plan:** The Hungarian authorities provided an action plan in June 2012, in which they indicated that the Ministry of Public Administration and Justice sent the judgment to the drafters of the new Constitution of Hungary. This new Constitution, which entered into force in January 2012, provides that voting rights can only be removed by decision of a court after an individualised judicial evaluation. This measure is being assessed by the CM.

#### **MDA / Tanase**

Grand Chamber, Appl. No. 7/08, Final on 27/04/2010, CM/ResDH(2012)40

*Requirements for becoming Member of Parliament: Legislative ban imposed on republic of Moldova's nationals with dual or multiple nationalities to stand as candidates in parliamentary elections (Article 3 of Protocol 1)*

**Final resolution:** The judgment has been published and disseminated to all concerned national authorities. The law was amended in December 2009 to lift the ban for all categories of public servants.

### **Q. Freedom of movement**

#### **BGR / Ignatov**

#### **BGR / Gochev**

#### **BGR / Nalbantski**

Appl. Nos. 50/02, 34383/03 and 30943/04, Final on 02/10/2009, 26/02/2010 and 10/05/2011, CM/ResDH(2012)156

*Travel ban: lengthy and disproportionate prohibition to leave Bulgaria for non-payment of debt and lack of an effective remedy in this respect; prohibition to leave the country on account of a criminal conviction (Article 2 Protocol No. 4 and Article 13)*

**Final resolution:** The provision of the Bulgarian Personal Documents Act under which the domestic authorities were obliged to impose a prohibition on leaving the country on any individual who had debts exceeding certain amount towards other physical or legal persons was declared unconstitutional in a judgment of the Constitutional Court of March 2011. Moreover, the provision of the above-mentioned Act imposing a travel ban on persons who had been convicted of a wilful offence has been repealed. The issue of lengthy criminal proceedings is being examined by the CM in the framework of the *Kitov* group of cases and the pilot judgment in the *Dimitrov and Hamanov* case.

### **R. Discrimination**

#### **CRO / Šečić**

Appl. No. 40116/02, Judgment final on 31/08/2007, Enhanced supervision

*Ethnically-motivated crime: Failure to carry out an effective investigation into a racist attack on a Roma (Article 3 and Article 14 in conjunction with Article 3)*

**Action report:** The authorities provided a detailed action report in April 2012. The report notably indicates that the new Criminal Code, which entered into force in January 2013, includes “hate crimes” in the list of criminal offences and provides for more severe punishment in respect of such crimes. Moreover, the authorities have indicated that the Law on Criminal Procedure, into force since September 2011, has changed the criminal proceedings, in particular the investigation mechanism. Special rules of procedure have also been adopted by the Government in “hate crime” cases aiming at ensuring efficient and comprehensive action of all state actors involved. A special monitoring mechanism has also been put in place to collect relevant data. These legislative measures are currently being assessed by the CM.

#### **CZE / D.H. and others similar cases**

Appl. No. 57325/00, Judgment final on 13/11/2007, Enhanced supervision

*Right to education – discrimination against Roma children: assignment of Roma children to special schools (designed for children with special needs, including those suffering from a mental or social handicap) (Article 14 in conjunction with Article 2 of Protocol No. 1).*

**CM decision:** The CM has noted the different action plans adopted and steps taken by the Czech authorities since the judgment became final in 2005, but has encouraged them for further progress through several decisions and other interventions. At its June meeting 2012, the CM underlined anew the importance of accelerating the implementation of the judgment and called upon the authorities to provide a consolidated action plan with a time-table and budget for the implementation of the measures foreseen, and which responds to all the outstanding questions identified in memorandum CM/Inf/DH(2010)47. At its December HR meeting, the CM noted with interest the action plan submitted and, in particular, the measures proposed to remove the possibility for pupils without a disability to be educated in a class for pupils with disabilities. The CM noted however that the overall percentage of Roma pupils educated in programs for pupils with a “slight mental disability” remains disproportionately high even if a slight decrease in this percentage is recorded. The CM welcomed therefore the Czech authorities’ commitment to ensure monitoring of the implementation of the measures foreseen and to adopt, on the basis of an assessment of the situation during and after their adoption, all the additional measures which might prove necessary. Having reiterated the importance of rapidly obtaining concrete results, the CM requested to be regularly informed of all developments in the implementation of the action plan and in the authorities’ reflection on the development of the concrete situation on the ground.

