COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Council of Europe

Committee of Ministers

Supervision of the execution of judgments

of the European Court of Human Rights

1st annual report

2007

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COMMITTEE OF MINISTERS

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I. Foreword by the 2007 Chairs of the HR Meetings[1]

This is the first annual report on the Committee of Ministers' supervision of the execution of the judgments of the European Court of Human Rights. The report demonstrates, in particular, the breadth of questions examined by the Committee in this area of its work, the number of different actors involved in the execution process, and the important number of reforms which are eventually adopted to ensure that legal systems and practices develop in conformity with the standards of the European Convention on Human Rights. The overview of issues examined in 2007 is of particular interest in this context.

Good execution is essential from many different perspectives. Its primary purpose is to improve and promote the protection of human rights by remedying (as far as possible) violations which have already occurred, and by taking measures necessary to prevent similar violations or putting an end to continuing violations. Good execution fosters good governance, respect for the rule of law and of the human rights of citizens and of all other persons within the state's jurisdiction. It also fosters the trust which must exist between the authorities in the various member states if there is to be democratic stability and efficient co-operation in Europe. The quality of execution is crucial. Redress provided to victims must be effective and general reforms taken should truly be able to prevent further violations. Supervision of execution is thereby an essential element of the credibility of the system and the efficiency of the actions of the Court.

In order to achieve good execution all actors must participate. The Committee's experience shows that the speed and quality of reforms is increased if examples of good practices in other states are easily available. From this perspective, this report should be of interest as it provides information on the kind of actions typically adopted by states in different situations and describes numerous situations where national authorities, in particular courts and administrations, have adopted rapid and innovative approaches to overcome different problems related to the execution of judgments.

However, as is also clear from the report, a number of problems exist, not least the question of redress to individual applicants in certain situations and the length of time sometimes required for legislative and other reforms, as well as the related problem of clone and repetitive cases that come before the Court.

Over the years, the Committee has taken different actions to assist states in addressing such problems including, in particular, efforts to limit the flow of clone and repetitive cases to the Court. It is, nevertheless, obvious that further action is required. Recent efforts have included the setting up, in 2006, of a special execution assistance programme which is yielding good results and the adoption, in February 2008, of a new recommendation to member states on efficient domestic capacity for rapid execution of judgments of the Court, which supplements the five recommendations already adopted since 2000 regarding other aspects of the national implementation of the Convention.

As Chairs of the HR meetings in 2007 we have, in the same way as our predecessors, also felt a special responsibility to include different activities aimed at improving execution in our programmes for subsequent Chairmanships of the Committee of Ministers. Among such measures, mention could be made of the regional conference organised by Serbia in Belgrade on the role of supreme courts in the implementation of the

1. In recent years, by agreement between the Chair and Vice-Chair of the Ministers' Deputies, "HR" meetings have normally been chaired by the latter.

Convention, a seminar organised by Slovakia in Bratislava on the role of government agents in ensuring effective human rights protection (planned for April 2008) and a colloquy organised by Sweden in Stockholm on how to move towards stronger implementation of the Convention at national level (planned for June 2008).

It is hoped that this new annual report will adequately supplement the various other initiatives taken by the Committee to benefit the understanding of the execution process and of execution itself.

The Chairs of the Committee of Ministers' Human Rights meetings in 2007

Serbia	Slovakia	Sweden
Ms Sladjana Prica	**Mr Emil Kuchár**	**Mr Per Sjögren**

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

Introduction

The Committee of Ministers' decision to adopt an annual report on its supervision of the execution of the judgments of the European Court of Human Rights (the ECtHR) is an attempt to address the increasing demands, from within the Council of Europe but also from national authorities and civil society, for transparency regarding the impact and efficiency of the mechanism set up to supervise execution. These demands have become more and more urgent over the years, in particular since the adoption of the Committee's Resolution Res (2000) 2 on the Council of Europe's information strategy and also the Ministerial Conference in Rome in November 2000 celebrating the 50th anniversary of the European Convention on Human Rights (the Convention – see Part III, page 15, and Part IV, page 19, for more details).

The Committee of Ministers has thus substantially lifted the confidentiality which once surrounded the execution process up to the final result, final resolutions having always been public. Since 2000, the process has been conducted with ever-greater transparency. In practical terms, this has resulted in strengthening exchanges of information with other bodies, primarily of course with national authorities, but also with the ECtHR and to an increasing extent with other bodies within the Organisation, such as the Parliamentary Assembly and the Commissioner for Human Rights as well as other monitoring organs within the Directorate General of Human Rights and Legal Affairs, whose activities can contribute to speeding up the execution of the judgments of the ECtHR. Where appropriate, the exchange of information has also extended, *extra muros*, to relevant bodies within the European Union, the Organisation for Security and Co-operation in Europe and the United Nations. Synergies have been established and developed. The overview of cases in Appendix 1 (page 27) provides many examples of the importance of – as well as the need for – efficient information exchange with other bodies with similar objectives in order to ensure that national authorities receive a consistent message.

The need further to develop adequate access to information on the execution process has been made all the more pressing by the rapid increase in the number of cases brought before the ECtHR. The number of violations established has made it difficult to get an overview of the execution process, whether the aim is to identify relevant trends in the requirements of Article 46 of the Convention or to assess the contribution of the execution process to maintaining effective respect for the rule of law, human rights and democracy in all Council of Europe member states.

Although the annual report cannot give a full picture of all the achievements of 2007 it should, in particular through the thematic overview in Appendix 1, both contribute to understanding of the unique execution process under the Convention and provide concrete information about the execution requirements and different national developments in 2007.

The general process of the supervision of execution is defined by one paramount requirement: all judgments of the ECtHR must be executed. The Committee of Ministers has itself underlined that respect for the judgments of the ECtHR is a condition *sine qua non* for membership of the Organisation.

As attested by the final resolutions closing its supervision of execution, the Committee of Minis-

ters has so far always been able to conclude that respondent states have fully executed the judgments rendered against them.

Admittedly, execution has taken a considerable time in some cases and has also required investment on the part of the Committee of Ministers and the member states. In rare cases execution has even been at a total standstill for certain periods, but the end result has always been full execution. Thus applicants have in all cases received the just satisfaction awarded by the ECtHR (plus adequate compensation for any delay, if need be) and have received, if applicable, any further individual measure required under Article 46 to erase, as far as possible, the consequences of the violation found (*restitutio in integrum*). More than a thousand different general problems revealed by the Court's judgments have also been remedied, or are in the course of being remedied, through legal, administrative and/or other reforms.

This level of respect for an international treaty – even considering that it relates to human rights – is remarkable and deserves to be highlighted. It demonstrates the commitment of European states to human rights and also the quality of the work performed by the treaty institutions: both the ECtHR in deciding whether or not there has been a violation and the Committee of Ministers in ensuring that violations found are effectively rectified.

This undeniable achievement does not mean, however, that all problems have been solved. The annual report is also intended to shed light on unresolved problems and on what is being done to deal with them, in particular as regards the measures taken by the Committee of Ministers.

The most important problem today is undoubtedly the great stress placed on the monitoring system by the exponential increase in the number of applications lodged before the ECtHR. Many related problems were examined in the Wise Persons' Report of November 2006 and subsequently discussed widely in various forums.

This increased case-load underlines the crucial importance of effective national implementation of the Convention and thus, indirectly, of full execution of the ECtHR's judgments, since the authority and effectiveness of the Convention monitoring system depends essentially on the respect shown to the judgments of the Court.

Many measures have been taken to improve the implementation of judgments by member states, supported by the Committee of Ministers, the Parliamentary Assembly and the Commissioner for Human Rights and, on occasion, by other bodies.

Between 2000 and 2004, the Committee of Ministers took the initiative to adopt five recommendations to all member states on most of these aspects of the implementation of the Convention at national level, with one aim being inviting them to learn from good examples identified in the course of the supervision of the execution of judgments. The Steering Committee for Human Rights (CDDH) has been mandated to monitor the practical effect given to these recommendations. In fulfilling this mandate, it is assisted by contributions from civil society. The CDDH presented an interim report on the state of national implementation of the recommendations in April 2007. The recommendations are also often used by the Committee of Ministers in the execution process to provide examples of the achievements expected by states. The Committee of Ministers adopted a sixth recommendation on improved domestic capacity to execute the judgments of the ECtHR in February 2008.

In this respect, the contributions made by the Parliamentary Assembly and the Commissioner for Human Rights should also be mentioned. The Assembly, for its part, has continued and developed its regular monitoring, which began in 2000, of progress made in executing old or otherwise specially deserving cases. In this context it has invited all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the ECtHR's judgments on the basis of regular reports by responsible ministries.

The Commissioner for Human Rights has taken numerous actions to promote respect for the Convention and the execution of certain judgments in the context of his dialogue with governments and visits to the member states. With the same aim, he has recently also stepped up his co-operation with national institutions for the promotion and protection of human rights.

Supervision of execution in 2007

General remarks

As a result of the steady increase in the number of cases and in particular of cases revealing structural problems, the Committee had over 500 such cases on its list at the end of 2007.

It goes without saying that supervising the accomplishment of the necessary reforms in so many cases is a huge task, but in many cases reforms progress rapidly and efficiently and supervision of execution does not pose major problems. In this respect, note should be taken of the increasingly important role played by domestic courts and authorities as the direct effect of the judgments of the ECtHR is more and more extensively recognised in domestic law. Acknowledgment of direct effect often spares states more complex and lengthy legislative work. This very positive development has been encouraged by the Committee of Ministers in a number of different ways and it is very welcome that judges, prosecutors, members of the police and lawyers from many member countries regularly come to Strasbourg to learn more about the Strasbourg monitoring system and share their experiences of the implementation process. In 2007, the Department for the Execution of Judgments of the ECtHR received visits from judges, prosecutors and other magistrates from some 30 states. The positive experiences of such visits suggest that states which have not already made arrangements for such visits might well be encouraged to do so.

These encouraging developments should not however hide the fact that the number of complex situations requiring more extensive involvement of the Committee of Ministers – and thus also of the Department for the Execution of the Judgments of the ECtHR – is increasing to a remarkable extent and is placing the staff of the Organisation involved in the process under growing pressure. Responses to this are being sought at various levels: some of them are touched upon below.

Nature of cases

In 2007, the nature of the cases brought before the Committee of Ministers for execution once again bore witness to a great variety of situations. It is very difficult to single out any truly special development for the year at issue. It might, however, be noted that certain groups of cases have started to become more frequent for certain states over recent years, not least cases involving children or those concerning environmental issues.

Practice regarding individual measures

Even if the practice regarding individual measures is well developed and well known and the appropriate measures in most cases clearly identified, new questions constantly arise as new cases are decided. It should be stressed that national courts and authorities have demonstrated a real willingness to search for solutions and solve such problems, whether by taking the necessary decisions themselves or acknowledging the need for changes of national legislation.

Questions currently before the Committee of Ministers include: the scope to be given to the reopening of "unfair" criminal proceedings, the question of the relevance (from an execution perspective) of proceedings for damages already engaged by the applicant and known to the ECtHR before awarding just satisfaction and the fate of unenforced but still enforceable domestic judgments after the ECtHR has ordered the state to provide full compensation. In this regard it is noteworthy that the ECtHR has continued to make recommendations on the issue of individual measures in certain cases. It may be noted that the absence of such a recommendation by the ECtHR in a specific judgment does not mean that nothing has to be done, but simply that the standard requirements developed before the Committee of Ministers apply.

Practice regarding general measures

In terms of general measures, the Committee of Ministers has continued to develop its practice in relation to the problem of repetitive or clone cases. Whilst in the past the Committee has always ensured that adequate remedial action is taken to prevent further violations, it has not

stressed the need for respondent states to ensure that general measures are retroactively applicable in order to cover potential violations occurring before the entry into force of the relevant measures. Before the adoption of this new practice, the ECtHR frequently had to deal with repetitive violations.

The increase in cases has led both the Committee of Ministers and the member states to modify their position in this respect. Thus in 2004 the Committee of Ministers recommended that member states, following judgments by the ECtHR pointing to structural or general deficiencies in national law or practice, review the effectiveness of existing domestic remedies and, where necessary, set up effective remedies to avoid the lodging of repetitive applications before the ECtHR.

Pursuant to this recommendation, the Committee of Ministers today increasingly includes the question of effective remedies in its examination of general measures, whether or not a separate violation of Article 13 of the Convention has been found. States have in general accepted this development as is apparent from the overview of issues examined in 2007, in particular in cases of excessively lengthy judicial proceedings.

No "pilot" judgment was rendered in 2007, but the ECtHR continues its efforts to address this problem in the context of its "pilot judgment procedure" in which the Court not only highlights the need to rapidly take general measures in case of structural problems to prevent new applications in the future, but also to ensure that all applicants with repetitive or clone complaints may have access to effective national remedies. As a corollary, the Court freezes the examination of further applications until new reforms have entered into force.

These various initiatives to improve responses to repetitive or clone cases have become increasingly important as Protocol No. 14, which should facilitate the handling of this type of cases by the ECtHR, has not yet entered into force.

Other measures to improve execution

More generally in the course of 2007, the Committee of Ministers has developed its system for sharing with respondent states the concerns expressed before it with regard to the progress of execution. These concerns have been set out in detailed decisions or interim resolutions adopted following the debates held at the Committee of Ministers meetings dedicated to the execution of judgments. Some 150 such decisions and 15 interim resolutions were adopted in the course of 2007. The effects of this development will, of course, depend on respondent states' subsequent efforts to distribute these decisions effectively to the authorities concerned. It may be hoped that the emerging practice of translating and disseminating interim resolutions will also be applied to detailed decisions.

The Committee of Ministers has also considered a number of further measures to improve execution and has decided to regularly include an item with this title on its agenda. Among such measures the following may be particularly mentioned:

- *The preparation of detailed studies on execution practice to assist the national authorities in particular to better define their responses to different execution problems.* The first one, on "The monitoring of the payment of sums awarded by way of just satisfaction", was published by the Committee of Ministers at its meeting in March 2008. Further studies on the monitoring of individual and general measures are expected to follow. These documents, together with another document on Committee of Ministers' procedures, will also be sent to the CDDH, to be included in a *vade mecum* on execution practice.
- *Exchanges of views with other bodies*. In June 2007 the Venice Commission appeared before the Committee of Ministers to present its study on the effectiveness of national remedies in respect of excessive length of proceedings. At its December meeting the Committee of Ministers also noted that the Chair wished to invite the Commissioner for Human Rights for an exchange of views on issues related to execution. Co-operation with the ECtHR continues, not least through the Liaison Committee (CL-CEDH). Exchanges with the Parliamentary Assembly have mainly taken place in the context of its regular monitoring exercise and replies to recommendations and oral and written questions of the Parliamentary Assembly.
- *The setting up of a global database with easily accessible information on the execution status of cases*. Considerable progress has been achieved in this area in 2007. The special website dedicated to the execution of the ECtHR's judgments now presents information, sorted by state, on the progress of execution in most, if not all cases. Work is continuing on this database in order to

make it more easily searchable (on criteria other than by state) and more user friendly.

- *The development of the Committee of Ministers' working methods*. Due to the increasing volume of cases the Committee of Ministers has, among other things, decided to hold four three-day meetings in 2008, instead of six two-day meetings. Whilst maintaining the total of twelve meeting days a year, it is hoped that this new schedule will leave more time for the Secretariat – in particular the Department for the Execution of the Judgments of the ECtHR – and the states to prepare the cases, not least through bilateral contacts between the states and the Secretariat. The Committee of Ministers should thus be able to concentrate its discussions on those cases which really merit full collective attention. In addition, at the December meeting of the Committee of Ministers, the Swedish Chair of the Human Rights meetings put forward a number of concrete proposals which will be further examined in 2008.

- *The special programme for the execution of judgments of the ECtHR*. In 2007 the activities covered by this programme comprised a meeting in Moscow on measures to be taken as follow up to the cases regarding actions by the Russian security forces in Chechnya, a major round table in Strasbourg for a number of countries interested in the recurrent problem of non-execution of domestic court decisions and a number of other meetings or seminars in respondent states to discuss different execution issues. The general experience of the results of this programme is very positive and it is anticipated that it will be further developed for 2008.

Development of workload

The statistics clearly demonstrate a remarkable increase in workload over recent years, regarding both the number of new cases transmitted to the Committee of Ministers and the number of cases pending for supervision of execution. There is every indication that this increase will continue in forthcoming years.

A series of measures is currently being examined to allow the Committee of Ministers to handle this situation. Without going into details, the reforms address, at secretariat level, three main areas:

- The human resources devoted to assisting the Committee of Ministers;
- The reinforcement of co-operation with the authorities of member states;
- The improvement of information technology tools, in order to enhance the efficiency of the work of the secretariat and further improve the capacities of the global database.

Concluding remarks

From an execution perspective, 2007 has certainly been a work-laden year, although all in all, a positive one. It has confirmed the determination of all member states to comply with their obligations under the Convention and to solve all the various problems identified. Their efforts underline the crucial importance they give to the Convention and the ECtHR case-law in the new European structure. In this respect, one may also note that the adoption of the Lisbon Treaty has reopened the perspective of EU accession to the system.

I wish to pay tribute to the efforts and sacrifices of all involved, government agents, authorities and officials in the member states, permanent representations, the Council of Europe Secretariat and all bodies involved in this exercise.

Philippe Boillat
Director General of Human Rights
and Legal Affairs
Strasbourg, March 2008

III. The CM's execution supervision

The implementation machinery of the ECHR

1. The machinery for the implementation of the ECHR has developed considerably over the years. The basic system set up in 1950 was based on inter-state complaints made before the CM, whose task it was to decide under the former Article 32 of the ECHR whether or not the ECHR had been violated and, if a violation was established, what effect should be given to its decision. In performing this task, the CM was assisted by the European Commission of Human Rights.

2. This basic system could, however, be improved by states by accepting the right of individual petition and the compulsory jurisdiction of the ECtHR. The importance of these additional obligations gained general recognition over the years and more and more states accepted them. Under the ECHR it also fell to the CM to supervise the execution of all judgments establishing a violation thereof.

3. In parallel with this development, the Council of Europe requirement that new member states accept the ECHR system also came to encompass the additional obligations. By 1990 all member states had recognised the ECHR and the compulsory jurisdiction of the ECtHR and the right of individual petition.

4. Following the major European developments after 1989 which highlighted the importance of the ECHR system, the Council of Europe's first summit in 1994 set in motion a revision of the system, which was changed by Protocol No. 11 (1998). Two institutions currently operate:

- the ECtHR, which delivers binding judgments on applications from individuals and states alleging violations of the ECHR,
- the Committee of Ministers, which supervises the execution of the ECtHR's judgments.[1]

5. The developments of the implementation machinery have not, however, changed respondent states' basic obligations in case of violations of the ECHR, or the CM's supervision of respondent states' respect for this obligation and of effective remedies for established violations.

The basic provision governing the execution process: Article 46 of the ECHR

6. The basic provision governing the CM's supervision of the execution of the judgments of the ECtHR is Article 46[2] of the ECHR which provides that:

> "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

1. It is noteworthy that the Committee of Ministers still has on its lists a certain number of "old" article 32 cases in which it decided the issue of violation and of just satisfaction itself. Since the execution obligations are the same for these cases as for cases decided upon by the ECtHR, both types of cases are dealt with in the same manner in the context of the CM's execution supervision. In the first cases before the CM under former article 32 of the ECHR (the *Pataki* and *Dunshirn* cases) the remedial action taken by the Austrian authorities covered both individual and general measures. The general shortcomings of the Austrian criminal procedure identified by the Commission were rectified and all applicants with cases pending before the Commission were granted the right to retrial under new provisions in conformity with the ECHR, cf. Resolution DH (63) 2.

2. Formerly Article 32 of the Convention (insofar as findings of violations by the CM were concerned) and Article 53 (insofar as findings of violations by the Court were concerned).

7. The application of this provision has become clearer over the years, in particular through the general principles of international law, the practice of states in execution matters and the indications given by the CM and the Court.

The obligation to abide by the judgments

8. The extent of contracting states' undertaking "to abide by the final judgment of the Court in any case to which they are parties" entails precise obligations, as noted above. The main elements are summarised in the CM's Rules of Procedure[3] – see Rule 6 (2).

9. One set of measures – individual measures – concern the individual applicant. They relate to the obligation to erase the consequences of violations established so as to achieve, as far as possible, *restitutio in integrum*.

10. Another set of measures – general measures – relate to the obligation to prevent new violations similar to that or those found or putting an end to continuing violations.

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

12. The adverse consequences of the violation suffered are not always adequately remedied by simply awarding a sum of money. This is where the second aspect of individual measures comes in: depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may require further individual measures. These may involve, 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 despite a real risk of torture or other form of ill-treatment in the country of destination. To avoid, as far as possible, that execution encounters problems because of shortcomings in the national legal framework, the CM issued a specific recommendation to member states in 2000 inviting them to ensure the existence of appropriate systems at national level to achieve, as far as possible, *restitutio in integrum* (Recommendation (2000) 2) and to allow reopening or re-examination of proceedings criticised by the ECtHR.

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

14. The CM expects competent authorities to take interim measures to limit the consequences of violations as far as possible, in respect of both individual and general measures, pending adoption of more comprehensive or definitive measures.

15. The direct effect often given today to the ECHR and the judgments of the ECtHR by domestic courts and authorities largely facilitate both providing adequate individual redress and the necessary development of domestic law and practices. Where execution through such direct effect is not possible, other avenues, most frequently legislative or regulatory, will have to be pursued.

The scope of the execution measures required

16. The scope of the execution measures required is examined by the CM in each case primarily on the basis of the conclusions of the ECtHR in its judgment and relevant information about the domestic situation submitted by the respondent government. In certain rare, complex situations it may be necessary to await further decisions by the ECtHR to clarify outstanding issues (e.g. decisions declaring the inadmissibility of a new, similar complaint on account of the reforms accomplished in the meantime or decisions concluding that violations persist despite reforms). The respondent government keeps the CM regularly informed of progress of execution measures. In examining the execution situation the CM will also take into account, as provided for in its rules, relevant communications by the applicant and by non-governmental organisations and national in-

3. Currently called, in their 2006 version, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements". See below, page 251.

stitutions for the promotion and protection of human rights.

17. Whereas today the Court's judgments usually provide very clear indications as to the conditions of payment of the just satisfaction awarded, other execution measures required, either individual or general, may not be clarified. These have thus, in principle, to be identified by the state itself under the supervision of the CM on the basis of the conclusions of the ECtHR and other relevant information, where appropriate with the assistance of the secretariat (see more below under "Present arrangements for supervision of execution"). This situation is explained by the principle of subsidiarity by virtue of which respondent states have freedom of choice as regards the means to be employed in order to meet their obligations under the ECHR. However, this freedom goes hand-in-hand with the CM's control so that in the course of its supervision of execution the CM may also, where appropriate, adopt decisions or interim resolutions to express concern, encourage and/or make suggestions with respect to the execution.

18. Exceptions to this situation exist particularly in the context of the new "pilot" judgment procedure where the ECtHR examines itself the reasons underlying systemic problems in more detail and may also provide certain guidance as regards remedial action required with respect to general measures, most importantly as regards the necessity of setting up efficient domestic remedies. Whereas the CM has recommended that effective remedies capable of handling all repetitive or "clone" cases are set up (see, in particular, Recommendation (2004) 6), the Court has ordered such remedies to be set up in certain cases and has also "frozen" its examination of all pending applications while waiting for the remedies to start functioning.

19. The ECtHR may also order the required individual execution measure. The first cases addressing situations of this kind were decided by the ECtHR in 2004, and in both cases the ECtHR ordered the release of applicants who were being arbitrarily detained.[4] Recently, the ECtHR has also provided recommendations with respect to appropriate individual measures in some cases.

20. The Directorate General of Human Rights and Legal Affairs, represented by the Department for the Execution of Judgments of the ECtHR[5] assists states and the CM in the evaluation of the measures that should be taken in order to comply with the Court's judgments and of the progress achieved in their implementation.

Present arrangements for the CM's supervision of execution

21. The practical arrangements for execution supervision are guided by the rules adopted by the CM for this purpose (reproduced in Appendix 6, page 251) and have been clarified in the context of the development of the CM's new working methods (see, in particular, CM/Inf (2004) 008 final, available on the CM's website).

22. Accordingly, new judgments establishing violations or accepting friendly settlements are added to the CM's agenda without delay once they become final. In principle, this examination takes place at the CM's special HR meetings.

23. As already indicated, the examination is based primarily on the information submitted by the respondent government. The CM may also take into account communications made by the applicant as regards the question of individual measures and by non-governmental organisations and national institutions for the promotion and protection of human rights with respect to both individual and general measures. Such communications should be addressed to the CM through the Department for the Execution of Judgments of the ECtHR.[6]

24. Cases progressing well or which for other reasons raise no problems are examined without debate on the basis of updated information presented in the annotated agenda. Other cases are submitted for debate in order to promote execution and find solutions to problems raised. The main criteria governing the question of whether or not to hold a debate are set out in guidelines proposed by the Chair,[7] namely:

4. The Court had already developed a certain practice in this direction in certain property cases by indicating in the operative provisions that states could choose between restitution and compensation. See for example the *Papamichalopoulos and others* judgment of 31 October 1995 (Article 50).

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

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- The applicant's situation because the violation warrants special supervision;
- The case marks a new departure in the case-law of the European Court;
- It discloses a potential systemic problem which is anticipated to give rise to similar cases in future;
- The case is between contracting parties;
- There is a difference between the assessment of the secretariat and the respondent state concerning the measures to be taken;
- There is a significant delay in execution with reference to the timetable set out in the status sheet;
- The case is requested for debate by a delegation or the secretariat, subject to the provision that if the state parties concerned and the secretariat object there shall be no debate.

25. As regards cases debated at the meeting, decisions are usually adopted at the meeting itself, while for the other cases a written procedure normally applies, whereby the decisions are formally adopted some 15 days after the meeting. After adoption, decisions are made available on the CM's website.

26. The first examination will in general centre on payment of just satisfaction and individual measures. Cases raising possible systemic problems will also be identified.

27. Before the meeting the authorities of the respondent state will usually have examined the measures required, in co-operation with the Department for the Execution of the Judgments of the ECtHR, and whether an action plan to secure execution is required and, if so, its scope. The aim is that the respondent state should be able to present a plan in such cases at the latest within six months from the date the judgment becomes final. Such action plans are considered as information of intent to the CM and not as binding on relevant domestic authorities. Indeed, developments of legislation, judicial practice or other aspects frequently induce changes to action plans that have already been presented.

28. Execution supervision continues in the light of the requirements of each case and the relevant information available. The standard intervals, applicable unless the CM decides otherwise, are laid down in the CM's Rules.

29. Generally speaking, as long as the issues of payment and of individual measures remain unresolved, cases come back before the CM at each HR meeting. Furthermore, cases raising general measures and requiring an action plan will, in principle, be pursued at each meeting until the plan has been presented.

30. When the main outstanding issue is one of general measures, further examination will usually depend on the content of the action plan.

31. Unless the CM decides otherwise the case will be looked at again within six months at the latest. If the action plan foresees that execution cannot be completed within a year from the date the judgment becomes final, the new working methods provide a more robust framework for the CM's continued examination. This may, for example, imply adoption of an interim resolution taking formal note of the measures planned and, where appropriate, postponing further examination for a longer period than the usual six months, or even until the adoption of the measures.

32. As indicated in the previous section, the CM may also intervene in the course of the execution supervision to express concern and/or to make suggestions with respect to the execution. Such interventions may, depending on the circumstances, take different forms, such as declarations by the Chair, press releases, decisions adopted as a result of a debate or interim resolutions. To be effective, such texts may require translation into the language(s) of the state concerned and adequate and sufficiently wide distribution.

33. Once the Committee has established that the state concerned has taken all the measures necessary to abide by the judgment, the Committee closes its examination of the case and either immediately adopts a final resolution or, more frequently, sends the case to a special section of the agenda awaiting the preparation of such a resolution.

34. In principle, the supervision of the respect of undertakings accepted by states in the context of friendly settlements follows the same procedure as the one outlined above.

7. The present guidelines were adopted in 2004 and are set out in document CM/Inf (2004) 8 final.

IV. Improving the execution procedure: a permanent reform work

Main trends

1. The main ECHR developments leading to the present system as laid down in Protocol No. 11 have been briefly described in the preceding section.

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

- improve the efficiency of the procedures before the ECtHR;
- improve the domestic implementation of the ECHR;
- improve the execution of the Court's judgments.

3. The importance of these three lines of action has been regularly emphasised at ministerial meetings and also at the Council of Europe's Third Summit in Warsaw in 2005 and the ensuing plan of action. A big part of the implementing work was entrusted to the CDDH. Since 2000 a number of different measures have been drawn up. Among instruments adopted have been:

- 5 Recommendations to states on various measures to improve the national implementation of the ECHR,[1] including in the context of execution of individual judgments of the ECtHR;
- Protocol No. 14,[2] both improving the procedures before the ECtHR and providing the CM with certain new powers in the context of its supervision of execution (to lodge with the Court requests for the interpretation of judgments and to bring infringement proceedings in case of refusal to abide by a judgment) and;
- New Rules for the CM supervision of execution of judgments and of friendly settlements' clauses adopted in 2000 and amended in 2006, not least improving transparency and the possibility of participation by civil society.

4. In the course of the reform work the problem of slowness and negligence in execution has attracted special attention.

1. *– Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;*

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

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

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

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

The status of implementation of these recommendations is currently evaluated with the assistance of the CDDH. Civil society has been invited to assist the governmental experts in this evaluation. A certain follow-up also takes place in the context of the supervision of the execution of the Court's judgments. In addition to these recommendations to member states, the Committee of Ministers has also adopted a number of resolutions addressed to the ECtHR:

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

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

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

2. This Protocol has, however, not so far entered into force.

5. A number of measures have also been brought forward to assist in preventing such situations from emerging, including improved databases with information on the execution situation in different cases and the drafting of a *vade mecum* on practice and procedure in execution matters. In addition the CM has since 2006 put in place a special programme for the execution of judgments of the ECtHR (comprising legal expertise, round tables and training programmes) to assist respondent states in their efforts to adopt the measures required by the Court's judgments. In addition, national officials from a number of countries regularly come to Strasbourg for study visits, seminars or other events where execution supervision is presented and special execution problems discussed.

6. In order to further promote the improvement of national execution procedures, the CM adopted in February 2008 a special recommendation to the member states on efficient domestic capacity for rapid execution of the ECtHR's judgments.

7. Reflections on means to improve execution continue not least in the light of the developments of the "pilot judgment" procedure before the ECtHR, the Wise Persons report, recommendations from the Parliamentary Assembly and the ongoing reflection in the CDDH.

Developments of the CM's Rules and working methods

8. The need to ensure the efficiency of execution have, as noted above, had important repercussions over the years on the rules adopted by the CM for execution supervision and its working methods.

9. The first Rules were adopted in 1959. One set related to the CM's exercise of its powers under old Article 32 of the ECHR. These rules were regularly updated until the abolition of this Article by Protocol 11 in 1998. Another set of Rules, also adopted in 1959, related to the supervision of the judgments of the ECtHR under old Article 54. These were also regularly updated (see Appendix 6, page 251). It is noteworthy that the CM decided in 1972 that the Secretariat should forward to it all complaints by applicants about the execution of judgments insofar as they related to individual redress in particular payment of just satisfaction.

10. The constant increase in the number of cases brought before the CM has in parallel led it to adapt its working methods in a number of ways. In 1989, the Deputies thus decided to handle cases mainly at special monthly "Human Rights" meetings.

11. However the pace of one Human Rights meeting every month soon became too much and in 1996 it was decided to hold a meeting only every 2-months, but to extend meeting time (mostly 2, sometimes 3 days). This rate has been roughly kept until 2007. In order to allow the permanent representations and the Secretariat to handle the huge amount of decisions to be prepared after each meeting, it was agreed that the decisions would in general be adopted in the course of a subsequent written procedure (usually ending some 2 weeks after the meeting). Only the most important decisions are adopted directly at the meeting.

12. The new reforms proved efficient, but the ever-increasing number of cases and the practice of making extensive, narrative notes (restating the positions of all major interventions made), in each case led to a huge document production, making it difficult for delegations to access relevant information and to obtain an overview of the general execution situation. In addition, the confidentiality of all the documentation of the Human Rights meetings (decisions included) did not correspond well with the general effort of the Council of Europe to increase transparency.

13. Further reforms in 2000 responded to these concerns. Notes on cases were drastically shortened and presented and grouped in one document – the annotated agenda (today divided in several parts). New Rules for the supervision of execution of the judgments of the ECtHR were also adopted,[3] mainly codifying existing practices. However, in line with the general call for more transparency in the Council's activities, the new Rules introduced a new principle of publicity in respect of all execution information submitted by the respondent state. In line with this the Deputies also started to publish the annotated agenda and the decisions adopted in the course of its execution supervision.

3. A special decision in 1998 made the earlier rules applicable also to judgments rendered under the new Article 46 awaiting the elaboration of a new set of Rules.

14. At the same time the increasing pressure on the Chair also led to an ad hoc arrangement, whereby the chairmanship of the Human Rights meetings is assumed by the incoming Chair of the CM.

15. Further to improve the efficiency of its activity, the CM drew up new working methods in 2004.[4] Under these, action plans (with timetables) with respect to outstanding execution measures are for example expected at the latest within 6 months from the date a judgment becomes final.

16. The results of the new working methods are regularly reviewed with a view to identifying further possible improvements. This process has already led to a number of additional changes. Thus, the number of Human Rights meetings will be limited, on an experimental basis, to 4 in 2008. The aim is, in particular, to allow more time to ensure the quality of the examination required in view of the ever-increasing number of judgments, more bilateral contacts with the Department for the Execution of Judgments of the ECtHR and increased assistance to states in order to accelerate the execution process.

17. The preparation and adoption of Protocol No. 14 made it necessary to revise anew the Rules. The new Rules of 2006 thus regulate the use of the CM's new powers and also take into account the fact that the protocol entrusts the CM with the new responsibility of supervising the respect of friendly settlements accepted by the ECtHR also before admissibility, in simple decisions (and not only settlements concluded after admissibility, by judgment). The Rules also extend the right to submit communications also to non-governmental organisations, as well as to national institutions for the promotion and protection of human rights. In contrast to applicants, these can address all execution issues and not just those relating to individual redress.

4. See document CM/Inf(2004)8 final.

V. Abbreviations

General acronyms

CM	Committee of Ministers
HR	"Human Rights" meeting of the Ministers' Deputies
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
IM	Individual Measures
GM	General Measures
Sec.	Section
Art.	Article
Prot.	Protocol
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Country codes[1]

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MLT	Malta
AUT	Austria	MDA	Moldova
AZE	Azerbaijan	MCO	Monaco
BEL	Belgium	MON	Montenegro
BIH	Bosnia and Herzegovina	NLD	Netherlands
BGR	Bulgaria	NOR	Norway
CRO	Croatia	POL	Poland
CYP	Cyprus	PRT	Portugal
CZE	Czech Republic	ROM	Romania

1. 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).

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		

Appendices

Initial explanations

The appendices below contain a number of overviews and statistics relating to the CM's supervision of execution in 2007.

Certain initial explanations have appeared useful in order to facilitate access to the information provided notably in the thematic overview (Appendix 1, page 27) and in the statistical part (Appendix 2, page 203), in particular the references made to the CM's meetings and to the sections on the agenda under which cases have been examined.

If the thematic overview thus indicates that a certain case was last examined at the 987-6.1 meeting, this means that the case was examined at the 987th "Human Rights" meeting of the Deputies held on 13-14/02/2007 in section 6.1, i.e. the section where cases are placed with a view to a decision on the question whether or not it appears possible on the basis of available information to close the examination of the case and request the Secretariat to present a draft final resolution.

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

1. CM's HR meetings in 2007

Meeting No.	Meeting dates	Decision dates
987	13-14/02/2007	28/02/2007
992	03-04/04/2007	20/04/2007
997	05-06/06/2007	20/06/2007
1007	15-17/10/2007	31/10/2007
1013	03-05/12/2007	19/12/2007

2. Sections used for the examination of cases at the CM'S Human Rights meetings

At each HR meeting, cases are registered into different sections of the annotated agenda and order of business. These sections correspond to the different stages of examination of the execution of each case, in the following way:

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

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

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

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

Sub-section 1.4 – Friendly settlement.

Section 2 – New cases examined for the first time.

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

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

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

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

Sub-section 4.1 – Supervision of individual measures only;

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

Sub-section 4.3 – Special problems.

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

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

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

Sub-section 5.3 – Publication/dissemination;

Sub-section 5.4 – Other measures.

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

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

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

Appendix 1

Thematic overview of issues examined in 2007

Introduction

The thematic overview below presents the execution situation of the ECtHR judgments at the end of 2007, in particular as regards those cases or groups of cases requiring further general measures than the mere publication and dissemination of the ECtHR's judgment and/or cases with individual measures of particular interest.

The thematic approach is based on the different rights and freedoms protected by the ECHR.

The information is presented in the following format:

State / Case (as far as groups of cases are concerned only the references of the leading case are indicated)

Application No.

Date of final judgment

Meeting No. and Section of last examination

Violations found

Individual (IM) and General (GM) measures taken or outstanding (for further information see the notes on the agenda of the indicated meeting and section or, if applicable, the Final Resolution adopted)

An index of cases by state is presented at the end of the overview, page 197.

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

A.1. Actions of security forces

1. AZE / Mammadov (Jalaloglu)

34445/04
Judgment final on 11/04/2007

Last examined: 1013-4.2

Torture inflicted on the applicant, Secretary General of the Democratic Party of Azerbaijan at the material time, while he was in police custody in October 2003 (violation of Art. 3); lack of an effective investigation into the applicant's allegations of ill-treatment (violation of Art. 3) and absence of a critical and effective review of the decision not to prosecute (violation of Art. 13).

IM In cases where a (procedural) violation of Art. 3 is found, there is a continuing obligation to conduct investigations. In accordance herewith, the Azerbaijani authorities have been requested to provide information about the resumption of criminal investigations.

GM The Azerbaijani authorities have indicated that the ECtHR's judgment had been translated and disseminated to police, prosecutors' offices, judicial bodies and courts. Furthermore a range of seminars on the standards of the ECHR and the European Committee for the Prevention of Torture as well as on the case-law of the ECtHR

were organised for the employees of the above-mentioned agencies.
Detailed information on the measures mentioned above is awaited.
Information is also awaited on any further general measures taken or envisaged to ensure firstly respect for the prohibition of torture, inhuman or degrading treatment and secondly proper investigations in case of allegations of ill-treatment and effective judicial review of prosecution decisions to close investigations, including an independent assessment of the facts.

2. BGR / Nachova and others

43577/98 *Last examined: 1007-4.2*
Judgment final on 06/07/05 – Grand Chamber

Death of Roma conscripts in 1996 due to use of excessive force during arrest (violation of Art. 2) and lack of an effective investigation into their death (violation of Art. 2), failure by the authorities to investigate whether or not possible racist motives may have played a role in the events (violation of Art. 14 taken in conjunction with Art. 2).

IM The original investigations into the killings were closed by the prosecutor. The General Prosecutor's Office has, however, indicated that a judgment of the ECtHR should be considered as a new fact and taken into account in the evaluation of the possibility of cancelling the decision to close the criminal investigation in this case. In accordance herewith the criminal file, together with a copy of the judgment of the ECtHR, was sent to the Military Prosecutor's Office in Pleven, competent in this situation. Information has been received on the follow-up action taken. This information is being assessed.

GM As a first measure the judgment of the ECtHR has been published and sent to the military courts and prosecuting organs, as well as to the Ministry of the Interior and to the Ministry of Defence, with a circular letter explaining the most important conclusions of the ECtHR, and in particular the fact that the ECHR prohibits the use of fire-arms during arrest of fugitives who are not dangerous.
As regards the **excessive use of force and failure to protect life**, the Ministry of Defence has adopted a regulation defining the circumstances in which military police may use force and fire-arms and providing an obligation to assess the nature of the offence committed by an individual and the threat that he or she poses.
The question of the need to change the legal framework on the use of force during arrest by ordinary police is also under discussion, in the light of the ECtHR's finding that the current framework did not meet the requirements of the ECHR.

Further information on recent developments is awaited.

The question of **lack of effective investigation** is followed mainly in the Velikova group of cases. In this context, a report drawn up by military prosecutors was provided concerning the results of the investigations into cases of alleged police violence for 1999-2005.

As regards the failure to determine whether or not **possible racist motives** played a role in the abuse of force during arrest, the authorities are of the opinion that no amendment of the Criminal Code is needed. The Ministry of Justice sent a circular letter to the military authorities and to the Ministry of Defence with a view tothe dissemination of the judgment. It indicated in this letter that Bulgaria's obligations under the ECHR can be fulfilled in an appropriate manner by drawing up instructions for the attention of prosecution authorities indicating their obligation to investigate possible racist motives in similar cases.

Subsequently, the Ministry of Defence, in particular its service responsible for the military police, brought the judgment to the attention of the competent authorities. Concrete instructions were given to the military police in order to prevent similar violations in the future. The question of the sufficiency of these measures is being assessed.

3. BGR / Velikova and other similar cases

41488/98 *Interim Resolution (2007)107*
First Judgment final on 04/10/2000 *Last examined: 1007-4.2*

Death and ill-treatment while in police custody, excessive use of force when arresting suspects and lack of an effective investigation into alleged abuses (violation of Art. 2 and/or 3 and 13), failure to provide timely medical care in police detention (violation of Art. 2), unlawful detention (violation of Art. 5§1), unlawful destruction by the police of property (violation of Art. 1 of Prot. No. 1) and excessive length of proceedings engaged against the state to obtain compensation for the alleged ill-treatment (Violation of Art 6§1). All events relate to the period 1993-1999.

IM In its recent **Interim Resolution** (2007)107, the CM has called upon the government of the respondent state to rapidly adopt all required individual measures. The CM is awaiting in particular information on the follow-up given to the judgments of the ECtHR by the General Prosecutor (competent to ask for the reopening of the unsatisfactory criminal investigations in these cases).

GM As regards the ***violations of the right to life, ill-treatment and lack of medical care***, the main information concerns awareness-raising measures and training of the police on the requirements of the ECHR: compulsory training on the subject has been introduced and in 2000 a specialised Human Rights Committee was set up at the National Police Directorate. In addition, in 2002, a new form was introduced, to be signed by all detained persons, containing information on their basic rights. Furthermore, in October 2003 a Code of Police Ethics, drawn up in co-operation with the Council of Europe, was introduced by order of the Minister of the Interior.

As regards the ***violations related to the lack of effective investigation***, judicial review of prosecutors' decisions not to prosecute was introduced in 2001 as well as the power for courts to remand files to the prosecutor for specific investigations. The effectiveness of this judicial review is steadily enhanced as the direct effect of the ECHR and the European Court's case-law is improving.

As regards ***the unlawful detention***, it has been noted that already at the time of the events, a written order had to be issued before police detention and this detention had to be recorded in a special register. In a circular letter of 13/03/2002 the Director of the national police force directorate reminded all the chiefs of regional police force directorates of their obligation to take all necessary measures to ensure strict compliance with these rules.

The special issue of ***the insufficiency of the legal framework for the use of firearms by police officers*** is being examined within the framework of the cases of Nachova and others.

The measures required by the ***violation related to the excessive length of the civil proceedings for damages against the state***, is examined in the context of the Djangozov case.

The most important judgments were **translated, published** on the internet site of the Ministry of Justice and sent out to the relevant authorities, in some cases together with an accompanying letter from the Ministry of Justice.

In the light of the particular circumstances of the ***violation of the right of property***, these measures appeared sufficient in this context.

Whilst noting with interest the information provided by the government in respect of general measures, the CM has, however, noted in the above mentioned **interim resolution** that certain general measures remain to be taken, in particular measures aimed at:

- improving the initial and ongoing training of all members of police forces, in particular as regards the widespread inclusion of the feature "human rights" in the training;
- improving procedural safeguards during detention on remand, in particular through the effective implementation of the new regulations concerning the obligation to inform detained persons of their rights and the formalities to be followed concerning the recording of arrests;
- guaranteeing the independence of investigations regarding allegations of ill-treatment inflicted by the police, and in particular ensuring the impartiality of the investigation organs in charge with this kind of cases;

In the light hereof the CM called upon the Government of Bulgaria to rapidly adopt all outstanding measures and to regularly inform the CM on the practical impact of the adopted measures, in particular by submitting statistical data on the investigations carried out in respect of allegations of ill-treatment by the police.

The CM decided to pursue the supervision of execution until all general measures necessary for the prevention of new, similar violations of the ECHR are adopted and their effectiveness does not raise any doubt

4. **GEO / Davtyan**
GEO / Danelia

73241/01 and 68622/01
judgments final on 27/10/2006 and
17/01/2007
Last examined: 1013-4.2

Lack of effective investigations, including a refusal of medical examination by an independent expert, into the applicants' complaints concerning torture and ill-treatment allegedly suffered during police detention (violation of Art. 3 and 13)

IM Information has been requested as to the resumption of criminal investigations into the events at issue. According to the Georgian authorities, there would be no legal basis for such an investigation in the Davtyan case, as the applicant did not appeal the prosecutor's decision of 1999 refusing an investigation. No information was provided in this respect as regards the Danelia case. In response hereto the Georgian authorities' attention has been drawn to their continuing obligation under the ECHR to ensure, on their own initiative, fresh investigations into the allegations of torture or ill-treatment here at issue. Further information on the resumption of investigations is, accordingly, awaited.

GM Several measures have been taken to eliminate torture and ill-treatment during detention and to improve the processing of complaint of torture or ill-treatment.
The Georgian authorities have referred to Article 92 of the Law on Imprisonment which provides that every person who enters the prison shall undergo medical examination. They have added that any information regarding injuries is noted in so called "Krebsi" – Daily Notes – of the Penitentiary Department, which notes are automatically transferred to the Unit Supervising the Penitentiary Department and Human Rights Protection Unit of the Prosecution Service of Georgia. In accordance with Article 263 of the Code of Criminal Procedure, this information is enough to automatically to start a preliminary investigation. Investigations may also be initiated on the basis of information received from physical or legal persons, local government bodies, officials, operative-investigative authorities and mass media. The statistical data for 2006 show an increase in the number of investigations into allegations of torture and ill-treatment.

Several training programmes have also been organised for the security forces, in particular by the Training Centre of the Prosecutor's Office (created in 2006) and the Training Centre at the Ministry of Internal Affairs (created in 2004). A Code of Ethics for Prosecutors and a Code of Ethics for the Police were adopted in June 2006. The judgments of the ECtHR have been published and disseminated to the authorities.

The scope and nature of further general measures required is being assessed.

5. **FRA / Tais**

39922/03
Judgment final on 01/09/2006
Last examined: 1013-4.2

Violation of positive obligation to protect the lives of persons in police custody on account of the lack of plausible explanation as to the cause of the injuries that resulted in the death of the applicants' son in 1993, while he was detained and the lack of effective police and medical supervision (substantive violation of Art. 2); lack of a quick and effective investigation into the circumstances surrounding the death (procedural violation of Art. 2).

IM The applicant's request for the reopening of the investigation was rejected by the Public Prosecutor's Office on 12/01/2007 as the new facts relied on by the applicants (made available in the course of the proceedings before the European Court) were not considered sufficient to justify a reopening of the investigations. The CM is examining the situation.