#### **GER / Brauer**

App. n°3545/04, Final on 28/08/2009 and 28/01/2010, CM/ResDH(2012)83

*Inheritance rights: Discriminatory interference with the right to respect for family life in preventing the applicant, born out of wedlock in 1948 in the former “German*

*Democratic Republic”, to assert her inheritance rights vis-à-vis her late father, resident in the Federal Republic of Germany (Articles 8 and 14).*

**Final resolution:** The Code of Civil Procedure and the Fiscal Code have been amended by the “Second Act for equal inheritance rights for children born outside of marriage” entered into force in April 2011 and applicable retroactively to all cases of succession following the date of the Court’s decision. The statutory right to inheritance is now also recognized to children born out of wedlock before 01/07/1949. Moreover, children born out of wedlock before 01/07/1949 are entitled to claim compensation where the State became the statutory heir on the basis of the legal situation before the Court’s judgment.

#### **GER / Zaunegger**

Appl. No. 22028/04, Judgment final on 03/03/2010, Standard supervision

*Custody of child born out of wedlock: Legislation preventing father of a child born out of wedlock to obtain joint custody (Article 14 in conjunction with Article 8)*

**Action plan:** The German authorities indicated in their action plans provided during the year 2012 that, until the entry into force of a statutory reform of the law on parental custody, the Federal Constitutional Court ordered in July 2010 a transitional regulation. According to this regulation, the Family Court shall, upon application by a parent, transfer parental custody, or a part thereof, jointly to the parents or to the father in the best child’s interests. In July 2012, the Federal Government prepared a draft law aiming at giving the opportunity to father of child born out of wedlock to obtain joint parental custody without the mandatory consent of the mother. The legislative process is under way and the Federal Government will keep the CM informed on its progress.

#### **GRC / Zeibek**

Appl. No. 46368/06, Final on 09/10/2009, CM/ResDH(2012)34

*Non-payment of large-family pension based on children nationality: deprivation of the pension payable for life to the mother of a large family on grounds that one of her four children did not have the Greek nationality (Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14)*

**Final resolution:** The applicant has received the required pension. In a legal opinion of 2009 bearing binding effect on the Administration, the Legal Council of the State indicated that ‘the nationality of the children of persons with large families should not be taken into consideration when processing the award of the relevant allowances’.

#### **HUN / Lajos Weller**

Appl. No. 44399/05, Final on 30/06/2009, CM/ResDH(2012)189

*Exclusion from maternity benefit: Refusal to pay, to a father and his two twins, both Hungarian nationals, a maternity allowance on account of the parental status and*

*nationality of the mother (Romanian national), the legal provisions generally excluding natural fathers from such benefits (Article 14 read in conjunction with Article 8)*

**Final resolution:** The Act on Family Support was amended with a new paragraph, extending the scope of this Act to every woman legally residing in Hungary.

#### **ROM / Moldovan and others**

Appl. No. 41138/98, Judgment final on 05/07/2005, Enhanced supervision

*Violence against Roma: racially-motivated violence, between 1990 and 1993, against villagers of Roma origin, and in particular improper living conditions following the destruction of their homes; incapacity of the authorities to put an end to the violations of their rights (Articles 3, 6, 8, 13 and 14 in conjunction with Articles 6 and 8).*

**CM Decision:** Following up the measures and initiatives already engaged, the authorities presented a new action plan in May 2012. The plan was examined at the CM’s meeting in June. As the deadline announced for the adoption of the new organisational and financial framework for the implementation of the outstanding measures had not been met in the *Moldovan* cases regarding the locality of Hadareni, the CM urged the authorities to speed up the adoption process and to provide a calendar for the implementation of remaining measures as well as a detailed assessment of the impact of the measures taken so far. Moreover, as regards the judgments *Kalanyos and others* and *Gergely*, the CM invited the authorities to provide, as soon as possible, a detailed assessment of the impact of the measures taken for the localities concerned by these judgments, as well as clarifications on the additional measures required, if any. In this context, having recalled that a working group had been set up under the co-ordination of the Private Office of the Deputy Prime Minister and of the Ministry for Foreign Affairs to monitor the measures taken for the locality of Hadareni, the CM noted that no monitoring had been ensured at this level for the other localities concerned and encouraged the authorities to remedy this situation.