GM As regards the substantive **breach of the positive obligation to protect life of persons in police custody**, the judgment has been sent out to the police, and will be commented upon during police officers' training, in order to draw the consequences of this judgment in their work and to avoid new, similar violations. More generally, the French Government has maintained important

efforts for several years, taking into account the CPT's recommendations, to improve conditions of police custody, notably through the implementation of the Circular on the dignity of persons in police custody issued on 11/3/2003).
The examination of these measures is under way.
As regards the **lack of effective investigation**, the judgment of the ECtHR was sent to the First President of the Court of Cassation and to the General Prosecutor before the same Court, as well as to the Public Prosecutor before the Court of Appeal of Bordeaux, which was concerned in this case. The French delegation also stated that the judgment would be published and commented on the Intranet site of the Ministry of Justice.
The examination of these measures is under way.

6. FRA / Slimani

57671/00
Judgment final on 27/10/04

Final resolution (2007)51
Last examined: 992-1.1

Applicant's inability to take part in the inquiry organised after the death of her partner in a detention centre in 1999 to establish the cause of death (violation of Art. 2)

Case closed by final resolution

IM The applicant received access to the inquiry documents during the proceedings before the ECtHR and made no other request.

GM As to the right of access to the criminal investigation, the law has been modified and persons close to the deceased may now become civil parties to the enquiry and thus obtain access to it, without having to lodge a criminal complaint. Furthermore, the judgment of the ECtHR was posted, with an explanatory note, on the intranet site of the Ministry of justice, for the attention of all magistrates including investigating magistrates.

7. GRC / Makaratzis

50385/99
Judgment final on 20/12/04

Last examined: 1013-4.2

Breach of the state's positive obligations to protect the applicant's right to life by law and to conduct an effective investigation into the police hot-pursuit incident that put applicant's life at risk in 1995 (violation of Art. 2)

8. GRC / Bekos and Koutropoulos

15250/02
Judgment final on 13/03/06

Last examined: 1013-4.2

Inhuman and degrading treatment by police of Roma applicants following their arrest and detention in custody in 1998 (substantive violation of Art. 3), lack of an effective investigation into the applicants' credible allegation of police ill-treatment (procedural violation of Art. 3) and into possible ethnic discrimination (violation of Art. 14 in conjunction with Art. 3 in its procedural aspect).

IM In both cases, the police officers incriminated were acquitted, respectively in 1999 and 2001. The question of the reopening of the investigation, initially raised, was dropped in the light of the fact that the applicants did not wish to proceed with further prosecution, The ECtHR awarded them just satisfaction in respect of the non-pecuniary damage sustained.

GM As regards the **police's failure to protect life and prevent inhuman and degrading treatments**, the Greek authorities have taken a series of general measures to establish a modern, comprehensive legal framework for the use of force and firearms by policemen, as well as their overall conduct towards citizens:
In 2003 a new law entered into force, which contains specific, strict conditions for carrying and use of firearms by policemen and establishing criminal liability for policemen in cases of unlawful use of firearms. This law entailed the adoption in 2004 and 2005 of provisions setting up compul-

sory policemen's education and training in firearms.

In 2004 the Policemen's Code of Conduct entered into force, containing guidelines for policemen's conduct towards all citizens, in accordance with international human rights principles. In particular, it provides that policemen should never use force unless absolutely necessary and as provided by law. The operation of police pursuits has also been regulated in 1993 by detailed provisions on policemen's conduct during arrest, detention and preliminary inquiries, aimed at the effective protection of citizens' rights.

As regards the **lack of effective investigations** into the allegations of abuses by the police, including the alleged **discrimination** of Roma people, in 2004 new provisions were issued concerning the disciplinary investigations against policemen. In particular, a special committee was mandated with proposing possible amendments of the relevant disciplinary law. Information thereon is currently being examined.

The Policemen's Code of Conduct of 2004 provides that policemen in their conduct should avoid all "prejudices" due to an individual's "colour, sex, ethnic origin, ideology and religion, sexual orientation, age, disability, family situation, financial and social status or other characteristics". It also provides that policemen should "take particular care" for the protection of members of minorities or other vulnerable social groups. Statistics were also provided on disciplinary investigations against policemen in 2001-2005.

Finally, **awareness-raising measures** have been taken:

- both judgments were translated, published and promptly notified to the Ministry of Justice and subsequently to the President of the Court of Cassation and to the State Prosecutor for further dissemination to all judicial authorities;
- in 2004 the UN Human Rights Centre's Pocketbook on Human Rights for the Police, was distributed, in Greek, to all policemen;
- a circular was issued by the Head of the Greek Police in 2005 on the protection of human rights during police action and other circulars were issued in 2005 and 2006 disseminating the ECtHR's judgment in Makaratzis case to all police units and, with reference to the Bekos and Koutropoulos judgment, providing guidelines for fighting racism, xenophobia and intolerance during police operations.

9. MDA / Corsacov

18944/02 *Last examined: 1013-4.2*
Judgment final on 04/07/2006

Torture inflicted on a minor in 1998 while in police custody (substantive violation of Art. 3); failure to carry out an effective investigation (violation of procedural aspects of Art. 3); lack of an effective remedy to claim compensation for ill-treatment (violation of Art. 13).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage suffered. The General Prosecutor's Office conducted an investigation against the alleged perpetrators of the ill-treatment and the case is currently under examination at First Instance. Information is expected on the progress of these proceedings.

GM The authorities provided extensive information, which is being assessed.

As regards the **torture inflicted while in police custody,** in 2005 an amendment to the Criminal Code was introduced, defining and criminalising torture. Furthermore, in December 2006, the Moldovan Government published the Code of Police Ethics, drafted with the Council of Europe's assistance. It provides, *inter alia*, that all police officers are fully responsible for their actions or omissions as well as for orders given to their subordinates and prohibits torture. Any failure to comply with these provisions invokes the disciplinary, civil or criminal responsibility of the police under the conditions prescribed by law.

Training and awareness raising programmes on human rights and the ECHR have been organised for the police and their co-workers and for the staff of the Ministry of Interior. The authorities indicated that twelve workshops on the implementation of the Code of Police Ethics were envisaged and that changes in the Police training curricula had already been made or were to come.

The authorities have been invited to provide examples of the application of the laws relating to criminal responsibility and information on the existing disciplinary measures for infliction of

torture. Clarifications on professional training are also expected.

As regards the **lack of effective investigation**, under the Code of Criminal Procedure, as amended in 2006, complaints about criminal investigation organs may be addressed to the prosecutor supervising this investigation. If a complaint concerns the prosecutor himself, he is obliged to transmit it, together with his explanations, to a superior prosecutor within 24 hours. All declarations, complaints or other circumstance indicating that a person has been tortured or subjected to inhuman or degrading treatment are examined by a public prosecutor in a separate procedure.

Further clarifications are expected on the measures related to the effectiveness of such investigations, together with relevant examples of such investigations.

As regards the **lack of remedy to claim compensation**, at the material time, it was necessary to establish that the act in question was illegal in order to claim compensation for damage sustained.

The authorities provided an example showing that the Civil Code establishes responsibility and the possibility of compensation for damage caused by public authorities or by organs of criminal prosecution, public prosecutors and the judiciary. Furthermore, under a law of 1998 "on Compensation for Damage caused by the Illegal Acts of the Criminal Investigation Bodies, Prosecution and Courts", persons whose rights had been violated are entitled to compensation for non-pecuniary and pecuniary damage, irrespective of the degree of culpability of the public agents. Clarifications have been requested as to whether this law applies to compensation for torture when the illegality of the acts in question has not been established and as to its relationship to the general provisions contained in the Civil Code. Relevant examples of their application are also expected.

The judgment has been translated, published and sent out to the national courts, the Ministry of Interior and all sections of the police.

10. NLD / Ramsahai and others

52391/99 *Last examined: 1007-2*
Judgment final on 15/05/07 – Grand Chamber

Failure to conduct an effective and independent investigation into a killing by the police in 1998 (violation of Art. 2).

IM As the ECtHR concluded, after a thorough examination of the facts, that the force used in the circumstances was "no more than absolutely necessary" no additional investigation appears necessary from an Article 2 perspective.

GM Measures were already taken before the judgment became final to ensure **the independence of investigations**. In particular, instructions were given in 2006 to ensure that investigations are rapidly carried out by the special State Criminal Investigation Department or at least by a police force other than that involved. No further general measure seems necessary in this respect.

As regards the **inadequacy of the investigation**, information is awaited on the protocol to be followed after incidents in which police officers use firearm, in particular if this leads to casualties.

11. RUS / Khashiyev and other similar cases

57942/00+ *Last examined: 1007-4.3*
Judgment final on 06/07/2005

Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2001: state responsibility established for deaths, disappearances, ill-treatment, unlawful searches and destruction of property; failure to take measures to protect the right to life; lack of effective investigations into abuses and absence of effective remedies; ill-treatment of the applicants' relatives due to the attitude of the investigating authorities (violation of Art. 2, 3, 5, 8, 13 and of Art.1 Prot. 1).

Failure to co-operate with the ECHR organs contrary to Art. 38 of the ECHR in several cases.

IM Domestic investigations into the circumstances at the basis of the violations have been either resumed or re-opened in order to give effect to the Court's judgments. The CM is monitoring their progress.

GM The **legal framework** for the action of security forces has been amended, notably through the adoption in 2006 of the new antiterrorist law.These legislative changes are to be assessed, as to their compliance with the ECHR, in the light of by-law regulations and instructions implementing them. The latter have been recently submitted by the Russian authorities and are being assessed by the Secretariat.

The CM is paying a particular attention to the measures taken or planned with a view to introducing safeguards against disappearances and to ensuring compliance with ECHR requirements in the context of anti-terrorist fight. Information is in particular awaited on the measures taken or planned with regard to arrests and registration of detention, whether for identification or other purposes in the circumstances of an anti-terrorist operation.

The aforementioned reforms have been reinforced by the mainstreaming of Human Rights and of the ECHR into initial and service **training** of all security forces, including the military.

The legal and regulatory framework of criminal investigations into alleged abuses has also been changed in September 2006 with the setting up of a new investigating committee with the General Prosecutor's office. It remains however to be assessed to what extent this reform will improve the effectiveness of investigations. A particular attention is also paid to the interaction between military prosecutors and other prosecutors during anti-terrorist operations as well as to the possibility of judicial review.

As regards **compensation of victims** certain positive developments of case-law, either concerning the destruction of property or the disappearance of relatives, have taken place and special compensation schemes managed by the state have been introduced.

The last analysis of the execution situation is to be found in Memorandum CM/Inf/DH(2006)32 revised 2. The CM has recently received extensive new information, including on the measures taken with regard to the violation of Art. 38. They are being assessed by the Secretariat.

The execution of the above judgments was also discussed at the Round Table organised jointly by the Council of Europe and the Russian Ombudsman's office in Moscow in July 2007.

12. RUS / Mikheyev

77617/01
Judgment final on 26/04/06

Last examined: 1013-4.3

Torture inflicted on the applicant while in police custody in 1998, failure to conduct adequate and sufficiently effective investigation in this respect (violation of Art. 3); lack of an effective remedy in this respect (violation of Art. 13)

IM In 2002, the Deputy Public prosecutor of the region allegedly involved in the events was discharged. In 2005, two police officers accused by the applicant were sentenced to 4 years of imprisonment for abuse of powers associated with the use of violence. These developments had taken place before the ECtHR delivered its judgment.

The ECtHR considered that the fact that the applicant might still receive an award in respect of pecuniary damage for his permanent disability in domestic proceedings did not deprive him of his right to compensation under Article 41 of the ECHR. Information is presently awaited on the outcome of pending proceedings for additional compensation under Russian law.

GM the Russian authorities provided extensive information which is being assessed. At the outset it appears that some further information and clarification would be necessary concerning:

1) the **procedural safeguards in police custody** and the improvements introduced by the new Code of Criminal Procedure (the "CCP") in force since 2002, as to:

a) the possible restrictions which are still applicable to access to a lawyer;

b) the right of the apprehended person to inform relatives and receive visits;

c) medical examination of persons in police custody;

d) video recording of questioning;

e) prosecutors' duties in respect of persons in police custody.

2) the **effectiveness of investigations**, in particular as regards the territorial, institutional and practical independence of prosecutors in charge of the examination of complaints regarding ill-treatment from those who ensure the supervision of the initial investigation.

3) the **awareness raising and training** initiatives taken in respect of police officers and prosecutors and in particular sanctions which might be taken if the ill-treatment is established. The authorities were invited to provide statistics demonstrating the effectiveness of such sanctions.

4) the **compensation of victims**, notably under Articles 1069 and 1070 of the Civil Code. Relevant examples of the case-law are awaited.

The judgment was published and disseminated to all regional prosecutors in charge for them to discuss the findings of the ECtHR with their subordinates.

13. RUS / Tarariyeva

4353/03
judgment final on 14/03/2007

Last examined: 1013-4.2

Inhuman treatment inflicted on the applicant's detained son as a result of his handcuffing at the civilian hospital and the conditions of his transport in a prison van (substantive violation of Art. 3); subsequent failure to protect the life of the applicant's son who died because of the lack of adequate medical care at the public hospital in September 2002 (substantive violation of Art. 2); lack of effective investigation into this death and inadequate possibility for the applicant to participate in the investigation or to claim compensation (procedural violation of Art. 2).

IM The criminal proceedings initiated against members of medical staff of the penitentiary hospital and of the public hospital have been discontinued for lack of *corpus delicti*. Only the head of the surgery department of the public hospital was referred to a trial court. As a result of this trial, he was acquitted.

Besides, the authorities indicated that disciplinary proceedings were impossible because of the time ban.

Information is awaited on other possible measures taken or envisaged in order to remedy the shortcomings of the domestic investigations identified by the ECtHR in its judgment.

GM As regards the **inhuman treatment** in respect of **handcuffing** at the civilian hospital, the Russian authorities indicated that there were no specific rules governing the situation of convicts in civil hospitals and that various laws were applicable to convicts and penitentiary staff members. This information is currently being assessed.

As regards the **inhuman treatment**, in relation to the **transport conditions**, information is awaited on the rules and standards governing the transport of detainees to public hospitals.

As regards the **failure to protect life** and lack of requisite medical care: see the Popov case.

As regards the **inadequacy of the investigation, in relation to the civil claim for compensation**: see the Khashiyev and other similar cases.

The judgment of the ECtHR was sent out to the Supreme Court, the General Prosecutor's office and the Ministry of Health and Social Development to ensure that they take measures within their competence and apply these in their daily practice. Further information is awaited on the dissemination of the judgment, together with appropriate instructions by the Federal Service for the Execution of Sentences and the Ministry of Health, to their local departments. The publication in general and specialised law journals is also expected.

14. SVN / Matko

43393/98
Judgment final on 02/02/07

Last examined: 1007-4.2

Ill-treatment of the applicant by the police while arresting him in 1995, lack of effective investigation in this respect (substantive and procedural violation of Art. 3).

IM The investigation into the ill-treatment of the applicant was discontinued in 1997. The applicant then had the possibility of instituting criminal proceedings against the police officers, but did not do so. According to the ECtHR, the use of this remedy had no prospect of success in view of the outcome of the investigation.

The judicial proceedings against the applicant ended in a final judgment in 2001. The applicant was given a suspended sentence of three months' imprisonment and ordered to pay the costs of the proceedings. The ECtHR awarded him just satisfaction in respect of non-pecuniary damage and for costs and expenses. It dismissed his claims for pecuniary damage and the costs of the domestic proceedings.

The Slovenian authorities indicated that the State Prosecutor may not initiate a criminal investigation against the police officers responsible for the ill-treatment of the applicant as the matter is time-barred. Information is expected on the exact time-limits of prescription in this case as well as on the possibility of instituting disciplinary proceedings against the police officers concerned. The question of whether other measures are necessary is being assessed.

GM **Ill-treatment by the police**: see Rehbock case.

Lack of effective investigation: the Constitutional Court decided in 2006 that the right to judicial protection secured by the Slovenian Constitution also included the right to an independent investigation in cases of alleged ill-treatment by the police.

The ECtHR's judgment has been translated and sent out to police stations in the territory in which the violation occurred, to the Ministry of Justice and the State Prosecutor's Office. In January 2007 the State Prosecutor sent out a memorandum to heads of District Prosecutors' Offices and the State Prosecutor's Special Group for the Prosecution of Organised Crime, requesting them to inform all state prosecutors of the judgment.

Two amendments to the State Prosecutor Act were adopted in 2007, setting up a specialised task group responsible solely for the prosecution of criminal offences committed by persons employed by the internal affairs authorities. These amendments also transfer jurisdiction to state prosecutors who will co-ordinate and direct the work of the police during criminal investigations concerning unlawful police acts.

An Amendment to the Police Act of 2005 contains detailed provisions on how medical care shall be provided to detainees.

The Ministry of Internal Affairs has furthermore conducted an internal analysis of the Matko case. Its findings will become part of the compulsory training programme for police officers and staff. The police provide continuous training and education for staff as regards the exercise of their powers and practical implementation of procedures. They also regularly publish brochures on the issue of the exercise of these powers in the context of human rights. The Human Rights Ombudsman is also involved in this training process.

The Ministry of Internal Affairs regularly inspects the work of Police, to monitor the legality of the procedures applied and protect individuals' rights.

This information is currently being assessed. Information has been requested on the implementation of the special task group under the State Prosecutor Act recently amended. Written confirmation of the dissemination and the publication of the judgment is also awaited.

15. ESP / Martínez Sala and others

58438/00
Judgment final on 02/02/2005

Last examined: 987-6.1

Lack of an effective investigation into allegations of ill-treatment suffered by the 15 applicants during their arrest and detention in 1992 on suspicion of sympathising with a Catalan separatist movement (violation of Art. 3).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The Court awarded just satisfaction for non-pecuniary damage. As regards the possibility of reopening the criminal investigations at issue, the government indicated that this would serve no purpose as any crime committed is today statute-barred. Moreover, the applicants have not asked for a new investigation.

GM The **prohibition of torture and inhuman treatment** was reinforced by the new Penal Code of 1995 which provides stricter sentences as well as a significant extension of the prescription period concerning torture and other criminal offences against physical integrity. Since 1992, no other similar complaint has been lodged before the ECtHR.

The judgment of the ECtHR was published in Spanish in the official Bulletin of the Ministry of Justice which is sent out to all Spanish courts and public prosecutors' offices as well as to Spanish state lawyers. The judgment has also been published in the most widely circulated private publications compiling case-law and has been sent out to the authorities concerned.

16. SUI / Scavuzzo-Hager and others

41773/98 *Last examined: 1013-4.1*
Judgment final on 07/05/2006

Failure to conduct an effective inquiry into the death of a relative of the applicants who died in 1994 from complications brought by an overdose of cocaine taken before being arrested by police officers (violation of Art. 2).

IM In accordance with the CM's well-established practice, the respondent state has a continuing obligation to conduct effective investigations, *a fortiori* where a violation of Article 2 is found (see in particular Interim Resolution (2005)20 in the case of McKerr and other similar cases / UK).
Information provided by the authorities on measures taken or envisaged is being assessed.

GM Even before the judgment of the ECtHR, but after the facts at the origin of this case, the right of an applicant to an effective and in-depth official investigation in which he must be sufficiently and effectively involved was explicitly incorporated into Swiss law by a judgment of the Federal Court of 06/10/2005, demonstrating the direct effect of the ECtHR's judgments.

On 29/03/2006, the judgment of the ECtHR was sent out to the judicial and police directorates of the Cantons. Furthermore, the judgment was published.

These measures are being assessed.

17. MKD / Jasar

69908/01 *Last examined: 1007-4.2*
Judgment final on 15/05/07

Lack of effective investigation, since 1998, into allegations of ill-treatment of a Roma by the police (procedural violation of Art. 3).

IM As the Public Prosecutor has not yet taken a decision on the complaint filed by the applicant on 28/05/1998, the latter is still barred from taking over the investigation. In fact, domestic law provides that if the public prosecutor finds no grounds for instituting or pursuing criminal proceedings, his role may be assumed by the injured party acting as a subsidiary prosecutor. Information is awaited on measures taken to remedy the personal situation of the applicant and in particular, on measures to accelerate the decision by the Public Prosecutor's Office on the criminal charges filed by the applicant and the communication of the decision to the applicant.

GM In July 2007, the CSRC (the Civil Society Research Centre, "the former Yugoslav Republic of Macedonia") and the ERRC (European Roma Rights Centre, Hungary), informed the CM that neither the draft law on Public Prosecution Offices nor the equivalent law currently in force lays down any time-limit for carrying out criminal investigations or for informing those concerned of the outcome.

Information is awaited on an action plan aimed at preventing inactivity by public prosecutors in cases involving allegations of police ill-treatment, in particular with regard to Roma people.

Information is also awaited on publication and dissemination of the judgment of the ECtHR, including targeted dissemination with an explanatory note on the violation found in this case to the authorities concerned, namely to the Prosecutor General, Štip Basic Public Prosecutor's Office and the Ministry of Interior.

18. TUR / Adalı

38187/97
Judgment final on 12/10/05
Last examined: 1013-4.2

Lack of an effective investigation into the death of the applicant's husband, who was shot in 1996 (violation of Art. 2 and 13) and interference with the applicant's freedom of association on account of a refusal of permission to cross from northern part of Cyprus to the southern part to attend a bi-communal meeting in 1997 (violation of Art. 11).

IM In 2006, the Attorney General ordered the police authorities to initiate an additional investigation into the death of Mr Adalı, taking into account the shortcomings identified in the Court's judgment. Information is still awaited on the specific steps taken in the framework of this additional investigation.

GM As regards the **lack of effective investigation** into the death of Mr Adalı, the Turkish authorities stressed that the shortcomings found did not result from the legislation in force (copy of which has been provided) but from the practice. In 2006, the Act on the Law Office was nevertheless amended in order to increase the Attorney General's control over police investigations.

The judgment has been translated into Turkish in view of its dissemination to the relevant authorities.

Additional information is awaited on other potentially relevant provisions as well as on the involvement of victims families in investigations (other then coroner's inquests) into the death of their relatives.

As regards the breach of **freedom of association**, the necessary measures have been taken and examined in the framework of the case of Djavit An.

19. TUR / Aksoy and other similar cases

21897/93
Judgment final on 18/12/1996
Last examined: 1007-4.3
Interim Resolutions (99)434 ; (2002)98 ; (2005)43
Memorandum CM/Inf/DH(2006)24 revised 2

Violations resulting from actions of the security forces, in particular in the southeast of Turkey, mainly in the 1990's (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces); subsequent lack of effective investigations into the alleged abuses (violations of Art. 2, 3, 5, 8 and 13 and of Art. 1 of Protocol 1).

In several cases, failure to co-operate with the ECHR organs as required under Art. 38 ECHR.

IM In the light of the violations found and the ECtHR's decisions on just satisfaction, the main issue has been the possible resumption of criminal investigations. However, in view of the need for general measures to improve investigations, this issue is largely integrated to that of general measures. Cases in which criminal proceedings are presently pending are followed separately, in specific groups (notably the Batı group of cases).

GM Since 1996 Turkey has adopted a large number of general measures with a view to complying with these judgments, including comprehensive changes in the Constitution, legislation, regulations and practice (see IR (99)434, (2002)98 and (2005)43 for details).

The **legislative and regulatory framework** for the actions of the security forces have been considerably improved, as has been **training and awareness** raising about the importance of respect of the ECHR.

The **efficiency of criminal investigations** into alleged abuses has also improved and extensive training programs for judges and prosecutors have been set up.

As regards remedies, the case-law has evolved to create a clear right of **compensation for victims** of abuses. In addition, a special compensation law with an expedited procedure has been adopted covering the period 1994-2006.

The progress achieved and the outstanding issues are detailed in the memorandum CM/Inf/DH(2006)24 revised 2. The CM has decided to resume consideration of these issues in the light of a draft interim resolution taking stock of the measures taken so far, with a view to possible

closure of some of the issues raised in IR (2005)43, and other outstanding measures to be taken.

As regards the **failure to co-operate with the ECHR organs** (see also Resolutions (2001)66 and (2006)45), the Turkish authorities have reiterated their determination to avoid any similar problems (see document CM/Inf/DH(2006)20 revised, in particular Appendix 3, page 235).

20. TUR / Batı and others, and other similar cases

33097/96 *Last examined: 1013-4.2*
Judgment final on 03/09/2004

Ineffectiveness of domestic proceedings into alleged abuses by members of security forces between 1995 and 1997, in particular ill-treatment of the applicants or the death of their relatives under circumstances engaging the responsibility of the state, including during the transfer of detainees (violations of Art. 2, 3, 5§3, 5§4, 5§5 and 13).

IM 1) In the case of Demir Ceyhan and others, in 2006, some of the persons accused were acquitted and the proceedings against the others were discontinued because of prescription. In both cases, the decisions are subject to appeal and information is awaited on the outcome of the appeals.

2) In the Batı and others and in the Sunal cases, the proceedings against the accused police officers were discontinued respectively in 2004 and in 2005 because of prescription.

3) In the other cases, information is awaited on the possibilities of reopening domestic proceedings against the members of the security forces accused of abuses, or on any other ad hoc measures taken or envisaged following the judgments of the ECtHR.

GM 1) In order to improve the **effectiveness of remedies**, the new Criminal Code provides much longer prescription periods (i.e. 15-30 years instead of 5) than the old Code. Further information is awaited concerning the prescription periods in cases of death of victims under circumstances which engage the responsibility of security forces, as well as in cases where victims are killed by unknown perpetrators.

2) As regards the **obligation to protect the right to life of detainees during their transfer** to prisons or other detention facilities, a circular by the Ministry of Justice from 2005 provides that all detainees should be examined by a medical doctor prior to transfer and that those who are found to be unfit to travel shall immediately be transferred to a hospital or a medical centre.

Information is awaited regarding the publication and dissemination of the ECtHR's judgment in the case of Batı and others, in particular to police forces, public prosecutors, assize courts and the Court of Cassation. Some of the other judgments of the ECtHR have already been published and disseminated to the relevant authorities.

21. TUR / Erdoğan and others

19807/92 *Last examined: 1013-4.1*
Judgment final on 13/09/2006

Failure to protect the right to life of the applicants' relatives in the planning and execution of armed operations in 1991; use of force by the members of security forces which was more than absolutely necessary, lack of an effective investigation and an effective remedy (violation of Art. 2 and 13).

IM Information is awaited on possible measures taken or envisaged by the Turkish authorities to ensure a fresh investigation into the incidents in the light of the shortcomings identified by the ECtHR.

GM The Law on the duties and legal powers of the police was amended on 2/06/2007 and the law now provides guidelines for the use of proportionate force by the police when confronted with resistance.

A Regulation on Operations of the Security Directorate came into force on 16/11/2001 with instructions for staff participating in law enforcement operations to ensure the proper conduct of the operations

The judgment has been published and disseminated to the Ministry of the Interior.

22. TUR / Kakoulli

38595/97
Judgment final on 22/02/2006

Last examined: 1013-4.2

Killing in 1996 of the applicants' husband and father by soldiers on guard duty along the cease-fire line in Cyprus and lack of an effective and impartial investigation into this killing (Violation of Art. 2).

IM The information provided by the Turkish authorities, in particular as regards the possibility to reopen the investigation into Mr Kakoulli's killing, is currently being assessed.

GM The CM is assessing the compatibility of the **legal framework regarding the use of firearms** by soldiers on guard duty at the post at issue in this case with the principle of proportionality and in particular with the principle of "absolute necessity" for the use of force enshrined in the ECHR.

Information is awaited on the dates of entry into force of certain new laws and instructions referred to by the Turkish authorities.

An article on the judgment has been published in the local bar association review and the judgment has been disseminated to all relevant authorities.

23. UK / McKerr and other similar cases

28883/95
Judgment final on 04/08/2001
Interim Resolutions (2005)20 and (2007)73

Memoranda CM/Inf/DH(2006)4 revised 2 and CM/Inf/DH(2006)4 Addendum revised 3
Last examined: 1013-4.3

Action of security forces in Northern Ireland in the 1980's and 1990's: shortcomings in investigation of deaths; lack of independence of investigating police officers; lack of public scrutiny and information to victims' families on reasons for decisions not to prosecute (procedural violations of Art. 2).

IM The CM's consistent position is that the respondent state has an obligation under the ECHR to conduct an investigation that is effective "*in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible*", and that there is a continuing obligation to conduct effective investigations inasmuch as procedural violations of Article 2 were found by the ECtHR in these cases (see, *inter alia,* the first Interim Resolution in these cases, (2005)20 and the most recent Resolution (2007)73). The CM in its most recent resolution regretted that in this field, as opposed that of general measures, progress had been limited and that in none of the cases had an effective investigation been completed; and urged the authorities to take all necessary investigative steps in these cases in order to achieve concrete and visible progress without further delay.

The UK authorities have indicated that investigations into the deaths at issue are ongoing, other than in the case of Finucane, in which the UK considers that the investigation has been concluded. Assessment of this position by the CM is under way.

GM Information submitted to date by the United Kingdom authorities and other interested parties concerning the measures adopted and the outstanding questions appear in Interim Resolution (2005)20, in document CM/Inf/DH(2006)4 revised 2 and, most recently in Interim Resolution (2007)73.
In particular, reforms adopted have allowed the CM to close its examination of a number of issues, namely:

- the **role of the inquest procedure** in securing a prosecution for any criminal offence,
- the **scope of examination of inquests**,
- the **possibility of compelling witnesses to testify at inquests**,
- the **disclosure of witness statements** prior to the appearance of a witness at the inquest,
- the **legal aid for the representation of the victim's family**,
- the **efficiency of inquests**,

- the **failure of the public prosecutor to give reasons for non-prosecution**,
- the **use of public interest immunity certificates** and
- the application of the package of measures to the **armed forces**.

Outstanding general measures relate to:
- the **defects in the police investigation**;
- the steps taken to ensure that **inquest proceedings are commenced promptly** and pursued with reasonable expedition;
- the **independence of police investigators**.

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

24. LUX / Pereira Henriques

60255/00 *Last examined: 1007-6.1*
Judgment final on 09/08/2006

Ineffective investigation by the prosecution authorities into the causes of the death of the applicants' husband and father in 1995 in an industrial accident on a private construction site; lack of an effective remedy by which to seek compensation from the state for the ineffective investigation (violation of Art. 2 and 13).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR granted the applicants just satisfaction in respect of the non-pecuniary damage suffered. As to pecuniary damage it indicated that it could not speculate on the damages that the applicants might have been awarded under domestic law, depending on the outcome of the investigation, if such investigation had been effective (in the circumstances of the case, if the investigation had proved intentional harm). In any event, a new investigation would no longer be possible as the building at issue no longer exists and any public prosecution would also be time-barred. Nevertheless, following the judgment of the ECtHR, proceedings for damages for the defective functioning of justice may be lodged under the law of 01/09/1988 on the civil liability of the state and public authorities (see GM).

GM Right to life: Several initiatives have been taken to stress the need for diligent and efficient prosecution action in industrial accident cases. Such action, as required by the ECHR, should allow victims to know the real cause of accidents and obtain, where needed, adequate compensation (for instance, higher compensation in case of intentional harm). Furthermore, the attention of the competent authorities (particularly public prosecutors and courts) has been drawn to the requirements of the ECHR which must be fully taken into account regarding investigations. In addition, after the facts at the origin of this case, clear instructions have been issued to the public prosecutor and the police on how to deal with industrial accident cases.

Effective remedies: The law of 01/09/1988 on the civil liability of the state and public authorities makes it possible to seek compensation in cases of ineffective criminal investigation. In this case, the ECtHR has not examined whether this law could have been an effective remedy, since the issue of exhaustion of domestic remedies was not raised. However, in view of:
- the wording of the law,
- the fact that domestic courts have already applied it in case of a defective functioning of justice in criminal investigations and,
- the fact that the Luxemburg courts – who have been duly informed of this judgment – directly apply the ECHR as interpreted by the ECtHR,

it seems possible to conclude that this law henceforth provides an effective remedy making it possible to seek compensation for ineffective investigations.

25. UKR / Gongadze

34056/02 *Last examined: 1013-4.2*
Judgment final on 08/02/2006

Prosecutor's failure, in 2000, to honour his obligation to take adequate measures to protect the life of a journalist threatened by unknown persons, possibly including police officers; inefficient inves-

tigation into the journalist's subsequent death; degrading treatment of the journalist's wife on account of the attitude of the investigating authorities; lack of an effective remedy in respect of the inefficient investigation and in order to obtain compensation (violation of Art. 2, 3 and 13)

IM In February 2005, the Office of the Prosecutor General identified four former officers of the Ministry of Internal Affairs who allegedly perpetrated Mr Gongadze's kidnap and murder.
The criminal proceedings against three of them were subsequently divided into separate proceedings and were brought to court. The criminal investigation against the fourth officer, (who absconded from investigation and has been put on the wanted list), and against the unidentified persons who had allegedly ordered the kidnap and murder of Mr Gongadze is being carried out by the Office of the Prosecutor General.

***1) Court proceedings against the three identified perpetrators*:**
The criminal case against the three former officers of the Ministry of Internal Affairs charged with premeditated murder has been pending before the Kyiv City Court of Appeal since January 2006. The Committee is regularly informed on its progress.

2) Investigating proceedings in view of establishing other persons who allegedly ordered the journalist's kidnap and murder:
Operational search activities aimed at identification of persons who had ordered the kidnapping and murder of Mr Gongadze are still being carried out.
Following an offer of assistance from Parliamentary Assembly of the Council of Europe, the Prosecutor General had asked the Assembly to select a group of experts to help with the analysis of certain audio recordings.
Information is awaited on the progress and outcome of the proceedings and the investigation, in particular the results of the examination of the recordings.

GM 1) **Independence of investigation**: Following the opinion of the Venice Commission and Recommendations of the Parliamentary Assembly, on 6/10/2006 the Verkhovna Rada withdrew from consideration the draft law On amendments to the Law On the Office of Public Prosecutor – which had passed a first reading on 4/03/2003 – as its provisions did not fully comply with the role of the prosecution system in a democratic society. The competent parliamentary committee was ordered to set up a working group to draft new wording for the law (Resolution of the Verkhovna Rada of Ukraine of 6/10/2006 No. 207-V).
The Ukrainian authorities informed the Secretariat that according to the Presidential Decree of 20/01/2006 No. 39 on the action plan for the honouring by Ukraine of its obligation and commitments to the Council of Europe, the new wording of the Law On the Office of Public Prosecutor will be drafted by the Ministry of Justice, after approval by the President of Ukraine of the Concept of complex reform of criminal justice, drafted by the National Commission for Strengthening Democracy and the Rule of Law. The Concept is in the final stage of elaboration.

2) **Remedies against the excessive length of investigations**: see Merit case. A draft law on amendments to certain legal acts of Ukraine (on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time). Information is awaited on the adoption of this draft law.

3) The judgment of the ECtHR has been translated and published.
Information is awaited concerning the dissemination of the judgment.

26. TUR / Güngör

28290/95
Judgment final on 22/06/2005

Last examined: 1013-4.2

Lack of an effective investigation into the killing of the applicant's son in 1991 due to obstacles linked to the parliamentary immunity of witnesses (procedural violation of Art. 2 and 13).

IM The CM is awaiting information on the outcome of the investigations carried out by the Parliamentary Commission established in February 2005.

GM The CM is awaiting information as to the measures envisaged by the Turkish authorities to clarify the law and ensure that, in practice, **parliamentary immunity is not an obstacle to the carrying out of criminal investigations** in cases in

which members of parliament or their families are involved as possible witnesses or suspects (see §111 of the judgment).

27. UKR / Shevchenko

32478/02 *Last examined: 1013-4.2*
Judgment final on 04/07/2006

Lack of an effective and independent investigation into the death of the applicant's son in 2000 while he was posted as a guard in a military unit.

Failure to meet the minimum requirements of independence and diligence, to ensure sufficient public accountability or scrutiny and to safeguard the interest of the next-of-kin (procedural violation of Art. 2).

IM Following the ECtHR's judgment, on 15/11/2006, the Prosecutor General quashed the decision to close the investigation into the death of the applicant's son and decided to reopen it. According to the Ukrainian authorities, in the course of the re-opened investigation a number of investigative actions was taken, including those mentioned by the ECtHR. Since the previous investigation was criticised by the ECtHR as being mainly based on a suicide theory, the investigating authorities considered this time all versions as to the reasons and circumstances of the A.S. (the applicant's son)'s death. It was nevertheless concluded that the A.S.'s death had resulted from suicide and not from a murder.
On 29/12/2006, the criminal case on the A.S.'s death was closed in accordance with Art. 6§1 of the Code of Criminal Procedure, no crime having been committed. The lawfulness of the resolution on closure of the criminal case was confirmed by the Western Region Military Prosecutors' Office and by the Prosecutor General's Office. The latter established that the investigation was complete, objective and comprehensive and that there were no grounds to quash the resolution. According to the Ukrainian authorities, this decision was served on the parents of A.S. in due time. They have not appealed against it.

The Ukrainian authorities were invited to provide more details on the steps taken in the framework of the new investigations, and in particular on the measures taken to remedy the shortcomings identified by the ECtHR in its judgment.

GM Information is awaited on measures taken or envisaged to remedy the shortcomings relating in particular to the independence of the investigation, exemplary diligence and promptness and public scrutiny in the army. It appears that such measures require changes in the legal and regulatory framework governing this kind of investigation. There may be a need for this reform could be complemented by appropriate training and awareness-raising measures.

The publication and dissemination of the ECtHR's judgment among the relevant authorities and domestic courts is also expected, possibly together with circulars or explanatory notes stressing the problems identified by the ECtHR.

28. TUR / Abdurrahman Kılınç

40145/98 *Last examined: 997-1.1*
Judgment final on 07/0905 *Final Resolution (2007)99*

Failure to protect the right to life of the applicant's son (who committed suicide in 1995 while performing his military service) notably due to the lack of an appropriate regulatory context for the medical monitoring of conscripts' mental fitness for service before and after call-up (substantial violation of Art. 2).

Case closed by final resolution

IM In view of the violation found, no special issue of individual measures arises over and above the just satisfaction awarded by the ECtHR.

GM Since 1995, a number of measures have been taken in order to improve the **regulatory**

framework governing aptitude to military service and to identify conscripts who suffer from psychological problems. These measures aim at facilitating exemption from conscription in relevant cases and providing those conscripted with better health services. In particular, the supervision of health conditions of conscripts during military service has been improved. Conscripts who are suspected of having psychological problems are transferred to special training units and their health situation is monitored by psychiatrists attached to military hospitals; Psychological Assistance Services have also been established in garrisons and barracks with guidelines concerning their working methods and activities; training programmes and awareness raising measures have been introduced for staff and conscripts on psychological problems and illnesses; communication between the conscripts and their family members has been facilitated; "orders" are regularly issued concerning the procedures to be followed regarding conscripts suffering from psychological problems. Lastly, in the event of a suicide, the authorities are under an obligation to immediately report with a view to ascertaining the circumstances surrounding the incident and judicial and administrative investigations have to be carried out.

The judgment of the ECtHR was translated and sent out to the relevant authorities.

29. TUR / Paşa and Erkan Erol

51358/99 *Last examined: 1013-4.2*
Judgment final on 23/05/07

Failure in1995 to take all safety measures around a mined military zone, thereby causing a 9-year old child severe injury and exposing the child to risk of death (substantial violation of Art. 2).

IM The ECtHR awarded an overall amount in just satisfaction in respect of pecuniary and non-pecuniary damages. No additional measure seems to be required.

GM Under the Ottawa Convention, which Turkey ratified into domestic law in 2004 (i.e. after the facts in this case), anti-personnel mines are prohibited and member states are under an obligation to destroy them. In this respect, the Turkish authorities indicated that measures had been taken since 1996 and that systematic mine clearance had begun in 1998. Pursuant to the Ottawa Convention, the government has undertaken to destroy all landmines by 2014 and periodically informs the United Nations about the progress made. A military installation was also put into place in July 2007 for further mine clearance operations.

The judgment of the ECtHR was published and sent out to all the authorities concerned.

Information is awaited on **measures taken or envisaged to enhance safety measures around mined areas**.

30. POL / Byrzykowski

11562/05 *Last examined: 1013-4.2*
Judgment final on 27/09/2006

Violation of the right to life due to shortcomings in the investigations by the prosecution authorities into the death of the applicant's wife in hospital in 1999 while giving birth; investigations were still pending at the time of the ECtHR's judgment and this caused the postponement of other proceedings (violation of Art. 2).

IM The prosecution investigation ended in May 2006 concluding that there was insufficient evidence for prosecution. The CM is now awaiting information on the progress of the other proceedings previously started: the civil proceedings engaged against the hospital for compensation and the disciplinary proceedings engaged against the doctors in charge.

GM The CM is awaiting information on the progress of certain **reforms under way regarding investigations into possible medical malpractice,** aiming at:

- Making judicial experts more efficient (a Bill on experts in judicial proceedings was laid before

Parliament and examined at first reading on 16/02/2007).

- Introducing a remedy in case of excessive length of investigations (on 21/12/2006 the Minister of Justice wrote to the Polish Ombudsman indicating his intention of taking steps to introduce an effective national remedy in case of excessively lengthy pre-trial investigations).
- Changing the disciplinary procedure before the Medical Association (the Minister of Health prepared an amendment to the 1989 Act on the Medical Association).

In the meantime the judgment has been translated and published.

A.3. Ill-treatment

31. GER / Jalloh

54810/00
judgment of 11/07/2006 – Grand Chamber

Last examined: 1007-6.1

Inhuman and degrading treatment resulting from the forceful administration of emetics in 1993 against a minor drug-dealer for the simple purpose of securing more rapidly evidence which would otherwise in all likelihood have appeared "the natural way" (violation of Art. 3) and use of the obtained evidence in the criminal proceedings leading to the applicant's conviction to six months suspended imprisonment, thus causing a violation of the right not to incriminate oneself (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded non-pecuniary damages but found an insufficient causal connection between the violation and the alleged pecuniary damage and the violation. The government has indicated that the applicant may in any event apply for reopening of the criminal proceedings. In such reopened proceedings, the use of the evidence obtained by force would be re-assessed in the light of the ECtHR's judgment.

GM The practice of **forcibly administering emetics** (substances provoking vomiting) in order to obtain evidence has been abandoned in the *Länder* which had recourse to it.

In view of the direct effect of the ECHR in Germany, it may be assumed that the requirements of Article 6§1 and the ECtHR's case-law will continue to be taken into account in the future, thus preventing new, similar violations,. In this context it should be noted that, all judgments of the ECtHR against Germany are publicly available via the website of the Federal Ministry of Justice. The judgment of the ECtHR was also sent out to the courts concerned and to appropriate local administrations.

32. GRC / Alsayed Allaham

25771/03
Judgment final on 23/05/2007

Last examined: 1007-2

Inhuman and degrading treatment by the police in 1998 of a Syrian national in a police station, allegedly resulting from his complaints about lack of attention he received when attempting to report on a robbery (violation of Art. 3).

IM The ECtHR awarded notably pecuniary damages to cover the disabilities suffered by the applicant as a result of the violation. The CM is presently awaiting information notably on the outcome of the civil proceedings for damages engaged by the applicant against one of the police officers (acquitted in 2002 from criminal charges).

GM A comprehensive reform of the **regulatory framework governing police activities** is under way (see for more details the Makaratzis case).

The Greek authorities are also at this stage examining whether amendments required of the police **disciplinary regulations** should be effected through legislation (amendment of the police dis-

ciplinary law) or through administrative action (Police Chief's circulars).
The CM is awaiting information on the action taken as well as on the publication of the judgment and its dissemination with an explanatory note on the violation found by the ECtHR in this case to all competent authorities (police, courts and prosecutors).

33. GRC / Serifis

27695/03
Judgment final on 02/02/07

Last examined: 1013-4.2

Delay in providing appropriate medical treatment to a detainee suffering from multiple sclerosis in 2002 (substantial violation of Art. 3); violation of the principle of equality of arms in that in 2003 the indictment chamber of the Appeal Court dismissed the applicant's request to appear before it when deciding on the extension of his pre-trial detention (violation of Art. 5§4).

IM The applicant was released and placed under court supervision in February 2005 so that he could receive regular medical care. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained.

GM Information is awaited on measures taken or envisaged to prevent new violations resulting from the **failure to provide adequate medical treatment.**

As regards the **unfairness of the proceedings** concerning the extension of the pre-trial detention, see the measures adopted in the case of Kotsaridis, detailed in Final Resolution (2006)54.

34. TUR / Ülke

39437/98
Judgment final on 24/04/2006

Interim Resolution (2007)109
Last examined: 1013-4.2

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

IM At first, immediately after the ECtHR's judgment, the question of the execution of the applicant's sentence to 17 and a half months' imprisonment did not arise. Subsequently, however, the applicant was summoned in July 2007 to serve his sentence, notwithstanding the ECtHR's findings. The CM adopted therefore in October 2007 Interim resolution (2007)109, emphasising that "*the Convention and the judgments of the Court now have direct applicability in Turkish legal order by virtue of Article 90 of the Turkish Constitution*" and regretting that despite this provision the applicant was now facing a real risk of being imprisoned. In the light of the situation the CM urged the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the ECHR. In parallel the CM is awaiting information on the objection lodged against the last sentence before the Military Court of Cassation on 03/08/2007 (see above-mentioned IR (2007)109 for further details).

GM In the above mentioned interim resolution the CM also urged Turkey to adopt rapidly the legislative reform necessary to prevent similar violations of the ECHR in the form of **repetitive convictions for refusals to perform military service**. In the meantime the judgment has been translated, published and also disseminated to relevant authorities.

35. UK / A.

25599/94
Judgment final on 23/09/1998

Interim Resolution (2004)39, (2005)8, (2006)29
Last examined: 1013- 4.3

Failure of the state to protect the applicant, a 9-year-old child, from treatment or punishment contrary to Art. 3 by his stepfather, who was acquitted in 1994 of criminal charges brought against him after he raised the defence of reasonable chastisement (violation of Art. 3).

IM Considering the nature of the violation, no specific measure has been deemed necessary over and above the just satisfaction awarded by the ECtHR.

GM Legislation on **corporal punishment of children** was amended by adoption of the following provisions: Scotland (Criminal Justice [Scotland] Act 2003, entered into force on 27/10/03), England and Wales (Children Act 2004, entered into force on 15/01/05) and Northern Ireland (The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006, entered into force on 20/09/06) limiting the defence of reasonable punishment in England, Wales and Northern Ireland to cases where the charge is one of common assault (thus excluding from the defence wounding, occasioning of actual bodily harm, grievous bodily harm or cruelty) and limiting the defence to a charge of assault in Scotland to certain limited circumstances (limited by reference specifically to the factors the ECtHR considered in this case).The government provided information on case-law arising under the new provisions, which is currently under assessment. The compatibility with the ECHR of the new provisions has been challenged in judicial review proceedings in Northern Ireland and a judgment was handed down on 21/12/2007, ruling in favour of the respondent government ministers. An appeal against the judgment is still pending and the CM is awaiting its outcome.

Details have been received of new **charging standards** In England and Wales, and guidance for prosecutors in Northern Ireland which take into account the vulnerability of children as victims, and a Crown Office Circular to Prosecutors in Scotland explaining the new legal provisions.

The government has underlined that already following the entry into force in 2000 of the ***Human Rights Act 1998*** (HRA), domestic courts or tribunals must take into account any judgment of the ECtHR, notably as far as the criteria developed by the ECtHR in the A. case were concerned; see the Court of Appeal judgment of R. v. H [2001].

Information has been provided on a number of general ***awareness-raising measures*** aiming at creating a positive attitude to parenting among parents and practitioners working with children. Further information has been received on research carried out by the Crown Prosecution Service on case-law in England and Wales where the defence of reasonable punishment has been used as well as on a review carried out by the government on the practical consequences of the new legislation in England and Wales.

The CM is still debating whether the measures enacted satisfy the requirements of the ECHR and, in particular, whether the measures taken so far ensure sufficiently the effective deterrence required by the ECHR in view of the vulnerability of children.

B. Prohibition of slavery and forced labour

36. FRA / Siliadin

73316/01
Judgment final on 26/10/05

Last examined: 976-4.2+3.B

Infringement of the positive obligation to have specific and effective legal protection against a situation of "servitude" such as that in which the applicant was held for several years from 1994 onwards, when she was a minor (violation of Art. 4).

IM Under civil law, the domestic courts granted the applicant the sums due to her in respect of unpaid wages plus an indemnity, and compensation for the "important psychological trauma" she had suffered. Under criminal law, the decision acquitting the persons who had held the applicant in "servitude" has the status of *res judicata*. The applicant made no other request.

GM The legislation was changed in 2003, after the facts of this case, to introduce into the Criminal Code a new definition of the crime of slavery and servitude. To establish these offences, it is no

longer necessary to prove that the victim was "abused", but only that his/her vulnerability or dependence was known. In the authorities' opinion, these provisions, interpreted by the courts in the light of the ECHR and of the present judgment, will make it possible in the future to convict perpetrators of acts similar to those at issue in the present case. Furthermore, the new law provides heavier sentences and new aggravating circumstances.

Information has been requested on the measures taken to make known the requirements of the ECHR as they arise from this judgment, in particular on the publication of this judgment and its dissemination to the relevant authorities (in particular public prosecutors).

C. Protection of rights in detention

C.1. Poor detention conditions

37. BGR / Kehayov and other similar cases

41035/98 *Last examined: 1013-4.2*
Judgment final on 18/04/2005

Degrading conditions of detention between 1996 and 2000 (violations of Art. 3) and lack of an effective remedy in this respect (violation of Art. 13 in one case). Different violations concerning pre-trial detention (violations of Art. 5§§1, 3, 4 and 5). Home searches performed in 1999 in contravention of domestic law (violations of Art. 8 in two cases) and excessive length of criminal proceedings (violation of Art. 6§1 in one case).

IM The non-pecuniary damage suffered by the applicants was compensated by the ECtHR. The applicants have been released or are no longer detained under the conditions criticised in these judgments.

The criminal proceedings that were pending in one case were closed in 2003.

GM As regards the **detention conditions**: the Bulgarian authorities indicated that the detention conditions in the Pazardjik prison had been improved in 1999-2002.

The Kehayov, I.I., Dobrev and Yordanov judgments were published on the Internet site of the Ministry of Justice `http://www.mjeli.government.bg/`.

Furthermore, 2 seminars on Article 3 of the ECHR and the ECtHR's case-law were organised by the National Institute of Justice in the period 2001-2006. Seminars were also planned for 2007, focusing on the recent judgments of the ECtHR against Bulgaria.

Information is awaited on the measures planned to improve detention conditions in the investigation services (see also the recommendations of the CPT, in its last report concerning this issue – report on its visit of 2002, made public in 2004) and on the dissemination of the Kehayov judgment.

As regards the **lack of effective remedy** with respect to detention conditions, information is required on the measures envisaged or taken and, in particular, on examples showing a change in the application of the law on the responsibility of the state in similar cases.

As regards the different violations concerning **pre-trial detention** and the excessive length of criminal proceedings, measures have either been taken (see cases Assenov and Nikolova closed by Final Resolutions (2000)109 and (2000)110 and case Shiskov) or their adoption is expected and examined in the context of the execution of other judgments (Anguelova, Kolev, Yankov, Kitov).

As regards the **searches of homes** in contravention of domestic law, in view of the development of the direct effect given by Bulgarian courts to the ECHR and to the ECtHR's case-law, the dissemination of the present judgments to the competent authorities appear to be sufficient measures for execution.

38. EST / Alver

64812/01, *Judgment final on 8/02/06*

Last examined: 992-1.1 *Final Resolution CM/Res/DH(2007)32.*

Inhuman and degrading treatment of the applicant while in detention on remand in 1996-1999 in Jögeva arrest house and Tallinn Central Prison, in particular due to overcrowding, inadequate lighting and ventilation, impoverished regime, poor hygiene conditions and state of repair of the cell facilities, combined with the applicant's state of health and the length of his detention (violation of Art. 3).

Case closed by final resolution

IM The applicant was transferred to serve his sentence in a different prison in 1999 and was released in November 2000. The consequences of the violation found in this case having been redressed by the ECtHR through the award of just satisfaction in respect of the non-pecuniary damage suffered, no further individual measures have been deemed necessary.

GM Measures have been taken to **improve conditions of detention on remand.** Tallinn Central Prison was closed in 2002 and the Jögeva one will be replaced by a new building in 2009. The health services and everyday conditions there, as in other arrest houses, have, however, already considerably improved as a result of an order in 2003 to police prefectures to ensure this. In addition, a complex programme for 2007-2010 is presently being implemented in order to build or very extensively renovate all arrest houses. Funding for the programme is secured.
Moreover, detainees may file complaints either through the prison system or directly to the Ministry of Justice, the Legal Chancellor, the President of the Republic, the prosecutor, the investigator or a court.
The judgment of the ECtHR has been translated into Estonian, published and widely disseminated, particularly to all prison directors.

39. FRA / Rivière

33834/03 *Last examined: 992-4.1*
Judgment final on 11/10/2006

Applicant, serving a life sentence notably for murder, maintained since 2002 in ordinary prison without adequate treatment of the mental disorder developed (violation of Art. 3).

IM The applicant has opposed removal to another detention centre with special treatment facilities. Furthermore, the authorities indicated that the applicant's mental state has improved. The CM assesses the appropriateness of the conditions of the applicant's detention in the light of his present state of health.

GM In order to improve the **psychiatric care of detainees**, a law of 2002 lays down a new regime for the treatment of all prisoners with psychiatric disorders, irrespective of the illness and the duration of their committal, where there is a medical decision that the detainee needs full-time care. Special secure units are being set up within, and under the clinical responsibility of ordinary hospitals. The security aspect of the secure units is the responsibility of the prison authorities. Seventeen secure units, representing 705 places, are to be created between 2008 and 2011. The project has received the agreement of the professional bodies and trade unions representing both professional groups involved, i.e. medical and prison staff.

The ECtHR's judgment has been transmitted to the departments concerned in the Ministry of Justice, and posted on the intranet site of the Ministry of Justice, together with a commentary.

The CM is examining the future handling of the case in the light of this information.

40. LVA / Kadiķis No. 2

62393/00 *Last examined: 1013-4.2*
Judgment final on 04/08/06

Degrading treatment resulting from the poor conditions of the applicant's "administrative" detention in a temporary isolation unit for 15 days in 2000 (violation of Art. 3) and lack of an effective and accessible remedy in this respect (violation of Art. 13).

IM The applicant was released in 2003 and the ECHR awarded him just satisfaction in respect of the non-pecuniary damage sustained.

GM As regards the poor detention conditions, amounting to **degrading treatment**, a number of measures were taken in 2004-2006 to put temporary isolation units in conformity with the ECHR requirements. In most of them, repair work has been done and in 2005 a new building complex was opened.
Further information is awaited on other measures taken concerning the specific problems identified by the ECtHR, for example overcrowding, physical exercises, meals, running water, bed linen etc.
As regards the lack of **effective remedies**, a working group was established in November 2006 to examine whether legislative amendments are necessary. So far, the working group has decided that it will become a permanent forum for discussing the necessary steps to execute the ECtHR's judgments. Its composition will be adjusted to include experts in the relevant fields. Furthermore, the working group has decided to examine the issue of effective examination of individual complaints concerning the conditions of detention in a broader context than the present judgment.

Further information is awaited on the ongoing reflections about the need to adopt legislative measures and, if such measures are foreseen, on the timetable for their adoption.

The publication and dissemination of the ECtHR's judgment to the relevant authorities and courts is expected, possibly with a circular or note explaining the problems identified by the ECtHR.

41. **MDA / Becciev**
MDA / Sarban

9190/03and 3456/05
judgments final on 04/01/2006

Last examined: 1013-4.2

Poor conditions of detention on remand between 2003 and 2005 amounting to degrading treatment (substantive violations of Art. 3); insufficient grounds for the detention (violation of Art. 5§3); failure to ensure a prompt examination of the lawfulness of the detention (violation of Art. 5§4); domestic court's refusal to hear a witness for the defence (violation of Art. 5§4).

IM Both applicants have been released and the consequences of the violations found have been redressed by the ECtHR through the award of just satisfaction.

GM As regards the **poor conditions of detention**, most of the regulatory framework governing the prison system, including conditions of detention, has been changed by the new Enforcement Code entered into force on 01/07/2005 and other new laws. The new Enforcement Code sets rules to reduce prison overcrowding and amendments to the Criminal Code have been drafted, reducing minimum sentences for less serious offences and increasing the number of offences in respect of which alternative penalties may be applied.
Measures have been taken to improve material conditions in prison cells, *inter alia,* by distributing sheets etc. New minimum daily diet standards have been established to improve the quantity and quality of rations and medicines have been supplied. Rules on the provision of medical care in prisons are being drafted and adopted.

Educational, cultural and sports programmes have been drawn up and implemented in prisons as a framework for detainees' free time. Psychologists and social workers are carrying out social integration programmes.

Detailed information is awaited on the possibility for outdoor exercise, on the current state of adoption of the rules on the provision of medical care and on the practice related thereto.

As regards the different violations related to the **lawfulness of detention**, a seminar was held by the Advanced Training Centre for Justice Officials run by the Ministry of Justice and the judges' attention has been drawn to their obligation to give reasons for orders to detain on remand. A copy of this and other relevant circulars has been requested, together with the rules on pre-trial detention.

The judgment of the ECtHR has been translated, published and sent out to all appropriate authorities.

42. MDA / Ciorap

12066/02
Judgment final on 19/09/2007

Last examined: 1013-2

Degrading treatment on account of the poor detention conditions and force-feeding of the applicant in detention, amounting to torture (violations of Art. 3); refusal by the Supreme Court to examine the applicant's complaint regarding the force-feeding, on the ground that he had not paid court fees, in breach of his right to access to court (violation of Art. 6§1);

Interference with the applicant's right to respect correspondence and to meet visitors in condition of privacy in detention (violations of Art. 8).

IM The applicant ended his hunger strike on 04/10/2001. The ECtHR awarded him just satisfaction in respect of non-pecuniary damage.

Information is awaited on the current situation of the applicant.

GM 1) As regards the **poor conditions of detention,** see Becciev case.

2) **Force-feeding** of detainees is now expressly prohibited since the amendment, on 9/10/2003, of the Law on Detention on Remand (which had provided for the force-feeding of detainees on hunger strike).

Information is awaited as to whether the 1996 instructions at the origin of the violation in this case have been revoked and new measures to implement the law of 2003 have been taken, as well as on possible training for prison staff.

3) As regards the **lack of access to a court**, under the domestic law, the applicant should have been exempted from paying court fees. Confirmation of the publication and dissemination of the ECtHR's judgment to the Supreme Court of Justice and relevant authorities is awaited.

4) As regards the **censorship of correspondence** and **interferences with private and family life**, resulting from the conditions in which the meetings with relatives took place, see Ostrovar case (Section 4.2).
Information is awaited on the current situation regarding the conditions in which detainees meet their visitors in prison no. 3 (now no. 13) in Chişinău.

43. RUS / Kalashnikov and other similar cases

47095/99+
Judgment final on 15/10/2002+

Interim resolution (2003)123
Last examined: 1007-4.2

Poor conditions of pre-trial detention amounting to degrading treatment and lack of effective remedies; excessive length of this detention; excessive length of criminal proceedings (violation of Art. 3 and 13, 5§3 and 6§ 1);

IM All applicants have been released before the ECtHR delivered its judgments and the damages sustained have been compensated by just satisfaction.

GM As regards **the poor conditions of pre-trial detention**, following Interim Resolution (2003)123, considerable progress has been achieved as regards material conditions of detention within the framework of the Federal Programme for the reform of the penitentiary system. A similar programme for the period 2007-2016 has also been adopted. In addition, according to recent information, a draft law aiming at a better involvement of NGOs in the control over the penitentiary institutions has been submitted to Parliament. The efficiency of the above measures remains to be assessed.

As to **effective remedies** information is awaited on whether detainees have at their disposal an effective remedy within the meaning of the ECHR in order to notably obtain compensation for poor conditions of detention or any other form of redress.

The problems related to **the other violations** are examined in the context of other cases (notably the Klyakhin group of cases).

44. RUS / Popov

26853/04 *Last examined: 1013-4.2*
Judgment final on 11/12/2006

Poor conditions of pre-trial detention facilities and in prison disciplinary cells, combined with lack of adequate medical care, amounting to inhuman and degrading treatment; restrictions of defence rights due to the authorities' refusal to examine the defence witnesses (violation of Art. 3, 6§§ 1 and 3 (d));

Illicit pressure from the prison administration amounting to undue interference with the applicant's right of individual petition (violation of Art. 34).

IM On 29/08/2007, the Supreme Court, at the request of its President, ordered the reopening of the applicant's case and its referral to the first-instance court.
On 27/12/2007, as a result of the new trial, this court, after having taken into account the findings of the ECtHR, has convicted anew the applicant while substantially reducing the previous sentence. Consequently, the applicant was released on 11/01/2008.
Due to the applicant's release, the examination under individual measures of the issue of the applicant's access to medical care in detention became moot, even if arrangements had been made by the authorities for this purpose.

GM 1) **Refusal to examine witnesses for the defence**: Given the recognised direct effect of the judgments of the ECtHR, publication and wide dissemination of the judgment to all courts under a circular letter of the Deputy President of the Supreme Court of the Russian Federation should prevent new similar violations.

2) **Lack of access to requisite medical care**: Information is awaited on the measures taken or envisaged in order to ensure to persons in the applicant's situation the access to required medical assistance (including the possibility for detainees to make external tests and to consult external specialists – see also CM Recommendation Rec(2006)13 on detention on remand and Rec(2006)2 on the European Prison Rules).

3) The other problems regarding **poor conditions of pre-trial detention** are examined in the Kalashnikov group.

4) **Interference with the right of individual petition**: information is expected on adopted measures (see the case of Poleshuk).

45. UKR / Kuznetsov and other similar cases

39042/97 *Last examined: 1007-4.2*
Judgment final on 29/07/03

Degrading detention conditions of prisoners sentenced to death between 1996 and 2000 (violations of Art. 3), unlawful interferences with their rights to private and family life, with their correspondence and their freedom of thought (violations of Art. 8 and 9); failure to carry out an effective official investigation into allegations of assaults by prison authorities (violations of procedural aspects of Art. 3); and lack of effective remedy in respect of the complaints as regards rights under Art. 3 and Art. 8 of ECHR (violation of Art. 13).

IM The applicants' death sentences were commuted to life imprisonment in 2000 following the abolition of the death penalty in Ukraine. In one case (Poltoratskiy), the representative of the applicant complained that in spite of the ECtHR's judgment the applicant's letters had been confiscated and that the domestic courts had concluded in 2002 that such seizure was lawful. He also complained of the lack of effective investigations into the applicant's allegations of ill-treatment in 1998. The Ukrainian delegation indicated that disciplinary sanctions were imposed on those officials

who were responsible for the breach of the applicant's right to correspondence and produced a declaration signed by the applicant in 2003, stating that he was satisfied with the response received and asking not to take into consideration his representative's complaints. This declaration has been sent to his representative.

GM As regards the **conditions of the applicants' detention on death row**, considerable improvements have been made. The relevant legislation was modified in 2000 and 2001 and a Regulation on the execution of life sentences was adopted in 2001 with a view to bringing these conditions into conformity with European standards for the protection of human rights. In 2006, a regulation was adopted providing for better hygienic conditions. Information is awaited on the implementation in practice of this regulation.

A number of construction works and repairs have been completed or are under way to improve prison facilities and related buildings, including medical units and sanitary zones. A state programme for the improvement of conditions of detention for 2006-2010 was approved in 2006. Information is awaited on further progress in implementing this Programme. It appears however from a 2007 report by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (CPT) that the space per prisoner, as provided by law, is still inadequate and the attention of the authorities has been brought to the relevant CM recommendations (R(80) 11; Rec(2006)13; Rec(99)22 and Rec(2003) 22).

As regards the **absence of an effective investigation** of the alleged ill-treatment, a number of legal acts were adopted between 2000 and 2005 to ensure effective investigation of alleged ill-treatment. They provide, among other things, that the head of prison must open criminal proceedings on the basis of applications from prisoners or detainees on remand concerning physical injuries possibly resulting from illegal acts. Furthermore, medical staff of prisons or detention centres must visits cells daily to see whether any detainee needs medical assistance and any physical injuries is recorded and notified to the body authorised to investigate complaints. Examples are expected on the application of these provisions.

As regards the **monitoring of correspondence**, the Internal Instruction criticised in the judgments was revoked in 1999 and the detention of prisoners sentenced to life imprisonment is now regulated by public legislative provisions, which do not provide censorship of correspondence in respect of the prisoners or detainees but review thereof for the security reasons. Correspondence to the Ukrainian Ombudsperson, the General Prosecutor of Ukraine, the ECtHR or supervisory bodies of international organisations shall not be subject to any review and shall be dispatched within 24 hours.

As regards **freedom of religion,** new regulations were adopted in 2003. Information is expected on the relevant legal provisions.

As regards the **lack of remedies**, although the law has not yet been amended, the practice with regard to its application has already changed. Complaints can be lodged against decisions to apply a disciplinary punishment and if the court finds it unlawful, it is then possible to lodge a civil suit for damages. Examples of this practice have been requested.

All the judgments have been translated, published and brought to the attention of prison authorities and prosecutors during their regular training.

46. UK / McGlinchey and others

50390/99
Judgment final on 29/07/2003

Final resolution (2007)133

Prison authorities' failure to comply with their duty to provide applicant with requisite medical care while in detention on remand in 1999 prior to her death (substantial violation of Art. 3) and lack of an effective domestic remedy in order to obtain compensation for non-pecuniary damage from the state for the suffering caused (violation of Art. 13)

Case closed by final resolution

IM No issue beyond the payment of the just satisfaction awarded by the ECtHR has been raised in this case.

GM **Inhuman and degrading treatment**: a programme, completed in 2006, was set up to improve prison health policy in relation to the handling of substance abusers and addicts. These

developments were accompanied by a £40m increase in resources. This figure was expected to increase to £60m in 2007 with funding continuing thereafter. The purpose of this funding was to enhance clinical and psychological management of drug dependence in prisons to meet national and international standards of good practice.
It is also to be noted that at the beginning of 2005 there were drug rehabilitation programmes in 103 establishments. In 2004/2005 an innovative, short-duration drug treatment programme, which can be carried out in around 4 months, was also introduced at 32 establishments, aimed at "short-term" prisoners. Data have shown a significant increase of prisoners who now benefit from these health services. Finally, research has demonstrated that drug treatment delivered in prison is effective in helping offenders stay drug-free and in reducing levels of re-offending.

Effective remedy: the Human Rights Act 1998, in force since October 2000, covers claims for damages, including non-pecuniary damage, by persons suffering from inhuman or degrading treatment in prison, or from relatives acting on behalf of a deceased person, and therefore provides an effective remedy in cases such as the present one.

Finally, the ECtHR's judgment was immediately sent out to the Prison Service and published.

C.2. Unjustified detention and related issues

47. BGR / Bojilov and other similar cases

45114/98
Judgment final on 22/03/2005

Last examined: 1013-4.2

Different problems concerning pre-trial detention, in particular the excessive length of pre-trial detention between 1994 and 2000, in view of the insufficient reasons to justify it and in view of the fact that "special diligence" was not displayed in the conduct of the proceedings (violations of Art. 5§3). Unlawfulness of the applicants' continued detention pending trial following the domestic courts' decisions ordering their release (violations of Art. 5§1) and lack of judicial review of the lawfulness of the detention (violations of Art. 5§4).

IM The applicants, whose detention was criticised by the ECtHR, were released.

GM As regards the excessive length of the detention pending trial and the unlawfulness of the applicants' continued detention pending trial, the authorities have relied on the development of the direct effect given by Bulgarian courts to the ECHR and to the ECtHR's case-law. Confirmation is thus awaited of the dissemination of the ECtHR's judgments in these cases together with a circular to the competent authorities drawing their attention in particular to the need to take into consideration the resources of the person concerned when deciding on the amount of the bail and to the obligation to provide sufficient justification for placement in detention on remand and for the continuation of such detention. The attention of the competent authorities should also be drawn to the particular vigilance required in respect of execution of decisions for release.
As regards the **lack of judicial review of the lawfulness of the detention,** according to the new Code of Criminal Procedure, which entered into force in April 2006, in case of non-payment of bail, the court may order and the prosecutor may request either house arrest or detention of the accused person. Such measures must be justified by the competent court. In addition, the accused may now contest the lawfulness of detention resulting from non-payment of bail at each stage of the proceedings.
As regards the **other violations** found, measures have either been taken (see cases Assenov and Nikolova closed by Final Resolutions (2000)109 and (2000)110 and case Nikolov) or are examined in the context of the execution of other cases (Nikolova No. 2, Kuibishev, Yankov, Kitov).

48. BGR / Emil Hristov and other similar cases

52389/99
Judgment final on 20/01/06

Final resolution (2007)158

Different violations of detainees' rights under the system of pre-trial detention in force until the legislative reform of 1/01/00 (violations of Art. 5§1, 5§3, 5§4 and 6§1)

Cases closed by final resolution

IM No individual measures over and above the payment of the just satisfaction were required in these cases. The applicants have been released or were no longer in pre-trial detention, when the ECtHR delivered its judgments. In addition, the criminal proceedings in the Ilijkov case, which the ECtHR had held to be excessively long, came to an end in 1999.

GM Measures have already been taken in response to a **number of violations** in the context of the execution of the case Assenov and others (see Final Resolution (2000)109), notably the reform of the Code of Criminal Procedure, which took effect on 1/01/00. These reforms have subsequently been incorporated into the new Code of Criminal Procedure, which came into force on 29/04/06.

As to the violations not covered by these reforms, the government considers that the direct effect of the case-law of the ECtHR, recognised by the Bulgarian courts, will allow the prevention of similar violations in the future.

The government in particular expects the courts to ensure henceforth the adversarial nature of appeal proceedings concerning applications for release, even if this is not explicitly foreseen in the legislation.

To ensure that the courts concerned are adequately informed of the ECHR requirements, the Ministry of Justice has sent translated copies of the judgments to the presidents judges of the regional courts, asking them to draw the attention of all judges dealing with pre-trial detention matters to its content. Bulgarian translations of the judgments are also available on the Ministry of Justice Internet site.

49. BGR / Stoichkov

9808/02
Judgment final on 24/06/05

Last examined: 1007-4.2

Unlawful imprisonment in 2000, after conviction in absentia of 1989, on account of the refusal by the Supreme Court of Cassation to reopen the proceedings (violation of Art. 5§1); lack of judicial review of the lawfulness of the applicant's detention (violation of Art. 5§4) and absence in domestic law of an enforceable right to compensation in respect of this detention (violation of Art. 5§5).

IM The applicant was released in 2006: the sentence is considered to have been executed as from 27/07/2005, the date on which its execution was suspended following the judgment of the ECtHR. The applicant's unconditional release was also motivated by the impossibility of reopening of his criminal trial due to the destruction of the case file.

GM As regards the **unlawfulness of the detention**, Bulgarian law provides since 2000 for reopening of criminal cases heard in absentia but the Supreme Court of Cassation refused it essentially on the grounds that such reopening was impossible because the case-file of the original proceedings had been destroyed in 1997, before the time-limit for keeping case-files provided by the law had expired. In view of the particular circumstances of this case, the publication and the dissemination of the judgment of the ECtHR to the competent authorities appear to be sufficient measures for execution.

As regards the **lack of judicial review of the detention**, the Ministry of Justice requested an opinion of the Supreme Judicial Council on the possibility of introducing into Bulgarian law judicial review of a deprivation of liberty in similar situations. The Supreme Judicial Council did not, however, deem that the request fall within its competence. Presently, it is envisaged to submit the question to a new working group which is to be created in the near future. Further information on this point is awaited.

As regards the **lack of an enforceable right to compensation**, see case Yankov.

The judgment of the ECtHR was published and sent out to the competent authorities (the District Court of Pernik, the Supreme Court of Cassation and the Supreme Cassation Prosecutor's Office).

50. BGR / Yankov and other similar cases

39084/97 *Last examined: 1013-4.2*
Judgment final on 11/03/04

Lack of an enforceable right in Bulgarian law to compensation for detention in contravention of the provisions of Art. 5 of the ECHR (violation of Art. 5§5); various violations related to the applicants' pre-trial detention (violations of Art. 5§§3 and 4); disciplinary punishment of a detainee for offending officials in the draft manuscript of a book in 1998 (violation of Art. 10); degrading treatment due to shaving of a detainee's head before his confinement in an isolation cell without specific justification (violation of Art. 3); lack of effective remedies against either the degrading treatment suffered or the interference with his freedom of expression (violation of Art. 13); excessive length of the criminal proceedings instituted against the applicant (violation of Art. 6§1).

IM The applicants have been released or sentenced to a term of imprisonment. The criminal proceedings against Mr Yankov were stayed in October 2004 due to his ill-health; information is awaited on the acceleration of these proceedings.

GM As regards the **lack of an enforceable right in Bulgarian law to compensation for detention** in contravention of the provisions of Article 5 of the ECHR: The authorities indicated that they envisage introducing such a right into domestic law and that a national expert opinion is expected on this issue. Information is awaited on the follow-up of this issue.

As regards the other **violations related to the applicants' pre-trial detention** and to the **excessive length of criminal proceedings**, measures have already been adopted or are being examined in the framework of the execution of other cases (see cases Assenov, closed by Resolution (2000)109 and case Kitov).

As regards the **degrading treatments**, the Bulgarian authorities indicated that there was no practice of shaving detainees' heads.

As regards detainees' **freedom of expression**, the legislation governing disciplinary sanctions on detainees for offensive and defamatory statements was not challenged by the ECtHR. Confirmation is expected of the dissemination of the Yankov judgment to prison authorities and to the competent courts.

Finally, as regards the **effective remedies,** a judicial appeal allowing a detainee to complain against imposition of solitary confinement was introduced into Bulgarian law in 2002, i.e., subsequent to the relevant facts. Moreover, as from 01/01/2005 the court may decide to stay the execution of a disciplinary sanction during examination of an appeal against it.

The ECtHR's judgment has been published on the website of the Ministry of Justice and seminars on the ECHR and the ECtHR's case-law have been organised by the National Institute of Justice in 2001-2006 (including four seminars on Article 5 of the ECHR). Seminars were also planned for 2007, focusing on recent judgments of the ECtHR against Bulgaria.

51. EST / Sulaoja
EST / Pihlak

55939/00 and 73270/01 *Final resolution (2007)33*
judgments final on 15/05/05 and 21/09/05

Unjustified extension of the applicants' detention on remand in 1998 (approximately 1½ years) and failure to examine promptly their applications for release (violations of Art. 5§3 and 5§4)

Case closed by final resolution

IM No other individual measure appears required as the consequences of the violation have been redressed by the ECtHR through the award of just satisfaction. The applicants are no longer in pre-trial detention, having been either released or sentenced to prison before the ECtHR's judgment.

GM To prevent excessive extensions of the **length of pre-trial detention**, the Estonian Code of Criminal Procedure (which entered into force mainly in 2004 and 2005), provides today that a person may not be kept in pre-trial detention for more than six months unless there are exceptional reasons for it. After the initial arrest warrant a de-

tainee may, within two months, ask the preliminary investigation judge or a court to verify the reasons for the detention. A new request may be submitted two months after the previous one. The preliminary investigation judge must decide on such requests within five days of receipt. If the term of the pre-trial detention has been extended for more than six months, the preliminary investigation judge must verify the reasons for the detention at least once a month regardless of whether this has been requested or not.

The judgments of the ECtHR have been translated into Estonian, published and widely distributed to courts, to ministries and other relevant authorities, to draw their attention so that due account may be taken of the violations found by the ECtHR in the future.

52. GER / Cevizovic

49746/99
Judgment final on 29/10/04

Last examined: 1007-1.1
Final Resolution (2007)120

Excessive length of detention on remand and of criminal proceedings, both starting with the applicant's arrest in 1996 and coming to an end in 2001 (4 years and 9 months) (violation of Art. 5§3 and 6§1)

Case closed by final resolution

IM The ECtHR held that the finding of a violation in itself constituted sufficient just satisfaction, noting in particular that the national courts had reduced the applicant's sentence to compensate for the inordinate length of the proceedings. In July 2001, under an agreement reached with the prosecutor, the applicant was expelled to Croatia, his country of origin, to serve his sentence there.

GM The ECtHR found that "the competent court should have fixed a tighter hearing schedule in order to speed up the proceedings" when the proceedings had to be resumed after the applicant had already been detained for two years.

The judgment of the ECtHR was sent out to the domestic courts concerned. All judgments of the ECtHR against Germany are furthermore publicly available via the website of the Federal Ministry of Justice. As the violation found does not appear to reveal a structural problem, no other general measures were deemed necessary.

53. GER / Storck

61603/00
Judgment final on 16/09/05

Last examined: 1007-1.1
Final resolution (2007)123

Detention of the applicant in a private psychiatric clinic without her consent or any court order, at her father's request, for a total of 20 months during the years 1977-1979 and medical treatment there against her will (violation of Art. 5§1 and Art. 8)

Case closed by final resolution

IM Not being able to establish a causal connection between the pecuniary damages sought and the violations established, the ECtHR awarded only non-pecuniary damages. As to possible additional measures available to fully erase the consequences of the violations, the government pointed out that criminal proceedings for deprivation of liberty and bodily harm were time-barred already in 1992 when the applicant regained her ability to speak. As regards the possibilities of obtaining additional compensation, it was expected that domestic courts would fully take into account the requirements of the ECHR as they emerged from the ECtHR's judgment.

GM To improve guarantees against forced **psychiatric detention without a court order**, a change of the relevant law in 2000 extends the right of an independent commission to visit, at least once a year, also private institutions where patients may be kept against their will,. Furthermore, patients' rights to submit complaints to the outside, in particular to attorneys, courts, parliaments or the independent commission itself have

been improved. Similar provisions now exist in most *Länder*.
In addition, since 1992 federal legislation concerning the forcible confinement to mental institutions of minors and persons under guardianship has been reinforced. These changes, together with the direct effect of the ECtHR's case-law in German law is expected to render impossible also the kind of violation here at issue, i.e. the placement of a person having attained the age of majority and not subject to any legal incapacity. To this end the competent ministry of the Land of Bremen has also sent a reminder of the current law to all hospitals treating mental illnesses, notably stressing that a court order is mandatory in all cases. The topic will also be raised by the independent commission on the occasion of future hospital visits. As is the case with all judgments of the ECtHR against Germany, the judgment is publicly available via the website of the Federal Ministry of Justice. Furthermore, the judgment has been published.

54. IRL / D.G.

39474/98
Judgment final on 16/08/02

Last examined: 1013-(4.2)

Placement, in 1997, of a minor suffering from severe personality disorders in a penal institution, due to the authorities' failure to provide appropriate accommodation and special care and protection suited to the applicant's condition (violation of Art. 5§1); lack of enforceable right to compensation in respect of this detention, since it was imposed in conformity with national law (violation of Art. 5§5).

IM The applicant has reached the age of majority and has been awarded just satisfaction in respect of non-pecuniary damage.

GM As regards the applicant's **placement under detention**, the number of special residential places for non-offending children in need of special care and protection has been increased from 17 in 1997 to a total of over 120 places in 2003. Updated information in this respect is awaited.

Furthermore, a new law of 2001 imposes statutory duties on health boards in relation to children in need of special care or protection. It establishes the Family Welfare Conference on a statutory basis and the statutorily based Special Residential Services Board to co-ordinate special residential services.
As regards the **lack of compensation** for the detention, the government has indicated that anyone who suffers damage as a result of the acts of state institutions which are incompatible with the ECHR (but in conformity with national law) may seek compensation under the European Convention on Human Rights Act 2003: following a "declaration of incompatibility" made by the High Court or the Supreme Court, the injured party may apply to the government, through the Attorney General, for an ex gratia compensation payment in respect of any loss, injury or damage suffered as a result of the incompatibility.
The assessment of this mechanism is under way.
The ECtHR's judgment has been published.

55. ITA / Messina Antonio No. 2 and other similar cases

25498/94
Judgment final on 28/12/00

Interim Resolution (2005)56
Last examined: 1013-4.2

Lack of access to an effective judicial control of the lawfulness of restrictions imposed under special detention regime (violations of Art. 6§1 and/or 13). Arbitrary monitoring of prisoners' correspondence (violation of Art. 8).

IM No individual measure is required as none of the applicants is any longer subject to the special detention regime.

GM 1) Violations of Articles 6§1 and 13: In its Interim Resolution (2005)56, the CM took note with concern that the judicial review of decisions related to the application of the special detention regime remained too slow and that the statutory ten-day time limit was systematically not respected by domestic courts. The CM therefore:

- called upon the Italian authorities rapidly to adopt the legislative and other measures necessary;
- encouraged all Italian authorities, and in particular the courts, to grant direct effect to the ECtHR's judgments so as to prevent new violations of the ECHR;
- decided to resume examination of these cases within one year at the latest, in order to supervise the progress in implementation of the general measures necessary to comply with the present judgments.

Information is awaited on the progress made.

2) Violation of Article 6 (concerning the "E.I.V." regime): Information is expected on measures envisaged or taken.

3) Violation of Article 8: general measures have been taken and are presented in Final Resolution (2005)55 closing the supervision of the case Calogero Diana and other similar cases.

56. LIE / Frommelt

49158/99
Judgment final on 24/09/04

Final Resolution (2007)55.

Absence of an adversarial hearing concerning the decision, taken in 1997, to extend the applicant's detention on remand (violation of Art. 5§4)

Case closed by final resolution

IM The applicant's detention on remand came to an end in August 1998.

GM The procedural practice when deciding on pre-trial detention has changed and the detainee is henceforth given the opportunity to comment either directly or via his legal representative before a decision is taken to prolong his pre-trial detention.

The judgment of the ECtHR has been published and sent out to the courts and the justice authorities concerned, including public prosecutors.

57. MDA and RUS / Ilaşcu and others

48787/99
Judgment final on 08/07/2004 (Grand Chamber)

Interim resolutions (2005)42; (2005)84; (2006)11; (2006)26 and (2007)106
Last examined: 1002-4.3

Applicants handed over by Russian troops to irregular forces in Transdniestria in 1992

State responsibility (violation of Art. 1): continued responsibility of the Russian Federation as to the fate of the applicants also after Russia's ratification of the ECHR because of Russian support to the irregular regime detaining the applicants and the absence of any action to obtain their liberation; responsibility of Moldova due to its failure to continue after 2001 its efforts to obtain the liberation of the applicants remaining in detention.

Merits of complaints: applicants subjected to ill-treated and poor detention conditions (violation of Art.3); their detention had also been unlawful as it had been based on a conviction by a "court" set up by a regime not recognised in international law (violation of Art. 5); breach of right of individual petition (violation of Art. 34)

IM In its judgment, the ECtHR found that the respondent states were to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release. The two remaining applicants, Mr Ivanţoc and Mr Popa (formerly Petrov-Popa), were released in 2007. They have lodged a new application with the ECtHR, against Moldova and the Russian Federation (No. 23687/05), on the ground of the prolongation of their **arbitrary detention** beyond 8 July 2004.

In July 2007, the CM adopted **Interim Resolution (2007)106**, whereby, in particular, it:

- noted with relief that the applicants Ivanţoc and Popa had finally regained their freedom, but regretted deeply that, despite the injunction of the ECtHR, they were only released on 2 and 4 June 2007 respectively;

- noted that the authorities of the Republic of Moldova had regularly informed the Committee of the efforts they had made to secure the applicants' release;
- recalled the various interim resolutions adopted by the CM and most particularly the call made upon the authorities of the member states of the Council of Europe to take such action as they deemed appropriate to ensure the compliance by the Russian Federation with its obligations under this judgment; noted the various steps taken by the states following this call; also noted, in this context, the support of the European Union and of numerous other states with a view to achieving the execution of this judgment;
- renewed its profound regret that despite these steps, the authorities of the Russian Federation had not actively pursued all effective avenues to comply with the ECtHR's judgment;
- reaffirmed most firmly that the obligation to abide by the judgments of the ECtHR is unconditional and is a requirement for membership of the Council of Europe;
- recalled that the ECtHR had stated that "any continuation of the unlawful and arbitrary detention of the [...] applicants would necessarily entail [...] a breach of the respondent states' obligation under Article 46 § 1 of the ECHR to abide by the Court's judgment";
- deplored deeply the prolongation of the applicants' unlawful and arbitrary detention after the judgment of the ECtHR and underlined, in the light of this situation, the obligation incumbent on respondent states under Article 46, paragraph 1, of the ECHR to erase, as far as possible, the consequences of the violations at issue in this case;
- noted, in this respect, that Mr Ivanțoc and Mr Popa had lodged a new application with the ECtHR, against Moldova and the Russian Federation (no. 23687/05), on the ground of the prolongation of their arbitrary detention beyond 8 July 2004;
- decided to suspend its examination of this case and to resume it after the final determination of the new application by the European Court of Human Rights.

58. POL / Trzaska and other similar cases

25792/94+
Judgment final on 11/07/2000

Interim resolution (2007)75.
Last examined: 997-4.2

Mainly problems concerning excessive length of pre-trial detention and deficiencies of the procedure for review of lawfulness. (violation of Art. 5§3 and 5§4)

IM In most cases the impugned detention on remand ceased at the time of the ECtHR's judgments or shortly afterwards. The CM is, however, awaiting in some of the most recent cases confirmation that the impugned detention on remand has been terminated.

GM In the light of the structural nature of the present problem of the length of pre-trial detention and the continuing increase of ECtHR judgments in similar cases, the CM adopted an interim resolution on these cases on 6 June 2007, IR (2007)75.

In this resolution it underlined the importance of rapid adoption of execution measures in these cases. The CM went on to take stock of the progress achieved and, in light hereof, it encouraged Poland:

- to continue to examine and to adopt further measures to reduce the length of detention on remand, including possible legislative measures and changes of courts' practice, and in particular
- to take appropriate awareness-raising measures with regard to the authorities involved in the use of detention on remand;
- to encourage domestic courts and prosecutors to consider the use of other preventive measures provided in domestic legislation, such as release on bail, obligation to report to the police or prohibition on leaving the country;
- to establish a clear and efficient mechanism for evaluating the trend concerning the length of detention on remand.

In the light hereof the CM decided to resume consideration of outstanding measures within June 2008 at the latest.

59. PRT / Magalhães Pereira no. 2

15996/02
Judgment final on 20/03/06

Last examined: 1013-4.2

Failure promptly to review the lawfulness of the applicant's detention in a psychiatric clinic (violation of Art. 5§4).

IM The applicant was released on 24/05/2002.

GM The Portuguese authorities have provided extensive information on the general measures taken and envisaged in this case. A law of 2004 provides the possibility to pay doctors or experts who conduct the forensic medical examination directly. Until then, they received no remuneration for the examinations they conducted, which is probably why they often refused to do so. In addition, the capacity of several regional offices of the National Institute of Forensic Medicine is being increased, additional psychiatrists have been recruited, the construction of a new building is foreseen.

As regards the legal "ceilings" for the number of examinations which may be conducted per expert per year, the Ministry of Justice intends to propose to the Ministry of Health to send a circular letter to all regional health authorities to draw their attention to the need to approach such "ceilings" in a flexible manner, refusals to conduct examinations not being permitted when the liberty of citizens is at issue. Finally, the Ministry of Justice is in the process of developing institutional co-operation between the National Institute of Forensic Medicine and the Prison Services with a view to avoiding situations in which psychiatrists are asked to conduct forensic examinations of their own patients. A translation of the ECtHR's judgment has been published.

Information is awaited on the follow-up given to the law of 2004, on progress in the enlargement of the capacity of the offices of the National Institute of Forensic Medicine and the circular letter on "legal ceilings" referred to above and on current practice as regards these "ceilings". Finally, information is awaited on progress in co-operation between the National Institute of Forensic Medicine and the Prison Services.

60. **ROM / Notar**

42860/98 *Last examined: 1013-4.2*
Judgment final on 20/04/04 – Friendly settlement

Multiple allegations raised by the applicant, a juvenile at the time of the events: mistreatment while in police custody in 1996 and lack of effective investigations thereon (complaints under Art. 3); unlawfulness of detention in a Youth Shelter (complaint under Art. 5§1), lack of explanation of the charges against him (complaint under Art. 5§2); lack of prompt judicial review of the legality of the detention (complaint under Art. 5§§3 and 4); lack of compensation for unlawful detention (complaint under Art. 5§5); lack of access to a court (complaint under Art. 6§1); breach of the presumption of innocence, as his identity was disclosed during a television programme which depicted him as the perpetrator of a criminal offence (complaint under Art. 6§2); hindrance to the exercise of his right of individual application (complaint under Art. 34).

Undertakings by the government: according to the terms of the friendly settlement reached, the Romanian Government undertook to pay the applicant a sum of money in respect of pecuniary and non-pecuniary damage, as well as in respect of costs and expenses. In addition, it undertook:

(1) to reform the existing legislation with a view to exempting from stamp duty civil court actions claiming damages for ill-treatment contrary to Art. 3,

(2) to inform the police of the appropriate conduct to be observed to ensure respect for the presumption of innocence, and

(3) to pursue its efforts in the area of protecting children in difficulty.

IM The amount agreed in the friendly settlement was paid. No further individual measure is required.

GM As regards the **placement of minors in youth shelters,** the law in force at the time has been repealed and new legislation has been adopted in 2004, notably providing for "special child protection measures" for children who have committed a criminal act but are not criminally liable. A Decision of the National Audiovisual Council of 2006 furthermore prohibits the broadcasting of any information on children under 14 which could lead to their identification when they are accused of committing offences.

Clarification is expected concerning the legislative acts of 2004 and on the legislation governing the placement of minors in youth shelters.
Requests for the determination and award of civil damage for alleged **treatment in breach of Articles 2 and 3 of the ECHR** are exempted from stamp duty since 2005.
As regards **presumption of innocence**, a draft order was prepared in 2004 by the Minister for Home Affairs, notably setting out the rules to be followed concerning the disclosure to the media of data and information obtained by the personnel of the Ministry of public administration and Home Affairs in the exercise of their professional duties and providing in particular for the confidentiality of the identity of persons who are being investigated, prosecuted or placed in detention on remand.
Further information is expected on action taken with regard to the follow up given to this draft order and on the timetable envisaged for its adoption. Information is also expected on measures aimed at ensuring the appropriate training of the police.

61. RUS / Klyakhin and other similar cases

46082/99
Judgment final on 06/06/05

Public memorandum CM/Inf/DH(2007)4
Last examined: 1013-4.2

Insufficient grounds for prolonging pre-trial detention (violation of Art. 5§3), insufficient review of the applicant's applications for release (violation of Art. 5§4), excessive length of criminal proceedings (violation of Art. 6§1) and absence of an effective remedy in this respect (violation of Art. 13), censorship of the applicant's correspondence with the ECtHR (violation of Art. 8) and interference with the applicant's right of individual petition (violation of Art. 34).

IM No individual measures are required since no applicants are in pre-trial detention and all pending criminal proceedings have been terminated.

GM As regards the **lawfulness of pre-trial detention,** a number of measures have been taken and are detailed in the public memorandum CM/Inf/DH(2007)4. In particular, a Decree of the Plenum of the Supreme Court of the Russian Federation of 2006, drew lower courts' attention to the shortcomings of judicial decisions regarding pre-trial detention and announced measures with a view to remedying them. Furthermore, a draft law reforming conditions in which detention may be ordered is in preparation since 2006.
However, information is still awaited on the measures taken or envisaged aiming at further development of alternative preventive measures. The most important outstanding issues concern the improvement of in-service training of judges, prosecutors and heads of detention centres (see CM Rec (2004)4 on ECHR and professional training) and the strengthening of their disciplinary and professional responsibility.

As regards the **excessive length of criminal proceedings**, the identified causes of this problem are mainly the same as those in civil proceedings, i.e. the poor material conditions of the courts' functioning. The related questions are mainly examined in the context of the Kormacheva group. It is also in this group that the CM examines the problem of effective remedies, whether compensatory or acceleratory.

As regards the **opening and hindrance of detainees' correspondence**, see **Poleshchuk case**.

62. TUR / A.D.

29986/96
Judgment final on 22/03/2006

Last examined: 1013-4.2

Detention of a military, imposed by a superior officer (lieutenant-colonel), i.e. not by an organ offering judicial guarantees, for disobeying military orders (violation of Art. 5 § 1(a)).

IM No individual measure appears to be needed, as the applicant has been released since long and the pecuniary aspects of the violation have been covered by the ECtHR's just satisfaction award.

GM Recent reforms reduce the maximum penalty from 21 to 7 days of detention and further

reforms are under way to ensure that military sanctions implying deprivation of liberty (even of short duration) are only ordered by a body offering the judicial guarantees required by Article 5 of the ECHR.

The judgment of the ECtHR have been translated into Turkish, sent out to the relevant authorities and published on the website of the Court of Cassation.

63. TUR / Öner Sultan and others

73792/01 *Last examined: 1013-4.2*
Judgment final on 17/01/2007

Unlawful arrest and detention (18 hours) of the first applicant as these were based on an outdated wanted notice (violation of Art. 5§1); ill-treatment during the arrest (substantial violation of Art. 3); violation of the children's rights due to the authorities' failure to spare them from the perils of the conditions imposed on their mother (violation of Art. 3 and 5§1); lack of an effective remedy in respect of these violations (violation of Art. 13).

IM No specific measure seems required.

GM As regards the **unlawful arrest and detention**, a number of regulations have been enacted between 1999 and 2006, which will allow a regular update of the police data and prevent unjustified arrests. In addition, with the computerisation of the entire database of the security services, maintenance and transmission of information is faster and more reliable. Furthermore, the new Code of Criminal Procedure (in force since 2005) has provided a right to compensation for those arrested without a valid reason.

Regarding the **protection of children during the arrest and detention of a relative**, the authorities have indicated that according to the law, children of arrested parents are taken into care by an institution if their family is not able to take care of them and in addition such children are considered as "children in need of protection" and all necessary legal steps are to be taken to protect them.

The ECtHR's judgment has been translated and distributed to the Ministry of Justice, Ministry of the Interior, the High Courts as well as the Prosecutor's Office attached to the Court of Cassation.

As regards the **ill-treatment and the absence of an effective remedy**, see Aksoy group of cases.

64. UK / Benjamin and Wilson

28212/95 *Last examined: 1007-4.2*
Judgment final on 26/12/02

Absence of right to bring proceedings for review of lawfulness of detention on mental health grounds after expiry of tariff period of "technical lifers" (violation of Art. 5§4).

IM The first applicant was convicted in 1983, with his tariff of six years expiring in 1989. In October 1993 he was made a technical lifer. He was released in 2001.