#### **RUS / Alekseyev**

Appl. No. 4916/07, Judgment final on 11/04/2011, Enhanced supervision

*Repeated bans on gay marches: Moscow authorities’ repeated bans, over a period of three years (2006, 2007 and 2008), on the holding of gay-rights marches and pickets, and enforcement of the ban by dispersing events held without authorisation and by finding participants who had breached the ban guilty of an administrative offence; absence of effective remedies (Articles 11 and 13).*

**CM Decisions:** At its June meeting, after having recalled the fundamental importance of the right to freedom of peaceful assembly, the CM noted with interest the information provided, that according to the Russian Legislation, this right can effectively be enjoyed by all Russian citizens without any discrimination on grounds of sexual orientation. However, the CM was concerned that, since the Court’s judgment, the applicant was not able to organise Gay Pride marches in

Moscow, and invited the Russian authorities to provide detailed information on the reasons. The CM also underlined the need to receive information on how many similar events took place since the Court's judgment, including further details on the recent events referred to by the authorities during the meeting, on how many of them were refused and on what grounds. Similarly, the CM expressed concerns with regard to different laws prohibiting propaganda of homosexuality among minors adopted in different regions of the Russian Federation and invited the authorities to clarify the situation.

In September, the CM took note of the information and statistics provided by the authorities according to which out of the total number of notifications submitted in respect of events similar to those envisaged by the applicant, only a very limited number of such events could effectively take place. It noted that in the vast majority of cases, the competent authorities, in particular in Moscow, refused to agree the time and place for the events, and that the information provided did not allow it to satisfy itself that the decisions had been based on a thorough and objective assessment of the situation. In this context, the CM reiterated its concerns as regards the use of regional laws prohibiting propaganda of homosexuality among minors. It also observed that the situation called for further general measures, in particular regarding the training and awareness raising of the authorities responsible for handling the notifications for holding public events, and invited the Russian authorities to submit a comprehensive action plan in this respect. The CM also observed that the domestic remedy referred to by the authorities might not provide adequate redress in all circumstances and consequently invited them to adopt the necessary measures, through legislative action if need be.

#### **RUS / Kiyutin**

Appl. No. 57942/00, Judgment final on 06/07/2005, Transfer to standard procedure

*Discrimination against HIV positive foreigner: Russian authorities' refusal to grant to the applicant, a foreign national living in Russia with his Russian wife and their minor child, a residence permit on the grounds that he was HIV positive (Article 14 in conjunction with Article 8)*

**CM decision:** At its meeting in September, the CM noted with satisfaction that the urgent individual measures had been taken in that the applicant had been granted a residence permit. The CM decided to pursue the supervision under the standard procedure. It also invited the authorities to provide a revised action plan/report by the end of October 2012.

#### **SVN / Kurić and others (pilot)**

Appl. No. 26828/06, Judgment final on 26/06/2012, Enhanced supervision

*Deprivation of residence status: automatic deprivation, and without prior notification, of residence status of former non-Slovenian citizens of Socialist Federal Republic of Yugoslavia (the "SFRY") after its declaration of independence, and lack*

*of effective remedy (Article 13 in conjunction with Article 8 and Article 14 in conjunction with Article 8)*

**CM decision:** When examining this case at its September meeting, the CM noted that the Court found in the present pilot judgment the existence within Slovenian legal order, of a shortcoming as a consequence of which the whole category of the "erased" are still denied compensation for the infringement of their fundamental rights. It noted further that the authorities should, within one year, from the date at which the judgment became final, set up an ad hoc domestic compensation scheme to provide redress to applicants in similar situation. Bearing in mind this deadline, the CM invited the authorities to rapidly provide an action plan indicating the envisaged and taken measures, and to keep it informed on the developments of the situation, notably on any agreement reached with the applicants in respect of compensation of pecuniary damage sustained or any other measures aimed at remedying their individual situations.