The second applicant was sentenced in 1977; his tariff, which was set at eight years, expired in 1984. In June 1993, he was made a technical lifer and he is currently detained at a medium-security psychiatric hospital. The Mental Health Review Tribunal (MHRT) reviewed Mr Wilson's case in 2006, and found that he continued to meet the statutory criteria for detention. (See also GM below, which apply to Mr Wilson's case.)

Clarifications have been requested as to how the review of cases such as Mr Wilson's satisfies the ECHR requirement that the reviewing body must have the competence to decide on the lawfulness of the detention and to order release if the detention is unlawful.

GM According to the ECtHR's conclusions in this case, the MHRT did not meet the requirements of Article 5§4 ECHR as it could only issue recommendations and was not empowered to release the applicants.

As of 2005, all future life-sentence prisoners have their discharge determined by the Parole Board and managed on discharge through "life licence" arrangements (i.e. the specific parole conditions applicable to life prisoners). All life-sentence prisoners held in hospitals (including the remaining

technical lifers) are entitled to apply to the MHRT. In addition, the Secretary of State may at any time refer the prisoner to the MHRT and must do so in any three-year period. Following an application or referral to the MHRT, the Tribunal will notify the Secretary of State as to whether they consider that the prisoner continues to meet the conditions for detention in hospital or should be absolutely discharged or discharged subject to conditions.
Technical lifers (such as Mr Wilson) are treated as patients, and if the MHRT recommended discharge, such patients would be discharged without referring to the Parole Board. Whilst the Secretary of State reserves the right to refuse discharge, he has never actually refused a discharge. The authorities have provided detailed information on the procedure followed. It appears however that existing technical lifers are still not entitled to the review of their continued detention by a judicial body empowered to order their release. Clarifications are under way on this point.

In the case of a transferred lifer (a life-sentence prisoner who did not or could not apply for "technical lifer" status before 02/04/2005 and who is currently held in a hospital), where his tariff has expired, or is about to expire, the Secretary of State will as a matter of course refer the matter to the Tribunal.

Outstanding issues concerning the manner in which the release of technical lifers is decided are still being discussed.

Issues concerning the Parole Board have been examined in the context of the supervision of the execution of the Stafford judgment.

The judgment has been published.

65. UK / Stafford and other similar cases

46295/99
judgment of 28/05/02 – Grand Chamber

Last examined: 992-6.1

Continued detention of the applicants after the expiry of their tariff, without review by a body empowered to order their release or presenting the necessary judicial safeguards (violation of Art. 5§4); in the Stafford case, lack of legal basis for the detention (violation of Art. 5§1); in the Wynne (No. 2) and Hill case, lack of compensation for this detention (violation of Art. 5§5)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The detention of the applicants was reviewed. In the Stafford case, the applicant was released in 1998. In the other cases, the detention was confirmed and is now submitted to regular review.

GM **Unlawful detention,** as found in the Stafford case, should not occur in future as the Secretary of State is no longer free to depart from the recommendations of the Parole Board regarding the release of mandatory life sentence prisoners with respect to whom a minimum term order has been made.

Absence of adequate judicial review: Following the interim measures initially taken, legislative amendments were introduced and came into force on 18/12/2003, making the Parole Board competent to rule on the release of all mandatory life sentence prisoners. Furthermore, under the new Parole Board Rules, all life-sentence prisoners will be entitled to insist upon an oral hearing.

Absence of compensation in the Wynne (No. 2) and Hill cases: Measures have already been taken in the framework of the execution of the case of O'Hara.

The judgments in the Stafford and Wynne (No. 2) cases have been published.

C.3. Detention and the right to privacy

66. FRA / Slimane-Kaïd

27019/95
Interim Resolution (99) 355 of 09/06/99 under former Art. 32 of the ECHR; decision on just satisfaction of 03/12/99

Final Resolution (2007)5

Opening by the prison authorities of letters sent to the applicant by his lawyers and of a letter sent by the former European Commission of Human Rights (violations of Art. 8).

Case closed by final resolution

GM Monitoring of correspondence between detainees and lawyers: In 2000, the Code of Criminal Procedure relating to the application of sentences was amended, so as to remove the distinction between lawyers who assisted the accused in the proceedings for which they had been detained and others and to remove any kind of monitoring of correspondence with the latter.
Monitoring of correspondence between detainees and ECHR organs: a memorandum was sent to prison governors specifying that detainees' correspondence with the European Commission of Human Rights, whatever the organ, should remain unopened. The Code of Criminal Procedure (Order of 16/09/05), which lists the administrative and judicial authorities with which detainees may correspond without their letters being opened makes explicit mention of the President of the ECtHR, the Registry of the ECtHR and all members of the ECtHR.

Lastly, the Commission's report and the CM' decision have been forwarded to the authorities directly concerned.

67. FRA / Wisse

71611/01
Judgment final on 20/03/06

Last examined: 1013-4.2

Breach of detainees' privacy on account of the recording of the conversations with their relatives in prison visiting rooms between 1998 and 1999, in the absence of sufficient legal safeguards in the law (violation of Art. 8).

IM The recordings were used as evidence in the criminal proceedings against the applicants, resulting in their final conviction in 2002 to 25 and 20 years' imprisonment. The applicants' complaint about the unfairness of such proceedings was however rejected by the ECtHR for non-exhaustion of domestic remedies.
Information on the fate of the recordings is expected.

GM After the events of these cases, a law was adopted in 2004 containing provisions relating to the recording of conversations in the context of proceedings concerning facts of organised crime. Information is awaited concerning the exact scope of the new provisions, in order to assess the need to adopt further measures.

68. LIT / Čiapas

4902/02
Judgment final on 16/02/07

Last examined: 1013-4.2

Infringement of the applicant's right to respect for his correspondence during his pre-trial detention and imprisonment between 2001 and 2003: all his correspondence with private persons was opened and read in his absence by the prison authorities (violation of Art. 8).

IM The applicant is currently serving his sentence. Information is awaited as to whether his correspondence with private persons is still subject to censorship.

GM As regards the disproportionate monitoring of detainees' correspondence, certain amendments to the Law on Pre-trial Detention are under way as regards, *inter alia*, the right of correspondence of persons detained on remand (developing further the changes introduced in 2001, see the Jankauskas case). The draft amendments were submitted to the government on 05/07/2007 but not yet to the Parliament.

Information has been requested on the progress in the adoption of the proposed amendments.

69. **LIT / Jankauskas**

59304/00 *Final Resolution (2007)128.*
Judgment final on 06/07/2005

Infringement of the applicant's right to respect for his correspondence as, while he was detained on remand, all his correspondence and in particular that to his lawyer and to the state authorities, had been opened and read in his absence by the prison authorities (violation of Art. 8).

Case closed by final resolution

IM The applicant was released from prison in August 2003. He is no longer suffering from the consequences of the violation and therefore no further individual measures, other than the payment of just satisfaction, seem necessary.

GM The Detention on Remand Act was modified in 2001. It now provides that correspondence of pre-trial detainees may be censored for a 2-month period, provided that such censorship is justified by the need to prevent the commission of offences or to protect the rights or freedoms of others. Such censorship may be ordered only by the officer investigating the case, the prosecutor or the court. Letters addressed to the investigating officer, the detainee's lawyer, the prosecutor, the court, or to state or municipal institutions as well as to relevant international institutions may not be censored under any circumstances.

The Remand Prisons Internal Rules have also been modified in accordance herewith on 7/09/2001.

The Lithuanian translation of the judgment has been published and sent out with a covering letter to the Supreme Administrative Court, the General Prosecutor's Office and the Prisons Department.

70. **MDA / Ostrovar**

35207/03 *Last examined: 1013-4.2*
Judgment final on 15/02/06

Poor conditions of detention on remand in 2002-2003 amounting to degrading treatment (violation of Art. 3) and lack of effective remedy in this respect (violation of Art. 13 taken together with Art. 3); interception of the applicant's private correspondence and authorities' refusal to authorise visits by the family in the absence of sufficiently precise legal rules (violation of Art. 8)

IM The applicant is no longer detained on remand and the consequences of the violations found have been redressed by the ECtHR's award of just satisfaction.

GM As regards the **breach of detainees' privacy**, the new Enforcement Code has repealed in 2005 the provisions at the origin of the violation. The Code prohibits the censorship of the correspondence of the convicted persons with their lawyer, the Complaints Committee, the prosecution authorities, courts, the central public administration authorities and international, intergovernmental organisations protecting human rights and fundamental freedoms. The Statute on the Enforcement of Sentences, adopted in 2006, provides that prisoners' correspondence with relatives or with other physical or legal persons may not be subject to censorship except under the conditions set out in the Code of Criminal Procedure or in the Act on Operational Investigations.

As regards the **poor conditions of detention**, see the *Becciev* case.

As regards the **lack of remedies**, a Supreme Court of Justice decision of 2000 laid down that where domestic law does not provide a right to an effective remedy against any right safeguarded in the ECHR, the competent court shall directly apply the provisions of the ECHR, whether in civil or criminal proceedings. Furthermore, Moldovan law provides that the state is responsible for prejudice resulting from errors by prosecutors and courts in criminal proceedings and a law of 1998 provides for a concrete mechanism for the reparation of judicial errors. A Complaints Committee has also been set up as an independent body with the mandate to deal with prisoners' complaints at any time during their sentence.

The judgment of the ECtHR has been translated, published and sent out to all appropriate authorities.

The need for further measures is being assessed.

71. POL / Klamecki No. 2 and other similar cases

31583/96
Judgment final on 03/07/03

Last examined: 1013-4.2

Violation of detainees' right to correspondence on account of the insufficient clarity of the law before 1/09/98 and of the unlawful monitoring of correspondence with the Constitutional Court, the ECHR organs, the Chancellery of Senate and the lawyers (violation of Art. 8); interference with the right of application due to the significant delay in posting the applicants' letters to the ECtHR (violation of Art. 8); excessive restrictions of family contacts in 1996-1997(violation of Art. 8); various violations of procedural guarantees in detention of remand (violations of Art. 5§3 and 5§4) excessive length of criminal and civil proceedings (violations of Article 6§1).

IM The applicants are no longer in pre-trial detention and the ECtHR granted just satisfaction in most of these cases. Under Polish law, applicants and persons who claim infringement of their right to respect for their correspondence may claim compensation from the State Treasury.

GM As regards the failure to respect detainees' correspondence and the right to address the ECHR organs, the Code of Execution of Criminal Sanctions, as amended in 2003, provides that the correspondence of convicted persons with, *inter alia*, their lawyers, the justice administration and Strasbourg organs cannot be censored or stopped. Such correspondence can only be the object of supervision where there is a reasonable risk that the letters might contain prohibited objects. Letters may here be opened in the presence of the convicted person. Persons in detention on remand should enjoy at least the same rights and their correspondence may be supervised by the organ at whose disposal they remain (a public prosecutor or a court). More detailed rules governing the control of the correspondence of detainees and convicted persons are included in the Rules for Executing Prison Sentences and the Rules of Detention on Remand, which both entered into force in 2003.

A draft legislative amendment to the Code of Execution of Criminal Sanctions has been submitted to the Council of Ministers, aiming among other things to

- eliminate the differences between the treatment of convicted persons' correspondence with their lawyers on the one hand, and certain institutions, including the judiciary and the ECHR organs on the other;
- introduce a clear provision that the rule concerning convicts also apply to other detainees;
- lay down new, simpler rules concerning the handling of correspondence to detainees.

Public prosecutors and judges have been instructed to pass on detainees' correspondence, including their correspondence with the organs of the ECHR, to the addressees. The Minister of Justice has sent circulars to Appeal Court presidents drawing their attention to the ECtHR's conclusions and asking them to send it out to the judges under their administrative responsibility and to those responsible for examining detainees' correspondence who should take measures to guarantee respect for detainees' correspondence.

The judgments of the ECtHR in the Klamecki No. 2 and Matwiejczuk cases have been published.

The information provided is being assessed. Additional information is awaited on the present practice of supervising detainees' correspondence, the follow-up of the draft amendment to the Code of Execution of Criminal Sanctions and the dissemination of the Klamecki No. 2 judgment to the competent courts in order to draw their attention also to the need to ensure **respect for family life**.

As regards the **right to be brought promptly before a judge** and to challenge the **lawfulness of detention,** necessary execution measures have been taken, see case Niedbała, closed by Resolution (2002)124. As for the **excessive length of detention on remand**, see case Trzaska (IR (2007)75).

As regards the **excessive length of the civil and criminal proceedings,** see in particular Podbielski and Kudła, IR (2007)28.

72. ROM / Petra

27273/95
Judgment final on 23/09/98

Final Resolution (2007)92.

Monitoring of the applicant's correspondence, during his detention, with the former European Commission of Human Rights (violations of Art. 8 and former Art. 25)

Case closed by final resolution

IM No measure was needed in this case.

GM A new legislation, entered into force in 2003, provides for the confidentiality of requests or applications addressed by detainees to the public authorities, judicial bodies or international organisations or courts whose competence has been accepted or recognised by Romania. The law indicates that such letters cannot be opened or retained. The law also provides the possibility to challenge measures restricting the rights of prisoners before a judge. The law furthermore provides that, for detainees lacking the necessary means, mailing costs for correspondence with the ECtHR are covered by the prison administration. Finally, the law also applies to prisoners on remand.

In 2003, pursuant to these provisions, the National Prisons Administration on several occasions ordered prison staff to respect the principle of confidentiality and set up rules for the organisation of the exercise of detainees' right to confidentiality of their correspondence.

The judgment of the ECtHR was translated, published and widely disseminated to the authorities concerned.

73. UK / Wainwright

12350/04
Judgment final on 26/12/2006

Last examined: 1007-6.1

Failure of the authorities in 1997 in their obligation to comply with the procedures for the proper conduct of strip searches of the applicants, a mother and son visiting a prisoner, or to take rigorous precautions to protect the dignity of those being searched (violation of Art. 8); lack of remedy in this respect (violation of Art. 13).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded both applicants just satisfaction in respect of non-pecuniary damages. It noted that the second applicant had received an award from the domestic courts in respect of the battery.

GM **Violation of the right to respect for private and family life**: the policy of HM Prison Service related to the searching of visitors has been modified and strip searches occur only rarely.
In November 2003, the Operational Policy Unit of the Prison Service issued a note referring to the House of Lords' decision in the Wainwright case and reminding prison staff of the appropriate policy on strip searching, stressing the importance of adhering to correct procedures and maintaining full and accurate records. In December 2006, the Operational Policy Unit of the Prison Service prepared a paper to amend aspects of policy on searches. Some of the changes address issues raised in the Wainwright case. This paper was published on the Prison Service intranet.

On 14/08/2007 HM Prison Service issued a Prison Service Instruction to governors. Under that instruction, governors must ensure that all relevant prison staff are made aware of the changes to searching policy and practice. The instruction mentions the Wainwright case and draws attention to the fact that when conducting full searches, staff must not deviate from the standard procedures, as searches will otherwise be considered unlawful.

Lack of effective remedy: Since the Human Rights Act 1998 came into force in October 2000, victims of unlawful action may bring claims. The court may grant such relief or remedy, or make such order, within its powers, as it considers just and appropriate, including orders for compensation. The domestic courts will be obliged to take

the Wainwright judgment into account should any similar violations arise in the future.

The judgment of the ECtHR has been published and commented on in many legal publications.

D. Issues related to aliens

D.1. Unjustified expulsion

74. BGR / Al-Nashif and others

50963/99 *Last examined: 1013-4.2*
Judgment final on 20/09/2002

No possibility to review lawfulness of detention pending expulsion on national security grounds (violation of Art. 5§4), inadequate safeguards in relation to such expulsion (violation of Art. 8), lack of effective remedy against the expulsion (violation of Art. 13).

IM In 2004 and 2006, following the judgment of the ECtHR, the order revoking the applicant's residence permit was quashed, as well as that ordering his detention and expulsion. The ban for Mr Al-Nashif's re-entry on the Bulgarian territory was lifted in October 2007.

GM As regards the **effective remedy in respect of the expulsion decision**, the Supreme Administrative Court has, since the Al-Nashif judgment, indicated to the competent courts that they must apply the ECHR, as interpreted by the ECtHR, directly and that they must, consequently, examine complaints against expulsion measures based on national security grounds. Subsequently, the legislation was amended in January and March 2007 so as to codify the practice.

The CM is presently assessing the sufficiency of the measures, as it appears that appeals against expulsion, revocation of residence permits and bans on entry into the territory based on national security grounds have no suspensive effect. In the view of the authorities, Article 1§2 of Prot. no. 7 does not require such suspensive effect in cases involving national security.

As regards **judicial review of detention pending expulsion**, the CM is assessing the measures taken to ensure such review also in case of detention in specialised centres on the grounds of national security.

The judgment of the ECtHR was published on the internet site of the Ministry of Justice.

75. FRA / Gebremedhin (Gaberamadhien)

25389/05 *Last examined: 1007-2*
Judgment final on 26/07/2007

Lack of remedy with suspensive effect against the decision refusing leave to enter France and directing removal of the applicant to a country in which there was a risk of treatment contrary to Art. 3, thus making it impossible under French law to request asylum (violation of Art. 13 combined with Art. 3)

IM After the applicant had lodged his application in this case, the ECtHR indicated to the French Government, pursuant to Rule 39 (interim measures) of the Rules of ECtHR, that it was desirable not to remove him to Eritrea prior to the examination of the case. Accordingly, on 20/07/2005 the French authorities granted him leave to enter France and then issued him with a temporary residence permit. On 7/11/2005 the applicant was granted refugee status. The ECtHR noted that Article 33 of the Geneva Convention of 28/07/1951 on the status of refugees now stands in the way of his deportation to his country of origin. Furthermore, the ECtHR held that, in the circumstances of the case, the non-pecuniary damage suffered by the applicant is sufficiently compensated by the finding of a violation of Article 13. In these circumstances, no further measures seem required.

GM In November 2007, a law was adopted on "the control of immigration, integration and asylum", aiming, *inter alia,* at "applying the recent ju-

risprudence of the European Court of Human Rights with regard to the remedy against refusal to grant asylum at the frontier". The new law provides that aliens who have been refused access to French territory in order to request asylum have 48 hours from the notification of this decision to request its annulment in a reasoned application to the Administrative Tribunal and this application has suspensive effect. The applicant may request the assistance of an interpreter and of a lawyer. Judgments of the Administrative Tribunal may be appealed but this appeal has no suspensive effect. The CM is assessing these measures, notably in the light of comments submitted by a non-governmental organisation, which had already intervened as a third party in the proceedings before the ECtHR.

76. LVA / Slivenko

48321/99
Judgment final on 09/10/03 – Grand Chamber;

Memorandum CM/Inf/DH(2005)32 revised
Last examined: 987-6.1

Deportation of the applicants, a mother and her 18-year-old daughter, former Latvian residents of Russian origin, to Russia in the context of the implementation of the 1994 agreement regarding the withdrawal of Russian troops (violation of Art. 8).

Case in principle closed on basis of available information – draft final resolution in preparation

IM In the domestic judicial proceedings engaged by the applicants to obtain anew their residence status, the domestic courts in substance accepted the violation established by the ECtHR, but the courts did not consider themselves empowered to grant the relief sought. Following an exchange of letters between the Chairman of the CM and the Latvian Minister of Foreign Affairs, a friendly settlement agreement between the applicants and the authorities was reached in March 2006. On 21/06/2006, the Minister of the Interior adopted a separate decision with respect to each of the applicants, granting them permanent residence permits. No other individual measure has been considered necessary from a ECHR perspective.

GM As to the residence rights of other persons in the applicants' situation, the position taken by the Latvian courts in the context of IM confirms the direct effect of the ECHR and the ECtHR's judgments in Latvian law. A Latvian translation of the judgment of the ECtHR has also been published and disseminated to judges. The issue has furthermore been included in the training program for judges and assistants at administrative courts.

77. NLD / Said

2345/02
Judgment final on 05/10/2005

Last examined: 997-6.1

Risk of ill-treatment in case of expulsion of the applicant to Eritrea; problem in assessing the credibility of the applicant's declarations (violation of Art. 3).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant was granted asylum as of September 2005 until September 2010.

GM Domestic courts, when reviewing the credibility of the reasons for asylum, decide *ex nunc* on the basis of available information at the relevant time. New facts and circumstances may be considered in appeal proceedings and can also be adduced in a renewed asylum application if the first application is denied. Following the ECtHR's judgment, the Implementation Guidelines for the Aliens Act 2000 were modified. A specific chapter was added, easing eligibility for a residence permit for Eritrean deserters and conscientious objectors.

The judgment was published in several legal journals in the Netherlands.

78. NLD / Salah Sheekh

1948/04
Judgment final on 23/05/07

Last examined: 1013-4.2

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

IM On 10/03/2006, the applicant was granted asylum on the basis of a temporary categorical protection policy adopted by the Minister of Justice on 24/06/2005 in respect of asylum seekers coming from certain parts of Somalia. Before the ECtHR issued its judgment in this case, the authorities indicated that the provisional measures would be reviewed in the light of the ECtHR's decision. Information is therefore awaited on the individual measures envisaged to remedy the violation in respect of the applicant.

GM The judgment was published in numerous legal journals in the Netherlands.
Information is awaited on further measures taken or envisaged by the Netherlands authorities to prevent new, similar violations in the future, in particular with regard to the following four points:

- possible modification of the policy regarding Somali asylum seekers in situations similar to that of the applicant;
- possible modification of the general policy of deporting rejected asylum seekers to "relatively safe" areas of countries otherwise deemed "unsafe" or "relatively unsafe";
- any changes envisaged to the policy of requiring asylum seekers to show the existence of special distinguishing features beyond membership of groups whose members are exposed to treatment in breach of Article 3 in their country of origin;
- dissemination of the judgment of the ECtHR.

79. NLD / Tuquabo-Tekle and others

60665/00
Judgment final on 01/03/06

Last examined: 1013-4.1

Failure in the obligation to strike a fair balance between the applicants' interests (development of family life) and the state's interest (controlling immigration) due to the authorities' refusal to allow Mrs Tuquabo-Tekle's daughter living in Eritrea to join her mother and step-family in the Netherlands (violation of Art. 8).

IM Information is awaited on progress in ensuring family reunion in this case

GM On 8/09/2006, a new policy was adopted by the Ministry of Justice in cases regarding the right to family reunion of minor children with a parent legally residing in the Netherlands. According to the authorities, the criterion of "factual family ties" used to determine whether a right to family reunion exists, is now interpreted in a manner "similar" to the ECtHR's interpretation of Article 8 ECHR. It is now assumed that a child has factual family ties with the parent concerned if family life within the meaning of Article 8 ECHR exists. Exception is only made to this rule in cases where the child will live independently from his or her parent and will provide for him- or herself; where the child forms an independent family by engaging in marriage or a relationship; or where the child has responsibility for the care of extra-marital children. These three exceptions, none of which applied to the child in the present case, also formed part of the previous policy and have been maintained since in such situations it may be assumed that the child has reached a certain level of independence. In such cases the application of a strict immigration policy outweighs the individual interest of the child to join his or her parents in the Netherlands. The other conditions (proof of a legal family relationship and the requirement of sufficient funds) also remain unchanged. The judgment has been published.

80. **ROM / Lupsa**
ROM / Kaya

10337/04 and 33970/05
judgments final on 08/09/2006 and
12/01/2007
Last examined: 1013-4.2

Illegal interference with the applicants' private life resulting from their expulsion for security reasons, in August 2003 and April 2005, which was not provided by a law responding to the requirements of the ECHR (violations of Art. 8). Infringement of the procedural guarantees of the expulsion procedures (violations of Art. 1 of Prot. 7).

IM The applicants may request the re-examination of the decisions in question under the Code of civil procedure. The ECtHR awarded them just satisfaction in respect of non-pecuniary damage.

GM The law at the origin of the violation was amended on 26/03/2007. According to its new wording, declarations of undesirability of aliens shall henceforth be made by the Bucharest Court of Appeal, seised by a public prosecutor at the request of the authorities having jurisdiction in the field of public order and national security. The data and information at the basis of such declarations shall be placed at the disposal of the judicial authority in accordance with the conditions provided by the law regulating national security activities and the protection of classified information. The public prosecutor's submission is examined by a court chamber sitting in private, the parties being notified. The judicial authority shall inform the alien of the facts at the basis of the submission. A reasoned judgment should be given within 10 days of the prosecutor's submission. It is final and shall be communicated to the alien concerned and, if the alien is declared undesirable, to the Aliens Authority for enforcement.

Clarification is needed as to whether the amendments also guarantee adversarial proceedings.

Both judgments have been translated and published.

81. **RUS / Bolat**

14139/03
Judgment final on 05/01/07
Last examined: 1013-4.2

Violation of freedom of movement, on account of the unlawful fining of the applicant in 2002 allegedly for not having respected the residence regulations (violation of Art. 2 of Prot. No. 4) and ensuing unlawful expulsion in August 2003, following the revoking of the applicant's residence permit because of the above-mentioned fine (violation of Art. 1 of Prot. No. 7).

IM The negative consequences of the violation have not yet been remedied: the applicant, a Turkish national, is still prohibited from entering the Russian Federation due to the ban imposed by the Federal Security Service – the FSB –, notwithstanding a valid judicial decision of 28/10/2003 ordering the extension of the applicant's residence permit for five years, starting from 4/08/2003, and notwithstanding the probability established by the ECtHR and not challenged so far that the prohibition by the FSB had been issued in connection with the failures to abide by the residence regulations here at issue. In the light of these circumstances, information has been requested on the applicant's present situation as far as his residence rights are concerned.

GM The authorities of the Russian Federation submitted important information which is being assessed.

As far as freedom of movement is concerned, the procedures applicable in cases of violation of residence regulations need to be clarified. Information on training and awareness raising measures is also expected, as well as on liability of police officers and other officials for violating the procedures in force.

As regards **entry bans,** notably those imposed by the Russian Federal Security Service on the basis of a new law of January 2003, information is requested on the current procedure, notably how individuals concerned and other authorities and courts are informed of decisions taken (in the present case the ban was disclosed neither to the applicant nor to the domestic authorities and

courts involved in the granting of the new residence permit.
Also the question of the **remedies** at the disposal of the person concerned requires clarification. In this context it is to be noted that the applicant was expelled without any judicial order, notwithstanding the fact that Russian law required such a decision, and even in violation of a clear judicial decision staying expulsion. Moreover, a new law introduced shortly before, in January 2003, provided certain executive authorities, such as the Federal Security Service, with the power to decide that a foreign national's presence on the national territory is undesirable, although lawful. Clarifications have been sought as to the interplay and possible conflict between the relevant provisions.

In addition, information is awaited on measures taken or envisaged to ensure that the power to impose such bans is exercised in line with the Russian Federation's obligations under the ECHR as well as on the scope of criminal and disciplinary responsibility of state agents acting in clear violation of domestic law in the context of expulsion.

The publication of the judgment is expected, as well as its dissemination to all authorities concerned with an explanatory letter, drawing their attention in particular to their obligation to align their practice with the requirements of Russian law and of the ECHR as they arise from the judgment.

82. SWE / Bader and others

13284/04
Judgment final on 08/02/2006

Last examined: 997-6.1

Risk for the applicants of being tortured and executed, if expelled to Syria (applicants arrived in Sweden in 2002); problem in assessing whether their fears were well-founded (violation of Art. 2 and 3).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant and his family were granted a permanent residence permit on 27/10/2005.

GM The procedure to review the reasons for asylum was changed in March 2006. The former appeal organ, the Aliens Appeal Board, was replaced by a special Migration Courts, thus creating a three-tier appeal system. Moreover, a new Aliens Act entered into force at the same time, providing clearer rules on the issue of residence permits and putting more emphasis on grounds for protection.

The ECtHR's judgment has in addition been translated, published and disseminated to the relevant authorities.

83. TUR / D. and Others

24245/03
Judgment final on 23/10/2006

Last examined: 992-4.1

Risk of expulsion to Iran in 2003 where one applicant risks being flogged (violation of Art. 3)

IM The applicants have been granted "refugee status" and residence permits for a renewable period of one year starting from 18/05/2007,.

GM In this case, the **evaluation of the risks run by the applicants in case of expulsion** was linked with the UNHCR's **evaluation** that the applicants did not qualify for refugee status and did not run a risk sufficiently serious to prevent expulsion. In these circumstances, the publication and dissemination of the judgment to relevant authorities has been considered sufficient, in particular in view of Article 90 of the Constitution, acknowledging the direct applicability of human rights treaties.

D.2. **Detention in view of expulsion**

84. BEL / Čonka

51564/99
Judgment final on 05/05/02, Interim Resolution (2006)25

Last examined: 997-6.1

Unlawful detention and restrictions on freedom of movement in context of expulsion, in 1999, of Slovakian nationals of Romany origin and asylum seekers, and uncertain treatment of recourses against such measures (violation of Art. 5 §§1 & 4, Art. 4 Prot. 4 and Art. 13 combined with Art. 4 Prot. No. 4).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicants have never requested any special individual measure before the CM.

GM As regards the unlawful detention and restrictions on freedom of movement the case was exceptional and it has appeared sufficient to inform the authorities concerned and the legal community of the ECtHR's judgment to prevent any repetition thereof.

As to the **uncertainties surrounding the appeal procedure against detention,** the problem has been remedied by a Royal Decree adopted on 02/08/2002 ensuring adequate information about the applicable appeal procedures in a number of languages. Detained persons today also have the right to receive legal assistance and to have free telephone contacts with their lawyers.

In order to ensure the **effectiveness of the appeal procedure against expulsion**, the Ministry of the Interior sent out a circular shortly after the ECtHR's judgment to ensure that expulsion decisions would not be enforced if a stay thereof had been requested under the emergency procedure before the *Conseil d'Etat*. More generally, a new law of 2006 provides a wide-ranging reform of procedures for disputes concerning aliens. In particular, it set up an Aliens' Disputes Board, with full judicial competence, for asylum and subsidiary protection issues. Complaints brought before it against decisions of the General Commissions on Refugees and the Stateless have a full suspensive effect. For other kinds of disputes (entry, stay, domiciliation and removal) the new Board can suspend or set aside decisions of the Aliens' Board or request interim measures and the Aliens' Disputes Board must give its decisions within 72 hours. No distinction is made between aliens already present on the territory and those presenting themselves at the frontier. The law was accompanied by Royal Decrees of implementation, coming into force in 2007.

85. BEL / Mubilanzila Mayeka and Kaniki Mitunga

13178/03
Judgment final on 12/01/07

Last examined: 1007-4.2

Unlawful detention in 2002 of a 5-year-old child in a centre of detention not adapted to her young age (2nd applicant) and deportation to her country of origin in Africa, when her mother (1st applicant) was living in Canada (violations of Art. 3 and Art. 8 for both applicants as a result of the child detention and deportation; violation of Art. 5§1 and Art. 5§4 in respect of the second applicant).

IM By the end of October 2002, the child joined her mother in Canada following interventions by the Belgian Prime Minister and his Canadian counterpart. In addition, the ECtHR awarded just satisfaction to each of the applicants in respect of non-pecuniary damage sustained.

GM As regards the ill-treatment and unlawful detention, after the facts of this case, on 24/12/2002, legislation was brought in setting up a system of guardianship and care for minors. In 2006, the Belgian Council of Ministers approved in principle a measure to put an end to the practice of detaining unaccompanied minors apprehended at the frontier in closed establishments. Detailed information is awaited on the care arrangements provided for unaccompanied minors apprehended at the frontier.

As regards the **lack of remedies in respect of the unlawful detention** and the **failure to reunite the child with her mother**, the publication and dissemination of the ECtHR's judgment to all the authorities involved is awaited.

86. CZE / Singh
CZE / Vejmola

60538/00 and 57246/00
Judgments final on 25/04/2005 and 25/01/2006

Final Resolution (2007)119.

Excessive length of the applicants' detention with a view to deportation and lack of prompt examination of their applications for release (violations of Art. 5§1(f) and 5§4)

Case closed by final resolution

IM The applicants were released in 2001 and 2000, respectively. The consequences of the violation found have been redressed by the ECtHR through the award of just satisfaction.

GM In order to prevent **excessively long detentions of foreigners with a view to deportation** and relying on the ECtHR's judgment's direct effect in the Czech legal order, the publication and dissemination to the courts of the Singh judgment were rapidly undertaken. The dissemination was done with a covering letter indicating that any arrest or detention should only last a reasonable time and that proceedings to determine the lawfulness of detention should be carried out promptly.

More strict national provisions concerning these issues are also now in force. According to the amendments made to the Code of Criminal Procedure (entered into force on 1/01/02), the courts now have a duty to decide promptly an application for release from detention, and no later than within five working days.

Statistics concerning detention pending deportation indicate a significant improvement since 2002, the average length of detention pending deportation being 199 days in 2001, 87 days in 2002 and 72 days in 2004.

87. GRC / Dougoz
GRC / Peers

40907/98 and 28524/95
Judgment final on 06/06/01 and 19/04/01

Interim Resolution (2005)21
Last examined: 1013-5.4

Degrading conditions of detention pending expulsion in 1994 and 1997 (violations of Art. 3); detention pending expulsion not prescribed by law (violation of Art. 5§1) and non-availability of judicial review (violation of Art. 5§4); interference with prisoner's correspondence with the former European Commission of Human Rights (violation of Art. 8).

IM The applicants are no longer detained in Greece. They were expelled in 1998.

GM As regards the lawfulness of the detention pending expulsion, the detention and expulsion of aliens following a court order are now regulated by an Inter-ministerial Decision issued under Immigration Law of 1991 and making express reference to the ECHR. According to this Decision, the detention of aliens under expulsion following a court order is now subject to control by the public prosecutor and the courts.

As regards the **respect of prisoners' correspondence**, the Penitentiary Code of 1999 may now be regarded as providing sufficient safeguards for the protection of prisoners' correspondence.

As regards the **degrading detention conditions**, in order to improve detention conditions in police and other detention centres a new centre for the transfer of detainees has opened in Athens and seven new detention centres opened in various police headquarters. A new prison opened in 2006 and six more were expected to open in 2007. The construction of five more prisons is scheduled to start in 2008. All these new prisons are constructed in accordance with international standards. Moreover, important renovation works are carried out in many prisons.

In order to prevent prison overpopulation, a new law of 2005 provides, *inter alia*, that the reception capacity of the present "independent prisons" may not exceed 300 detainees, while the future, new ones should not exceed 400. A programme of detainees' segregation according to age, the nature of offences and the gravity of penalties is under way and convicts who have served a part of their sentence may be set free under certain conditions. Since 2005, measures alternative to imprisonment are possible under conditions.
Furthermore, detainees have been transferred to agricultural prisons, which are less crowded. In 2005, 125 prison surveillance staff members took part in seminars on the treatment of detainees.
Programmes have also been set up for the education and professional training of detainees as well as for the support of drug-dependent detainees.
Despite these important measures, further major improvements of detention conditions in prisons or detention centres are necessary, in the light of the concern expressed in the Human Rights Commissioner's follow-up Report on Greece (CommDH(2006)13) and in the 2005 report of CPT (CPT/Inf(2006)41). Thus, more concrete information is awaited on the improvement of detention conditions in prisons and police and other detention centres.
The Greek authorities have informed the CM that, given that 35% of the prison population is aliens, a programme is under way for their return to serve their sentences in their country of origin. More information is awaited thereon.
Information is also awaited on the construction of immigration detainees' centres, as well as on the progress of the detainees' segregation programme.
Finally, information is awaited on the existence of domestic effective remedies in similar cases concerning degrading detention conditions, in accordance with CM Recommendation Rec(2004)6 on the improvement of domestic remedies.

88. **GRC / John**
GRC / Mohd

199/05 and 11919/03
Judgments final on 10/08/07 and 27/07/06

Last examined: 1013-(4.2)

Unlawful extension of the administrative detention of the applicant, foreign national, in relation to his expulsion (violation of Art. 5§1).

IM In the John case, the applicant was expelled to Nigeria (his country of origin) in 2004. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained.
In the Mohd case, the applicant was acquitted on appeal in 2001 and in 2003 the Council of State annulled the administrative expulsion order. The applicant requested no just satisfaction from the ECtHR, having reserved his right to do so under domestic law.

GM The facts of the present cases occurred before the entry into force of a new Aliens' Law in 2006, introducing detailed provisions relating to the administrative expulsion and detention of foreigners. It now remains to assess the extent to which the current provisions comply with the ECHR requirements.

Information is awaited as to whether the new law provides specific safeguards concerning **the detention of persons subject to administrative expulsion** and any further measures taken or envisaged to prevent similar violations. Information is also awaited on the publication and dissemination of the judgment, including the targeted dissemination with an explanatory note on the violation found by the ECtHR in this case to the authorities concerned, in particular the police.

D.3. **Other issues**

89. **FRA / Aristimuño Mendizabal**

51431/99
Judgment final on 17/04/06

Final Resolution (2007)38.

Breach of the right to private and family life of the applicant, a citizen of a member state of the European Union, on account of the excessively long period taken by the French authorities to issue

her the residence permit to which she was entitled according to national and Community law (violation of Art. 8)

Case closed by final resolution

IM In December 2003, the applicant was issued with a ten-year residence permit (*carte de séjour*). The remaining damage suffered by the applicant has been compensated by the ECtHR's just satisfaction award.

GM The government considers that the dysfunction which led to the excessively long delay in delivering the residence permit was an isolated instance. Nevertheless, in order to strengthen existing guarantees:

- the authorities concerned have been duly informed of the requirements of the ECHR resulting from this judgment (the Ministry of the Interior has published a commentary on the present judgment on its intranet site, which may be consulted by all Ministry and prefecture officials);

- an European Union directive of 29/04/2005 on the right of residence of EU citizens has been transposed into national law in 2006 which should further reduce the probability of this kind of problem. The Code on Entry and Residence of Foreigners in France and on the Right to Asylum provides a 5-year right of residence for EU citizens, during which period they need no formal residence permit and at the end of which they can obtain a permanent residence permit.

90. **GER / Niedzwiecki**
GER / Okpisz

58453/00 and 59140/00
judgments final on 15/02/2006

Last examined: 997-6.1

Introduction of a new discriminatory provision denying child benefit to aliens with a less stable residence permit (respect for private life – violation of Art. 14 in conjunction with Art. 8).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded, *inter alia,* just satisfaction covering the child benefits in question. No further individual measures thus appeared called for.

GM On 06/07/2004 the Federal Constitutional Court, in a ruling on pilot cases, held that the provision at the basis of the discrimination in the enjoyment of child benefits was incompatible with the Basic Law and that such difference of treatment lacked sufficient justification. Accordingly, the legislator was ordered to amend the Child Benefits Act by 01/01/2006. On 18/12/2006 the new law concerning entitlement of aliens to child benefit was published and entered into force retroactively as of 01/01/2006. This law takes into account the principles to which the ECtHR referred in its judgments and contains provisions for all cases concerning child benefit decisions not yet final which were taken between 1/01/1994 and 18/12/2006.
The judgment of the ECtHR in the case of Okpisz was sent out to the courts and justice authorities concerned. All judgments of the ECtHR against Germany are publicly available via the website of the Federal Ministry of Justice.

E. Access to and efficient functioning of justice

E.1. Excessive length of judicial proceedings

91. **AUT / Morscher**

54039/00
Judgment final on 5/05/04

Final Resolution (2007)112

Excessive length of proceedings beginning before local and regional authorities and ending before the Administrative Court regarding a building permit (violation of Art. 6§1)

Case closed by final resolution

IM None, the proceedings are now closed. In addition, the applicant has been granted planning permission to build on his land.

GM The Regional Government of Vorarlberg sent out an explanatory circular to the local and regional authorities stressing their legal obligations to respect the statutory rules regarding their administrative decision-making. Modern information technology is also used to accelerate administrative proceedings.
With regard to measures to accelerate proceedings before the Administrative Court, see Resolution (2004)77 in the case G.S.
The Morscher judgment was automatically transmitted to the Presidency of the Administrative Court. Furthermore, judgments of the ECtHR are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS) and on the internet.

92. AUT / Schweighofer and other similar cases

35673/97
Judgment final on 9/01/02

Final Resolution (2007)113.

Excessive length of criminal proceedings started in the years 1985-1988 (violations of Art. 6§1)

Case closed by final resolution

IM None, the proceedings are closed.

GM **Length of proceedings**: The new Code of Criminal Procedure, which will enter into force on 1/01/08, emphasises the principle that proceedings should be conducted rapidly and prohibits unnecessary delays at all stages of criminal trials. The new law notably provides that an accused may request termination of the trial if this principle is infringed.
It also obliges criminal courts to report any delay or negligence of an authority which the court has requested to carry out a specific action (to the superior authority or to the next instance court, as the case might be). Furthermore, public prosecutors are subject to dual supervision. In order to provide a measure of redress, the new Code provides that the excessive length of criminal proceedings be taken into account as a mitigating circumstance when sentencing.
Effective remedies: Under Austrian law, it is possible to apply for acceleration of excessively long criminal proceedings and the ECtHR has considered this possibility to have developed into a generally effective remedy, albeit with certain exceptions.
All judgments of the ECtHR against Austria concerning violations due to the length of criminal proceedings are automatically transmitted to the president of the Higher Regional Court of the jurisdiction where the violation occurred, with a request to inform all subordinate judicial authorities as appropriate. Furthermore, the judgments of the ECtHR are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS) and on the internet.

93. BEL / Dumont and other similar cases

49525/99
Judgment final on 28/07/2005

Last examined: 1013-4.2

Excessive length of civil and criminal proceedings, mostly between 1987 and 1997 (violations of Art. 6§1).

IM The proceedings are ended in all cases except Leroy, where information is expected on the acceleration of the criminal proceedings, if still pending.

GM As regards the **courts under the jurisdiction of the Brussels Court of Appeal**, where the delays were notably resulting from the difficulty of respecting the language requirements in the recruitment of judges, the authorities modified in 2002 the provisions regulating the conditions of use of languages in the judicial field, in order to simplify the requirements of bilingualism and give more means to judge cases in the French language, in the majority before the Brussels courts (see the information provided by the Belgian authorities to the Venice Commission, reflected in

document CDL(2006)026). The assessment of these measures is under way.
See also the Oval S.P.R.L. case (judgment of 15/11/2002) as regards the measures taken to eliminate the backlog of cases at the Court of Appeal.
As regards the **situation at national level**, there does not seem to be a structural problem in civil justice, except for the Brussels courts (see above)
As for criminal justice, there is on the other hand a problem for certain proceedings both in respect of the preliminary stage (see the case of Stratégies et Communications et Dumoulin) and the proceedings before the courts themselves (for details, see the above-mentioned document CDL (2006) 026).
The Belgian Minister of Justice has drawn up a general plan (Plan Thémis) containing measures aimed at avoiding **excessive length of judicial proceedings** (see also the above-mentioned case Oval S.P.R.L.). A new law, of 21/04/2007, amending the Judicial Code with a view to reducing the judicial backlog is being assessed by the CM. It contains several provisions tightening different phases of the proceedings into time-limits decided by the judge. Moreover it contains provisions aiming at monitoring the respect of time-limits for deliberations and to sanction parties who use the proceedings with obviously delaying aims.

Belgian law does not seem to provide specific **remedies** whereby the acceleration of civil or criminal proceedings may be requested (see the above-mentioned document CDL (2006) 026).

On the other hand, certain judicial decisions have admitted that the state may be liable on account of the excessive length of civil proceedings, and that the damage subsequently suffered is to be compensated. The law of 21/04/2007 amending the Judicial Code with a view to reducing the judicial backlog contains certain provisions enabling a request for acceleration of civil proceedings; these provisions are currently being examined in detail.

Furthermore, the Code of Criminal Procedure provides as from 12/12/2000 a penalty in respect of excessive length of criminal proceedings: "the judge may pass sentence by means of a simple finding of guilt or impose a lighter sentence than the minimum sentence stipulated by law".

The question of the existence of a remedy in respect of the excessive length of a criminal pre-trial investigation has been examined in the context of the case of Stratégies et Communications et Dumoulin.

94. BEL / Stratégies and Communications and Dumoulin

37370/97 — *Last examined: 997-6.1*
Judgment final on 15/10/02

Excessive length of the investigation during criminal proceedings against the second applicant and lack of effective remedy in this respect (violation of Art. 6§1 and 13)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicants' file was closed and archived following a decision of the attorney general of Brussels, mainly based on the absence of any party claiming damages and the absence of major criminal elements in this case.

GM **Length of proceedings:** in November 2005 the General Public Prosecutor sent a circular to all prosecutors concerning new guidelines aiming at improving the efficiency of the supervision of long preliminary investigations. This document, *inter alia*, encourages public prosecutors regularly to send detailed reports on cases in which preliminary investigations have lasted for more than one year to the General Public prosecutor.

Effective remedies: in 1998, a new law amending the Criminal Investigation Code, introduced a remedy under domestic law enabling the accused to complain of the length of a criminal investigation. Examples of case-law show that the remedy provided in the new provisions permits the acceleration of investigations.

95. BGR / Djangozov and other similar cases

45950/99 — *Last examined: 1013-4.2*
Judgment final on 08/10/04

Excessive length of civil proceedings (violations of Art. 6§1); and absence of an effective remedy (violations of Art. 13).

IM The acceleration of proceedings still pending is awaited.

GM As regards the **excessive length of civil proceedings and effective remedies** in this respect, according to a report by two Bulgarian NGOs, the average length of civil proceedings in Bulgaria is at present 350 days. Official statistical data on this issue will be provided as soon as available. Furthermore, seminars and other training activities on the ECHR and the case-law of the ECtHR (including Art. 6 and 13) are regularly organised by the National Institute of Justice. Moreover, a new provision of the Code of Civil Procedure of 1999 allows a party to the proceedings to lodge a complaint against the length of the civil proceedings with the court superior to the court dealing with the merits. The president of the court to which the case is referred may give binding instructions to the competent court. The authorities indicated that they would provide examples on the application of this remedy. The judgment in Djangozov case was published. The Bulgarian authorities provided further information on the above issues that are being examined.

As regards the **excessive length of criminal proceedings and effective remedies** in this respect, see the measures examined in the framework of the Kitov case. Clarification is necessary concerning the introduction of domestic remedies whereby a party to stayed civil proceedings may obtain acceleration of criminal proceedings which are blocking their resumption.

96. BGR / Kitov and other similar cases

37104/97 *Last examined: 1013-4.2*
Judgment final on 03/07/2003

Excessive length of criminal proceedings between 1986 and 1999 (violations of Art. 6§1), lack of effective remedy against excessive length of criminal proceedings (violations of Art. 13); violations of the ECHR related to the applicants' detention between 1993 and 2003 (violations of Art. 5§§1, 3, 4 and 5).

IM The applicants detained were released and awarded just satisfaction for the non-pecuniary damage suffered. Additional information is awaited on the acceleration of the proceedings still pending.

GM As regards the **excessive length of criminal proceedings**, a new Code of Criminal Procedure entered into force on 29/04/2006, as part of a global reform of criminal justice in Bulgaria, aimed in particular at accelerating criminal proceedings. For instance, the code explicitly introduces the obligation for courts and investigation authorities to examine criminal cases within a reasonable time and extends the use of simplified proceedings.
Furthermore, seminars and other training activities on the ECHR and the case-law of the ECtHR (including Art. 6 and 13) are regularly organised by the National Institute of Justice.
Statistical data on the average length of criminal proceedings has been provided and is being assessed.
Additional information is awaited on the follow up given to the Ministry of Justice's plan of action for the implementation of the reform of criminal justice, which provides for the computerisation of the judicial system, the creation of a consistent mechanism for collection and analysis of statistical data concerning the work of courts, as well as, other relevant measures in this field. Information is also awaited on the dissemination of the ECtHR's judgment in the Kitov case, together with a circular, to criminal courts, prosecutors and preliminary investigation authorities drawing their attention to the conclusions and the concrete suggestions of the Court on the problems found.

As regards the **effective remedies** in respect of the length of proceedings, the new Code of Criminal Proceedings provides for a defendant to ask for the transfer of his or her case to a competent court once a period of one or two years has elapsed since the beginning of the preliminary investigation, according to the gravity of the charges. The court to which the case is referred may order the prosecutor to bring the preliminary investigation to an end within two months or put an end to the criminal proceedings. Additional information is awaited about the introduction of a similar

remedy for criminal proceedings pending at the trial stage.

As regards the **lack of effective judicial review of the lawfulness of house arrest,** in 2000, after the facts here at issue, the Code of Criminal Procedure was modified and a full initial and subsequent judicial review of this measure was introduced.

As for the **excessive length of house arrest**, the dissemination of the judgment in the case Nikolova No. 2 to the competent courts with an explanatory note drawing their attention to the requirements of the ECHR concerning the length and the justification of such measures has been requested.

As regards the **lack of prompt examination of the requests for release**, following the amendments of the Code of Criminal Procedure which entered into force on 01/01/2000, courts are required to consider the requests for release at the preliminary investigation stage of criminal cases within very short time-limits. However, it would be necessary to inform the competent courts of the obligation also to examine promptly requests for release made at the trial stage.

A confirmation is also expected of the dissemination of the Nedyalkov judgment to competent courts, since the violation of the ECHR (**court's refusal to examine an applicant's request for release after expiry of the time-limit for detention**) resulted from a violation of the domestic law.

As regards the other **violations concerning pre-trial detention**, measures have already been adopted or are being examined in the context of the execution of other cases (see cases Assenov and Nikolova closed by Final Resolutions (2000)109 and (2000)110; Ilijkov; Asenov; Yankov).

Some of these judgments have been published.

97. CRO / Cvijetić and other similar cases

71549/01
Judgment final on 26/05/04
Last examined: 1013-4.2

Excessive length of enforcement proceedings (violations of Art. 6§1) and lack of an effective remedy in this respect (violation of Art. 13), violation of the applicants' right to respect of their home by non-execution of judicial eviction orders against squatters (violations of Art. 8).

IM In three cases, the applicants regained possession of their flats following the execution of the eviction orders in 2002, 2003 and 2004 respectively. Furthermore, the ECtHR awarded all of them just satisfaction in respect of the non-pecuniary damage and in two cases also in respect of pecuniary damage suffered due to the impossibility of living in their homes and the expenses incurred for getting an alternative accommodation.

Information is awaited on the acceleration of the domestic proceedings that were still pending.

GM As regards the **excessive length of enforcement proceedings** and the **effective remedies** against this length, the Enforcement Act was amended in 2005, in order to simplify and accelerate enforcement proceedings, in particular by limiting the possibilities of suspending them. The possibility for the competent authorities to request the assistance of the judicial police in the event of a refusal to execute their orders is also provided. Concerning the specific problems related to the late execution of eviction orders against squatters, the authorities consider that these could for the most part be solved by a better application of the legislation in force. For that purpose the Judges' Academy organised seven two-day training meetings on the implementation of the new Enforcement Act. Since then, the authorities have provided decisions of the Constitutional Court, between 2002 and 2005, confirming that constitutional complaints against the excessive length of judicial proceedings are also applicable to enforcement proceedings.

Meetings were held between representatives of the competent courts and persons in charge from the relevant police departments with a view to improving the efficiency of police assistance in enforcement proceedings and led to the conclusion that co-operation between courts and police was satisfactory. However, it seems that better preparation of intervention when the police are involved is needed in some cases. The Ministry of Justice therefore will continue to encourage periodic co-ordination meetings on this issue at local level.

Statistical data are awaited on the average length of enforcement proceedings.

The judgments of the ECtHR have been published in Croatian and the Supreme Court sent them out to courts and to the Constitutional Court.

98. CYP / Gregoriou and other similar cases

6470/02 — *Last examined: 1013-4.2*
Judgment final on 09/07/03

Excessive length of proceedings before civil courts; lack of an effective domestic remedy (violations of Art. 6§1 and 13).

IM Information is awaited about the state of the proceedings which were still pending before national courts.

GM **Length of proceedings**: Regulatory measures (in particular a series of circulars issued by the Supreme Court between1995 and 2003) were taken to prevent similar violations, and in 2005 the average length of proceedings in the District Courts and in the Supreme Court was 2½ years. The judgments were promptly disseminated to judicial authorities, the Justice Ministry, the Cyprus Bar Association and the Legal Affairs and Human Rights Parliamentary Committees. Information is awaited on further possible legislative or other measures envisaged to accelerate proceedings before civil courts.

Effective remedies: Legislation which provides for an effective remedy in cases of excessively lengthy proceedings is being prepared. The draft legislation will be tabled in Parliament by the Justice Ministry once approved by the government. More information is awaited thereon.

The judgment in the case of Paroutis was translated and published.

99. EST / Treial

48129/99 — *Final Resolution (2007)152*
Judgment final on 02/03/2004

Excessive length of certain civil proceedings (divorce and division of property) requiring special diligence (violation of Art. 6§1)

Case closed by final resolution

IM The proceedings have ended in May 2006.

GM Length of judicial proceedings: given that that there is no systematic problem concerning the length of proceedings in Estonia and that the Estonian courts give direct effect to the case-law of the ECtHR, publication and dissemination of the judgment of the ECtHR are sufficient measures to prevent new, similar violations. The judgment has been translated into Estonian, disseminated to all domestic courts and prosecutors and published on the internet.

Effective remedy: anyone may file a complaint before the administrative courts against delays in judicial proceedings or inaction by the courts. In doing so, he/she may rely on the relevant provisions of the Constitution or of the ECHR as well as on the provisions of the Code of Administrative Procedure and the case-law of the Supreme Court. It is possible during such proceedings to demand compensation for damage caused by such delays/inaction and the administrative courts have competence to order the payment of compensation.

Moreover, the new Code of Civil Procedure, which entered into force on 1/01/06, provides a special appeal for parties to cases in which a court adjourns the hearing without the consent of the parties for more than three months.

100. FIN / Kangasluoma and other similar cases

48339/99+ — *Last examined: 1013-5.1*
Judgments final on 14/06/04

Excessive length of civil and criminal proceedings (violations of Art. 6§1) and, in several cases, lack of effective domestic remedy (violation of Art. 13).

IM The acceleration of proceedings still pending is awaited.

GM As regards the **excessive length of proceedings**, the judgments of the ECtHR have been translated, published and widely disseminated with a covering letter to various authorities con-

cerned. Furthermore, a working group set up by the Ministry of Justice handed over its report on 14/02/2007. It proposes, *inter alia,* to improve the supervision of the overall length of the cases, to make the provisions on the jurisdiction of the courts more flexible, to diversify the compositions of chambers and to improve the efficiency of courts' internal working methods and direction. Information is awaited on the follow-up given to these proposals.

As regards the **lack of remedies**, a working group set up by the Ministry of Justice delivered its conclusions on 19/01/2007. It proposes a compensatory remedy for the excessive length of proceedings. As a preventive measure, applicants could also make a complaint to a higher court about the length of civil, criminal or administrative proceedings. The conclusions of the working group are now being commented by several authorities and the government's proposal for the draft law was to be submitted to Parliament in autumn 2007. Information is awaited on the follow-up given to the legislative amendments.

101. FRA / Etcheveste and Bidard

44797/98
Judgment final on 21/06/02 and other similar cases

Final Resolution (2007)39.

Excessive length of certain proceedings before criminal courts (violations of Art. 6§1)

Case closed by final resolution

IM All the proceedings are ended.

GM 1. **Excessive length of proceedings**

a. Measures taken to avoid the ***excessive length of criminal proceedings*** as a whole:

The five-year orientation and programming law for Justice was adopted on 9/09/02, aiming at improving the effectiveness of justice in particular by reducing the length of civil and criminal cases. First, court staff has been largely increased: 950 magistrates and 3500 state employees and agents of the judicial services have been planned for 2007.

The financial means have also been reinforced by more than 11% for 2004 and 2005. Moreover, "objective-setting contracts" were signed with certain pilot sites: in return for additional staff and financial means, the courts have undertaken to reduce considerably the time taken to deliver judgments. As the pilot sites achieved positive results in 2003, "objective-setting contracts" have been generalised to all appeal courts from 1/01/06. In addition, new three-monthly statistics are now compiled in order to identify any anomaly as quickly as possible.

b. Measures taken to avoid the ***excessive length of the pre-trial investigation stage*** in particular: On 15/06/00, a new law modified certain provisions of the Code of Criminal Procedure concerning judicial inquiries on criminal issues. These judicial inquiries are subjected to a proceedings schedule and new rights have been granted to the parties in order to avoid extension of the proceedings, for example the request to close the investigation may be made when no investigating act has been carried out for a period of four months or when the expected time for the completion of the investigation has expired.

In particular, the length of the investigation must not exceed a reasonable length of time, with consideration to the seriousness of the charges brought against the person under judicial examination, the complexity of the investigations needed to establish the truth, and the exercise of the rights of the defence. If, two years after the investigation was opened, it has not been concluded, the investigating magistrate delivers a reasoned judgment, explaining the reasons for the length of the proceedings, including indications justifying the continuation of the investigation and specifying the prospects for completion.

2. **Effective remedy:** The ECtHR considers that an application for compensation under Article L 781-1 of the Code of Judicial Organisation had, since the facts at the origin of the present cases, acquired sufficient legal certainty to be considered as an effective remedy.

In the light of these measures and of France's undertaking to continue to make all the necessary efforts so as to avoid new violations similar to those found in these cases, the CM decided to close its examination.

102. FRA / Richard and other similar cases

33441/96 *Final Resolution (2007)48.*
judgment of 22/04/98 and other similar cases

Excessive length of certain proceedings before administrative courts to obtain compensation for harm sustained on account of infection with the HIV virus and/or the Hepatitis C virus as a result of blood transfusions (violations of Art. 6§1)

Case closed by final resolution

IM All compensation proceedings pending before the French courts when the Court delivered its judgments were completed within the months following the delivery.

GM **Length of proceedings:** Measures were rapidly adopted concerning the administrative courts to ensure that the cases submitted by persons infected with the HIV virus were processed with the "exceptional diligence" required by the ECHR. Such cases are now given priority treatment by the registry, following notification by the judges. The deadlines given to the parties for their submissions are shortened and set by the examining judge, with due regard for the adversarial principle. In addition, the president of the bench may, at short notice, set a date for the end of the investigation and an indicative date for the hearing, in accordance with the provisions of the Code of Administrative Justice.

In view of the direct effect given to the ECHR and the case-law of the ECtHR in French law the French Government is convinced that the courts, in assessing these criteria, will have due regard for the case-law of the ECtHR.

103. FRA / Richard-Dubarry
FRA / Siffre

53929/00 and 49699/99 *Last examined: 1013-4.2*
Judgments final on 01/09/04 and 12/03/07

Excessive length of civil proceedings before financial courts (violations of Art. 6§1)

IM The proceedings in the Siffre case started in 1995 and ended in 2000.

In the case of Richard-Dubarry, on the other hand, the four sets of proceedings, which started in 1994, were still ongoing when the ECtHR delivered its judgment. In two of them the *Cour des comptes* acted to accelerate the proceedings, taking into account the ECHR case-law in the Martinie case. In the two other sets of proceedings concerned, after the ECtHR's judgment, the *Chambre régionale des comptes* delivered judgments in 2005 and 2006. Appeals lodged by the applicant against these judgments are pending before the *Cour des comptes*. Information would be useful on the progress of these proceedings.

GM As regards the excessive length of proceedings, the Code of Administrative Justice, as of 09/12/2005, provides that any party considering that proceedings before an administrative tribunal or court of appeal are excessively lengthy may seise the Head of the Standing Inspectorate of Administrative Courts (*mission permanente d'inspection des jurisdictions administratives*), who may make recommendations to redress the situation. This body also receives copies of all administrative or judicial decisions allocating compensation for the damage caused by the excessive length of proceedings before the administrative courts and may bring any shortcoming in the provision of justice to the attention of court presidents.

The question of whether or not there is a general problem of excessive length of proceedings before financial courts is being examined and information is expected on whether the measures taken regarding the excessive length of proceedings before administrative courts (Final Resolution (2005)63, adopted in SAPL case and other similar cases) are also valid for financial courts (see also the Martinie case).

As regards **effective remedies** to complain of the excessive length of proceedings, the *Cour des comptes* confirmed that the effective remedy for complaints about the excessive length of administrative proceedings also applies to proceedings before the financial courts.

The effectiveness of this remedy was confirmed by the ECtHR in 2003 (Broca and Texier-Micault judgment) and, since 01/09/2005, this remedy has been included in Code of Administrative Justice,

thus falling under the exclusive jurisdiction of the *Conseil d'Etat*. Accordingly, applications lodged on this basis may be settled promptly, avoiding any excessive length of proceedings to engage the state's responsibility. No further measure would appear necessary.

104. GER / Stork

38033/02
Judgment final on 13/10/2006

Last examined: 997-6.1

Excessive length of certain administrative proceedings (violation of Art. 6§1)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The proceedings are closed.

GM Length of proceedings and effective remedies: the Code of Administrative Court Procedures provides for the right to submit a claim to the Administrative Court if administrative authorities fail to decide within a reasonable time limit (generally three months) without giving sufficient justification for the delay.

The judgment of the ECtHR was sent out to the courts and justice authorities concerned. All judgments of the ECtHR against Germany are publicly available via the website of the Federal Ministry of Justice.

In view of these measures and the direct effect of the ECHR in Germany, it may be assumed that the requirements of Article 6 of the ECHR and the ECtHR's case-law will be taken into account in the future, thus preventing new, similar violations.

105. GRC / Konti-Arvaniti and other similar cases

53401/99
Judgment final on 10/07/2003+

Interim Resolution (2007)74
Last examined: 1013-4.2

Excessive length of proceedings before civil courts (violation of Art. 6§1) and lack of an effective remedy (violation of Art. 13)

IM The CM is awaiting confirmation of the acceleration of the proceedings still pending, notably in the case Inexco.

GM ***Excessive length of proceedings:*** measures deemed satisfactory to accelerate civil proceedings in general have already been adopted in the context of the execution of case Academy Trading Ltd and others against Greece and other similar cases (see Final Resolution (2005)64).

Effective remedies: As noted in the interim resolution adopted in the case of Manios and others (Interim resolution (2007)74) information is urgently awaited on the developments and timetable for adoption of the draft law on "compensation of litigants due to excessively lengthy judicial proceedings", which law should also cover proceedings before the civil courts.

106. GRC / Manios and other similar cases

70626/01
Judgment final on 11/06/2004+

Interim Resolution (2007)74
Last examined: 1013-4.2

Excessive length of proceedings before administrative courts and lack of an effective remedy (violation of Art. 6§1 and 13).

IM The CM is awaiting confirmation of the acceleration of the proceedings still pending.

GM *Excessive length of proceedings before the Council of State and lower administrative courts*: A first set of measures deemed sufficient were adopted in the context of the examination of the case of Pafitis and of 14 other cases (for details about the legislative and other measures already adopted, see the Final Resolution (2005)65 adopted in these cases). The persistence of the problem has, however, led the CM to resume its examination thereof and the CM is today awaiting information on the timetable of a new draft Administrative Law Code aimed at further accelerat-

ing administrative court proceedings and on any other specific measures envisaged to accelerate proceedings before the Council of State.

Information is also awaited on the current average length of proceedings before the administrative "special evaluation commission" (case Lalousi-Kotsovos) and measures envisaged to accelerate them.

Effective domestic remedies: Information is urgently awaited on the developments and timetable for adoption of the draft law on "compensation of litigants due to excessively lengthy judicial proceedings".

In view of the gravity of the systemic problem at the basis of the violations: the CM has also adopted Interim resolution (2007)74, notably recalling the CM Recommendation (2004)6 on the improvement of domestic remedies and urging the Greek authorities to accelerate the adoption of the necessary legislative and other measures.

The special problems regarding ***the length of proceedings before the Court of Audit***: are dealt with in the context of the Papazoglou case.

107. GRC / Papazoglou and other similar cases

73840/01 *Last examined: 1013-4.2*
Judgment final on 13/02/04

Excessive length of proceedings before the Court of Audit (violation of Art. 6§1).

IM All the proceedings at issue are closed.

GM According to information provided by the President of the Court of Audit to the Justice Ministry in 2005, hearings in this Court are on average fixed within 7-8 months following the lodging of the application and judgments are rendered within 6 months thereafter. Delays may exceptionally occur in cases of influxes of applications by large groups of individuals, such as former servicemen, as in the present cases. However, the Ministry of Justice has created a committee to examine a possible amendment of the Court of Audit's rules of procedure, taking into account proposals by this Court's President. More information is awaited on the progress of this committee's work.

108. HUN / Tímár and other similar cases

36186/97 *Last examined: 1013-4.2*
Judgment final on 09/07/03

Excessive length of civil or labour proceedings (violations of Art. 6§1). The proceedings began between 1986 and 1998 and most of them ended between 2000 and 2005.

IM The acceleration of the proceedings still pending is awaited.

GM As regards the **excessive length of civil proceedings**, the workload of the Supreme Court decreased considerably following a reform of the legal system in 2002 which transferred appeal competence to the five Courts of Appeal created in 2003 and 2004.

Furthermore, several amendments to the Code of Civil Procedure were adopted with the aims of accelerating civil proceedings and modernising the system of legal remedies. More strict time-limits were provided for the stay of proceedings and the drafting and notification of judgments. As from 1999, the double degree of jurisdiction for administrative cases was removed and legal competence in this kind of cases was transferred to regional courts. In 1998, appeals against first-instance decisions in cases concerning small amounts were limited and simplified. Moreover, the conditions of revision of judgments before the Supreme Court were modernised in 2002 in order to restrict the use of this extraordinary means and to reduce the length of this kind of proceedings. Finally, in 1999 administrators were appointed to courts to ensure better case management. As from 1997, the Office of the National Judicial Council and the presidents of courts are in charge of administrative supervision of the examination of cases, requests from courts information on cases pending for more than two years and the respect of legal time-limits and may order that certain civil or criminal cases are examined in priority. New legislation is also being drafted to provide for stricter requirements regarding court experts' work and more effective sanctions against their unjustified delays.

Statistics for the year 2006 show that around 1-2% of the cases before the Supreme Court and appeal courts have been pending at that level for more than12 months. However, at first-instance, there is a higher percentage of cases pending for over 12 months.

Information is awaited on the timetable for the legislative project and on its relevant provisions. Further recent statistical data regarding the cases pending before the local courts and country courts have been requested.

As regards **effective remedies** against excessive length of judicial proceedings, a law of 2006 allows parties to ask for the acceleration of proceedings and sets precise time-limits for examining such complaints and adopting appropriate measures to put an end to the situation complained of. Complaints rejected as ill-founded can nonetheless be forwarded to a superior court for decision. Examples of application of this law have been requested.

The judgments of the ECtHR were published on the website of the Ministry of Justice and sent to the Office of the National Judicial Council in order to be disseminated to civil and labour courts.

109. ITA / Ceteroni and other similar cases

22461/93+
Judgment final on 06/08/1992+

Last examined: 987-4.3

Excessive length of proceedings (violation of Art. 6§1).

IM The CM is awaiting information on the acceleration of the proceedings that were still pending and in particular on the continuing follow up given by the Superior Council for the Magistrature to the fate of pending cases.

GM Since the early 1980s a large number of ECtHR judgments and CM decisions have established a structural problem related to the length of judicial proceedings in Italy. Major reforms during the end of the 1980s and early 1990s led the CM to close its examination of a number of aspects of the problem by Final Resolutions (1992)26, (1995)82 and (1994)26.

Given the subsequent, continued, influx of new violations the CM resumed in 1997 its examination, stressing that the dysfunction of the working of justice represents an important danger, not least to the rule of law. It decided in Interim Resolution (2000)135 to continue its examination until effective reforms were implemented and the reversal of the national tendency was definitely confirmed, and established a system of annual reports to this effect.

Since then the CM has regularly received the requested annual reports which describe the numerous efforts made and present statistical information on the development of the length of proceedings. The CM has, however, been compelled to conclude that satisfactory results are not being achieved.

As to the special question of **effective remedies**, the CM has, however, welcomed the establishment in 2001 (Law No. 89) of a domestic remedy to compensate victims.

In this situation the CM, in December 2005, demanded **in Interim Resolution (2005)114,** taking into account Parliamentary Assembly Recommendation 1684 (2004), the establishment of a new strategy, relying in particular on a reinforcement of political support, at the highest level, and an interdisciplinary approach to which all the main actors of the judicial system would contribute.

The responses to this interim resolution have been examined in a new **Interim Resolution (2007)2**, adopted in February 2007.

In this resolution the CM notably:

- welcomed the declaration at the highest political level that priority would be given to the problem;
- welcomed a new law, No. 12 of 2006, assigning competence to the Presidency of the Council of Ministers to co-ordinate the execution process of the ECtHR's judgments and requesting it to keep Parliament regularly informed of progress achieved;
- noted the proposals contained in its most recent annual report 2006 (cf. CM/Inf/DH(2007)9), including an ambitious project for the computerisation of civil proceedings (*processo telematico*);

The CM nevertheless considered that these new measures only addressed certain aspects of the complex problem which still needed a complete, in-depth analysis for an overall strategy to be presented. It noted, in this context that, in September

2006, a special commission had been set up by the Ministry of Justice (the Mirabelli Commission), mandated to submit proposals to reduce the delays in proceedings.

The CM stressed the importance of organising effective follow-up and co-ordination, at the highest national level, of the action needed and noted in this context the possibilities offered by the new Law No. 12 of 2006. It also welcomed the Italian authorities' intention to co-operate regularly and closely with the Secretariat so that the CM would be kept informed of the strategy to be implemented and progress achieved. It recalled in this context the rich comparative experience accumulated, not least in the framework of the supervision of the execution of the ECtHR's judgments, concerning various means of resolving the problem of excessive length of judicial proceedings.

Convinced that this co-operation and reflection should fully involve the main actors of the Italian judicial system, the CM concluded the interim resolution by urging the Italian authorities at the highest level to hold to their political commitment to resolving the problem of the excessive length of judicial proceedings;

- inviting the authorities to undertake interdisciplinary action, involving the main judicial actors, co-ordinated at the highest political level, with a view to drawing up a new, effective strategy;
- deciding to resume consideration of the progress achieved at the latest by 1 November 2008 and asking the Italian authorities and the Secretariat to keep the Committee informed of the progress made in setting up the new national strategy in this respect.

Following this interim resolution the Italian authorities have provided information regarding a number of legislative initiatives. Information on the results of the special commission set up by the Ministry of Justice has recently been submitted and is being assessed.

A number of meetings between the Secretariat and relevant Italian authorities were also organised in Rome in October 2007 where further information on planned reforms, both normative and organisational, was presented. Following these meetings the Director of Monitoring Mechanisms has written a letter to Head of Cabinet of the Minister of Justice acknowledging the importance of the reforms envisaged, the continued need to associate all actors of the judicial system and stressing anew the importance of establishing a time table for reforms and an efficient follow up system, in particular for the medium term.

110. LIT / Girdauskas and other similar cases

70661/01
Judgment final on 11/03/2004

Last examined: 1007-1.1
Final Resolution (2007)127

Excessive length of certain criminal proceedings (violations of Art. 6§1)

Case closed by final resolution

IM No individual measures have been required in these cases, the proceedings having been terminated at the time of judgment of shortly thereafter.

GM The new Code of Criminal Procedure, which entered into force on 1/05/03, provides stricter time-limits for completion of criminal cases and contains effective domestic remedies in cases when such proceedings are delayed. In particular, the new Code imposes a 6-month time-limit for pre trial investigation and, subsequently, a 20-day time-limit for referral of a case to a court for a first hearing. It also provides that upon complaint by a suspect alleging an excessively long pre-trial investigation, the investigating judge may compel the prosecutor to complete or discontinue the investigation.

Furthermore, the judgment of the ECtHR in the Girdauskas case was translated, published and sent to the Supreme Court, the Office of the Prosecutor General, the Kaunas Regional Court and the Kaunas City Court.

111. LUX / Schumacher and other similar cases

73983/01
Judgment final on 13/10/04 /02/04, 27/07/06 and 18/05/07

Last examined: 1013-4.2

Excessive length of criminal proceedings (and of civil proceedings, postponed until the end of criminal proceedings) (violations of Art. 6§1); lack of an effective remedy (violation of Art. 13); failure to inform the applicant in the Casse case of the nature of the accusations against him (violation of Art. 6§3a).

IM Information is awaited on the acceleration of the proceedings still pending in two cases.

GM As regards the **excessive length of the proceedings**, there does not seem to be a structural problem at national level but, rather, excessively long proceedings on account of the excessive workload of certain authorities. Measures have been taken to remedy this problem:

- *Excessive workload of the Police Criminal Investigation Department*: the reorganisation and increase of its staff, in 2003, have in particular made it possible to reduce the time needed to carry out enquiries, so as to accelerate treatment of criminal cases by the courts.
- *Excessive workload of investigating magistrates*: recruitment took place in 2001, 2003 and 2005 (see also Scheele case, (2003)89), and a new law on criminal justice was adopted in 2006, introducing certain procedural reforms to reduce investigating magistrates' workload.

In view of the violations found concerning civil proceedings suspended pending the outcome of criminal proceedings, the government is drafting a bill to give an optional character to application of the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court.

In any event, the competent authorities have been made aware of the requirements of the ECHR as regards the need to expedite proceedings (the judgments were published and transmitted to the State Prosecutor General for the information of all interested judicial authorities).

The CM is expecting information on the impact of the measures taken and on the progress of the bill.

As regards the **effective remedies** against excessively lengthy proceedings, the Luxembourg authorities have indicated that such a remedy already exists, namely a special law of 1988, which makes it possible to obtain pecuniary reparation. However, the ECtHR has taken the view in recent judgments that this remedy is not an "effective" one. A draft law, currently under adoption, aims to clarify the right to compensation for prejudice caused by excessively lengthy proceedings as set out in the law of 1988. Further information is expected on this.

As regards the violation of the **right to be informed of the accusation**, information is expected on the dissemination of the Casse judgment to investigating magistrates as well as on other measures which might be taken or envisaged to avoid new, similar violations.

112. POL / Fuchs and other cases

33870/96
Judgment final on 11/05/03

Last examined: 1013-4.2

Excessive length of proceedings concerning civil rights and obligations before the administrative authorities and the Supreme Administrative Court (violations of Art. 6§1).

IM Information is awaited on the acceleration of all domestic proceedings still pending.

GM Most judgments have been sent to the relevant competent authorities. Some have also been published.

As regards the solution of the problem of the **excessive length of proceedings before the Supreme Administrative Court**, a new legislation in force since 2004 has instituted a two-instance system of administrative courts (the newly created voivodship administrative courts and the Supreme Administrative Court) and provided new possibilities to accelerate proceedings, such as mediation and summary proceedings. The number of judges and other courts' staff has also been increased.

Statistical data provided show that both the backlog of cases and the average length of proceedings have decreased.

In addition, a law of 2002 provides for administrative courts' control of the functioning of administrative authorities: the courts can be seised of complaints concerning the inactivity of administrative authorities and the authority in question can be fined.

Moreover, the law of 17/06/2004 on complaints against excessive length of judicial proceedings (examined in context of the Kudła case, IR (2007)28) also applies to litigants before administrative courts to seek the acceleration of excessively lengthy proceedings and claim compensation for damages caused by such proceedings. According to the President of the Supreme Administrative Court, these measures guarantee an effective domestic remedy against excessive length of proceedings.

As regards the **excessive length of proceedings before administrative bodies**, several measures have been taken.

The building Act was amended in 2003, so as to simplify and accelerate proceedings concerning building permits and penalties were introduced in case of non-respect of time limits. The confirmation is expected that the judgments in the Beller and Szenk cases have been disseminated to the Warsaw-Centre Municipal Office which deals with requests for the right of usufruct in respect of nationalised land in Warsaw.

On a more **general level,** the Minister of the Interior and Administration has presented legislative changes which might be envisaged to improve the promptness and efficiency of administrative proceedings, including:

- introduction of "participative proceedings", i.e. the obligation to appoint a representative when the number of parties to a case reaches a certain level;
- introduction of a legal prohibition of abuses of administrative law, in particular a ban on the repeated extension of the legal time-limit for dealing with a case;
- shortening legal time-limits for examining cases, or imposing financial penalties on administrative organs which do not respect the legal time-limits;
- introduction of the principle according to which, when an administrative body does not deliver its decision within a certain time, it is assumed that a tacit decision in favour of the applicant has been rendered;

In addition, Parliament is examining legislative texts to enhance the decentralisation and distribution of tasks within the public administration. Information is expected on the follow-up to these legislative proposals.

Further information has been provided, which is being assessed.

113. POL / Turczanik

38064/97
Judgment final on 30/11/2005

Last examined: 992-6.1

Excessive length of administrative proceedings, between 1983 and 1999, concerning the registration of the applicant's law firm address and violation of his right to effective judicial protection due to the non-observance by the Bar of the Supreme Administrative Court's directions (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM In 1999, the domestic proceedings were terminated and the address of the applicant's law firm was registered. The ECtHR granted the applicant just satisfaction for non-pecuniary damage and dismissed his claims in respect of pecuniary damages.

GM 1) **Excessive length of proceedings**: the ECtHR's judgment has been published and, upon request of the Minister of Justice, the National Bar Council informed its members of the ECtHR's conclusions in this judgment.

2) **Violation of the right to access to a tribunal**: Following an amendment of 2005, the provisions of the 1982 Act on Barristers have been modified as regards the registration of barristers' chambers. According to the new provisions, a registered barrister chooses the address of his or her law firm and informs the bar about it within 30 days, without any longer having to ask for the bar's consent.

Moreover, the Act on Proceedings before Administrative Courts, which entered into force in 2004, contains provisions which aim at avoiding the inactivity of administrative bodies and ensuring the execution by these of court decisions. In case of non-enforcement of a judgment finding the inactivity of an administrative body and having summoned the latter to enforce it, a party may lodge a request before an administrative court, asking for imposing a fine on the administrative body in question. Moreover, any person affected by the

lack of enforcement of such a judgment may also seek compensation from the administrative body which has not enforced it. If such compensation has not been awarded within 3 months, the person concerned may institute proceedings before a civil court, on the basis of the Civil Code's provisions.

114. POL / Podbielski and other similar cases

27916/95+
57467/00+
Judgment final on 26/10/2000+
14/12/2004+

Interim Resolution (2007)28
Last examined: 992-4.2

Excessive length of proceedings before civil and labour courts (violation of Art. 6§1); lack of effective remedy (violation of Art. 13).

POL / Kudła and other similar cases

30210/96+
Judgment final on 26/10/2000+

Interim Resolution (2007)28
Last examined: 992-4.2

Excessive length of criminal proceedings (Violation of Art. 6§1); lack of effective remedy (violation of Art. 13).

IM In most cases, measures to accelerate the domestic pending proceedings have been taken.

GM As to the **length of proceedings**, the CM has welcomed the reforms adopted so far (see IR (2007)28 of 4 April 2007), and, in particular:

- the legislative reforms (Code of Criminal Procedure with subsequent amendments) adopted in 1997 and 2003, aimed at simplifying and accelerating criminal proceedings;
- the additional administrative and structural measures adopted to prevent further unreasonably long proceedings and to accelerate those which have already been excessively lengthy (in particular increasing the number of judges and administrative staff, increasing court budgets and establishing monitoring mechanisms);
- the setting-up of a domestic remedy in 2004 for cases of excessive length of judicial proceedings allowing litigants to seek acceleration of the proceedings and claim compensation for damages caused by their excessive length.

The CM has also taken note of the statistical data provided and demonstrating in particular a trend to the decrease of the number of "old" cases pending before civil courts (for more than 5 years) and the increasing efficiency of criminal courts. It has, however, found that the existing mechanisms for evaluating, at a general level, the length of judicial proceedings are insufficient.

With regard to the setting up of an effective remedy, the CM has underlined the importance of its Recommendation (2004)6 to member states regarding the need to improve the efficiency of domestic remedies. Recalling that the creation of such remedies does not obviate the obligation to pursue with diligence the adoption of general measures required to prevent new violations of the ECHR, the CM has welcomed the creation of a domestic remedy in 2004 and has noted in this context that the ECtHR has held in numerous situations that the new remedy satisfies the "effectiveness" test established in the Kudła judgment. The CM has, however, noted that the new remedy seems inapplicable at the pre-trial stage of criminal proceedings.

In the light of this situation and considering the gravity of the systemic problem at issue, the CM encouraged in April 2007 in IR (2007)28 the Polish authorities to:

- continue to examine and adopt further measures to accelerate judicial proceedings and reduce the backlog of cases;
- establish a clear and efficient mechanism for evaluating the trend concerning the length of judicial proceedings;
- ensure that the new domestic remedy is implemented in accordance with the ECHR requirements and to consider introducing such a remedy also as regards the pre-trial stage of criminal proceedings;

and decided to resume consideration of outstanding individual and general measures in April 2008 at the latest.

115. PRT / Oliveira Modesto and other similar cases

34422/97 *Last examined: 1007-4.2*
Judgment final on 08/09/2000

Excessive length of judicial proceedings before civil, criminal, administrative, family and labour courts (violation of Art. 6§1).

IM In its Interim Resolution (2007)108, adopted in October 2007, the CM noted with concern that three of the cases are still pending before the domestic courts, after 19 years and 7 months (Oliveira Modesto and others), 15 years (Garcia da Silva) and 11 years and 9 months (Sociedade Agricola do Peral and Others) and invited the Portuguese authorities to take action to accelerate these proceedings as much as possible.

GM **Length of proceedings**: The CM has over the years been seised of many violations of the ECHR due to excessive delays in various kinds of judicial proceedings in Portugal, which reveal the persistence of certain structural problems in the administration of justice. Numerous reforms have been adopted to remedy these problems, in particular:

- an increase in the number of judges
- the reduction of civil litigation and a geographically more even spread of cases among civil courts,
- the setting up of new district administrative tribunals with competences previously vested in the Supreme Administrative Court and the Central Administrative Tribunal,
- an increase in the number of justices of the peace and "mediation services", which facilitate settlement of disputes by conciliation between the parties, and the increase of their fields of competence.

Effective remedies: The CM recalled in this respect its Recommendation Rec(2004)6 to member states on the improvement of domestic remedies and noted that the existence of an effective domestic remedy does not obviate the obligation to pursue the adoption of general measures required to prevent new violations.

It noted that in criminal cases the Code of Criminal Procedure enables a person to request the acceleration of pending proceedings and that, in all types of cases, the case-law of the Portuguese Supreme Administrative Court today appears to accept that the decree of 1967 on the extra-contractual civil responsibility of the state provides an effective right of compensation in case of unreasonably long proceedings, and that both avenues have been accepted as effective in admissibility decisions by the ECtHR.

In the light of the above situation, the CM adopted **Interim Resolution** (2007)108 mentioned above, in which it welcomed the measures taken and planned so far, whilst recalling that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law.

The CM however considered that the impact of the reforms could only be assessed on the basis of comparative, statistical data. In this context it noted that the first evaluations seemed to show a positive trend: in 2006, for the first time in more than 10 years, the number of concluded proceedings was greater than the number of those initiated. It found however that more statistical data over a longer period were necessary for a full assessment of the effectiveness of the measures adopted.

The CM also welcomed the ongoing legislative process to replace the decree of 1967 by a new law which would explicitly regulate the extra-contractual responsibility of the state for the violation of the right to a judicial decision within a reasonable time, thus providing a more stable basis for this effective remedy.

In its interim resolution the CM thus, among other things:

- Encouraged the authorities to continue their efforts in solving the general problem of the excessive length of judicial proceedings before civil, administrative, criminal, family and labour courts;
- Invited them to provide the CM with further information on the practical impact of all the reforms on the length of judicial proceedings, and in particular with additional comparative, statistical data in this respect;
- Invited them to continue the legislative process with a view to adopting the draft law on the regime of extra-contractual civil responsibility of the state and other public entities, which would provide a more stable basis for the effective remedy in civil and administrative proceedings; and

• Decided to resume consideration of the outstanding individual measures and the general measures in these cases at its third meeting in 2008 at the latest.

116. RUS / Kormacheva and other similar cases

53084/99 *Last examined: 1013-4.2*
Judgment final on 14/06/04

Excessive length of civil proceedings (violation of Art. 6§1); absence of an effective remedy (violation of Art. 13)

IM The CM is awaiting information on the status of the cases in which the proceedings are still pending and on the measures taken to accelerate them.

GM The problem of the excessive length of judicial proceedings, either civil or criminal, is mainly due to the poor material conditions of functioning regularly pointed out by the ECtHR in its judgments. In this respect, the CM took note with interest of a Federal programme on Development of the judicial system of the Russian Federation for 2007-2011. This programme, adopted on 4/08/2006, contains a range of measures aiming in particular at improving the material conditions of functioning of Russian courts.
Specific measures have been adopted in 2006 in St Petersburg aiming in particular at ensuring proper and timely representation of the Governor and executive organs of St Petersburg in courts and at avoiding delays due to their failure to attend the hearings.
As to the **question of remedies**, the CM is awaiting information on a draft law which is being prepared by the Supreme Court of the Russian Federation on the subject. The draft law provides for compensation and certain possibilities to accelerate the proceedings.
Several of these judgments have been translated and published in the Bulletin of the ECtHR and sent out to all courts under a circular letter of the Deputy President of the Supreme Court of the Russian Federation.

117. SMR / Tierce Vanessa

69700/01 *Last examined: 1013-4.2*
Judgment final on 03/12/03

Excessive length of civil proceedings which lasted from 1993 to 2001 for two degrees of jurisdiction (violation of Art. 6§1).

IM The proceedings are closed.

GM A working group was established in 2005 to take measures to reduce the **length of proceedings**. This group consists, *inter alia*, of representatives of the Ministries of Justice and of Foreign Affairs, judges and lawyers. The working group concluded its work in early 2006 and its conclusions should be published shortly.
At the same time, a new law adopted in 2005 introduces procedural and material changes to shorten the length of proceedings, for example by providing that civil suits may be extinguished *ex officio* in case of prolonged inactivity of the parties. Also, first instance judges' workload has been reduced by reorganising the jurisdiction between the latter, the justices of peace and the appeal judges. Information is awaited on the follow-up to be given to these proposals and on the timetable for the possible legislative reform as well as on the effective remedy in the length of proceedings cases.

118. SER / V.A.M.

39177/05 *Last examined: 1013-4.2*
Judgment final on 13/06/2007

Excessive length of divorce and custody proceedings started in 1999 and still pending and lack of an effective remedy (violations of Art. 6§1, 13 and 8). Further violation of right to respect of family life

because of non-enforcement of an interim court order granting applicant access to her child (violation of Art. 8)

IM Information is awaited on measures taken to enforce the interim order of 23/07/1999 providing the applicant's access to her daughter, and to conclude the pending civil proceedings.

GM the CM is awaiting information on:
- the implementation in practice of the Serbian legislation providing for the right to a fair trial within reasonable time in family matters;
- the application of the 2004 Enforcement Procedure Act and of the Criminal Code to ensure enforcement of court decisions in situations similar to the present case;
- the effectiveness of the introduced legislative changes providing for a remedy before the Constitutional Court.

The judgment has been translated, disseminated to courts and published (notably in the Official Gazette). It has also been discussed at a seminar organised on 14-15/06/2007 by the Department for Human and Minority Rights of the government and the State Agent in co-operation with the Council of Europe, attended by members of judiciary and state authorities.

119. SVK / Krumpel and Krumpelová

56195/00
Judgment final on 5/10/05

Last examined: 987-1.1
Final Resolution (2007)10

Excessive length of certain criminal proceedings to which the applicants were civil parties (violation of Art. 6§1).

Case closed by final resolution

IM The attention of the Supreme Court has been drawn to the ECtHR's findings with a view to accelerating the pending proceedings as far as possible.

GM **Constitutional reform introducing an effective remedy against the excessive length of proceedings**: Since 1/01/02, the Constitution of the Slovak Republic allows individuals and legal persons to complain about alleged violations of their right to have their cases tried without unjustified delay. The Constitutional Court can also order the competent authority to proceed with a given case without delay and to grant adequate pecuniary compensation in case of excessive length of judicial proceedings. The ECtHR has already found that this new constitutional remedy represents an effective remedy in the sense of Article 13 ECHR.
Legislative measures to accelerate criminal proceedings: A new Code of Criminal Procedure, entered into force on 1/01/06, contains several provisions aimed at accelerating criminal proceedings, including the possibility to lodge a complaint with the judge competent to rule on the merits of the case, requesting acceleration of the proceedings.
Statistical data: Between 2002 and 2005, the average length of the criminal proceedings resulting in convictions was between 4.02 and 5.78 months before the first instance courts and between 23.51 and 28.20 before appeal courts (from the beginning of the proceedings before the instance in question until the decision on the merits).
Publication and dissemination: With a view to facilitating the development of the direct effect of the ECHR and the case-law of the ECtHR in Slovak law, the Minister of Justice sent this judgment, accompanied by a circular letter, to all Presidents of regional criminal courts, inviting them to send it out to all competent judges in order to avoid similar violations in future.

120. SVN / Lukenda and other similar cases

23032/02+
Judgment final on 06/01/2006

Last examined: 1007-4.2

Excessive length of proceedings before civil courts (violations of Art. 6§1), lack of effective remedy against excessive length of proceedings (violations of Art. 13).

IM All relevant domestic courts have been informed of the priority to be given to cases still pending. The CM is awaiting information on the state of proceedings and on measures taken or envisaged to accelerate them.

GM The Slovenian authorities provided an action plan for the implementation of measures to avoid further similar violations.
As regards the **excessive length of civil proceedings**, according to the statistical data provided, in 2002-2006 the number of completed cases exceeded the number of new cases, thus reducing the backlog. Furthermore the employment of judicial staff was increased and new premises for courts are to be acquired.
The Slovenian authorities have prepared a "Lukenda Project" on faster resolution of court proceedings and reducing arrears at courts and state prosecutors' offices. This project aims to halve the number of backlog cases in courts by 31/10/2010. The Lukenda Project also provides numerous complex avenues to increase the judiciary's efficiency and solve the problem of court arrears.
A new Labour and Social Courts Act, which entered into force on 01/01/2005, sets up specialist jurisdictions for social and labour litigation in order to accelerate proceedings before labour courts.
Seminars for judges and state attorneys were organised in September and October 2006, in cooperation with the Council of Europe.
The CM is awaiting further information on the implementation of the Lukenda Project' as well as on statistics concerning the average length of domestic judicial proceedings for 2002-2006, in particular before civil and labour law courts.

As regards **effective remedies**: a new law on the Protection of the right to trial without undue delay took effect on 01/01/2007. This law provides various remedies against excessive length of proceedings:

- Remedies for acceleration (a supervisory complaint in view of expediting certain steps of the procedure and/or for the purpose of specifying a time-limit);
- Remedies for compensation (a claim for just satisfaction, an action for damages or an action brought on the grounds of the Code of Obligations).

These remedies are available to parties to court proceedings, participants in non-contentious proceedings and injured parties in criminal proceedings. They may be also used before administrative courts and the Supreme Court, but not before the Constitutional Court.

In its judgment in the Grzinčič case (judgment of 03/05/2007, final on 03/08/2007), the ECtHR was satisfied that the aggregate of remedies provided by the 2006 Act in cases of excessively long proceedings pending at first and second instance is effective in the sense that the remedies are in principle capable of both preventing alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred.

Additional information is awaited on the working of these remedies in practice.

121. MKD / Janeva and other similar cases

58185/00
Judgment final on 03/10/2002 –Friendly settlement

Last examined: 1007-4.1

Excessive length of proceedings before labour or civil courts (violations of Art. 6§1); lack of an effective domestic remedy (violation of Art. 13).

IM Information is awaited on urgent measures taken to accelerate the pending proceedings.

GM **Excessive length of proceedings**: a new Law on Civil Proceedings was adopted in September 2005 with the primary purpose of increasing the efficiency of civil proceedings and reducing their duration. The new law notably contains improvement with respect to legal representation, time-limits for admission of evidence at various stages of proceedings. It also provides that appeal courts may e.g. no longer repeatedly refer cases back to the first instance: instead, they must themselves determine any case which comes before them a second time. The law also provides the possibility of prompt reopening of cases following a judgment of the ECtHR finding a violation related to the fairness of proceedings.

A new Law on Enforcement was also adopted in 2005 which provides, among other things, that final court decisions immediately become en-

forcement orders which the beneficiaries may submit for enforcement to private enforcement agents, designated by the Ministry of Justice, who are obliged to enforce the decision without delay.
Lack of effective remedies: a new Law on Courts was adopted in 2006 and provides a domestic remedy whereby applicants may request protection of their right to a hearing within a reasonable time before domestic courts before lodging applications with the ECtHR. The major changes introduced by the Law on Courts are that:
• the Supreme Court is competent to decide, on request of the parties or other participants in the proceedings, whether there has been a violation of the right to hearing within reasonable time.
• Parties considering that their right to trial within a reasonable time has been violated may bring their complaint immediate higher-instance court. The court thus seized must take its decision within six months. If the court finds a violation, it awards just satisfaction, charged to the budget of the responsible Court.

The judgments in Janeva, Atanasovic, and Milošević have been translated and published on the internet site of the Ministry of Justice and sent out to the relevant courts. The Janeva judgment was also circulated to the Ministry of Foreign Affairs, the Constitutional Court, the Supreme Court and the Public Prosecutor's Office.

122. TUR / Demirel and other similar cases

39324/98+
Judgment final on 28/04/2003

Last examined: 1007-5.2

Excessive length of criminal proceedings and of detentions on remand, lack of independence and impartiality of state security courts and unfairness of criminal proceedings before them, on account of the failure to communicate to the defence the Public prosecutor's written observations (violation of Art. 5§3 and 6).

IM The CM is awaiting information on the progress of cases still pending and, to the extent possible, on the acceleration of the proceedings.

GM As regards the ***excessive length of detention on remand,*** additional safeguards have been introduced in the new Code of Criminal Procedure, in force as from 01/06/2005:

a) decisions regarding detention on remand must be reconsidered by a judge at least every 30 days and be duly reasoned on both legal and factual grounds;

b) a maximum time-limit for the length of detention on remand is set;

c) pecuniary and non-pecuniary damages are available in case of unlawful detention.

The CM is assessing the measures taken and has requested additional examples of case-law applying the new rules.
The problem of the ***excessive length of criminal proceedings*** is dealt with in the context of other cases (notably the Ormancı group).
The problem of the ***independence and impartiality of state security courts*** has been solved, as these courts were abolished in 2004 (see Final resolution (99)555 in the case Çıraklar against Turkey, judgment of 28/10/1998).
The issue of the ***non-communication of the Principal Public Prosecutor's written observations*** has also been resolved as the new Code of Criminal Procedure (2005) introduced a requirement to this effect.

123. UK / Blake

68890/01
Judgment final on 26/12/2006

Last examined: 1007-6.1

Excessive length of civil proceedings, from 1991 to 2000 (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The proceedings in question have been ended.