#### **SUI / Losonci Rose and Rose**

Appl. No. 664/06, Final on 9/11/2010, CM/ResDH(2012)102

*Family name: Discriminatory treatment of a bi-national couple on the ground of sex in terms of their freedom to choose their family name after marriage, according to whether it is the man or the woman who possesses Swiss nationality (Article 14 in conjunction with article 8)*

**Final resolution:** In addition to the applicant's family name being entered in the registry of births, deaths and marriages, the Federal Assembly adopted on 30 September 2011 legislation amending the provisions of the Civil Code on the choice of family name after marriage, granting spouses the option of adopting either the bride's or the groom's unmarried surname. The amendments are being implemented under a transitional provision and will come into force on 1 January 2013. A transitional provision also allows to the spouse who changed the name before the entry into force of this legislative amendment "to declare at any time to the civil state Registrar the willingness to take back the name he or she bore before the marriage".

## **S. Co-operation with the European Court and respect of right to individual petition**

#### **UK / Al-Sadoon and Mufdhi**

Appl. No. 61498/08, Final on 04/10/2010, CM/ResDH(2012)68

*Detainees transferred to Iraqi authorities despite the risk of capital punishment: Transfer of Iraqi nationals under the control of the British Armed Forces to Iraqi custody to stand trial for war crimes despite the indication of an interim measure by the European Court indicating that the applicants should not be removed from British custody (Articles 3, 34 and 13).*

**Final resolution:** Al Saadoon and Mufdhi were released from custody by the Iraqi authorities in July and August 2011 respectively. Prior to their release, the UK took all possible steps to obtain assurances from the Iraqi authorities that the applicants would not be subjected to the death penalty. Moreover, when negotiating arrangements relating to UK detainee transfers on military operations for the purpose of prosecution, the UK gave assurances that the non-application of the death penalty will always be sought from those nations that retain the death penalty.

## T. Inter-state case(s)

### TUR / Cyprus

#### TUR / Varnava

Appl. No. 25781/94, Judgments final on 10/05/2001 and 18/09/2009, Enhanced supervision

*Fourteen violations linked with the situation in the northern part of Cyprus concerning the Greek Cypriots missing persons and their relatives, the homes and property of displaced persons, the living conditions of Greek Cypriots in the Karpas region of the northern part of Cyprus (“the enclaved part”), and the rights of Turkish Cypriots living in the northern part of Cyprus (Articles 8 and 13, Article 1 of Protocol No. 1, Articles 3, 8, 9, 10 and 13, Articles 1 and 2 of Protocol No. 1, Articles 2, 3, 5 and 6)*

**CM decisions:** As foreseen in its decision of December 2011, the CM resumed, at its March 2012 HR meeting, its examination of still outstanding issues in this case. This examination was pursued at its HR meetings in June and December. The different issues closed are described in Interim resolutions (2005)44 and (2007)25.

– *As regards the homes and property of displaced Greek Cypriots*

The CM recalled in its March and December decisions, that the Court had been seized of a request under Article 41. It thus decided to resume consideration of these questions at its next HR meeting in March 2013.

– *Concerning property rights of Greek Cypriots residing in the northern part of Cyprus*

In March, the CM took note of the detailed information provided by the Cyprus authorities and the detailed clarification provided by the Turkey during the debate. The Secretariat was invited to prepare a synthesis of this information with a view to examining the matter, if possible, at its September HR meeting. Finally, the CM resumed consideration of this question at its December HR meeting. In the light of the synthesis prepared by the Secretariat, the CM urged the Cypriot and Turkish authorities to provide, for its March 2013 HR meeting, all relevant further information concerning this matter, including answers in writing to the questions raised during the debate. In this context the CM invited the Turkish delegation to provide in particular the information booklet concerning property rights of enclaved persons and their heirs, to which it had made reference during the meeting.