GM In 1999, after the facts at the origin of this case, the new Civil Procedure Rules (CPR) came into effect, with the aim of accelerating proceedings before the High Court of Appeal, High Court and county courts – see Final Resolution (2006)28

in the cases of Davies; Foley; Mitchell and Holloway and Price and Lowe.
Other changes regarding the Court of Appeal were implemented as the result of a review of the Civil Division of the Court of Appeal and the Supervising Lords Justice now take responsibility for overseeing case management.
The Master of the Rolls' Practice Note of February 2003 sets clear dates by which cases must be heard ("hear-by dates") and gives clear guidance on principles for expedition in appropriate cases.
The Civil Appeals Office monitors the throughput of applications and appeals closely. Reports are prepared on any cases which have passed the hear-by date.
These substantial administrative changes have had a significant effect in reducing the time cases take to be heard. Moreover, the Ministry of Justice keeps the systems in place under review.
The House of Lords have also reviewed their procedures in light of the Blake judgment. From October 2007, the Appellate Committee of the House of Lords has sat regularly in two divisions. This means that two courts sit simultaneously, allowing twice as many appeals to be heard and thereby significantly reducing the delay between decisions of the Court of Appeal and the House of Lords. The House of Lords seek to respond when any urgent hearing is required, and to expedite appeals where considered appropriate. The House of Lords will, in appropriate cases, give priority where there has already been a long period of accrued delay.

The Human Rights Act (HRA) provides that it is unlawful for any public authority, including courts, to act in a way which is incompatible with rights guaranteed by the ECHR. This means that courts have a duty to conduct proceedings within a reasonable time. If they do not, the victim may either raise that issue within the proceedings themselves or as a ground of appeal. A victim might therefore apply within the course of the proceedings for an order that the proceedings be expedited, as well as seeking a declaration that there has been a violation.

The judgment has been published, it has received wide press coverage and copies have been provided to all Civil Appeals Office lawyers and their senior administrators.

124. UK / Stephen Jordan No. 2

49771/99
Judgment final on 10/03/03

Last examined: 987-6.1

Excessive length of criminal proceedings (almost 4 years and 8 months), brought against the applicant in 1995 before a court-martial (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM Proceedings have been ended.

GM The judgment of the ECtHR has been published. Furthermore:

a) In 2000, an independent internal regulatory body in the Army, the Office for Standards and Casework (Army), (the OSC(A)) was created to monitor the progress of cases subject to the court-martial system. Among the tasks of this body are those of promoting a sense of urgency and priority in handling administrative and disciplinary casework, and of identifying causes of unnecessary delay.

b) The grant of legal aid has been expedited: legal aid may be granted at an earlier stage of proceedings.

c) Judicial review before the High Court, one of the sources of delay in this case, was removed in 2003 in order to put military personnel in the same position as civilian defendants with respect to Crown Court proceedings.

d) The Judge Advocate General introduced Directions Hearings as standard practice in all cases except those concerning absence without leave, in which different procedures apply to prevent delay.

e) In early 2006, the Adjutant General established the Adjutant General's Delay Action Group, which meets approximately every 10 weeks. This group is attended by representatives of all parts of the military justice system who have an interest in its expeditious process. The group produces statistics and discusses procedures. Where a delay is identified, the group can make recommendations accelerate the outcome of proceedings brought before the service courts.
The authorities have stated that the combined effect of these measures has ensured significant

improvements in the system, which safeguards against unnecessary delay.

E.2. Lack of access to a court

125. BGR / Zlínsat

57785/00
Judgment final on 15/09/06

Last examined: 1013-4.2

Lack of access to a court to contest prosecutors' decisions suspending in 1997 a contract concluded between the state and the applicant company and concerning the privatisation of a hotel, on the ground that the conditions were manifestly unfavourable to the state (violation of Art. 6§1); unlawful interference with the applicant company's property rights on account of the lack of precision of the law (violation of Art. 1, Prot. No. 1).

IM In October 1999, the hotel in question was restored to the applicant company. The application of Art. 41 was reserved by the Court concerning the pecuniary damage, as well as certain costs and expenses.

GM The provision of the Code of Criminal Procedure at the origin of the violation was repealed and the new Code of Criminal Procedure, which entered into force in 2006 does not contain similar provisions.

Information is required on the measures envisaged to clarify the scope of the other provision at issue, in the Judicial Power Act, and to introduce independent supervision of the prosecution authorities' decisions taken on the basis of this provision, and in a more general manner adopted by prosecutors in similar situations.

The judgment was published; confirmation is expected of its dissemination to the competent authorities, and in particular to prosecutors.

126. CZE / Běleš and others

47273/99
Judgment final on 12/02/03

Last examined: 1007-1.1
Final Resolution (2007)115

Refusal to consider the merits of a case as the Czech courts had interpreted certain procedural requirements in a manner that prevented the examination of the applicants' requests and complaints in substance (violation of Art. 6§1); lack of access to a court due to an unpredictable interpretation of the applicable procedural rules governing the admissibility of constitutional appeals (violation of Art. 6§1)

Case closed by final resolution

IM The applicants' association indicated that it did not intend to request a new judicial review of the decision of execution at issue.

GM Concerning the first violation of Article 6, paragraph 1, the interpretation given by the domestic courts in this specific case to the relevant procedural rules has been contradicted by the subsequent case-law of the Supreme and Constitutional Courts. Moreover, the Act on the Freedom of Associations was modified in 2002 and it was made clear that appeals against decisions rendered by private associations are regulated by the provisions of the Code of Civil Procedure and should not be dealt with under the rules governing the judicial review of administrative decisions.

Concerning the possibility of bringing a case before the Constitutional Court, the rules on the admissibility of constitutional complaints were clarified by a Constitutional Court decision in 2003. Subsequently, a new law entered into force on 1/04/04, according to which it is not necessary to have lodged an extraordinary appeal before bringing the case before the Constitutional Court. Besides, in those cases where an extraordinary appeal is declared inadmissible only on the basis of a discretionary assessment, a constitutional complaint may be lodged within 60 days from the notification of the decision dealing with the admissibility of the appeal at issue. These new provi-

sions aim at eliminating the uncertainty which existed as regards the interpretation of the admissibility rules concerning constitutional complaints which led to the violation of the right of access to the Constitutional Court in the present case (see also Resolution (2007)30 in the case Zvolský and Zvolská).

The judgment of the ECtHR has been published on the website of the Ministry of Justice.

127. CZE / Credit and Industrial Bank

29010/95
judgment of 21/10/03 – Grand Chamber Last examined: 1007-1.1

Final Resolution (2007)117

Breach of the right of access to a court (violation of Art. 6§1)

Case closed by final resolution

IM On 31/09/95 the Czech National Bank withdrew the applicant's banking license and on 2/10/95 the Prague Commercial Court declared it bankrupt. Since the applicant bank now lacks legal personality and the re-opening of the case could have adverse financial consequences for its creditors, no individual measures arise in this case.

GM The domestic legislation applicable at the material time was amended in 1994 and now provides effective domestic remedies which allow a bank to challenge before a court the reasons for a decision imposing compulsory administration.

The judgment of the ECtHR has been translated, published and disseminated to the authorities concerned.

128. CZE / Soudek

56526/00
Judgment final on 15/06/05

Last examined: 992-1.1
Final Resolution (2007)31

Lack of access to the Constitutional Court due to a particularly strict interpretation of the procedural requirements (violation of Art. 6§1)

Case closed by final resolution

IM The ECtHR found that the finding of a violation was in itself sufficient just satisfaction. Considering the nature of the violation, the prejudice suffered by the applicant and the fact that his case had been considered on the merits at both first instance and appeal, no specific individual measures would appear necessary. In addition, the applicant has submitted no request for such measures.

GM Following the ECtHR's judgments in the cases of Bělěs and Zvolský and Zvolská, the Czech Constitutional Court in 2003 announced a change in its practice concerning admissibility criteria for constitutional appeals.
Subsequently, a law entered into force on 1/04/04, according to which it is not indispensable to have recourse to an extraordinary appeal before bringing the case before the Constitutional Court. What is more, in cases where an extraordinary appeal is declared inadmissible by the competent organ solely on the basis of its discretionary assessment, a constitutional complaint may be lodged within 60 days from notification of the decision on the admissibility of the appeal at issue.
The judgment of the ECtHR has been published and sent out to the authorities concerned.

129. FRA / Carabasse

59765/00
Judgment final on 18/04/2005

Last examined: 997-6.1

Lack of access to a court in 1999 on account of the striking of the applicant's appeal on points of law from the roll of the Court of Cassation for not complying with the pecuniary order made by the

Court of Appeal, without examining the applicant's situation effectively or completely (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM After the applicant's death in 2003, his heirs had to pay the sums ordered by the pecuniary sentence given at the outcome of the proceedings at issue. These proceedings are final (proceedings lapsed, on account of the applicant's inactivity) and it is not possible, under French law, to have them re-opened, following the judgment of the ECtHR. Nevertheless, no specific individual measure (notably reopening of proceedings) appears to be necessary in this case, as:

- the proceedings at issue established rights to the benefit of a third party of good faith (a physical person, who was awarded damages against the applicant), deserving protection, according to the principle of legal certainty;
- the applicant's heirs have not expressed any request in the framework of the execution of the HR judgment.

GM See the measures taken in the context of the execution of the case of Bayle (judgment of 25/09/2003).

130. **FRA / Khalfaoui**

34791/97
Judgment final on 14/03/00

Last examined: 1013-1.1
Final Resolution (2007)153

Breach of the applicant's right of access to a court on account of the forfeiture of his appeal on points of law in application of Art. 583 of the Code of Criminal Procedure, because he had not obtained an exemption from surrendering to custody and did not surrender to custody before the examination of his appeal on points of law (violation of Art. 6§1)

Case closed by final resolution

IM A new law of 15/06/2000, strengthening the protection of the presumption of innocence and victims' rights, provides that "review of a final criminal court decision may be requested on behalf of any person found guilty of an offence where it emerges from a judgment delivered by the ECtHR that sentence was passed in a manner violating the provisions of the ECHR or of the protocols thereto, if the nature and the gravity of the violation found are such as to subject the sentenced person to prejudicial consequences that could not be remedied by the just satisfaction awarded on the basis of Article 41 of the ECHR". The same law also provided that "As a transitional measure, applications for review […] founded on a judgment delivered by the ECtHR prior to publication of this law in the Official Gazette of the French Republic may be made within one year following publication." The applicant did not prevail himself of this possibility.

GM The above-mentioned new law strengthening the protection of the presumption of innocence and victims' rights abrogated Articles 583 and 583-1 of the Code of Criminal Procedure concerning the forfeiture of the right to appeal on points of law for a person given a custodial sentence of more than six months, for failure to surrender to custody or in the absence of an exemption from surrendering to custody. This law entered into force on 16/06/00.

131. **FRA / Lemoine Daniel**

33656/96
Interim Resolution (2000)16 of 14/02/2000 under former Art. 32 of the ECHR; decision on just satisfaction of 14/02/2000

Last examined: 997-1.1
Final Resolution (2007)78

Lack of access for the applicant to a court to contest a decision, taken by his employer, the French railway company (*Société nationale des chemins de fer – SNCF*), discharging him from his post on

grounds of physical unfitness, and excessive length of judicial proceedings before civil courts (violation of Art. 6§1).

Case closed by final resolution

IM **Access to a court**: the applicant's requests of annulment of the S.N.C.F. decision at issue were dismissed by the French courts, for lack of jurisdiction. The government nevertheless indicated that some avenues remain open to the applicant, especially as a full reopening of the initial case on the applicant's discharge on grounds of physical unfitness would, obviously, at the most lead to compensation for the applicant, in particular in view of the time elapsed since the relevant time (almost 20 years) and the applicant's age. French law offers the applicant possibilities to request compensation before the administration. If he fails, he could appeal to the administrative courts, requesting compensation on the basis of the provisions on which the initial, contested decision had been based. These courts apply the ECHR and the Court's case-law directly and would thus be in a position to take account of the findings of violations to erase, as far as possible, their consequences.

Excessive length of proceedings: The proceedings at issue ended in 1999.

GM **Access to a court**: a new procedure was instituted in 1999, according to which decisions concerning unfitness for work are taken by medical doctors from the occupational health service. These decisions can be contested before the transport labour inspector, who will take a decision after consulting the transport occupational health officer. There are several possibilities to appeal against decisions by transport labour inspectors: submission for an out-of-court settlement to the inspector who took the decision; hierarchical appeal to the Minister of Transport; finally, appeal to the administrative court.

Length of the proceedings: general measures have already been taken (see Final Resolution (2003)88 in the Hermant case).

132. FRA / Poitrimol and other similar cases

14032/88
Judgment final on 23/11/1993

Last examined: 1013 – 1.1
Final Resolution (2007)154

Breach of the applicants' right of access to a court and thus to their right to a fair trial, on account of the declaration by the Court of Cassation that their appeals were *ipso jure* inadmissible because they had not complied with an arrest warrant issued against them by a decision of an appeal court against which they had lodged an appeal; the cases of Poitrimol and Van Pelt also concern the right of an applicant to the assistance of a lawyer of his choice in an appeal procedure where the applicant himself is not present (Art. 6§1)

Case closed by final resolution

IM Following the introduction, in 2000, of a law allowing for the review of criminal sentences having been found contrary to the ECHR, (Law No. 2000-516 of 15 June 2000), Mr Van Pelt requested a review of the proceedings pertaining to him. The other applicants did not avail themselves of this possibility.

GM The judgments were published and the case-law changed, putting the French law in conformity with the ECHR respectively in 1999 and in 2001. Following clarifications given by the ECtHR in the framework of a subsequent case (Khalfaoui, judgment of 14/12/1999, final on 14/03/2000), the law was amended in June 2000 and abrogated the provisions according to which the failure to surrender to custody at the latest the day before the appeal hearing in the Court of Cassation resulted in the right to appeal on points of law being forfeited.

133. FRA / Tricard

40472/98
Judgment final on 10/10/01

Last examined: 992-1.1
Final Resolution (2007)52

Lack of access to a court (violation of Art. 6§1), due to the application in this case of the rules relating to time-limits for appealing on points of law deprived the applicant – domiciled in French Polynesia and party to criminal proceedings in metropolitan France – of the possibility of seizing effectively the Court of Cassation.

Case closed by final resolution

IM The applicant did not ask for the reopening of the proceedings.

GM The judgment has been sent to the Court of Cassation and to all appeal court judges designated as human rights correspondents. Accordingly, the Court of Cassation, which like all French courts applies the ECHR and the ECtHR's case-law directly, is in a position to draw conclusions from the Tricard judgment. Although it is not provided expressly in the Code of Criminal Procedure, the Criminal Chamber now admits that appeals may be accepted even after the expiry of the time limit if, "due to a case of *force majeure* or to an insuperable obstacle beyond his/her control, the complainant was unable to comply with the time-limit". Given the exceptional nature of the circumstances, the Court of Cassation has not been seised of any new case concerning this issue since that of Tricard. If a similar case were to occur, the Court of Cassation has indicated that it would invoke the *force majeure* doctrine in order to accept the appeal.

134. GRC / Tsalkitzis

11801/04
Judgment final on 26/03/07

Last examined: 1013-4.2

Violation of the applicant's right of access to a criminal court, due to disproportionately extensive interpretation of the doctrine of parliamentary immunity in 2004 (violation of Art. 6§1).

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

GM According to the Constitution, during the parliamentary term the members of parliament may not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament. Requests for leave to prosecute a member of parliament are first examined by the Parliament's professional ethics committee which should take into account, *inter alia*, whether the act complained of is linked to a political activity of the member of parliament.

Information is awaited on measures taken or envisaged by the authorities to prevent similar violations. Confirmation is also awaited of the wide dissemination of the ECtHR's judgment to competent judicial authorities, the Parliament's Speaker and professional ethics committee.

135. NLD / Marpa Zeeland B.V. and Metal Welding B.V.

46300/99
Judgment final on 09/02/2005

Last examined: 997-6.1

Denial of effective access to appeal court in 1997 and excessive length of criminal proceedings from 1990 to 1998 (violation of Art. 6§1)

Case in principle closed on basis of available information – draft final resolution in preparation

IM According to new legislation which entered into force on 01/01/2003, the applicants are entitled to request reopening of criminal proceedings found to have violated the ECHR.

GM **Unfairness of the proceedings**: The legal provisions applied by domestic courts seem to be compatible with the ECHR. Given the direct effect of the ECtHR's judgments in the Netherlands, all authorities concerned are expected to align their practice with the present judgment. With this aim, the judgment of the ECtHR has been published in several legal journals in the Netherlands.

Excessive length of proceedings: in criminal cases, recognition by the domestic court that the

reasonable time requirement has been violated may result in a mitigation of the penalty. The Supreme Court has set out general guidelines in this respect.

136. POL / Jedamski i Jedamska and other similar cases

73547/01
Judgment final on 30/11/2005

Last examined: 992-4.1

Lack of access to court due to excessive court fees in civil cases (Art. 6§1).

IM In one of the cases (Podbielski and PPU Polpure) the violation was due to domestic courts' refusal to exempt the applicant from court fees in respect of an appeal lodged against a judgment concerning important pecuniary claims stemming from a contract regarding construction work carried out for the commune of Świdnica. After the ECtHR delivered its judgment, the applicant attempted to obtain the reopening of the proceedings at the origin of the violation but his appeal was declared inadmissible as not being provided by law. At present his enterprise is insolvent and he has requested the CM to ensure that the judicial and enforcement proceedings related to his insolvency be stayed, in so far as they are linked to the violation of the ECHR. In this situation, the Polish authorities have provided information on the possibility of bringing an action on the basis of the provisions of the Civil Code on state tort liability. The CM is currently assessing whether further individual measures would be necessary.

In three other cases concerning private disputes (Teltronic CATV, Jedamski and Jedamska and Kniat), the government insisted that legal certainty opposed a reopening. The ECtHR granted just satisfaction in respect of non-pecuniary damage. The applicants have not submitted any requests for individual measures. In addition, in the case of Teltronic CATV, the violation resulted from the domestic court refusal to examine the applicant company's claims against a private counterpart. In this case it appears that the refusal in principle does not prevent a new action.
Having examined the situations in these latter cases (Jedamski and Jedamska, Kniat and Teltronic-CATV), the CM considered that no individual measures were required and decided to close these cases.

GM Satisfactory measures have already been adopted in the context of the execution of case Kreuz (no. 28249/95, judgment of 19/06/01), in particular a new Act on court costs in civil cases entered into force on 2/03/2006.

137. POL / Woś

22860/02
Judgment final on 08/09/06

Last examined: 1013-4.2

Violation of the right of access to court in proceedings instituted in 1994 by the applicant before the Polish-German Reconciliation Foundation, under a "first compensation scheme", in view of obtaining financial assistance as a victim of nazi persecution during the Second World War (violation of Art. 6§1): the Appeal Verification Commission, which had rejected the applicant's appeal, could not be regarded as a "tribunal" under the ECHR and the Supreme Administrative Court's and the Supreme Court's case-law held that national courts were not competent to deal with entitlement claims.

IM The ECtHR awarded the applicant just satisfaction in respect of non-material damage. Information is presently awaited on the applicant's present circumstances, particularly whether he may have his claims in the proceedings under the "first compensation scheme" examined by a "tribunal".

GM The judgment has been published with a commentary and it has been sent out to the Presidents of courts of appeal.
In 2006, the Foundation ceased paying compensations under the compensation schemes for lack of funds.
The Polish Constitutional Court is currently examining a complaint, supported by the Polish Ombudsman, challenging the conformity with

the Constitution of certain provisions excluding decisions of the Polish-German Reconciliation Foundation from the competence of administrative courts.

In 2007, the Supreme Court, seized by the Polish Ombudsman with reference to the judgment of the ECtHR, confirmed that such decisions of the Polish-German Reconciliation Foundation may be subject to judicial review by ordinary courts.
Also in 2007, the public prosecutor brought a civil action before the Warsaw Regional Court contesting a refusal to award financial compensation under the second compensation scheme.
Information is awaited on the follow-up to these actions brought under domestic law.

138. ROM / Canciovici and others
ROM / Moşteanu and others

32926/96 and 33176/96
judgments final on 24/09/03 and on 26/02/03

Last examined: 997-6.1

Lack of access to a court in order to claim, in 1995 and 1996, the restitution of buildings nationalised in 1950, the court having considered that it was not competent in this field (violations of Art. 6§1).

Cases in principle closed on basis of available information – draft final resolution in preparation

IM In both cases, the applicants have recovered their right of property over the buildings at issue.

GM Changes made to the legislation and case-law in 1998 recognised the right of access to a court for former owners of nationalised property.
A new law, adopted in 2001, provides, in pending cases, the possibility either to continue the judicial proceedings for restitution of property or to apply a special administrative procedure.
Both judgments have been published.

139. ROM / Lupaş and others no. 1

1434/02
Judgment final on 14/03/07

Last examined: 1013-4.2

Lack of access of the applicants to a court due to the application of a case-law rule requiring unanimity amongst joint owners in order to bring an action for recovery of a property held in common which had been nationalised under the former regime (violation of Art. 6§1).

IM The ECtHR awarded the applicants a just satisfaction in respect of the non-pecuniary damage suffered. In addition, they can request the reopening of the civil proceedings at issue. Should they do so, the domestic courts would be bound to apply Romanian law in conformity with the criteria used by the ECtHR in this case, since the ECHR and the case-law of the Court have direct effect under Romanian law.

GM Information is expected on measures taken or envisaged to avoid future similar violations and, in particular, on the draft law setting aside the unanimity rule in this context and the possible time-frame for its adoption.
Information is expected on the publication and dissemination of the ECtHR's judgment among relevant courts and authorities, with a view to raising domestic courts' awareness of the ECHR requirements as they result from this case.

140. SVK / Mikulová

64001/00
Judgment final on 06/03/06

Last examined: 997-6.1

Lack of access to a tribunal, in 1999, due to the Supreme Court's restrictive interpretation of provisions concerning notification of judicial decisions (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained but dismissed her claim in respect of pecuniary damage as it could not speculate on what might have been the outcome had the appeal on points of law been examined on the merits.
Under the Code of Civil Procedure, as amended in 2005, a party to the proceedings may apply for reopening if the ECtHR has found a violation and if the consequences of this violation have not been sufficiently redressed by just satisfaction. Reopening is subject to a time limit of three years from the date on which the domestic judgment at issue became final, or three months from that on which the judgment of the ECtHR became final.

GM The judgment of the ECtHR has been sent out to civil courts and published. No further general measure seems necessary, taking account of the direct effect given by the Slovakian authorities (particularly the judiciary) to the ECHR and the case-law of the ECtHR, as well as the isolated nature of the violation in this case.

141. ESP / Stone Court Shipping Company S.A.
ESP / Saez Maeso

77837/01 and 55524/00
Judgments final on 28/01/04 and 09/02/2005

Last examined: 992-5.1 (1013-3.b)

Breach of the applicants' right of access to a court (violations of Art. 6§1) due to the Supreme Court's particularly strict interpretation of its own rules of procedure in 1997 and 2000 respectively.

IM In both cases, the ECtHR awarded the applicants just satisfaction for non-pecuniary damage. No claim for individual measures to erase possible consequences of the violation has been submitted by the applicants either to domestic courts or to the ECHR organs following the judgments of the ECtHR.

GM The Spanish authorities are invited to indicate whether any amendment to clarify the law governing proceedings at appeal is envisaged or whether there are any examples of changes in the case-law of the Supreme Court in response to the judgment of the ECtHR. Information on other possible measures taken or envisaged to prevent new, similar violations would also be useful.

142. SWE / Janosevic

34619/97
Judgment final on 21/05/03

Last examined: 992-1.1
Final Resolution (2007)59

Lack of access to a court to determine criminal charges in taxation proceedings (violation of Art. 6§1) and excessive length of proceedings (violation of Art. 6§1)

Case closed by final resolution

IM The domestic proceedings have been terminated in 2004 and the judgments are final.

GM The judgment of the ECtHR has attracted a great deal of attention in Swedish media and is well known. Explanatory reports, together with copies of the judgments have been sent to the relevant judicial authorities to draw their attention to their obligations under the ECHR.
As concerns in particular the lack of access to a court, under the Tax Payment Act, which came into force on 1/07/03, the taxpayer now has an unconditional right to be granted a stay of execution with respect to tax surcharges until the tax authority has reconsidered its decision or, if an appeal is lodged, until the competent county administrative court has examined the appeal. Moreover, the taxpayer is not required to provide security in order to be granted such a stay of execution.
As regards, more generally, the excessive length of the proceedings, the Swedish Tax Agency issued guidelines concerning time-limits for the reconsideration of taxation decisions. This should now be completed within one month or, if further investigations are necessary, within three months. According to the statistics available for 2003, the median time for a decision was 112 days. The Swedish Government has also set operational objectives for county administrative courts and administrative courts of appeal regarding the turna-

round time of cases and it has asked the National Courts Administration to evaluate the situation concerning the handling of tax cases.
Furthermore, tax authorities and courts are now empowered to remit or reduce a tax surcharge when the individual has not had his or her case determined within a reasonable time.

In addition, even though the ECtHR did not find a breach of the presumption of innocence, certain amendments have been introduced in the provisions dealing with grounds for remission of tax surcharges.

143. UK / Faulkner Ian

30308/96
judgment of 30/11/99 – Friendly settlement

Last examined: 992-6.1

Lack of access to civil courts in Guernsey due to absence of provision for legal aid (complaints under Art. 6§1).

In the friendly settlement reached in this case, the government undertook to introduce a legal aid scheme for civil cases consistent with the findings in this case.

Case in principle closed on basis of available information – draft final resolution in preparation

IM There was no undertaking with respect to individual measures in the friendly settlement.

GM 1) Assistance of an advocate is no longer compulsory in proceedings before the Royal Court, since the entry into force in 2004 of the Royal Court (Signing of Summonses) Order 2003. A person in the position of the applicant would no longer need an advocate to introduce his action, and would therefore no longer need legal aid to pay for the services of an advocate.

2) A civil legal aid scheme was introduced in Guernsey on a provisional basis as from 2002. New legislation was then adopted in July 2003 and enacted in 2005. The scope of the existing civil legal aid scheme is considered to be broad enough to be fully compatible with Art. 6 ECHR.

3) The Human Rights (Bailiwick of Guernsey) Law, 2000, as amended, was brought into force with effect from 01/09/2006. This law is the same as the Human Rights Act 1998. There is now the added protection for aggrieved persons wishing to obtain legal aid in accordance with their rights under Article 6 in that they may, if necessary, argue that their rights under the ECHR have been violated.

E.3. Non-execution of domestic judicial decisions

144. ALB / Qufaj Co. SH.p.k.

54268/00
Judgment final on 30/03/2005

Last examined: 1007-4.2

Non-enforcement of a final domestic decision ordering a municipality to compensate the applicant company for damage sustained following the refusal to grant a building permit (violation of Art. 6§1).

IM No individual measure is required as all damages have been covered by the just satisfaction awarded.

GM The CM is awaiting information on the general measures taken and/or envisaged by the Albanian authorities, in particular the publication of ECtHR's judgment and dissemination and information on the current practice of the Constitutional Court. Clarification would also be useful as to whether the violation may be due to a structural problem.

145. BIH / Jeličić

41183/02
Judgment final on 31/01/2007

Last examined: 1013-4.2

Right of access to court violated because of non-enforcement of a final domestic judgment of 1998 ordering the state to release old savings accounts in foreign currency; and also violation of right of property (violations of Art. 6§1 and 1, Prot. 1).

IM No individual measure is required as all damages have been covered by the just satisfaction awarded.

GM The statutory provisions subjecting all final judgments relating to old foreign savings accounts to administrative verification has been repealed. An Action plan is expected on further measures to prevent similar violations, including the recording of all outstanding debts of this kind, notably under domestic judgments.

The ECtHR's judgment was published in the Official Gazette.

Information is awaited on its wide dissemination to competent judicial and government authorities.

146. BGR / Angelov and other similar cases

44076/98
Judgment final on 22/07/2004 CM/Inf/DH(2007)33

Last examined: 1013-4.2

Delay by authorities in complying with court judgments, between 1996 and 2003, awarding compensation to the applicants (violations of Art. 1 Prot. 1 and, in some cases, of Art. 6§1).

IM The competent state institutions enforced the decisions given in the applicants' favour. The applicant who was detained in the Rahbar-Pagard case died in 2003. The ECtHR awarded just satisfaction in respect of the non-pecuniary damage the applicants suffered.

GM The Bulgarian authorities indicated that they planned to present before the Parliamentary Commission on Judicial Issues amendments to the Code of Civil Procedure, related to the execution of judgments ordering the payment of compensation by public institutions. Moreover, they indicated in December 2005 that a proposal had been made to the Council of Legislation of the Ministry of Justice to modify the provisions concerning execution of judicial decisions by state institutions. Information was provided on the follow-up given to this proposal. It is being assessed.
The ECtHR's judgment in the Angelov case has been published on the website of the Ministry of Justice and has been sent to the Supreme Court of Cassation. More than 23 seminars on the ECHR and the ECtHR's case-law were also organised between 2001 and 2006 by the National Institute of Justice. Further seminars were planned for 2007, focusing on recent judgments of the ECtHR against Bulgaria.

On 21 and 22/06/2007 a high level Round Table (organised by the Department for the Execution of Judgments of the ECtHR) between representatives of the Council of Europe and the authorities of different states was held to discuss solutions to the structural problems of non-enforcement of domestic court decisions (see conclusions CM/Inf/DH(2007)33). In this context the representatives of the Bulgarian authorities exchanged their experiences on the measures taken or under way to prevent similar violations and examined possible further reforms.

Information is awaited on the follow-up to the proposal for legislative reform mentioned above, the time-frame for its examination, as well as on further measures envisaged for the execution of these judgments.

147. GEO / "Iza" Ltd and Makrakhidze GEO / "Amat-G" Ltd et Mebaghishvili

28537/02 2507/03
Judgments final on 27/12/2005 and 15/02/2006

Last examined: 1013-4.2

Impossibility to obtain execution of final domestic judgments ordering payment of state's debts (violation of Art. 6§1, 13 and Art. 1, Prot. 1).

IM No individual measure is required as all damages are covered by the just satisfaction awarded. However, given that the domestic judgments are still enforceable, the situation remains to be solved through appropriate procedures. The CM is awaiting information thereon.

GM Both judgments have been translated into Georgian and published on the website of the Ministry of Justice, in the Official Gazette as well as distributed to the appropriate state agencies.
The Georgian authorities have indicated that they intend to present: information on the sums envisaged in the state budget for the execution of domestic judgments; a timetable for the execution of judgments; legislative amendments so as to make it possible to reopen cases following the finding of violation of the ECHR.
The CM is assessing this information.

148. ITA / Immobiliare Saffi and other similar cases

22774/93+
Judgment final on 09/03/2003+
Interim Resolution (2004)72

Last examined: 997-1.1
Final Resolution (2007)84.

Systemic violation of flat owners' right to peaceful enjoyment of their possessions by failure to enforce judicial eviction orders as a result either of legislation suspending or staggering enforcement or simply of the applicants' inability to obtain assistance from the police and lack of any effective remedies to establish the state's liability and obtain compensation for delays in, or lack of, enforcement (violations of Art. 1, Prot. 1 and Art. 6§1).

Case closed by final resolution

IM All the judicial decisions in these cases have been executed and the applicants have been able to take possession of their property. No further measure is therefore necessary.

GM A legislative reform in 1998, gave the courts, instead of the administrative authorities, the power to establish priorities for the implementation of eviction orders, but this was not enough to resolve the problems at the origin of these cases (see Interim Resolution (2004)72).
In 2004, the Constitutional Court ruled that the suspensions had been justified until 2003 because of their transitional and restricted nature. It, however, declared that this legislative rationale could not be considered justified in the future. Italy continued to enact suspensive legislation but the matter has not been referred to the Constitutional Court since then. Nonetheless, the legislation in question might be referred to its subject to its review.
The enforcement of eviction orders with the assistance of the police has improved, according to statistics provided by the Ministry of Home Affairs.
As regards compensation for delays in enforcement:

a) Under the Civil Code, tenants must compensate landlords for the late return of housing. If the delay is due to suspension laws, owners are not required to take court action or show that they have suffered detriment and a ceiling is applied to compensation. The maximum level of compensation should however not apply in any case where the conduct of the tenant rather than legislation made it impossible to re-establish possession of the property.

b) The Court of Cassation confirmed in 2004 that owners who had been granted a court order were entitled to all the assistance they required from the authorities to secure its enforcement and set a series of principles to be respected by police authorities in exercising their technical discretion about the precise moment when their assistance should be granted. The Court of Cassation has also stated that where the police fail to provide assistance, owners are entitled to seek damages from the authorities in the ordinary courts. In actions for damages, the authorities must show that it was impossible for them to provide assistance and can only be exempted from this requirement in exceptional and unforeseeable circumstances. The Court has stated in this regard that situations of permanent judicial or adminis-

trative crisis create a presumption that the authorities do bear responsibility.

c) The Pinto Act of 2001 is applicable to delays in eviction proceedings against tenants. This remedy enables citizens to obtain compensation for pecuniary and non-pecuniary damage suffered as a result of excessively lengthy judicial proceedings. In 2002, the Court of Cassation stated that in assessing length of proceedings, account also had to be taken of delays caused by the application of legislation suspending enforcement. In its inadmissibility decision in the Provvedi case (2/12/2004, application No. 66644/01), the ECtHR ruled that this was a remedy to be exhausted in this type of case.

The Immobiliare Saffi judgment and the ECtHR's case-law concerning this group of cases has been published and commented on in several legal journals.

149. MDA / Luntre and other similar cases

2916/02 *Last examined: 1013-4.2*
Judgment final on 15/09/2004

Non-enforcement of final judgments delivered by domestic courts (violations of Art. 6§1 and 1, Prot. No. 1)

IM The national judgments at issue, except those in the Prodan and Popov cases, were ultimately enforced after the applications before the ECtHR had been communicated to the respondent government.

In the Prodan case, a friendly settlement was reached with the applicant in 2004. As regards the Popov case, the CM is awaiting information on the reopened proceedings which are pending since 2004, following the quashing of the final decision of 5/11/97, and on measures taken or envisaged to accelerate them.

GM The problem of non-enforcement of judicial decisions is being dealt within the framework of the ongoing overall legislative reform of the judiciary.

On 01/07/05, the new Code on Enforcement Proceedings entered into force. Under the new provisions, applicants who have won their cases before a national court may take judicial action against the persons or authorities responsible for late execution or non-execution of a final judicial decision by directly invoking the provisions of the ECHR or Article 20 of the Moldovan Constitution.

Moreover, the new Code of Civil Procedure authorises domestic courts to open civil proceedings on the basis of an application from a person claiming the protection of his fundamental rights and freedoms. In the context of this type of actions, applicants have the right to ask before the court for compensation of pecuniary and/or non-pecuniary damage as well as the reimbursement of costs. Several judgments have already been given in this type of actions against the Ministry of Finance. The sums awarded by the judgment may also be indexed and applicants may ask for compensation for loss of profits. The CM is awaiting information on the legislative provisions and judgments mentioned above.

The judgments of the ECtHR have been translated and published and the respondent government has undertaken to disseminate them to the appropriate authorities with a circular letter drawing their attention to the requirements of the ECHR concerning the enforcement of domestic judicial decisions.

150. RUS / Timofeyev

58263/00 *Last examined: 1013-4.3*
Judgment final on 23/01/04

Violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour including decisions ordering welfare payments, pension increases, disability allowance increases, etc. (violations of Art. 6§1 and of Art. 1, Prot. No. 1).

IM In the cases concerning the non-payment of pension arrears and child allowances in the Voronezh Region, the Federal Budget law 2005 was amended so as to provide the funds for the execu-

tion of domestic judgments regarding indexation of old-age pensions due to their belated payment in 1998 and 1999. In June 2006 the Administration of the Voronezh Region requested additional funding for payment of pension arrears for the period starting in 2000.

In some of the cases of this group the ECtHR did not award the sums due under the non-executed domestic court judgments. Information is thus expected on the progress made in the enforcement of the outstanding domestic judgments, including payment of default interest.

GM 1) **Sector-specific measures** have been put in place in order to ensure the effectiveness of different rights to housing foreseen for certain professional groups: former members of the armed forces, retired judges or Chernobyl workers. In order to facilitate the examination of these special measures, the cases concerned have been dissociated from the present group and are henceforth examined in three different groups: the Konovalov group, the Teteriny group and the Milinovskiy and Mikryukov group, respectively.

On the contrary, the aforementioned measures (see under IM) taken in the Voronezh Region will be examined separately by the CM only if it is demonstrated that, beyond the settlement of the specific problem, there is a general mechanism capable of rapidly remedying the temporary insufficiency of funds in a region.

2) As regards **more general solutions**, the Russian authorities have notably engaged in a bilateral project in 2005 with the European Commission for the Efficiency of Justice (CEPEJ) in order to examine the situation and find appropriate solutions. An expert report was published on 9/12/2005 (CEPEJ(2005)8) summarising the problems and presenting a certain number of proposals. This bilateral project continued in 2006, notably with CEPEJ participation in the Round Table held in Strasbourg in October 2006 (see below).

In the context of this general reflection new laws have also recently been adopted amending the Budgetary Code, the Code of Civil Procedure, the Arbitration Code and the Federal Law on Enforcement proceedings.

In view of the complexity of the problem, the CM decided in October 2006 to hold a high level Round Table. This Round Table was organised on 30-31/10/2006 in Strasbourg by the Department for the execution of the judgments of the ECtHR in co-operation with the CEPEJ and the Russian authorities. Representatives of the Russian Supreme Courts, the relevant ministries and the federal authorities concerned participated in order to assess the first results of the reforms and to establish the priorities for further reforms. Comprehensive and constructive discussions allowed to identify the most important outstanding problems and to make generally accepted proposals for the future reforms.

Information on the follow-up to this Round Table was reflected in the Memorandum CM/Inf/DH(2006)19 revised 3 declassified by the CM in June 2007.

On 21-22/06/2007, a new high-level Round Table was organised in Strasbourg in the context of the Special Execution Assistance programme involving several states facing this problem. The Russian Federation was represented by the Federal Treasury and by the Chief of the Bailiffs' Service. This new Round Table gave rise to a constructive exchange of views between the representatives of the states concerned and of different instances of the Council of Europe with regard to the search for solutions to the problem of non-execution of domestic judicial decisions. The exchanges led to the adoption of general Conclusions in which the main causes underlying this problem were identified and a range of possible solutions proposed.

Information is presently awaited notably on the follow up given by the Russian authorities to the Conclusions of the Round Table.

151. UKR / Zhovner and other similar cases

56848/00+

Judgment final on 29/09/2004+

Memorandum CM/Inf/DH(2007)30 (rev. in English only)
Last examined: 1013-4.2

Failure or serious delay by the Administration or state companies (including in case of bankruptcy and liquidation) in abiding by final domestic judgments mainly ordering payments; absence of effective remedies to secure compliance; violation of applicants' right to protection of their property (violations of Art. 6§1, 13 and 1, Prot. No. 1).

IM Information on enforcement of still non-enforced domestic judgments is expected. An amendment to the Law on Enforcement Proceedings (in force on 14/03/2007) provides for closure of domestic enforcement proceedings where the sums in question have been awarded as just satisfaction in the judgment of the ECtHR and paid.

GM As to the remedies, a draft Law "On amendments to certain legal acts of Ukraine (on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time)" has been elaborated providing for a new compensatory remedy in case of excessive length of proceedings. The draft was sent for the parliament for consideration but in view of dissolution of the parliament it was sent back to the government for re-lodging when new parliament commences working. Amendments are also under way with regard to the Administrative Offences Code and the Customs Code. The CM is awaiting information on possibility for the Supreme Court to issue interim guidance to lower courts, encouraging them to award compensation for delays directly on the basis of the ECHR and the ECtHR's case-law.

As to the substance, a draft law which provides for abolishment of the moratorium on forced sale of state companies' assets has been prepared in 2007.

The CM is awaiting information on the time table of the above reforms and:

- on action taken or envisaged to avoid any legislative lacuna and confusion in the area of attachment on budgetary funds;
- on legislative measures taken or envisaged to prevent debtors from hiding their funds;
- on action taken to enhance criminal, material and other responsibility;
- on further measures taken or envisaged to remedy special sector-specific problems such as the enforcement of court judgments awarding pay and/or work-related benefits, and those related to state mining companies under administration, bankruptcy or liquidation;
- on the new moratorium imposed since end 2005 on attachment of funds pertaining to the fuel and energy companies;
- on the follow-up given by the authorities to the specific issues raised in Memorandum on the non-enforcement of domestic judicial decisions in Ukraine (CM/Inf/DH(2007)30rev) and at the Round Table "Non-enforcement of domestic court decisions in members states" held in Strasbourg on 21 and 22 June 2007.

Information on special measures taken to ensure the payment of certain particular debts, notably those owed by Atomspetsbud (in the Chernobyl contaminated area where seizure of property remains prohibited) is being assessed.

152. ROM / Popescu Sabin and other similar cases

48102/99
Judgment final on 02/06/04, rectified on 05/07/2004

Memorandum CM/Inf/DH(2007)33

Last examined: 1013 – 4.2

Non-enforcement by local authorities of domestic courts' decisions ordering the restitution of land property nationalised or lost during the communist period (violation of Art. 6§1 and 1, Prot. No. 1).

IM In certain cases, the confirmation is expected that effective restitution of property has taken place. In others, information is still awaited as to the government's choice between compensation and restitution (in some cases on the basis of special arrangements with the applicants). In yet other cases the domestic decisions have been enforced or compensations have been paid.

GM Certain measures have already been taken to compel local authorities to respect judgments of the kind here at issue: on 19/07/2005 Parliament adopted Law No. 247 on the reform of property and justice, notably to accelerate proceedings and to allow the imposition of sanctions on local authority representatives who do not respect legal provisions. Statistical reports and a preliminary analysis of the application of this law have been provided showing a significant increase in cases resolved by the local commissions. Further information on the effectiveness of the new measures is awaited.

Romanian authorities attended the high level Round Table of 21-22/06/2007 organised by the Department for the Execution of ECtHR Judgments to discuss solutions to the structural problems of non-enforcement by the state of domestic court decisions (see CM/Inf/DH(2007)33). Infor-

mation is expected on reflections, if any, following this participation.
All judgments have been published in the Official Journal. Over and above this statutory measure and in order to assist the legislative process and relevant authorities in ensuring as far as possible a ECHR compliant implementation of existing laws and regulations, the most important judgments have also been specially disseminated. Circular letters have been addressed to all prefects and local authorities explaining the ECHR requirements regarding the execution of judicial decision concerning land property.

153. **ROM / Sacaleanu**
ROM / Orha

73970/01, 1486/02
Judgments final on 06/12/05 and 12/01/07

Memorandum CM/Inf/DH(2007)33
Last examined: 1013-4.2

Late execution or non-execution by public institutions of the obligation to pay certain sums of money as established by final court decisions (violation of Art. 6§1).

IM The domestic judicial decision has been executed in the Sacaleanu case. The question of just satisfaction remains reserved by the ECtHR in the Orha case.

GM The CM is awaiting information on the size of the problem identified by the ECtHR and on the measures envisaged or already adopted to guarantee the prompt payment by public institutions of their debts, in conformity with final court decisions.
Romanian authorities attended the high level Round Table of 21-22/06/2007 organised by the Department for the Execution of Judgments to discuss solutions to the structural problems of non-enforcement by the state of domestic court decisions (see CM/Inf/DH(2007)33). Information is expected on reflections, if any, following this participation.

154. **ROM / Strungariu**
ROM / Mihaescu

23878/02 and 5060/02
Judgments final on 29/12/2005 and 26/03/2006

Memorandum CM/Inf/DH(2007)33
Last examined: 1007 – 4.2

Late enforcement of final judicial decisions ordering that the applicants be reinstated in their post within a public body (violation of Art. 6§1)

IM No special measures is required, over and above payment of the sums awarded by the ECtHR for costs and non-pecuniary damage, as the applicants had already been reinstated in their posts at the time of the ECtHR's judgments and had received their salary arrears.

GM The CM is awaiting the government's assessment of the scope of the problem identified by the ECtHR.

Romanian authorities attended the high level Round Table of 21-22/06/2007 organised by the Department for the Execution of Judgments to discuss solutions to the structural problems of non-enforcement by the state of domestic court decisions (see CM/Inf/DH(2007)33). Information is expected on reflections, if any, following this participation.
In the meantime the judgments have been published and disseminated, notably to the National Agency for Public Servants.

155. **ROM / Ruianu**
ROM / Schrepler

34647/97 and 22626/02
Judgments final on 17/09/03 and 15/06/2007

Memorandum CM/Inf/DH(2007)33
Last examined: 1007- 4.2

Non-enforcement of final judicial decisions ordering private persons to demolish an illegally construed building or to pay sums of money (violation of Art. 6§1)

IM In the Ruianu case, after the death of the applicant in 2005, her heirs reached a friendly settlement with the neighbours and sold them the plot of land on which the building at issue stands. In the Schrepler case, the execution of the decision at issue remains expected.

GM The rules governing the enforcement of civil court decisions have recently been amended through a modification of the Code of Civil Procedure. Information is awaited on the nature of the reforms and their efficiency.
Romanian authorities attended the high level Round Table of 21-22/06/2007 organised by the Department for the Execution of ECtHR Judgments to discuss solutions to the structural problems of non-enforcement by the state of domestic court decisions (see CM/Inf/DH(2007)33). Information is expected on reflections, if any, following this participation.

In the Ruianu case, the ECtHR judgment was published in the Official Gazette and included in a collection of judgments delivered against Romania between 1998 and 2004, 2000 copies of which have been distributed free of charge to courts and others. It was also transmitted to the Magistrates' Superior Council. Information is expected on further dissemination measures to law enforcement officials and relevant local authorities.

156. ROM / Pântea Elisabeta

5050/02
Judgment final on 15/09/2006

Memorandum CM/Inf/DH(2007)33
Last examined: 1007 – 4.2

Non-enforcement by the administration of a final judicial decision of 2001 ordering the registration of the applicant's ownership in the land registry (violation of Art. 6§1)

IM In this case, the ECtHR itself ordered the respondent state to ensure, beyond the payment of just satisfaction for non-pecuniary damage, the full enforcement of the domestic judgment of 2/04/2001. Information is still awaited on measures taken to this effect, in particular with respect to the removal of the title of a third party to the same property.

GM The CM is awaiting the government's assessment of the scope of the problem identified by the ECtHR.

Romanian authorities attended the high level Round Table of 21-22/06/2007 organised by the Department for the Execution of Judgments to discuss solutions to the structural problems of non-enforcement by the state of domestic court decisions (see CM/Inf/DH(2007)33). Information is expected on reflections, if any, following this participation.
The judgment of the ECtHR was translated and published in the Official Gazette and on the website of the Supreme Court of Justice and Cassation. Confirmation of its dissemination to the relevant authorities and courts is expected.

157. ROM / Pini and Bertani and Manera and Atripaldi

78028/01
Judgment final on 22/09/2004

Last examined: 997-6.1

Non-enforcement of final court decisions, rendered in 2000, by which the applicants, two Italian couples, adopted two Romanian abandoned children, Mariana and Florentina, born in 1991 and living in a private institution for minors "CEPSB" (violation of Art. 6§1)

Case in principle closed on basis of available information – draft final resolution in preparation

IM In 2003, the domestic courts revoked the adoption of Mariana. The other child, Florentina, instituted proceedings to have her adoption revoked but the domestic court in 2005 decided to entrust her to the applicants. This decision became final and the girl left Romania with her adoptive parents.