The CM decided to resume consideration of these matters at its June 2013 HR meeting on the basis of a synthesis and an updated assessment by the Secretariat.

– *In respect of the question of Greek Cypriot missing persons and their relatives*

At its March HR meeting, the CM recalled the decisions it had adopted since the exchange of views with the members of the CMP in March 2009. It reiterated its call to the Turkish authorities to give the Committee on Missing Persons’ (CMP) access to all relevant information and places and to take concrete measures with a view to effective investigations. In this context, the CM took note with interest of the information provided by the Turkish authorities during the debate and considered that the information provided called for in-depth assessment. The CM decided to resume consideration of this question at its next June HR meeting. At this meeting, the CM anew recalled the previous decisions adopted, and took note with interest of the information provided, in writing and orally during the meeting, by the Turkish delegation. The CM encouraged the steps undertaken following the identification by the CMP of missing persons, while underlining the urgency to make further progress in the process of effective investigations into deaths of persons identified. The CM also called on the Turkish authorities to adopt a proactive approach as regards effective investigations into the fate of persons who were still missing and reiterated its request to obtain further concrete information on the steps taken by the authorities aimed at giving the CMP and investigative officers access to all relevant information and places, in particular concerning military zones. The CM noted that a certain number of questions were raised in this context, among which the investigators’ access to forensic data and evidence found and/or conserved by the CMP, and invited the Turkish authorities to provide replies to all the questions raised by the CM, while also drawing on all relevant information contained in military archives and reports. In accordance with a proposal by the Chair supported by both delegations the CM decided not to revert to the matter at its September meeting as initially foreseen, but at its December HR meeting. At this last meeting the CM recalled the decision adopted in June, took note of the information provided at the meeting and decided to resume consideration of these questions at its March HR meeting.

– *Concerning the Varnava case*

This case concerns in particular the disappearance of nine Greek Cypriots during the military operations in 1974.

At its June HR meeting, it was proposed that the Deputies pursue the examination of the issues raised in this case in the framework of their discussions on the questions regarding missing persons in the case Cyprus against Turkey.

## **Appendix 3: Other important developments in 2012**

### **1. Round table on excessive length of procedures – how to resolve a systemic problem in this area, and avoid an influx of repetitive applications to the European Court in a durable manner – Turkey, Antalya, 8-9 November 2012**

On 8-9 November 2012, the Council of Europe (Department for the execution of judgments and decisions) organised a Round-Table hosted by the Turkish authorities in Antalya devoted to the important and complex problem of excessive length of proceedings. This problem continues to figure as the most important problem in terms of cases before both before the European Court of Human Rights and the Committee of Ministers of the Council of Europe which supervises the execution of the European Court's judgments.

The aim of the Round Table was to contribute to the solution of this longstanding problem by allowing an exchange of experiences between the participants on the three following issues:

- How to identify the causes of excessively lengthy proceedings?
- Which types of measures can be applied to the various causes?
- How to ensure effective monitoring of the efficiency of measures adopted and, in the longer term, effective prevention of new systemic problems?

At the outset, the participants highlighted the importance of the work carried out by the European Commission for the Efficiency of Justice (the "CEPEJ") in order to support member states' efforts to ensure efficient judicial systems, notably through the design of tools which could be used in the daily administration of justice:

- Time management checklist
- Guidelines for judicial time management
- Compendium of good practices,
- Centre for judicial time management (Saturn Centre)
- Coaching programmes for courts
- Recommendations on different relevant issues.

In this respect it was underlined that wide dissemination and translation of these texts into national languages will have a positive and concrete impact. The participants also expressed their great interest in CEPEJ's assistance and training activities.

It emerged from the discussions that the identification of the sources of the problem was based on the findings of European Court in its judgments, in particular in its pilot judgments. This being said other indicators such as resolutions and recommendations of the Committee of Ministers, experience gained from the domestic judicial system and statistical data about its functioning, as well as information provided by the civil society also serve this purpose.

As regards the choice of adequate measures, at the outset participants underlined the importance of including relevant stakeholders in the process, and in particular members of the judiciary in order to achieve viable solutions. A wide range of possible measures were discussed, including IT developments for courts, simplification of proceedings, reduction of the number of instances where appropriate, redesigning the judicial map with a view to rebalance the workload between courts, introducing modern management tools, making wider recourse to alternative dispute resolution systems...

Regarding the third issue discussed, the participants stressed the importance of initiating reforms with the involvement of relevant authorities, in particular with the judiciary, in order to ensure that reforms are put in place and implemented swiftly. It was underlined in particular that adequate tools, notably statistical information should be developed with a view to closely following the progress of implementation. The participants highlighted the importance of setting up continuous monitoring mechanisms in order to ensure that new systemic situations of excessive length of proceedings do not develop.

In this context, a number of participants referred to the importance of effective domestic remedies as a tool to raise the awareness of domestic stakeholders and to trigger their rapid action to solve problems revealed. The need for a clear and adequate assignment of responsibility for paying compensation, as well as for the allocation of appropriate budgetary means to cover compensation awarded, was underlined. As to the question of the individual responsibility of judges, participants stressed the need for a careful approach bearing in mind the importance of guaranteeing judicial independence as well as the need to respect all aspects of the right to a fair trial as guaranteed by Article 6 of the Convention.

As a general conclusion, the participants noted the considerable information available at the European level and in particular the expertise of CEPEJ and the experience gained by individual states in executing judgments of the European Court. They considered that all domestic authorities concerned should take full advantage of this experience in ensuring the effectiveness of the judicial system.

Participants also repeatedly stressed the importance of regularly sharing information and good practices, taking into account also the follow up given to violations admitted in friendly settlements, with a view to enlarging the domestic toolbox of measures to prevent lengthy proceedings.

## 2. CDDH's conclusions – France, Strasbourg, 27-29 November 2012

Numerous provisions in the Interlaken and Izmir Declarations concern the implementation of the European Convention of Human Rights at a domestic level, and particularly the legal obligation of State Parties to fully comply with the judgments of the European court of Human Rights. For that purpose, Member States have been invited to inform the Committee of Ministers on measures taken to implement the relevant parts of these Declarations.

The Steering Committee for Human Rights (CDDH) has thus been charged with the elaboration of a report to the Committee of Ministers, in conformity with its terms of reference, including an analysis of replies provided by the Member States in their domestic reports and recommendations for the follow-up on measures taken to implement the relevant parts of the Interlaken and Izmir Declarations.

### Extract from the CDDH report on measures taken by the member States to implement relevant parts of the Interlaken and Izmir Declarations – CDDH(2012)R76 Addendum I

#### Execution of judgments<sup>49</sup>, including pilot judgments

Recommendations for the attention of member States:

- ensure full implementation of Committee of Ministers' Recommendation CM/Rec(2008)2, in particular by designating a co-ordinator<sup>50</sup> for execution of Court judgments;
- consider giving, where appropriate, an explicit legal basis to the existence and role of the co-ordinator;
- consider formally appointing, where appropriate, contact persons in other ministries and public authorities with whom the co-ordinator may liaise;
- ensure that the co-ordinator remains informed of the process of drafting necessary legislative reforms, and may where appropriate play an appropriate role in this process;
- ensure that the co-ordinator remains informed of developments before relevant domestic courts concerning the resolution of different execution issues through changes in domestic courts' practice or case-law;

49. Following the enlargement under Protocol No. 14 of the Committee of Ministers' competence now to supervise also the execution of friendly settlements, the following points should be considered as applying *mutatis mutandis* also to friendly settlements.

50. N.B. this co-ordinator could be responsible for several areas of activity.

- ensure that relevant authorities are informed of the obligation to execute Court judgments and consider formalising, where appropriate, that obligation in domestic law;
- consider, where appropriate, establishing the possibility of recourse to higher political authorities for resolution of difficulties, in particular in relation to execution of general measures;
- ensure, where appropriate, rapid, high-quality translation and dissemination of Court judgments against the State, as well as of Committee of Ministers' decisions and resolutions concerning supervision of execution;
- examine the possibility, within existing constitutional constraints, of involving national parliaments in an oversight role over execution of judgments;
- where not already the case, consider introducing legal provisions permitting direct application of the Convention by domestic courts;
- ensure adequate possibilities for re-examining, including re-opening of proceedings, at least in criminal cases, where necessary to remedy a violation found by the Court;
- ensure full and effective co-operation with the Council of Europe, in particular the Court and the Department for the Execution of Judgments, and involving also other relevant domestic authorities, including the judiciary, in such processes.