GM 1) The violation of Article 6 in this case is the result of the failure of the domestic authorities to ensure "CEPSB"'s respect for the domestic court decisions in this case, in particular by refraining from imposing any sanctions on the

"CEPSB" for its unjustified opposition to enforcement. To prevent any future violations, the national Authority for the Protection of Children's Rights conducted an investigation of the "CEPSB" in 2005. As a result, several recommendations were made, requiring in particular better information and greater involvement of the children concerning decisions made in respect of them.
According to the new law on adoptions as well as its implementing rules, which entered into force on 01/01/2005, international adoptions are no longer possible. As for the national adoptions, the law provides in particular that before an adoption may take place, contact must be established between the child and the prospective adoptive parents. The law also provides that the child should spend a 90-day trial period with the adoptive family before adoption.

2) The judgment of the ECtHR was translated and published in the official gazette and included in a collection of judgments against Romania distributed to courts and other relevant authorities.

E.4. Unfair judicial proceedings

158. AUT / A.T.

32636/96
Judgment final on 21/06/02

Last examined: 997-1.1
Final Resolution (2007)76

Absence of an oral hearing in compensation proceedings under the Austrian Media Act (Violation of Art. 6§1)

Case closed by final resolution

IM No request by the applicant for individual measures has been made. The Austrian Code of Criminal Procedure allows the reopening of criminal cases following a judgment of the ECtHR.

GM Interim measures
Compensation proceedings under the Media Act follow the rules for criminal proceedings. The ECtHR's judgment was promptly published and sent out by the Ministry of Justice to all competent judicial authorities. In this context it is to be stressed that the ECHR and the ECtHR's case-law enjoy direct effect in Austrian law. All judgments of the ECtHR relating to criminal proceedings are sent by the Ministry of Justice to the President of the Higher Regional Court in the region where the violation occurred, with a request to inform all competent judicial authorities as appropriate. Austrian courts are also systematically informed about summaries in German of all significant judgments of the ECtHR regarding Austria.

Adoption of new legislation

An amendment to the Media Act entered into force on 1/07/05, which provides that in criminal proceedings initiated by a natural or legal person other than the state, the court may choose not to hold an oral, public hearing only if these persons have explicitly waived their right thereto.

159. AUT / Schelling
AUT / Brugger

55193/00 and 76293/01
Judgments final on 10/02/2006 and on 26/04/2006

Last examined: 997-6.1

Absence of an oral hearing before the Administrative Court in 1999 and 2001 (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The Administrative Court Act 1985 provides for the possibility of reopening the proceedings at issue.

GM The facts in these cases occurred after the legislative reform of 1997 aimed at preventing similar violations (see Final Resolutions (97)405 in the case of Stallinger and Kuso and (98)59 in the case of Linsbod). However, the Austrian Government has indicated that the Administrative Court is to pay any just satisfaction awarded to the

applicant out of its own budget, a measure which could contribute towards preventing new, similar violations. Furthermore, a new administrative reform including the introduction of lower administrative courts is being discussed.
The judgments were automatically transmitted to the Presidency of the Administrative Court and are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS). A summary of ECtHR judgments and decisions concerning Austria is regularly disseminated widely to relevant Austrian authorities as well as Parliament and courts.

160. BEL / Cottin

48386/99 *Last examined: 1013 – 4.2*
Judgment final on 02/09/2005

Failure, in 1997, to respect the adversarial principle during the establishment of an expert medical opinion ordered in the framework of criminal proceedings against the applicant for assault (violation of Art. 6§1).

IM The penalty imposed on the applicant has been subject to limitation since 27/11/2001 and he can apply for "rehabilitation" to the Attorney General (Procureur du Roi), in accordance with the procedure provided in the Criminal Code. No further individual measure seems necessary.

GM An important reform of criminal procedure is under way in Belgium, involving a change to rules governing forensic opinions so that they are subject to the adversarial principle at all stages, except in the following four situations, in which to apply it would:

- obstruct the administration of evidence in the context of an investigation;
- represent a danger to persons;
- represent a threat to privacy; or
- where an application by a civil party to join criminal proceedings with a suit for damages appears inadmissible or where such civil party is unable to show legitimate justification for consulting the case-file.

It is for the prosecution, the examining magistrate or the trial judge to determine the conditions for establishing such opinion having regard to the rights of the defence and the requirements of the prosecution. The CM is awaiting information as to the progress in the adoption of this Bill.
The ECtHR's judgment has been disseminated to the appeal courts, to the Federal Prosecutor and to the Prosecutor before the Court of Cassation. The CM is expecting additional information concerning publication and dissemination to the Court of Cassation.

161. BEL / Goktepe

50372/99 *Last examined: 997-4.2*
Judgment final on 02/09/95

Unfairness of criminal proceedings against the applicant and two co-accused, lack of individual examination on the question of the extent of the applicant's guilt (existence of aggravating circumstances) (violation of Art. 6 § 1).

IM On 1/12/2007 a law allowing for the reopening of proceedings following a judgment of the ECtHR entered into force. The applicant, who is serving a 30-year prison sentence, can apply for reopening within six months of the law's entry into force.
From April 2006 onwards, the applicant was able to take periods of leave from prison. On 8/12/2006, he obtained an employment contract of indefinite duration, since 3/01/2007 he has enjoyed partial liberation status and since 30/05/07 he has been at liberty on license.

GM A group of judges is examining the ECtHR's judgment in the framework of an expert group on criminal procedure under the Collegium of Prosecutors General. The judgment was transmitted to the Collegium to be sent out to the country's appeal courts, to the Federal Prosecutor and to the Prosecutor at the Court of Cassation. Following the broad distribution of this judgment to courts, assize court presidents will examine the matter of individualising questions addressed to juries regarding objective aggravating circum-

stances. Examples of recent case-law have been requested.

A more general reform of procedures before assize courts is under consideration. Information is awaited concerning its progress.

162. BEL / Van Geyseghem and other similar cases

26103/95 *Last examined: 997-4.1*
Judgment final on 21/01/99 – Grand Chamber

Infringements of the right to legal assistance of their own choosing at different stages of criminal proceedings and of the right of access to a tribunal (applicants failing to appear and refusing to comply with warrants for their arrest) (violations of Art. 6§1 combined with Art. 6§3c)).

IM The Belgian authorities have pardoned Mr Stroek and Mr Goedhart, partly erasing the consequences of their convictions, declaring void the international arrest warrants taken out against them. The sentence imposed on Mrs. Van Geyseghem is time-barred. In the Pronk case, the applicant's sentence will be time-barred on 1/10/2008. Concerning the Stift case, on 11/05/1998, during the hearing before the Brussels Appeal Court, the applicant's lawyer indicated that the applicant was no longer in Belgium, because he was afraid of being arrested. His sentence shall be time-barred in 2008. On 1/12/2007 a law allowing for the reopening of proceedings entered into force (see Goktepe case).

GM The ECtHR's judgment in the Van Geyseghem case has been widely disseminated with a circular and the Court of Cassation has changed its case-law in 1999. The Code of Criminal Procedure had been amended in 2003, so that it is now established that a lawyer may represent his client under all circumstances and that anyone may lodge an appeal on points of law, even if they are not in prison in accordance with a sentence. No other general measure appears to be necessary.

163. BGR / Capital Bank AD

49429/99 *Last examined: 1013-4.2*
Judgment final on 24/02/2006

Unfairness of proceedings, resulting in the compulsory liquidation of the applicant bank in 2005, due to the fact that the domestic courts held themselves to be bound by the National Bank's finding of insolvency, without examining it on its merits, and that the applicant could not defend its position as it was represented by persons dependent on the other party to the proceedings (violations of Art. 6§1). Violation of the right to peaceful enjoyment of its possessions on account of the impossibility for the applicant bank, under the applicable law, to challenge the withdrawal of its licence (violation of Art. 1, Prot. No. 1).

IM The applicant bank was purchased by another bank which contracted to pay certain amounts to the creditors. Following the judgment of the ECtHR, three companies, which are shareholders in the Capital Bank initiated several sets of proceedings aimed at quashing the decisions resulting in its liquidation. The Supreme Administrative Court refused in 2006 to quash the decision of the National Bank withdrawing the applicant bank's licence and declared inadmissible the shareholders' complaint against the tacit refusal of the National Bank itself to reconsider the withdrawal of the applicant bank's licence. On the other hand, the Prosecutor General's office refused to request the reopening of the liquidation proceedings, noting, *inter alia,* that the bank's entire undertaking had been purchased by a third party of good faith. The Supreme Court of Cassation furthermore rejected on 12/04/2007 the request for reopening of the liquidation proceedings.

The applicants complained about this situation and the detailed information submitted is being assessed.

GM As regards the **lack of independent review of the withdrawal of the applicant bank's licence**, a new law on credit institutions entered into force on 1/01/2007 and provides the possibility of appealing such decisions before the Supreme Administrative Court.

As regards the **lack of independent representation of the applicant bank during the liquidation proceedings**, following a modification of the Bank Insolvency Act introduced in July 2006, shareholders owning more that 5% of the shares of a bank are entitled to participate in proceedings concerning its liquidation. However, the provision according to which only the special administrators appointed by the National Bank, the prosecutor and the representatives of the National Bank are allowed to appeal against the competent court's decision to initiate liquidation proceedings, remains unchanged. Contacts are under way concerning possible additional measures with regard to this issue.

The judgment of the ECtHR was published on the website of the Ministry of Justice. Confirmation is awaited of its dissemination to the National Bank and the competent courts.

164. BGR / Padalov

54784/00 *Last examined: 1013-4.1*
Judgment final on 10/11/2006

Unfair criminal proceedings in 1997 on account of the breach of the applicant's right to benefit from free legal aid (violation of Art. 6§§1 and 3 c).

IM The applicant was sentenced to more that 14 years' imprisonment as a result at the proceedings at issue. He was released following the ECtHR's judgment. Information is awaited on whether the Prosecutor General has requested the reopening of the trial.

GM The provisions of the Code of Criminal Procedure called into question by this case were modified subsequently to the relevant facts and now provide that free legal assistance must be granted if the accused cannot afford to instruct counsel and asks for a public defender to be assigned and the interest of justice requires such measure. The ECtHR's judgment has been published on the Ministry of Justice's website.

165. CZE / Chmelíř

64935/01 *Last examined: 1013-4.1*
Judgment final on 12/10/2005

Unfair criminal proceedings in 1999-2000 on account of the lack of objective impartiality of a High Court judge, who was at the same time defendant in another action brought against him by the applicant and who had imposed a severe fine on the applicant when the applicant asked for his withdrawal in the criminal proceedings (violation of Art. 6§1).

IM The reopening of the proceedings found by the ECtHR to be in violation of the ECHR is possible. Accordingly, on 27/02/2006 the applicant requested reopening of the proceedings relating to his initial constitutional complaint. The Constitutional Court is currently examining this request. Information is awaited on the outcome of this request.

GM The judgment of the ECtHR has been translated, published and sent out to national courts.

166. CZE / Mareš

1414/03 *Last examined: 1013-4.1*
Judgment final on 26/01/2007

Infringement of the right to a fair and adversarial trial before the Constitutional Court on account of the fact that the applicant did not receive a copy of the observations of the other parties to the proceedings as to the admissibility of his complaint (violation of Art. 6§1).

IM Before the Constitutional Court, the applicant complained about the alleged infringement of his constitutional rights in certain criminal proceedings brought against him, having led to

his conviction to a term of imprisonment and to a ban on the exercise of his professional activity as a police officer. In 2002, the applicant received presidential pardon for the term of imprisonment. In 2005, the Minister of Justice introduced an extraordinary appeal in the applicant's favour, which was rejected by the Supreme Court. The applicant lodged another constitutional complaint against the decision of the Supreme Court, which was pending when the ECtHR delivered its judgment. It should be noted that the applicant's criminal case was considered on the merits both before the first and the second instance courts and that he has not submitted so far any request concerning individual measures before the CM. However, information would be helpful as regards the applicant's present situation, in particular concerning the outcome of his latest constitutional complaint and the effectiveness of the ban on the exercise of his professional activity.

GM Relevant measures have been adopted – see the case of Milatová (judgment of 21/06/2005, closed with final resolution (2006)71).

167. CZE / Štefanec

75615/01
Judgment final on 18/10/06

Last examined: 1013-4.2

Lack of access to a tribunal since the Constitutional Court limited its consideration of the applicant's case to constitutional questions only (violation of Art. 6§1) and violation of freedom of expression on account of the unpredictability of the application of a law, whereby the applicant was fined for having organised a demonstration in 2000 (violation of Art. 10)

IM The ECtHR awarded the applicant just satisfaction in respect of the pecuniary damage sustained. No further individual measures seem to be needed.

GM As regards the lack of full judicial review, the provision at the origin of the violation has been annulled by the Constitutional Court. Moreover, the Czech Constitutional Court, in a judgment of 27/06/2001, decided to annul the whole administrative section of the Code of Civil Procedure, which subsequently underwent major reform. According to the new rules, which entered into force in 2003, applicants may request the annulment of a decision concerning an act of an administrative authority, if this decision prejudices them directly or violates their rights. This principle also applies to administrative decisions extinguishing a case.

Clarifications are still awaited on the functioning of the new appeal system.

As regards the violation of the applicant's freedom of expression, the judgment of the ECtHR was published on the website of the Ministry of Justice and sent out to the authorities concerned. Moreover, the Ministry of Justice is currently examining whether a legislative change is needed to the Right of Assembly Act.

The information provided in this respect is being assessed.

168. FIN / Mild and Virtanen

39481/98+
Judgment final on 26/10/2005

Last examined: 992-6.1

Lack of a fair trial, in 1996, on account of the impossibility, for the applicants, to examine witnesses against them (violation of Art. 6 §§ 1 and 3 (d)).

Case in principle closed on basis of available information – draft final resolution in preparation

IM According to the Code of Judicial Procedure, extraordinary appeals may be lodged against final decisions if, *inter alia*, "a procedural error has been committed which may have had an effect on the decision". This provision seems to allow the applicants to request the reopening of criminal proceedings found to violate the ECHR, if they wish to do so.

GM According to the new provisions of the Code of Judicial Procedure, as amended in 1997, if a person to be heard as a witness has already been convicted of the same offence in other pro-

ceedings, he/she cannot be considered as a witness. In this kind of situation, the provisions on the invitation, absence and hearing of a party apply, in so far as appropriate, also to that person. In this respect, the direct effect afforded by the Finnish courts to the ECtHR's case-law seems to be sufficient to prevent new similar violations. The judgment of the ECtHR has been published and it has been sent out to the relevant authorities.

169. FRA / Augusto

71665/01
Judgment final on 11/04/2007

Last examined: 1013-4.1

Unfair civil trial (violation of Art. 6§1) on account of the failure to communicate to the applicant the report by the doctor appointed by the CNITAAT (national tribunal for incapacity and the establishment of insurance for industrial accidents) in proceedings seeking in 1996 to obtain a retirement pension on the basis of her incapacity to work.

IM The necessity for specific individual measures is being assessed.

GM Subsequent to the facts of this case, legislative changes amended the proceedings before the CNITAAT. Now, the president in charge of the case may appoint one or several medical expert and copies of their reports must be sent to the parties.

170. FRA / Cazes

27413/95
Interim Resolution (99)31 of 18/01/99 under former Art. 32 of the ECHR;

Decision on just satisfaction of 14/02/00
Last examined: 992-1.1
Final Resolution (2007)40

Breach of the presumption of innocence in certain proceedings before the national commission for compensation in respect of detention on remand (*Commission nationale d'indemnisation en matière de détention provisoire*) (violation of Art. 6 §2)

Case closed by final resolution

GM The appeal forms were modified in order to make them more precise and prevent a repetition of violations similar to the one found in the present case. Furthermore, the law was modified in 2000 and now provides that the deliberations in respect of compensation for detention on remand have to be motivated and "take place in public audience except opposition of the applicant".

The Government of France is convinced, given the status of the ECHR and of the case-law of the ECtHR in domestic law, that the judges sitting on the Compensation Commission will, when considering applications for compensation for detention on remand, take account of the Strasbourg case-law in order to avoid further violations of Art. 6, paragraph 2.

171. FRA / Cabourdin and other similar cases

60796/00
Judgment final on 11/07/2006

Last examined: 1013-4.2

Unfairness of civil proceedings and disproportionate interference with the applicants' property rights on account of the retroactive application of a law to pending judicial proceedings, which had not been justified by compelling grounds of the general interest (violation of Art. 6§1 and 1, Prot. No. 1).

IM In some of these cases, the ECtHR held that the applicants had suffered a genuine opportunity loss and granted them just satisfaction in respect of all heads of damage taken together or in respect of pecuniary damage.

GM The ECtHR's judgment in the Vezon case was sent to the General Prosecutor of the

Court of Cassation as well as to the General Prosecutor of the Court of Appeal. The French authorities, and in particular the Ministry of Economy and Finance, are examining in detail the issue of the use of laws designed to legalise existing practices (*lois de validation*) and on measures necessary to avoid new violations. Information is awaited on the results of this examination and on the measures envisaged to avoid further violations.

172. FRA / Kress

39594/98
Judgment final on 07/06/01 – Grand Chamber and other similar cases

Last examined: 992-1.1

Final Resolution (2007)44

Lack of a fair trial due to the participation of the Government Commissioner in the deliberations of the *Conseil d'Etat*; (cases of Kress and Maisons Traditionnelles) excessive length of proceedings before administrative courts (violations of Art. 6§1)

Case closed by final resolution

IM The domestic proceedings are closed. Given the circumstances of these cases and the reasons put forward by the Court in support of its decisions on the just satisfaction, no specific individual measure seems necessary.

GM **On the participation of the Government Commissioner in the deliberations of the *Conseil d'Etat***: the Code of Administrative Justice was modified with effect as of 1/09/06.
According to the new provisions, the Government Commissioner will no longer intervene in deliberations in proceedings before courts and administrative courts of appeal.
In proceedings before the *Conseil d'Etat* it will be open to parties to request that the Commissioner does not take part in deliberations. Parties are informed of this right in the summons and if no such request is submitted, the Government Commissioner will be present at the deliberation in the interest of the consistency of administrative case-law and the greater legal security of the parties.

On the length of proceedings before administrative courts: Legislative and other measures have already been taken since 2002 (see Resolution (2005)63 in the case of Sapl). It should also be recalled that in the case of Broca and Texier-Micault (judgment of 21 October 2003), the ECtHR found that a remedy now exists in French law whereby a complaint may be lodged against the excessive length of proceedings before administrative courts.

173. FRA / SCM Scanner de l'Ouest Lyonnais and others

12106/03
Judgment final on 21/09/2007

Last examined: 1013-2

Infringement of the right to a fair trial (violation of Art. 6§1) on account of the enactment in 1997 of a law aimed at solving proceedings that were pending and of its application in a litigation between the applicant company and public authorities.

IM The Court recalled that it could not speculate on what the outcome of the proceedings might have been, if the violation had not taken place. In a spirit of fairness, it granted a sum to all the applicants jointly, in respect of all heads of prejudice.

GM Bilateral contacts are under way to determine what general measures might be taken. Confirmation is expected of the publication of the ECtHR's judgments and of its dissemination to the Constitutional Court, the Lyon Appeal Court and the Court of Cassation.

174. FRA / Tedesco

11950/02
Judgment final on 10/08/2007

Last examined: 1013-4.1

Infringement of the right to a fair hearing (violation of Art. 6§1) on account of the presence of both the Rapporteur and the Government Commissioner at the deliberations of the Regional Audit Commission of Alsace.

IM The ECtHR considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained. As regards the damage sustained on account of the fine imposed and to the payment of the deficit, the ECtHR considered it could not speculate as to the outcome of the proceedings had there not been a breach of the ECHR. Information is awaited on measures possibly envisaged regarding to the violation found, in order to ensure restitutio in integrum.

GM Laws of 2001 and 2002 provide that "when considering fines for *ultra vires* acts, the court deliberates in the absence of the Rapporteur" and that "the Government Commissioner may attend sittings of chambers and sections and make verbal observations. He may not take part in the deliberations".

175. **FRA / Vaudelle**

35683/97
Judgment final on 06/09/01, Interim Resolution (2005)1

Last examined: 992-6.1

Unfair criminal proceedings leading to the conviction in 1995 of an individual under temporary guardianship (curatelle), in absentia and without his guardian having been informed of these prosecutions (violation of Art. 6).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant has already served his sentence, has not applied for re-examination of his case, which was possible under French law, and has not requested any just satisfaction in respect of pecuniary damages which he was sentenced to pay. Accordingly, no individual measure appears to be needed.

GM A new law, modifying the legal protection of adults, was passed on 5/03/2007. It adds a new chapter to the Code of Criminal Procedure, concerning the conduct of pre-trial investigations and the trial of adults who are subject to legal protection (wards), including people in a situation similar to the applicant's. The new provisions explicitly provide that whenever proceedings are to be brought against a ward, the public prosecutor or investigating magistrate informs the guardian as well as the judge in charge of legal protection. The guardian may be informed of the whole file, under the same conditions as the accused, and is informed of any dismissal of charges, discharge, acquittal or conviction of his or her ward. The guardian is informed of the hearing date, and when heard by the court, participates as a witness. If there are plausible reasons to presume that the guardian is accomplice in the offence, and if there is no surrogate curator or guardian, the public prosecutor or the investigating magistrate asks the judge in charge of legal protection to appoint an ad hoc guardian. This also applies if the guardian is victim of the offence. In the absence of such appointment, the President of the High Court (tribunal de grande instance) appoints an ad hoc representative to assist the person in the criminal proceedings.
Before a judgment is delivered on the merits, the defendant is examined medically to assess whether he/she is criminally responsible.
The defendant is assisted by a lawyer. If the defendant or his or her guardian fails to designate one, the public prosecutor or the investigating magistrate asks the President of the Bar to appoint a lawyer, the defendant being informed that he or she will have to bear the costs unless entitled to legal aid.
It may be noted that in the *travaux préparatoires* of this law there is explicit reference to the Vaudelle judgment and to the necessity to avoid further similar findings of violations against France by the ECtHR.
In anticipation of the adoption of this law, the Vaudelle judgment has been published so that the courts, through direct application of the ECHR and of the ECtHR's case-law, are in a position to avoid new, similar violations.

176. **FRA / Yvon**

44962/98
Judgment final on 24/07/03

Last examined: 997-1.1
Final Resolution (2007)79

Infringement of the principle of equality of arms in that the Government Commissioner (a party to the proceedings to assess compensation for expropriation, defending the same interests that those of the expropriating authority – the state, in this case) had a privileged position in proceedings before the expropriations judge (violation of Art. 6§1)

Case closed by final resolution

IM After a detailed examination of the circumstances of the case, the CM concluded that the applicant did not appear to have undergone very serious negative consequences as a result of the violation and therefore the reopening of the proceedings at issue was not requested

GM From 9/06/04, the Court of Cassation held that some of the national provisions at issue in the Yvon case caused an imbalance incompatible with the principle of equality of arms to the advantage of the Government Commissioner, and that implementing them would breach Art. 6, paragraph 1, of the ECHR.

On 01/08/05 a decree entered into force, accompanied by a circular, providing that:

- the Government Commissioner's conclusions should set out the references to the elements upon which he relied to reach the proposed assessment;
- such conclusions, to be admissible, should be notified to the parties at least eight days before the site visit;
- the other parties might reply to the conclusions by a written note, until the day of the hearing;
- the judgment should indicate the reasons in law and in fact for granting any principal or secondary compensation, thus granting legal parity of treatment between the Government Commissioner's and the claimant's proposals;
- the judge might appoint another expert (or a solicitor – *notaire*), by a reasoned decision, when there is a special difficulty regarding the assessment;
- the possibility to appoint an expert is also extended at appeal level, by a motivated decision.

The government indicated that a further, broader reform of the law of expropriation was envisaged, which would however keep unchanged the procedural principles set out in the Decree of 13/05/05 in response to the ECtHR's judgment in Yvon.

177. **GEO / Donadze**

74644/01
Judgment final on 07/06/06

Last examined: 1013-4.2

Unfair civil proceedings on account of the lack of effective examination of the applicant's arguments by the domestic courts in 2000 (violation of Art. 6§1).

IM The ECtHR awarded the applicant just satisfaction covering, on an equitable basis, the global damages sustained and the applicant has expressed no further request for specific individual measures before the CM. Accordingly, such measures do not appear to be needed in this case. Nevertheless, as this case raises the issue of unfair proceedings in Georgia for the first time, information would be useful concerning whether, in Georgian law, it is possible to re-examine proceedings that have violated the ECHR, in accordance with Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the ECtHR.

GM Since the facts at the origin of this case, the judicial system has changed and a comprehensive reform is under way, in co-operation with the Council of Europe, to bring the Georgian judicial system fully in conformity with the requirements of the ECHR. This reform is planned to be completed in three to five years.

Awareness-raising and training activities for Georgian judges and prosecutors are envisaged in co-operation with the competent Council of Europe services.

Information is awaited about the current state of this reform and the possible provisions under the new system to guarantee the fairness of civil pro-

ceedings, specially those involving administrative entities.

Information is also awaited on the translation and publication of the judgment of the ECtHR and its dissemination to all relevant civil courts.

178. GRC / Platakou

38460/97
Judgment final on 06/09/01

Last examined: 992-6.1

Disproportionate constraint on the applicant's right of access to a court and absence of equality of arms in that her compensation claim for expropriation was declared time-barred although the delay was the result of an error by the official bailiff (violation of Art. 6§1); violation of the applicant's right to protection of her property on account of the disproportion between the compensation determined by the domestic courts and the value of the applicant's property (violation of Art. 1, Prot. No. 1)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR having awarded the applicant pecuniary damages equivalent to the difference between the valuation price of the property and the sum awarded by the domestic court, no further measure is considered necessary to restore her to her rights.

GM 1) The principle of equality of arms: in 2002, the Court of Cassation and the Council of State have expressly followed the ECtHR's case-law in their decisions. In 2006, a new law entered into force providing that in all cases where the state is involved, no judicial time-limit may run during court vacation periods either against the state or the other litigants, while those which have already started to run before the vacation will be suspended until the end of this period.

2) Other aspects of the violation of the applicant's right of access to a court: The judgment of the ECtHR has been translated, published and sent out to competent judicial authorities and to the bailiffs' confederation.

3) Inadequacy of compensation awarded by domestic courts: see the legislative and other measures adopted or under way in the framework of the execution of the case of Tsirikakis and other similar cases.

179. ITA / Dorigo

33286/96

Interim Resolution (99)258 of 15/04/99 (violation) under former Art. 32 of the ECHR,

Interim Resolutions (2002)30; (2004)13 and (2005)85)
Last examined: 997-1.1
Final Resolution (2007)83.

Unfairness of criminal proceedings on account of the impossibility for the applicant to question witnesses against him, or have them questioned (violation of Art. 6§1 in conjunction with Art. 6§3).

Case closed by final resolution

IM In the framework of the proceedings for review of sentence, brought by the applicant, in March 2006, the Bologna Appeal Court questioned the constitutional legitimacy of domestic law, in so far as it did not allow the reopening of proceedings on the basis of a finding of a violation by the ECtHR. Pending the Constitutional Court's decision, the Appeal Court decided to suspend the enforcement of the applicant's sentence, and he was provisionally released in March 2006.

Following proceedings initiated by the public prosecutor, challenging the lawfulness of the applicant's detention in the light of the violation found, on 1/01/06 the Court of Cassation ordered the unconditional release of the applicant and it confirmed the direct effect of the ECHR and insisted that machinery for the reopening of domestic proceedings was urgently needed. The Court of Cassation also stressed that the Constitutional Court had not yet answered the question put to it by the Bologna Appeal Court, and that this created a legal vacuum. In these circumstances and in view of Italy's prolonged inaction – despite

the interim resolutions adopted by the Committee of Ministers and the persistent violations of Art. 46 of the ECHR – it ruled that the detention of the applicant, who had been convicted in unfair judicial proceedings, was unlawful.

In view of the Court of Cassation's decision, the applicant now has several new remedies which he can use to obtain compensation for his unlawful detention, and secure deletion of the conviction from his criminal record.

GM See Resolution (2005)86 in the Lucà case.

180. **ITA / F.C.B.**

12151/86
Judgment final on 28/08/91

Resolution (93)6 and Interim Resolution (2002)30

ITA / Sejdovic and other similar cases

56581/00
Judgment final on 01/03/2006 – Grand Chamber

Last examined: 1013-4.2

Unfairness of criminal proceedings by which the applicants were sentenced in absentia to several years' imprisonment although it had not been shown that the applicants had been willfully absconded or renounced to their right to attend the hearings (violations of Art. 6§§1 and 3).

IM 1) F.C.B.: the applicant was sentenced in 1984 to 24 years' imprisonment. In 1993, the CM adopted Resolution (93)6, putting an end to its examination of the case on the basis of the general measures taken. However, in 1999, it decided to resume its examination, the Italian authorities having requested the extradition of the applicant from Greece with a view to enforcing the conviction of 1984. In September 2000, this request was dropped. In 2004 the applicant was arrested in Italy for other offences and the Italian authorities issued an enforcement order in respect of the conviction of 1984. In 2005, the Court of Cassation referred the question of the legitimacy of the enforcement order back to the Milan Appeal Court, emphasising the need to revise the order in the light of the ECtHR's finding of a violation. On 30/01/2006, the Milan Appeal Court decided not to revise the enforcement order and the matter was once more brought before the Court of Cassation, which dismissed the appeal on 15/11/2006.

2) Sejdovic: in 1999, the applicant was arrested in Germany but extradition was denied on the ground that Italian law did not provide sufficient guarantees concerning reopening of his trial. The applicant was freed. In 2006, the Italian authorities revoked the international warrant against him and the judgment of the ECtHR was noted in his criminal record. Opinions diverge as to the formalities needed to authorise the applicant's counsel to receive payment of the just satisfaction.

3) Hu: In 1983, the applicant was arrested at Amsterdam airport under a warrant issued by the Italian authorities. The Netherlands authorities rejected the application for extradition on the ground that the applicant had not had the opportunity to defend himself. On the date of the ECtHR's judgment, the applicant was living in the Netherlands.

4) Ay Ali: In 2000, the applicant was arrested in Lithuania and extradited to Italy. He applied for suspension of the time-limit for appeal against his sentence but the Court of Cassation rejected this request by a final judgment on 4/12/2004.

5) Zunic: In 2002, the applicant was arrested in Croatia and extradited to Italy. He has brought several appeals against his conviction, but these were all denied. The decision of the Court of Cassation, seised of the case, is not known.

6) Kollcaku: the applicant was arrested in Rome in 2003; his objection to enforcement was denied.

Information is awaited on the outcome of the applicants' various requests to have a fresh judicial determination of the validity of the charges laid against them, both in fact and in law. Information is awaited on case-law indicating that a remedy is in fact available to the applicants in the present cases and on the introduction of a right to reopen criminal proceedings which have violated the ECHR.

GM 1) *Legislative measures*: in 1989, Italy adopted a new Code of Criminal Procedure (CCP) improving the guarantees in case of in absentia proceedings (see Resolution (93)6). In 2004, in the Sejdovic case, the ECtHR found however that this measure was insufficient. In

2005, Italy amended again the CPP, making it possible to appeal against judgments rendered in absentia at first instance even if the normal deadlines have expired at the request of the person concerned, except where the accused has had "effective knowledge" of the proceedings against him or of the judgment but has willfully decided not to appear or to appeal. The ECtHR considered that it was premature in the absence of any domestic case-law, to pronounce itself on this reform.

2) *Jurisprudential measures*: the Court of Cassation, in a decision of 3/10/06, applied retroactively the law of 2005 to an "old" case (Somogyi, ECHR judgment of 18/05/2004), thus reaffirming the direct effect of the ECHR and the case-law of the ECtHR in Italian law, not least in respect of judgments having the status of res judicata. The Court of Cassation was furthermore seised of an objection to enforcement by the applicant in the F.C.B. case but this appeal was rejected on 15/11/2006. Information is awaited on the development of this new case-law.

3) *Recent legislative initiatives*: On 16/05/2007, the government submitted a draft law aiming at adapting the rules on in absentia procedure to the requirements of the ECHR. Reopening of criminal proceedings following violations of the ECHR is still not possible in Italy. The Constitutional Court has however been seised of the matter (in the Dorigo case) and, on 18/09/2007, a new draft law (applicable only to violations of Art. 6§3) was submitted to introduce such reopening into the Italian judicial system.

181. ITA / Rojas Morales

39676/98
Judgment final on 16/02/01

Last examined: 1013-6.1

Lack of impartiality of a first-instance criminal court in 1996 because of the judges' previous involvement in proceedings against a co-accused of the applicant and during which the responsibility of the applicant had been assessed (violation of Art. 6§1)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant will complete his sentence in 2012 and reopening of proceedings following a judgment of the ECtHR finding a violation of the ECHR is still not available in Italian law.

As the appeal court judgment in the proceedings at issue was not found to be unfair, it does not appear that the violation found by the ECtHR was caused by procedural errors or defects of sufficient gravity to cast a serious doubt on the outcome of the domestic criminal proceedings. Thus the conditions required by Recommendation Rec(2000)2 for reopening do not appear to have been met in this case. Furthermore, the Italian authorities indicated that the applicant had never manifested any request for reopening of the criminal proceedings at issue, or brought any other form of action before the national courts on the basis of the ECtHR's findings.

Finally, the ECtHR granted the applicant a sum in respect of "genuine loss of opportunity" and "certain moral harm".

GM The Constitutional Court, in 1996, declared the unconstitutionality of the provision of the Code of Criminal Procedure at the origin of the violation in this case. This constitutional decision is set out in a footnote linked to the relevant article of the Code. The ECtHR's judgment has been sent out to all criminal courts and published.

182. MDA / Bujnita

36492/02
Judgment final on 16/04/2007

Last examined: 1013-4.1

Violation of the applicant's right to a fair trial in criminal proceedings, due to the quashing in 2001 of a final judicial decision acquitting him on a rape charge. The decision favourable to the applicant was quashed at the request of the Deputy Prosecutor General (violation of Art. 6§1).

IM The ECtHR considered that the most appropriate form of redress would be the authorities' confirmation of the applicant's final acquittal of 2001 and the erasure of his conviction with effect from that date.

Information is thus awaited on the measures taken to this effect.

GM The provision authorising the Deputy Prosecutor General's action was repealed in 2003 with the entry into force of the new Code of Criminal Procedure.

183. NLD / Bocos-Cuesta

54789/00 *Last examined: 997-6.1*
Judgment final on 10/02/2006

Unfairness of criminal proceedings in that the applicant had no proper or adequate opportunity to challenge certain witness statements of a decisive importance for his conviction given by minors (violation of Art. 6§1 taken together with Art. 6§3)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant was released by the Court of Appeal before he was convicted. The ECtHR considered that national law allowed adequate redress through the procedure of revision of a final judgment (reopening).

GM Since 1/10/2006, the Netherlands police have been making audiovisual recordings of interviews with persons under 16, under certain conditions (nature of the crime, damages inflicted to the victim, maximum penalty provided).

In addition, the judgment of the ECtHR has been published in several legal journals in the Netherlands. Given the direct effect of ECtHR's judgments in the Netherlands, all authorities concerned are expected to align their practice to the present judgment.

184. POL / Brudnicka and others

54723/00 *Last examined: 1013-4.2*
Judgment final on 03/06/05

Lack of independence and impartiality of the Maritime Disputes Appeals Chamber taking into account that no judicial review of its decisions was possible under Polish law and as its presidents and vice-presidents were hierarchically subordinated to the Minister of Justice and the Minister for Maritime Affairs (violation of Art. 6§1).

IM The proceedings brought by the applicants, concerning a shipwreck in which relatives of the applicants had died, resulted in 1999 in a final decision attributing responsibility to the crew. According to the Polish authorities, the applicants may bring actions in compensation for pecuniary and non-pecuniary damages before the ordinary courts, which will also examine the question of the crew members' liability. Accordingly, seven cases arising out of this shipwreck are currently pending. Information is awaited concerning their progress.

GM The Polish authorities indicated that legislative modifications were envisaged, taking into account also the adoption of new EU legislation concerning maritime transport accident investigations. These modifications will guarantee Presidents and Vice-Presidents the same security of tenure as that enjoyed by ordinary judges and will introduce the possibility of judicial review (new proceedings or a normal appeal) of all Maritime Chamber decisions. The legislative work entails the adoption of a new law on maritime courts and the amendment of the Sea Code, the Maritime Safety Law and the Law on Ordinary Courts. The new legislation was expected to be adopted before the end of July 2007. Information is expected on the progress of these reforms.

185. ROM / Buzescu

61302/00 *Last examined: 997-6.1*
Judgment final on 24/08/2005

Unfairness of certain proceedings whereby the applicant contested the annulment by the Romanian Union of Lawyers (UAR), in 1996, of a previous decision reinstating him as a member of the Constanța Bar Association (violation of Art. 6§1). Disproportionate interference with the applicant's property rights as a result of the annulment of his registration as a lawyer, involving the loss of his clients (violation of Art. 1, Prot. No. 1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM No measure is required: the ECtHR compensated the applicant for the pecuniary and non-pecuniary damage incurred. Already before the Court's judgment, on 14/02/2004, the Council of the UAR had decided to set aside its 1996 decision. The applicant has been permanently registered as a lawyer and member of the Bucharest Bar since 01/12/2004.

GM The Legal Profession Act was amended in March 2001 and it sets now explicitly the competence of the Council of the UAR to examine the lawfulness of Bar decisions and to annul them on grounds of illegality.

The judgment of the ECtHR was translated, published and sent to the Constanța Bar Association, Bucharest Bar Association and Romanian Union of Lawyers to be disseminated to all Bar Associations.

186. ROM / Grecu

75101/01
Judgment final on 28/02/2007

Last examined: 1013-4.1

Impossibility for the applicant to contest, before a competent and independent court, an order by the prosecutor, in 1985, and to obtain the restitution of seized currencies; unfairness of the criminal proceedings and violation of the right to a double degree of criminal jurisdiction (violations of Art. 6§1 and Art. 2§1, Prot. No. 7).

IM The ECtHR considered that it could not speculate on what the outcome of the proceedings would have been, had they been fair. Accordingly, it did not order the restitution to the applicant of the sums seized. The ECtHR deemed however that the applicant had suffered a real loss of opportunity and awarded him a global sum, covering all damages. Clarification is awaited as to whether the applicant may request reopening of the proceedings at issue.

GM See Vasilescu case.

187. ROM / Vasilescu

27053/95
Judgment final on 22/05/98
Last examined: 997-1.1

Interim Resolution (99)676
Final Resolution (2007)94

Impossibility for the applicant to have access to an independent tribunal competent to order the return of valuables unlawfully seized by the militia in 1966; unjustified quashing of final court decisions ordering the return of the valuables (violations of Art. 6§1 and of Art. 1, Prot. No. 1)

Case closed by final resolution

IM The government has compensated the applicant party for the value of the unlawfully seized valuables as ordered by the ECtHR as a just satisfaction. Accordingly, no further measure is needed.

GM Case-law change

The Constitutional Court already in 1997 rectified the problem at the origin of the violation to a great extent by interpreting the Code of Criminal Procedure so as to provide a judicial appeal against the acts of prosecutors (see IR(99)676). Judicial practice has subsequently changed and, as a result, appeals against prosecutors' acts are now accepted by courts.

Subsequent legislative change

These developments were codified when the Code of Criminal Procedure was amended in 2003 to explicitly allow judicial recourse against

seizure measures adopted during the criminal investigations.
The problem of the unjustified quashing of final court decisions has been dealt with mainly in the context of the Brumarescu group of cases where it has been noted that the Code of Civil Procedure was also amended in 2004 and, accordingly, it is no longer possible to annul final judicial decisions at any moment.

The judgment has been published and widely disseminated.

188. RUS / Vanyan and other similar cases

53203/99
Judgment final on 15/03/2006

Last examined: 1013-4.2

Breach of the principle of equality of arms on account of failure to summon the accused in criminal supervisory-review proceedings (violation of Art. 6§1 or in conjunction with Art. 6§3c); In the Vanyan case, unfairness of the criminal proceedings against the applicant in that he was convicted of drug-dealing whilst the commission of the offence had been procured by undercover agents of the state and in the absence of any other element suggesting the applicant's guilt (violation of Art. 6§1).

IM The applicants are entitled to apply for reopening of proceedings impugned by the judgments of the ECtHR. No claim in this respect has been lodged by them.

GM As regards the **gathering of evidence through undercover agents,** the Operational-Search Activities Act was amended in 1999 so that some investigation techniques (e.g. telephone tapping) can no longer be used except only upon a court order and under specific conditions. However, this principle based on a court order does not apply to the use of undercover agents. Information is awaited on the measures envisaged or taken to ensure that the use of undercover agents complies with the ECHR requirements. The authorities' attention was drawn to the experience of other countries which have taken measures to comply with judgments of the ECtHR (see e.g. Resolution (2001)12 in the case of Texeira Castro against Portugal).

As regards **the supervisory review procedure**, the Code of Criminal Procedure of 2001 prohibited the initiation of supervisory-review procedures to the detriment of the convicted person. Consequently, since the situation of the convicted person cannot be aggravated, the Code left to the supervisory-review courts' discretion the issue of whether or not the convicted person and his/her counsel should be notified of the hearing, unless explicitly requested by them.

These provisions were later declared unconstitutional by the Constitutional Court. Information is thus awaited on the possible reforms in order to implement the judgment of the Constitutional Court.

189. SUI / Contardi
SUI / Spang

7020/02 and 45228/99
judgments final on 12/10/05 and on 11/01/06

Last examined: 1007-1.1
Final Resolution (2007)132

Unfairness of certain proceedings concerning civil rights and obligations before the administrative courts (Federal Insurance Court) on account of the failure to disclose some documents to the applicants with the consequence that they could not reply (violation of Art. 6§1)

Case closed by final resolution

IM Under Swiss administrative law the applicants may request reopening of domestic proceedings following the ECtHR's judgment.

GM The principles reaffirmed by the ECtHR in these judgments have been explicitly incorporated into Swiss law by judgments of the Federal Court of 28/12/05 and of 3/04/06 demonstrating the direct effect of the ECtHR's judgments.

The judgments of the ECtHR were published, sent out to the authorities directly concerned and brought to the attention of the Cantons via a circular.

190. TUR / Hulki Güneş and other similar cases

28490/95
Judgment final on 19/09/2003

Interim Resolutions (2005)113; (2007)26
Last examined: 1013-4.3

Unfairness of criminal proceedings and ill-treatment of the applicants while in police custody. In some cases, lack of independence and impartiality of state security courts; excessive length of criminal proceedings; absence of an effective remedy (violations of Art. 6 §§ 1 and 3, 3 and 13).

IM The applicants continue to serve their sentence, as the current provisions on reopening of criminal proceedings, which entered into force in 2003, are not applicable to their cases. In the case of Hulki Guneş, the applicant's petition challenging the constitutionality of the Code's provisions on account of the discriminatory character of their scope of application was rejected twice in 2003 (before the incorporation of human rights treaties into Turkish law through Article 90 of the Constitution).

Given the absence of progress in the implementation of the judgment in the case of Hulki Guneş, the Chairman of the CM addressed the CM's concerns to the Minister of Foreign Affairs of Turkey on 21/02/2005 and on 12/04/2006. The Committee furthermore adopted two interim resolutions, respectively in November 2005 (IR (2005)113) and in April 2007 (IR (2007)26) calling upon the Turkish authorities without further delay to redress the violations found in respect of the applicant and strongly urging them to remove the legal lacuna preventing the reopening of proceedings.

GM Relevant general measures have been taken and/or are supervised in the context of other cases (see e.g. Final Resolution (99)555 in the Çıraklar case) and cases regarding actions of the Turkish Security Forces (Aksoy group of cases).

191. TUR / Oçalan

46221/99,
Judgment final on 12/05/05
– Grand Chamber

Last examined: 987 – 1.1
Final Resolution (2007)1

Shortcomings concerning the applicant's custody and the proceedings leading to his sentencing to death in December 1999: failure to present the applicant promptly before a judge following his arrest (violation of Art. 5§3); Lack of remedy before a court to contest the lawfulness of the continued police custody (violation of Art. 5§4); Lack of independence and impartiality of the State Security Court due to the presence of a military judge during part of the proceedings; unfairness of the proceedings due to the lack of time and facilities to prepare the defence and restrictions on legal assistance (violations of Art. 6); Inhuman treatment on account of the applicant's sentencing to death following unfair proceedings (substantial violation of Art. 3).

Case closed by final resolution

IM The death penalty was abolished in Turkey in 2002, Shortly after, in accordance with the new law, the Turkish courts transformed the applicant's death sentence into life imprisonment.

As regards the erasure of the other consequences of the unfair trial, the ECtHR provided certain indications in its judgment regarding the relevance of a reopening or a re-examination of the procedure by the domestic courts. In July 2006, considering notably the binding nature of the ECtHR's judgment and the new Article 90 of the Constitution, acknowledging the direct applicability of Human Rights Treaties, the Turkish courts decided to examine the merits of the applicant's request for a retrial notwithstanding the restrictions in this respect laid down in the relevant law. The request was finally rejected in 2006 as devoid of merit, as the domestic court concluded that the violations established by the ECtHR could not change the applicant's conviction and that his sub-

missions before it were unsubstantiated, having regard to the nature of the crime and the evidence in the case file (including the applicant's confessions).

GM 1) **Failure to bring the applicant promptly before a judge after his arrest**: the new Turkish Code of Criminal Procedure (2005) provides a right for detainees to see a judge within 24 hours in regular cases and 3 days in exceptional cases, the prosecutor's extension decision being subject to an appeal to the courts.

2) **Lack of a remedy to contest before a court the lawfulness of continued detention in police custody**: the new Turkish Code of Criminal Procedure (2005) provides for such a remedy.

3) **Independence and impartiality of state security courts**: the presence of military judges was abolished by law in 1999. Subsequently, state security courts were abolished following the constitutional amendments of May 2004.

4) **Unfairness of the trial due to inadequate time and facilities for preparation of defence and restriction on legal assistance**: the new Code of Criminal Procedure (2005) introduced new provisions to guarantee defence rights.

5) **Imposition of the death penalty following an unfair trial, amounting to inhuman treatment:** the death penalty in peacetime was abolished by law in 2002. In 2003,Turkey ratified Prot. No. 6 concerning the abolition of death penalty and, in 2006, Prot. No. 13 concerning the abolition of death penalty in all circumstances.

The judgment of the ECtHR was translated and published.

192. UKR / Salov and other similar cases

65518/01 *Last examined: 1013-4.3*
Judgment final on 6/12/05

Delay in the judicial review of the lawfulness of the applicant's arrest in 1999 (violation of Art. 5§3), numerous violations of the applicant's right to a fair trial notably due to structural problems regarding judicial independence and impartiality and non-respect of requirements of legal certainty because of the use in 2000 of supervisory review to set aside a final procedural decision remitting the case for additional investigation (protest) (violation of Art. 6§1); furthermore a violation of freedom of expression in the Salov case because of a criminal conviction for interference with the citizens' right to vote as a result of the distribution of 8 copies of a forged newspaper article in the context of the presidential election campaign in 1999 (violation of Art. 10).

IM In one of the cases, (Salov), in addition to the just satisfaction awarded by the ECtHR covering the fine paid and the costs for renewing the applicant's license as a lawyer, his conviction has been struck out of his criminal record thus annulling the legal effects of the conviction. In another case (Savinsky), the applicant never served any sentence as a result of the adoption of an amnesty law in 2000.