### 3. New rule No. 61 of the rules of Court – “pilot judgment” procedure

#### Rule 61<sup>51</sup> – Pilot-judgment procedure

1. The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.
2. a) Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting Party concerned and on the suitability of processing the application in accordance with that procedure.
- b) A pilot-judgment procedure may be initiated by the Court of its own motion or at the request of one or both parties.
- c) Any application selected for pilot-judgment treatment shall be processed as a matter of priority in accordance with Rule 41 of the Rules of Court.
3. The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type

<sup>51</sup>. Inserted by the Court on 21 February 2011.

of remedial measures which the Contracting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.

4. The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.

5. When adopting a pilot judgment, the Court may reserve the question of just satisfaction either in whole or in part pending the adoption by the respondent Contracting Party of the individual and general measures specified in the pilot judgment.

6. a) As appropriate, the Court may adjourn the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment.

b) The applicants concerned shall be informed in a suitable manner of the decision to adjourn. They shall be notified as appropriate of all relevant developments affecting their cases.

c) The Court may at any time examine an adjourned application where the interests of the proper administration of justice so require.

7. Where the parties to the pilot case reach a friendly-settlement agreement, such agreement shall comprise a declaration by the respondent Contracting Party on the implementation of the general measures identified in the pilot judgment as well as the redress to be afforded to other actual or potential applicants.

8. Subject to any decision to the contrary, in the event of the failure of the Contracting Party concerned to comply with the operative provisions of a pilot judgment, the Court shall resume its examination of the applications which have been adjourned in accordance with paragraph 6 above.

9. The Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the Secretary General of the Council of Europe, and the Council of Europe Commissioner for Human Rights shall be informed of the adoption of a pilot judgment as well as of any other judgment in which the Court draws attention to the existence of a structural or systemic problem in a Contracting Party.

10. Information about the initiation of pilot-judgment procedures, the adoption of pilot judgments and their execution as well as the closure of such procedures shall be published on the Court's website.



#### **4. Tools at the Committee of Minister's disposal to ensure the execution of judgments in a timely manner – summary of the first discussions**

##### **Information provided to the CDDH by the Chairmanship of the HR meetings of the Ministers' Deputies as regards the results of the discussions on item d of the 1157th meeting (4-6 December 2012) – Measures to improve the execution of the judgments and decisions of the European Court of Human Rights – extract from document CDDH (2013)002.**

1. The working document prepared by the Secretariat was generally welcomed by delegations. It was noted that the document focussed on tools available in the event states fail to implement judgments of the Court in a timely manner and did not cover the issue of a persistent failure to execute judgments. Delegations agreed that greater and better use should be made of these tools in order to increase the efficiency, as well as the visibility and transparency of the work of the Committee. While sharing these objectives some delegations underlined that the tools should not be used to stigmatise states or take punitive measures against them, but rather to encourage execution processes.
2. General support emerged with respect to a number of the proposals made, such as the proposal for listing cases with certain typical execution problems or for using the regular meetings of the Committee of Ministers more frequently (although respecting certain criteria), the resumption of the practice of individualised press releases in more important cases, holding thematic debates on problems shared by several countries in order to allow exchanges of experiences (possibly with the participation of different expert bodies such as the CEPEJ or the Venice Commission). Although several delegations were not favourable to making the order of business public because of the confidential information contained therein, the alternative of publishing a list of the cases on the order of business did not raise objections.
3. Measures to increase interaction with NGOs and civil society were also widely supported, in order both to receive their input and disseminate the results of meetings. There was support for issuing more public statements and press releases, for making success stories more visible and for holding press conferences, notably to present the annual report, although some hesitation was expressed to holding them jointly with the Court.
4. There was both support and opposition to the idea of developing the practice of setting clear deadlines for specific execution actions and the idea of a "special list" of cases not fully solved.
5. The proposals for further improvement of synergies, beyond the holding of thematic debates, were also supported as well as those relating to more targeted and better coordinated assistance activities. On this latter point, some delegations

stressed that assistance should only take place upon the request of states. It was noted that the issue of how to enhance co-operation and assistance would be considered by the Committee of Ministers' ad hoc Working Party on Reform of the Human Rights Convention system (GTREF.ECHR) the following week.

6. The reflection was also made that the role of the Committee of Ministers is primarily to encourage the rapid progress of execution and that only in exceptional circumstances stronger measures should be considered.
7. There was agreement that the discussion should now continue in the GT-REF. ECHR and that the Chair's summing-up should be transmitted to the working party. The Chair of the working party noted that a list of proposals to be considered by the working party in the light of the Deputies examination of the present item could usefully be drawn up by the Secretariat. Several delegations stressed that many of the proposals contained in the Secretariat document could be implemented immediately.
8. Reference was also made to the mandate given to the CDDH to consider whether more effective measures are needed in respect of States that fail to implement judgments of the Court in a timely manner (paragraph 29d of the Brighton Declaration) and there was agreement also on the need to rapidly inform the CDDH about the result of the discussions.

## **Appendix 4: 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 1st 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<sup>52</sup> 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;
  - ii. general measures<sup>53</sup> 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.

52. 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).

53. 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 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.

## **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,<sup>54</sup> on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

<sup>54</sup>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 5: 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<sup>55</sup>;

j. Noting that the provisions of this recommendation are applicable, *mutatis mutandis*, to the execution of any decision<sup>56</sup> 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;

<sup>55</sup>Parliamentary Assembly Recommendation 1764 (2006) – “Implementation of the judgments of the European Court of Human Rights”.

<sup>56</sup>When Protocol No. 14 to the ECHR has entered into force.

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 vademecum 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.

## **Appendix 6: Where to find further information on execution of the ECtHR 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 web sites of the CM and of the Execution Department.

Such information comprises notably:

- Summaries of violations in cases submitted for execution supervision
- Summaries of the developments of the execution situation (“state of execution”)
- Memoranda and other information documents submitted by states or prepared by the Secretariat
- Action plans/reports
- Communications from applicants
- Communications from NGO’s and NHRI’s
- Decisions and Interim Resolutions adopted
- Various reference texts

On the CM website (“Human rights meetings”) - [www.coe.int/cm](http://www.coe.int/cm) - the information is in principle **presented by meeting or otherwise in chronological order**.

On 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 Rule of Law – DG1) - [www.coe.int/execution](http://www.coe.int/execution) pending cases are presented **sortable by state, type of supervision procedure, type of violation and date of judgment**.

As a general rule, information concerning the state of progress of the adoption of the execution measures required is published shortly after each HR meeting and published on the internet sites of the CM and the Execution Department.

The text of resolutions adopted by the CM can also be found through the HUDOC database on [www.echr.coe.int](http://www.echr.coe.int).



## **Appendix 7: “Human Rights” meetings and Abbreviations**

### **A. CM’S HR meetings in 2011 and 2012**

Meeting No.	Meeting Dates
1108	08-10/03/2011
1115	07-09/06/2011
1120	13-14/09/2011
1128	29/11/2011-02/12/2011
1136	06-08/03/2012
1144	04-06/06/2012
1150	24-26/09/2012
1157	04-06/12/2012

**B. General abbreviations**

Art.	Article
AR 2007-11	Annual Report 2007-2010
Art.	Article
CDDH	Steering Committee on Human Rights
CM	Committee of Ministers
CMP	Committee on Missing Persons in Cyprus
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights and Fundamental Freedoms
European Court	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
NHRI	National Human Rights Institutions
Prot.	Protocol
Sec.	Section
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

**C. Country codes<sup>57</sup>**

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MLT	Malta
AUT	Austria	MDA	Republic of 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		

57. 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).

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