GM As to the ***violations of Article 6§1***, legal certainty is henceforth ensured as supervisory review has been abolished in criminal procedure since June 2001.

As to the independence of judiciary, draft laws on the status of judges and on judiciary were submitted to Parliament on 27/12/2006. The Venice Commission issued on 20/03/07 an opinion (No. 401/2006) on the drafts stating that their fundamental provisions are in line with European standards and that they are a clear improvement compared to both the present situation and previous drafts. In order to improve financing of judiciary, a number of legislative initiatives have also been taken.

The CM is awaiting information on the progress in the adoption of relevant measures.

As to the ***violation of Article 5§3***, following the amendments of 21/06/01 to the Code of Criminal Procedure the power to remand in custody has been transferred from prosecutor's offices to the courts.

As to the ***violation of Article 10*** publication and dissemination of the ECtHR's judgment has taken place to draw the attention of prosecutors and courts to the requirements of the ECHR. Information on special training and awareness raising measures would nevertheless be useful.

The judgments were translated and published on the Ministry of Justice's official website and in the Official Gazette. Summary of the Salov judgment was also distributed to all Ukrainian courts and

the attention of the Supreme Court was drawn to the violation found.

193. UKR / Sovtransavto Holding and other similar cases

48553/99
Judgment final on 06/11/02 (merits) and on 24/03/04 (just satisfaction)

Interim Resolution (2004)14

Last examined: 1013-4.3

Non-respect of final character of judgments, interference by the executive in pending court proceedings, unfairness of proceedings (violation of Art. 6§1), resulting violation of the applicants' property rights (violation of Art. 1, Prot. No. 1).

IM Following the judgment of the ECtHR in the Sovtransavto Holding case, in 2005 the Ukrainian court partially granted the claim of the applicant company's legal successor and awarded compensation in respect of pecuniary damage. No further individual measure seems necessary in the other cases as all applicants have been granted just satisfaction covering pecuniary and non-pecuniary damages sustained.

GM On 11/04/2004 the CM adopted Interim Resolution (2004)14 taking stock of the measures adopted so far and pointing out the outstanding questions.

Subsequently, as regards the **Executive's repeated interferences with judicial proceedings**, the Ukrainian authorities indicated that the independence of the judicial power is guaranteed by the current legislation and the Constitution. Draft laws amending the laws *On Judiciary* and *On the Status of Judges* have also been prepared to enhance judicial independence in various aspects. In order to improve financing of judiciary, a number of legislative initiatives have been taken. Information is awaited on further developments related to these drafts laws, and in particular on the timetable envisaged for their adoption.

The **supervisory review** ("protest") procedure was abolished in June 2001.

The new Code of Civil Procedure in force since 01/09/2005 also abolished the prosecutors' power to request revision of final judgments in civil cases. Clarifications are expected concerning the Code of Commercial Procedure of 1991, which seems still to allow prosecutors to request revision of final judgments.

In this respect, the Ukrainian authorities indicated that in 2006 a new draft Code of Commercial Procedure was submitted to Parliament. More details are expected on the concrete provisions of this draft code governing prosecutors' participation in the proceedings.

The authorities provided comprehensive information on **training of judges and prosecutors**. With regard to plans to transform the Judges' Academy into a school for magistrates, the relevant amendments have been proposed in the mentioned draft law on the Status of Judges.

All the judgments of the ECtHR have been translated into Ukrainian and placed on the Ministry of Justice's official website. In addition, circulars on particular judgment were sent to the Academy of Judges of Ukraine, the Institute of Legislation of the Parliament and the Academy of Prosecutors of Ukraine.

194. UK / Edwards and Lewis

39647/98
Judgment final on 27/10/04 – Grand Chamber

Last examined: 1007-4.1

Unfair criminal proceedings, due to two judicial decisions (of 1995 and 1996) to withhold certain evidence from the defence in violation of the principle of equality of arms and without adequately protecting the interest of the accused (violations of Art. 6§1).

IM Neither of the applicants is still detained. Mr Lewis' appeal against his conviction, filed after the ECtHR's judgment, was dismissed in 2005 by the Court of Appeal. A further application to the ECtHR was also rejected. He then applied to the Criminal Cases Review Commission (CCRC) to have his case referred to the Court of Appeal but this request was also rejected on 28/02/2007. On 14/08/2007 a single judge of the High Court refused to grant permission for the judicial review

of this decision. The applicant has renewed his application for a hearing before the full court, arguing in particular that the domestic courts have failed to give due effect to the judgment of the ECtHR.
In view of the concerns raised, information was requested as to the outcome of the judicial review application in the case of Mr Edwards. The information provided by the authorities is being assessed.

GM In a decision of 2004, the House of Lords considered the question of whether the procedures for dealing with claims for public interest immunity made on behalf of the prosecution in criminal proceedings were compliant with Art. 6 ECHR.
As regards the **disclosure of sensitive evidence**, the House of Lords set out a number of general guiding principles on disclosure and the procedure which must be followed when a court is faced with an application to withhold sensitive material from the defence. The principles were summarised in a Guidance issued in 2004 and circulated among lawyers, caseworkers and prosecutors. The principles were later included in the Crown Prosecution Service's Disclosure Manual issued in April 2005 and the disclosure regime was also amended in 2003: the new test requires initial and continuing prosecution disclosure of any previously undisclosed material "which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused". The new edition of the Crown Prosecution Service's Disclosure Manual (issued in April 2005) supersedes all previous guidance. Along other things it clearly sets out when the prosecutor's statutory duty to disclose is triggered and the importance of scrupulously observing that duty, and sets out the consequences of failure to do so.

The appointment of a **special independent counsel** in certain criminal trials is possible, if needed, on an exceptional basis.

195. UK / Murray John and other similar cases

18731/91
judgment of 08/02/96
Interim Resolution (2000)26

Interim Resolution (2002)85
Last examined: 997-6.1

Unfairness of criminal proceedings on account of the infringement of the right to silence, the right not to incriminate oneself and denial of access to legal advice during the first 48 hours of detention, in combination with the provisions in national law whereby the choice of the accused to remain silent could result in a court or a jury drawing unfavourable conclusions (violation of Art. 6§3c alone or combined with Art. 6§1).

Cases in principle closed on basis of available information – draft final resolution in preparation

IM In the Magee, Averill and John Murray cases, the ECtHR held that the finding of a violation of the ECHR in itself constituted sufficient just satisfaction. In the Kevin Murray and Quinn cases, the applicants were awarded just satisfaction in respect of non-pecuniary damages. It should be noted that in the Quinn, Averill, John Murray and Kevin Murray cases, there was no violation of Art. 6§1 with respect to the courts' drawing of adverse inferences from the silence of the accused, given the safeguards in place and the weight of the evidence against the accused in the particular cases. In the Magee case, there was a violation of Art. 6§1 in conjunction with Art. 6§3 (c), as regards denial of access to a solicitor. It should be recalled that the incriminating statements made by the applicant within the first 24 hours of detention and before being granted access to a solicitor became the central platform of the prosecution's case. The applicant was convicted and sentenced to 20 years' imprisonment. Referring to the judgment of the ECtHR, the Court of Appeal quashed the applicant's conviction on 06/04/2001.

GM A number of interim measures (*inter alia*, guidance issued to police officers and prosecutors) were taken to avoid putting suspects in the situations criticised by the ECtHR and the CM: see Interim Resolutions (2000)26 and (2002)85, concerning all the cases above and strongly encouraging the authorities to ensure the rapid entry into force of the amendments to the Youth Justice and Criminal Evidence Act 1999 and the

Criminal Evidence (Northern Ireland) Order 1999.
As to England and Wales, the relevant provision came into force on 01/04/2003 and sets out that provisions of a previous law permitting a court to draw inferences from the silence of an accused do not apply where the accused was at an authorised place of detention and where the accused did not have prior access to legal advice.

As to Northern Ireland, most of the Criminal Evidence (Northern Ireland) Order 1999 was brought into force between 2000 and 2003.The relevant provision came into force on 07/02/2007.

196. **UK / Shannon**

6563/03
Judgment final on 04/01/2006

Last examined: 997-6.1

Unfairness of criminal proceedings in 1999 on account of the breach of the right not to incriminate oneself on ground of the requirement for the applicant to attend an interview with financial investigators and to be compelled to answer questions in connection with events in respect of which he had already been charged with offences (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded the applicant a sum in respect of pecuniary and non-pecuniary damage. He may apply to the Criminal Cases Review Commission for a review of his conviction, if he wishes.

GM The general measures adopted in accordance with the action plan presented by the United Kingdom on 26/10/2006 may be summarised as follows: the relevant Northern Ireland legislation was amended, with effect from 14/04/2000, to permit use of statements only if they are adduced, or if they are the subject of questions at trial, by the defence.

An interdepartmental legislative review was also made in 2007, leading to the conclusion that no further legislative measure was needed.

197. **UK / T.**
UK / V.

24724/94 and 24888/94
judgments of 16/12/99

Last examined: 1007-1.1
Final Resolution (2007)134

Unfair trial, the applicants (10 years old at the material time) having been unable "to participate effectively in the criminal proceedings against them" (violation of Art. 6§1) and violation of the right to an independent tribunal because the tariff, in sentences "during Her Majesty's pleasure", was set by the Home Secretary (violation of Art. 6, paragraph 1); violation of the right to have the lawfulness of one's detention reviewed by a court (violation of Art. 5§4)

Case closed by final resolution

IM Although reopening of proceedings was in principle possible under the law of England and Wales, this avenue was not explored: the applicants and their representatives stated that they did not intend to request reopening.
It is furthermore recalled that the Home Secretary, exercising the special powers he had at the time, increased the tariffs – the compulsory part of the sentence – to 15 years. This decision was quashed and, following the ECtHR's judgment, the Home Secretary accepted the original tariffs of 8 years set by the judge. These tariffs expired in November 2000.

GM **As regards the trial**: On 16/02/00, the Lord Chief of Justice issued a Practice Direction which deals with the criticism made by the ECtHR in relation to the trial of children and young persons before the Crown Court.
The Practice Direction sets out the following principle: "The trial process should not itself expose the young defendant to avoidable intimidation, humiliation and distress. All possible steps should be taken to assist the young defend-

ant to understand and participate in the proceedings".
It also sets out recommendations to this end to be followed before the trial, in particular at the plea and directions hearing, and during the trial itself. Moreover, in the event that similar facts were to arise, the Human Rights Act 1998 would require the competent judicial authorities to take duly into account the considerations found to be decisive by the ECtHR in the present cases.
As regards the tariff setting aspect: The Home Secretary no longer sets the tariff for juveniles convicted of murder and sentenced to detention "during Her Majesty's pleasure" under the Powers of Criminal Courts (Sentencing) Act 2000. In response to the T. and V. judgments, the government enacted section 82A of the Powers of Criminal Courts (Sentencing) Act 2000, which provides judicial determination of the minimum term to be served by those under 18 years old with a life sentence, with effect from 30/11/00.

In addition, the Home Secretary invited the Lord Chief Justice to review the minimum terms imposed by the Home Secretary on young offenders convicted of murder who were still in custody. The Lord Chief Justice issued a Practice Statement on 27/07/00 agreeing to review all such tariffs, and the Home Secretary agreed that all tariffs announced for both new and existing cases before section 82A came into force would be set in accordance with the Lord Chief Justice's recommendation.

Section 82A was replaced on 18/12/03 with section 269 of the Criminal Justice Act 2003, which provides judicial determination of the minimum term for a mandatory life sentence for all offenders, whether children or adults.

198. **UK / Whitfield and others**

46387/99+
Judgment final on 12/07/2005

Last examined: 997-6.1

Lack of independence and impartiality in disciplinary proceedings against the applicants while serving prison sentences, in 1998 and 1999 (violations of Art. 6§1) and lack of legal representation during these proceedings (violation of Art. 6§3c).

Case in principle closed on basis of available information – draft final resolution in preparation

IM All the applicants have been released after serving their sentences. In addition, the fourth applicant's disciplinary punishment was quashed by the Secretary of State. Given the applicants' release and other particular circumstances of the case, no specific measure would appear necessary.

GM As regards the **lack of independence and impartiality** in disciplinary proceedings, the new Prison (Amendment) Rules 2002, in force since 15/08/2002, provide that in serious prison disciplinary cases where prisoners risk a penalty of additional days' detention, the case is referred by the prison governor to an adjudicator approved by the Secretary of State, who inquires into the charge. Thus structural independence between prosecution and adjudication in such proceedings is assured, as prescribed by the ECtHR.
As regards the **lack of legal representation**, measures were taken in the framework of the execution of the case of Ezeh and Connors.
The judgment of the ECtHR has been published.

E.5. Non-respect of final character of court judgments

199. **BGR / Kehaya and others**

47797/99
Judgment final on 12/04/06 (merits)

and on 14/09/2007 (Art. 41)
Last examined: 1013-4.2

Quashing in 2000 by the Supreme Court of Cassation of a final judgment of 1996 ordering restitution of certain plots of land and resulting violation of the applicants' property rights (violation of Art. 6§1 and Art. 1, Prot. No. 1).

IM The ECtHR held that the respondent state was to return to the applicants, by 14/12/2007, the ownership and possession of the land at issue. Failing to such restitution, the respondent state

was to pay the applicants pecuniary damages. Information is awaited on the execution of the judgment on Art. 41. On 15/12/2007 the government informed the CM that the just satisfaction had not yet been paid to the applicants as these preferred restitution of the property in question and since steps had been taken to heed this request.

GM According to the case-law prevalent at the material time, judgments concerning restitution of agricultural land do not have res judicata effects. The contrary was stated in a decision of the Supreme Administrative Court of 2003.

Information is awaited on the present practice followed by the Bulgarian courts as regards this question and, if appropriate, on the measures envisaged to guarantee that disputes decided by final decisions given in the framework of land restitution proceedings are not reconsidered as regards the same parties (the state should be considered as one party, even if it is represented by different authorities).

The judgment has been published. Confirmation is awaited of its dissemination to the relevant courts.

200. RUS / Ryabykh and other similar cases

52854/99+

Judgment final on 03/12/2003

Interim Resolution (2006)1 Memorandum CM/Inf/DH(2005)20.
Last examined: 1013-4.3

Non-respect of final character of judicial decisions; quashing of final decisions by means of extraordinary proceedings instituted by state official (violation of Art. 6§1).

IM In most cases the ECtHR has awarded pecuniary and non-pecuniary damage covering the losses caused by the quashing of the final judgments. In one case, the ECtHR ordered the state to secure, by appropriate means, the execution of the original judgment, i.e. providing the applicant with a flat of certain size and standard. Information hereon is awaited.

GM A first step to limit the practice of supervisory review in civil cases was taken through the *new Code of Civil Procedure* in force since 01/02/2003 which, whilst largely maintaining the grounds upon which supervisory review may be sought, limited the right to initiate such review to the parties to the proceedings (excluding notably the prosecutor) and persons whose legal interests are affected by the judgments concerned. The new Code also introduced a one-year time-limit for lodging such application.

The situation after the 2003 reform was notably discussed at a *High-level Round Table* in Strasbourg on 21-22/02/2005 involving the main representatives of the Russian legal community (representatives of the Russian supreme courts, the Executive, the Prokuratura and the Bar) and of the Council of Europe. The progress achieved was acknowledged and outstanding questions identified (see document CM/Inf/DH(2005)20).

Having considered the conclusions of the seminar, the CM adopted in February 2006 – Interim Resolution (2006)1 – which among other things:

- encouraged the authorities to ensure through this reform that judicial errors were corrected in the course of the ordinary appeal and/or cassation proceedings before judgments become final and to give the relevant courts sufficient means and powers better to perform their duties;
- encouraged the authorities, pending the adoption of a comprehensive reform, to consider adoption of interim measures, and in particular:

to continue to restrict progressively the use of this procedure, in particular through stricter time-limits for applications and limitation of permissible grounds to the most serious violations of the law;

to ensure that the procedure respects the requirements of fair trial, including the adversarial principle, the equality of arms, etc;

to simplify the procedure, thus making it more expeditious;

to limit as much as possible the number of successive applications for supervisory review that may be lodged in the same case;

to discourage frivolous and abusive applications which amount to a further disguised appeal motivated by a disagreement with the assessment made by the lower courts within their competences and in accordance with the law;

to adopt measures inducing the parties adequately to use, as much as possible, the cassation appeal to ensure rectification of judicial errors before judgments become final and enforceable.

The need for further reforms has subsequently been confirmed by the ECtHR – see more recent judgments in the group e.g. in the Septa case (judgment of 15/02/2007) – which notably pointed to the uncertainties surrounding the effective time limit for supervisory review, and the scope of grounds justifying review.

On 5/02/2007 the Constitutional Court found that the supervisory review procedure was compatible with the Constitution, but restricted its application, stating notably that it could be used only after all other ordinary ways of review of judicial decisions had been exhausted.

In the light of the findings of the Constitutional court, on 6/02/2007, the Supreme Court of the Russian Federation issued a draft law aiming at the reform of the supervisory-review procedure. At the authorities' request, bilateral consultations took place with the Secretariat in March 2007. The Secretariat provided a number of comments and proposals intended to make the exhaustion of ordinary ways of review of judicial decisions obligatory before lodging an application for supervisory-review, to increase their effectiveness as well as arrangements concerning the *nadzor* procedure itself.

The law at issue was adopted on 14/11/2007 by the State Duma. A Decree of the Plenum of the Supreme Court providing the lower courts with guidelines on the implementation of this reform notably in the light of the ECHR requirements is expected in February 2008.

The CM has welcomed the reform while noting at this stage that it may need to be complemented by further steps to ensure full compliance with the ECHR's requirements notably to increase its effectiveness to remedy violations in a clear, predictable and timely manner. The CM has therefore encouraged the authorities to pursue bilateral consultations with the Secretariat with a view to identifying possible outstanding issues and prospects for further measures and/or reforms in this area.

201. UKR / Tregubenko

61333/00 *Last examined: 992-6.1*

Judgment final on 30/03/2005

Violation of the applicant's right of access to a court due to the courts' refusal to accept his action on account of alleged lack of jurisdiction (violation of Art. 6§1); quashing in 1998, by means of extraordinary procedure instituted by a judge, of a final judicial decision delivered in the applicant's favour (violations of Art. 6§1 and Art. 1, Prot. No. 1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR granted the applicant just satisfaction in respect of pecuniary damage. The applicant claimed however that not all the damages had been compensated and in 2005 sought reopening of the civil proceedings before the Civil Chamber of the Supreme Court of Ukraine, which dismissed the application stating that the civil procedural legislation of Ukraine does not allow for such reopening.

Following the intervention of the CM, in 2006 the Supreme Court of Ukraine, taking into consideration the judgment of the ECtHR in this case, accepted the applicant's request for reconsideration of his case on the basis of exceptional circumstances.

GM See case of Sovtransavto Holding against Ukraine and notably Interim Resolution (2004)14, taking stock of the measures adopted so far and pointing out the outstanding questions remaining under the Committee's supervision). Following 2001 judicial reform, the power of judges to bring supervisory review appeals to set aside final judgements was abolished.

F. Protection of private and family life

F.1. Home, correspondence and secret surveillance

202. FIN / Sallinen Petri and others

50882/99 *Last examined: 1013-4.2*
Judgment final on 27/12/05

Search and seizure of privileged material at the first applicant's law firm in the course of police investigation and also affecting the rights of his clients, due to the absence of proper legal safeguards in Finnish law (violation of Art. 8).

IM As the seized material has either been returned to the first applicant or destroyed and that the other consequences of the violation found in this case have been redressed by the ECtHR through the award of a just satisfaction compensating the non-pecuniary damage suffered by the applicants, no further individual measure seems necessary.

GM The Deputy Chancellor of Justice has invited the Ministry of Justice to examine whether there is need to amend the legislation in order to clarify the relationship between the Coercive Measures Act, the Code of Judicial Procedure and the Advocates Act. A working group was expected to be appointed in March 2007 to examine the overall renewal of the Coercive Measures Act. In this context it will also examine what kind of measures should be taken on the basis of the present judgment and on the jurisprudence of the ECtHR in general. An extensive preliminary report has already been made on this issue also referring to the present judgment.

The judgment of the ECtHR has been translated, published and sent out to several national authorities.

Additional information is awaited on the results of the working group, on the nature of the measures to be taken and on the proposed timetable for their adoption.

203. FRA / Vetter

59842/00 *Last examined: 1013-4.2*
Judgment final on 31/08/2005

Violation of privacy on account of the use of listening devices by the criminal police in an apartment regularly visited by the applicant, suspected of murder in the absence of sufficient legal safeguards in the law (violation of Art. 8); unfairness of the proceedings before the criminal chamber of the Court of Cassation, due to the failure to communicate the report of the reporting judge to the applicant or to his lawyer, whereas this report had been submitted to the advocate-general (violation of Art. 6§1).

IM The applicant, who has been sentenced by a final judgment of 2000 to 20 years' imprisonment, may apply for the re-opening of his appeal. Information has been awaited since December 2005 concerning the fate of the recordings.

GM As regards the **illegal use** of listening devices, a new law adopted in 2004 contains provisions on the use of sound recordings in proceedings to establish facts relating to organised crime. Information is requested as to whether and to what extent this law may be applied to facts similar to those of the Vetter case (see also Wisse case).

As regards the **unfairness of the criminal proceedings**, measures have been adopted in the framework of the execution of cases Reinhardt and Slimane-Kaïd (22921/93, Resolution (98)306) and Slimane-Kaïd No. 2 (29507/95).

204. NLD / R.V.

14084/88

decisions taken under former Art. 32 ECHR on 15/05/92, 21/09/93, 9/03/93

Last examined: 997-1.1
Final Resolution (2007)86

Violation of the applicants' right to respect for their private life on account of the surveillance of their activities by the intelligence and security services, the compilation and retention of personal information concerning them, as well as the denial of access to this information (violation of Art. 8)

Case closed by final resolution

IM No issue has been raised in this respect.

GM A first legislative change took place in 1988, but did not specify the circumstances under which or the means by which information could be collected. Therefore, on 16/06/94 the Administrative Law Division of the Council of State decided that the sections of the law that were not in accordance with Art. 8 of the ECHR must remain inapplicable and requests for access to security service files were to be examined under the Government Information (Public Access) Act.

Following this decision, on 29/05/02 a new law came into force, which was designed better to formulate the circumstances and conditions in which the authorities are empowered to carry out measures of secret surveillance and to provide a new procedure concerning requests for access to security service files. The law also lays an obligation on the security services to publish an annual report which is submitted to Parliament, in which areas of specific attention of the services for the past and coming year are outlined.

An article about the report of the Commission in this case has been published.

205. **ROM / Rotaru**

28341/95
Judgment of 04/05/00 – Grand Chamber,

Interim Resolution (2005)57
Last examined: 1007-4.2

Lack of sufficient legal safeguards concerning the storage and use, by the intelligence service, of personal data (violation of Art. 8); lack of an effective remedy in this respect (violation of Art. 13); failure of a court to rule on one of the applicant's complaints (violation of Art.6§1).

IM According to information provided by the Romanian authorities, no individual file on the applicant currently exists, as the document erroneously designating the applicant as a member of an extreme-right organisation was modified in order to avoid any confusion (another person bearing the same name as the applicant was listed there) and the judgment of the ECtHR was included in the file of the Romanian intelligence service, in order to avoid that any such confusion could occur again.

GM Legislative reforms are still under way to redress the shortcomings found by the ECtHR. In 2004, a new law on the prevention and repression of terrorism was adopted, providing a procedure of judicial supervision of all secret surveillance measures. Following the adoption of IR(2005)57, whereby the CM called upon the Romanian authorities rapidly to adopt the legislative reforms necessary to respond to the criticism made by the ECtHR in its judgment, the authorities confirmed that a new package of draft laws is currently under debate before the second chamber (Senate). At its HR meeting October 2007 the CM regretted that, 7 years after the judgment, all execution measures had still not been adopted and insisted on the urgency of fully executing this judgment, and decided to resume consideration of the matter anew at its first meeting in 2008, possibly on the basis of a new interim resolution.

In the meantime, the CM noted with interest the draft law on information activities, counter-information and protection of information seems to provide for the possibility to challenge the holding, by the intelligence services, of information on private life or to refute the truth of such information. Information is expected on the provisions of the other draft laws contained in the reform package, including their translations, their relevance to the violations found by the ECtHR and the timetable for their adoption.

As regards the violation of Art. 6§1, the Romanian authorities trust that the direct effect given by domestic courts to the judgments of the ECtHR will ensure that tribunals will in future assume jurisdiction over claims for damages linked to incorrect entries in the registers.

The judgment of the ECtHR has been translated, published and duly disseminated.

206. ROM / Surugiu

48995/99
Judgment final on 10/11/04

Last examined: 997-1.1
Final Resolution (2007)93

Inadequacy of measures taken by authorities to stop incursions into the applicant's courtyard by third parties who were granted title to the land by an administrative authority despite recognition of the applicant's title by the courts (violation of Art. 8)

Case closed by final resolution

IM Since 2001, the applicant has no longer been subjected to any further interference. In these circumstances no further measure, other than the payment of the just satisfaction awarded, appears necessary.

GM In order to deter infringements of the right to respect for one's home as established by the ECtHR's case-law, trespass is promptly and efficiently punished by the Romanian criminal system (statistical data were provided).

Furthermore, the 2005 law reforming the Land Act, criminalises acts of members of competent administrative commissions who obstruct or unjustifiably delay the restitution of plots of land to their recognised owners, or who issue ownership titles in breach of the legal provisions.

The judgment of the ECtHR has been translated, published and included in a collection of judgments of the ECtHR published in 2006 to be distributed to judges and prosecutors. Finally, the judgment is part of the syllabus of the course on the ECtHR's case-law, included in the curricula of the National Magistracy Institute.

207. SVK / Babylonová

69146/01
Judgment final on 20/09/2006

Last examined: 997-6.1

Violation of the applicant's right to respect for her private and home life, due to the impossibility to obtain that the former landowner be cancelled from the registers as resident at the applicant's address (violation of Art. 8).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. Pursuant to the Registration of Citizens' Residence Act of 1998, the applicant may ask the registration office to cancel the former resident's registration at her address.

GM A new Registration of Citizens' Residence Act entered into force on 01/07/2006. The new act regulates the rights and duties of Slovak citizens in respect of reporting their residence, and the rights and duties of the competent authorities in respect of registering citizens' residence. Pursuant to it, those who are not in a position to show that they are authorised to stay in a flat or other residential premises must report their presence to the registration office in the place where they are resident and the municipality in question is considered to be their permanent residence for official purposes.

A registration office cancels the registration of citizens' permanent residence, *inter alia*, when they move and register as residing elsewhere but also at the request of the owner of the premises. In such cases, the citizen whose registration has been cancelled is to be registered as residing in the municipality where the registration was cancelled.

208. SWE / Segersted-Wiberg and others

62332/00
Judgment final on 06/09/06

Last examined: 1013-4.2

Unjustified storage, by the police, of information on the applicants' former political activities in violation of their right to privacy (violation of Art. 8), to freedom of expression and association

(violations of Art. 10 and 11) and lack of any effective remedy with respect to these violations (violation of Art. 13).

IM The confirmation is expected that the information in question is no longer kept on file by the Security Police.

GM As regards the **violation of right to privacy** and the resulting violations of the right to freedom of expression and association, the publication and dissemination of the ECtHR's judgment to the Security Police are awaited.
As regards the **lack of effective remedies**, a Records Board was established, empowered to monitor the Secret Police's intelligence gathering and filing, and compliance with the Police Data Act but not to order the destruction of files or the erasure or rectification of information kept in the files. A Data Inspection Board was also established, with wider powers but its effectiveness in practice remains to be assessed. Information is awaited on the functioning of the Data Inspection Board and/or on the possible introduction of another effective remedy.

209. UKR / Panteleyenko

11901/02 *Last examined: 1013-4.2*
Judgment final on 12/02/07

Unlawful search of the applicant's notary office in 1999, seizure of equipment and unlawful disclosure of confidential psychiatric information in the course of a hearing in defamation proceedings brought by the applicant (double violation of Art. 8); violation of presumption of innocence (violation of Art. 6§2). Lack of remedy with regard to the double violation of Art.8 (violation of Art. 13).

IM The applicant was awarded just satisfaction in respect of the pecuniary and non-pecuniary damage sustained. He can furthermore apply for review of the proceedings.

GM As regards the violations of Art. 8, the attention of investigating bodies involved in pretrial investigation (the Ministry of the Interior and Office of the Prosecutor General) was drawn to the ECtHR's conclusions concerning the violation of the applicant's right to respect for his private life and home. Training concerning the ECtHR's conclusions in this judgment will be given in regional departments. Information thereon is awaited.

The attention of the Supreme Court of Ukraine and its judges was also drawn to the ECtHR's conclusions in the present judgment. The judgment should be further disseminated among appeal and local courts.

The special trainings for judges concerning legislation on collection, use and dissemination of confidential personal data were held in December 2002 by the Court of Appeal of Chernihiv Region. An action plan together with a timetable is awaited with a view to

- mainstreaming into initial and professional training of judges the courts' obligation to respect the principle of presumption of innocence;
- introducing an effective remedy for challenging the lawfulness of searches and
- ensuring that confidential psychiatric data is not disclosed in a public court hearing and that otherwise there is a possibility for a victim to obtain compensation in this respect.

The ECtHR's judgment has been translated into Ukrainian, published, placed on the Ministry of Justice's official web-site and sent to the Supreme Court of Ukraine and its judges as well as to the State Court Administration for further dissemination amongst appeal and local courts.

210. UK / Connors

66746/01 *Last examined: 1007-4.2*
Judgment final on 27/08/04

Unjustified eviction of a family from a gypsy caravan site in 2000 by a local authority without procedural safeguards (violation of Art. 8).

IM The ECtHR awarded just satisfaction to the applicant in respect of non-pecuniary damages consequent upon the denial of the opportunity to obtain a ruling on the merits of his

claims that the eviction was unreasonable or unjustified. No further additional measure appears necessary.

GM The government intends to implement the Connors judgment by legislation, i.e. the Housing and Regeneration Bill, which was laid before Parliament on 15/11/2007. On17/05/2007 the government published for consultation a draft guidance on management of gypsy and traveller sites, including interim guidance to local authorities on summary possession and the implementation of the Connors judgment. The consultation period ended in August 2007. The draft recommends that authorities should avoid asserting a right to summary possession, and encourages them to provide additional protection to licensees. The final version of the guidance was expected to be issued by the end of 2007.

In addition to these measures, the United Kingdom authorities had already drawn attention to the Housing Act 2004, which allows judges to suspend eviction orders against residents of local authority sites on certain terms. Second, they indicated that the nature of judicial review has changed since the Human Rights Act came into force.

Further information has been requested as to the progress made in the implementation of the general measures envisaged.

The judgment of the ECtHR has been published.

F.2. Disclosure of information in violation of privacy

211. GER / Von Hannover

59320/00
Judgment final on 24/09/04 and judgment of 28/07/05

Last examined: 1007-1.1
Final Resolution (2007)124

Breach of the right to respect for private life of Princess Caroline von Hannover, the eldest daughter of Prince Rainier III of Monaco, on account of German courts' refusal of her requests to prohibit the publication of a series photographs of her (violation of Art. 8)

Case closed by final resolution

IM Although it is possible under German law, the applicant did not take action to prevent further publication of the photographs in question after the ECtHR's judgment. According to information available, the photographs at issue have not been reprinted by the German press.

GM The judgment has been widely published and discussed by the German legal community and it is publicly available via the website of the Federal Ministry of Justice. Furthermore, the judgment was disseminated to the courts and justice authorities concerned.

When deciding upon similar cases, domestic courts have taken into account the judgment of the ECtHR, thus giving it direct effect in German law. Examples of case-law have been provided.

F.3. Lack of access to information

212. SVK / Turek

57986/00
Judgment final on 14/09/06

Last examined: 1013-4.2

Violation of the applicant's right to privacy due to the lack of procedural guarantees allowing the applicant effectively to challenge before the courts his registration as an agent during the communist time by the former State Security Agency (violation of Art. 8) and excessive length of the civil proceedings from 1995 to 1999 (violation of Art. 6§1).

IM The proceedings ended in 1999 and the deadline for requesting the reopening of the civil proceedings on the basis of the ECtHR's judgment expired on 14/12/2006. Under these circumstances, no individual measure seems necessary.

GM As regards the **violation of privacy,** the Lustration Act of 1991, which prohibited former State Security agents from holding certain important posts in state institutions, ceased to have effect in Slovakia on 31/12/1996. The legal provisions at issue, imposing the burden of proof on the defendant, were repealed in 1997 following a judgment of the Constitutional Court.

The judgment has been published and disseminated with a circular to the presidents of regional courts requesting them to distribute the judgment to all judges of these courts as well as to the district courts in their jurisdiction.

No further general measure seems necessary.

As regards the **excessive length of the proceedings**, see the case of Jakub and other similar cases.

213. **UK / Roche**

32555/96
Judgment of 19/10/2005 – Grand Chamber

Last examined: 1007-4.2

Failure to fulfil the positive obligation to provide an effective and accessible procedure giving the applicant access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in mustard and nerve gas tests in 1963 under the auspices of the British armed forces (violation of Art. 8).

IM Measures are required to fulfil the positive obligation to provide the applicant with access to the information in question. In 2007, the Pensions Appeal Tribunal found that the applicant's chronic obstructive pulmonary disorder was attributable to his service and examined to what extent there is a causal link between the tests and the applicant's disability. Information on this is under assessment.

The documents referred to in the ECtHR's judgment, to which the applicant wished to have access, have not been located. In fact, as certain records have been dispersed and are hard to find, the applicant's access to the relevant and appropriate information is linked to the adoption of the general measures.

GM In order to provide access to the relevant information to those who participated in tests similar to those in which the applicant took part, the authorities undertook:

1) To clarify the responsibilities of persons handling requests for access to information: in July 2006, the Ministry of Defence issued a guidance, covering:

- how to recognise a request triggering rights arising from Art. 8 of the ECHR;
- action required over and above that already required by specific domestic legislation;
- the need to communicate with the applicant;
- the appeals procedure.

Further information has been provided on the appeals procedure available to anyone who is dissatisfied with the information provided following a request to the Ministry of Defence.

2) To make it easier for applicants to make and pursue a request for information about their actual or possible exposure to hazard: applicants concerned about potentially hazardous exposure they may have experienced during their military service or civilian employment with the Ministry of Defence may submit a Special Subject Access Request (SSAR) via the Internet. On 31/10/2006, letters outlining the new extended access to information regime and providing a copy of the SSAR form were sent to 15 groups representing potential applicants. In addition, key personnel across the department have received guidance about the ECtHR's judgment, the United Kingdom Action Plan, how to recognise requests giving a right to information under Art. 8 and how to handle requests and points of contact. Moreover, the government has started revising the relevant leaflets made available to staff and members of the public.

3) To improve public availability of information about the tests at Porton Down, by publishing a historical survey of the Service Volunteer Programme at Porton Down: The historical survey was published in July 2006 and places a great deal of information about activities at Porton Down in the public domain, thus proactively providing answers to many queries that participants in the tests might have. Furthermore, a Porton Down Volunteers' free Helpline was set up in February 1998, with the objective of helping former volunteers or their representatives gain easy access to information relating to their participation in the tests.

Further information is being assessed.

F.4. Establishment of paternity

214. MLT / Mizzi

26111/02
Judgment final on 12/04/06

Last examined: 1013-5.1+3.B

Impossibility for the applicant, in 1997, to challenge the legal presumption of his paternity, established in 1967, due to the legal framework, which was too strict: the domestic courts rejected his claims because such claims were only possible within six months after birth. In so doing they failed to take account of the fact that the DNA tests upon which the applicant relied had not been available in 1967 (violation of Art. 6§1); failure to strike a fair balance between the applicant's legitimate interest in having a judicial determination of his presumed paternity and the protection of legal certainty and of the interests of the other people involved in his case (violation of Art. 8); discrimination as regards the strict time-limit applied to the applicant but not to other interested parties (violation of Art. 14 in conjunction with Art. 6§1 and 8).

IM Legislative reform is under way to enable new paternity proceedings in situations like the one here at issue (see GM below). Clarification has been requested as to whether the applicant will be in a position to benefit from the new law once it becomes effective, given the absolute deadline envisaged for such claims.

GM The respondent state provided detailed information on legislative reform under way. In 2006, a Bill to amend the Maltese Civil Code was published and is being debated. The new provisions will entitle persons in the same position as the applicant, to repudiate a child born before 1/12/1993 within an absolute time-limit. Information is awaited on the progress of the law reform, in particular with regard to the short time-limit currently applied, in the light of the violation of Art. 14 found by the ECtHR because other interested parties are not subject to any time-limit (see also Shofman against the Russian Federation, in which the ECtHR ruled that a time-limit of one year after birth violates the ECHR).

All judgments of the ECtHR against Malta are usually sent out to the competent authorities and are publicly available via the website of the Ministry of Justice and Home affairs.

215. NLD / Camp and Bourimi

28369/95
Judgment final on 03/10/2000

Last examined: 992-1.1
Final Resolution (2007)57

Impossibility for the second applicant to establish retroactively his relationship with his late father (partner of the first applicant) and thus to inherit (violation of Art. 14 taken together with Art. 8)

Case closed by final resolution

IM The pecuniary and non-pecuniary damage suffered by the applicants have been compensated by the award of just satisfaction. Therefore no further individual measure was required in this case.

GM The Civil Code has been changed and the option of letters of legitimisation has been replaced by a judicial declaration of paternity, which has retroactive force from the time of a child's birth.
In addition, the ECtHR's judgment has been translated and published.

216. RUS / Shofman

74826/01
Judgment final on 24/02/06

Last examined: 1007-4.2

Impossibility for the applicant in 1997 to challenge the legal presumption of his paternity on the basis of DNA tests, as such claims were only possible within one year after the birth, which had occurred in 1995 (violation of Art. 8)

IM In the framework of previous proceedings, the domestic courts established on the basis of genetic evidence that the applicant was not the child's father. However, the applicant is still required to pay maintenance in respect of the child. On 07/02/2007 the District Court cancelled the previous decision of 2000 in the applicant's case on the ground of newly discovered circumstances. The applicant's claim challenging his paternity was granted by the same court on 21/03/2007 and the birth register was modified accordingly. On 27/03/2007 the applicant lodged a request with the same court with a view to cancelling a decision of 15/09/2003 on the basis of which he is required to pay maintenance in respect of the child. Information in this respect is awaited.

GM The new Family Code in force since 1996 sets no time-limit for disclaiming paternity. However, the Supreme Court established in 1996 that the Code of 1969 should continue to be applied in respect of children born before the entry into force of the new Code.

The judgment of the ECtHR was sent out to all courts by letter from the Supreme Court apparently stressing the superiority under Russian law of the ECtHR's judgment over the Supreme Court Resolution mentioned above. The confirmation thereof is awaited.

The judgment of the ECtHR has also been published in the Bulletin of the ECtHR (Russian version).

217. **SVK / Paulík**

10699/05
Judgment final on 10/01/2007

Last examined: 1007-4.2

Violation of the applicant's right to respect for his private life due to the impossibility to contest in 2004, on the basis of DNA tests, his paternity judicially established in 1970 (violation of Art. 8), discrimination between situations where the paternity had been presumed, and could be contested at any time, and those where it had been judicially established – as in the applicant's case – where no contestation was allowed (violation of Art. 14, taken in conjunction with Art. 8).

IM Reopening of the civil proceedings is possible within three months after the final judgment of the ECtHR. Accordingly, on 26/01/2007, the applicant's lawyer lodged a petition for reopening of the paternity proceedings.

GM Under the Family Code, paternity can be challenged by the Prosecutor General if the interests of society so require but this does not apply in the case of paternity determined by judicial declaration.

The judgment of the ECtHR was translated, published and brought to the attention of the Minister of Justice and the Legislation Section in view of examining the legislative change that might be required in respect of the current provisions about challenging of paternity.

Information is awaited on measures already taken or planned to establish a legal mechanism enabling persons in a situation similar to that of the applicant to challenge their paternity.

218. **SUI / Jäggi**

58757/00
Judgment final on 13/10/06

Last examined: 1013-4.1

Failure to respect the applicant's right to his private life due to the refusal to authorise him to obtain DNA evidence from the mortal remains of a person, believed to be his father to establish his parentage with certainty (violation of Art. 8).

IM The applicant lodged an application for review with the Federal Court, the decision of which, delivered on 30/07/2007, is currently being examined.

GM In July 2006, the judgment of the ECtHR was sent out to the authorities directly concerned, and brought to the attention of the Cantons via a circular in November 2006. Furthermore, the judgment was published. In view of these measures and of the direct effect granted to the ECHR in Switzerland, it may be assumed that the requirements of Art. 8 and the ECtHR's case-law will be taken into account in the future, thus preventing new, similar violations.

219. **TUR / Tavlı**

11449/02
Judgment final on 09/02/2007, rectified on 25/01/2007

Last examined: 1013-4.2

Impossibility for the applicant to prevail himself, before the national courts in 1997, of DNA tests proving that he was not the father of his former wife's child. His paternity had been established by legal presumption in 1982, when DNA tests were not available. Nevertheless, the national courts rejected the applicant's request, maintaining that scientific progress could not be considered as "force majeure" justifying a retrial (violation of Art. 8).

IM Confirmation is notably awaited that the reopening of the civil proceedings here at issue is possible.

GM The confirmation is expected of the publication and dissemination of the judgment of the ECtHR, in particular to the Court of Cassation.

Information is also awaited on measures taken or envisaged by the Turkish authorities to ensure that the relevant provision of the Code of Civil Procedure is applied in accordance with the ECtHR's conclusion in this case.

F.5. Respect of custody and access rights

220. **ALB / Bajrami**

35853/04
Judgment final on 12/03/2007

Last examined: 1013-4.2

Violation of the applicant's right to respect for family life due to the authorities' failure to comply with their positive obligation to take the necessary measures to reunite him with his daughter, taken abroad by the mother in 2004 (violation of Art. 8).

IM The applicant died two weeks before the ECtHR's judgment was delivered. Proceedings for revision of the ECtHR's judgment are currently pending before the ECtHR.

GM Information is awaited on whether Albania envisages implementing international instruments on the protection of children (notably, the Hague Convention and the 1989 UN Convention on the Rights of the Child) and on any other measure envisaged or taken to provide a legal framework affording effective protection of parents' right to reunion with their children, in particular as regards specific remedy to prevent or punish cases of abduction of children from the national territory.

The ECtHR's judgment was translated into Albanian and published. The authorities of the Bailiff's Office have been requested to treat with special attention cases concerning enforcement of court decisions on child custody. A written confirmation in this respect is awaited.

221. **AUT / Moser**

2643/02
Judgment final on 21/12/06

Last examined: 1013-4.2

Violation by a domestic court of a mother's right to custody of her child born in 2000 by placing the child with foster parents 8 days after birth and transferring custody to the Youth Welfare Office

without exploring alternative solutions (Art. 8); violation of the principle of equality of arms because of the lack of opportunity to comment on reports of the Welfare Office, the absence of a public hearing and of public pronouncement of the decisions (3 violations of Art. 6§1).

IM The applicant has access to her child two hours per month, on its birthdays and Christmas since April 2005 on the basis of an agreement reached. She has apparently not filed any request to recover custody of the child, or to extend visiting rights.

The Austrian authorities provided detailed information on the way the visits are conducted with the help of the social service, ensuring that the relationship between the applicant and her son is continued without putting the child in a situation of conflict. The foster-parents are not present during the visits. Although the applicant does not have a residence permit and has been living illegally in Austria since 2005, the authorities do not plan to expel her but are currently examining ways to grant her a residence permit.

Information is awaited on the possibility for the first applicant to demand an extension of her visiting rights and a re-transfer of custody under Austrian law.

GM As regards the **equality of arms**, see the measures adopted in the framework of the execution of the Buchberger case.

As regards the **absence of a public hearing**, the reformed Austrian Non-Contentious Proceedings Act provides judges with discretion to hold family-law and guardianship proceedings in public and contains criteria for the exercise of such discretion. ECtHR judgments against Austria are automatically transmitted to the President of the Supreme Court and the Presidents of the 4 Higher Regional Courts with the request to disseminate them to all subordinate judicial authorities as appropriate, as well as to inform the authorities directly involved in the violation. A summary of the judgments and decisions concerning Austria is regularly sent out widely to relevant Austrian authorities as well as to Parliament and courts. Furthermore, the ECtHR judgments are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice.
Information is awaited on measures taken or envisaged to prevent new similar violations in particular through the dissemination of the ECtHR's judgment to all Youth Welfare Offices possibly with a circular as well as on the possibilities to pronounce publicly decisions in family-law and guardianship proceedings.

222. **AUT / Sylvester**

36812/97
Judgment final on 24/07/03

Last examined: 1007-4.1

Lack of adequate measures to enforce court decisions of 1995 ordering the return of a child to her father living in the United States (violation of Art. 8).

IM In 1996, the Austrian courts gave the mother the custody of the child on account of the fact that the relation with the father was already de facto broken because of the lapse of time. Accordingly, the enforcement of the 1995 return order is currently impossible. Until 2005, the father had regular contacts with his daughter in Austria on the basis of an out-of-court agreement with the child's mother, but complained that the existing restrictions to his visiting rights were the result of the ECHR violation, of which the authorities were responsible. The authorities indicated that the only lawful way for the applicant to obtain better visiting conditions was to bring new proceedings before the Austrian courts. Accordingly, in 2005, the US authorities, on the applicant's behalf, sent the Austrian authorities a request based on the Hague Convention concerning the access to the child. As a consequence, however, the contacts between the applicant and the child were suspended and the applicant complained of this situation and of the excessive delays in the new proceedings. The question of whether the CM should continue to supervise the execution of the case until the end of the proceedings is being examined in the light of the CM's practice in similar situations to continue its supervision until the competent domestic authority, before which the execution question has been brought, has taken its decision. In March 2006, the applicant and the mother of the child reached an agreement to suspend the legal proceedings and reach an

out-of- court agreement on the applicant's visiting rights. The proceedings do not appear to have been resumed. Information is expected as to whether the out-of-court negotiations between the parties are still going on.

GM A number of new measures aiming at ensuring the prompt enforcement of return orders or visiting rights under the 1980 Hague Convention have been adopted. In particular, a new law of January 2005, provided for the decrease of the number of courts competent to deal with requests of return based on the Hague Convention (from 180 to 16 district courts), attached to one court of appeal competence to hear appeals in return proceedings. In the light of the information submitted, the CM considered that this aspect of the case may be considered settled.

223. CRO / Karadžić

35030/04
Judgment final on 15/03/2006

Last examined: 1013-4.2

Insufficient efforts seeking to reunite mother and child, abducted by the father, due to delays in the proceedings on application of the Hague Convention and in the enforcement of a decision ordering that the child should be returned to his mother (violation of Art. 8)

IM No individual measures appear required, as the child presently lives with his father on the basis of an agreement between the parents, concluded in February 2005 and approved by the social welfare authorities. This agreement also secures the mother access to her son and the CM has received no complaints regarding its content or implementation.

GM Following an initial reflection on the need to adopt legislative measures in order to improve the efficiency of domestic procedures in application of the Hague Convention, on 7/12/2007 the Government of Croatia decided to create a special working group for preparation of the legislation for the implementation of the Hague Convention. In the meantime, as the need for immediate training measures on the Hague Convention was recognised, three seminars were organised by the Judges' Academy.

The ECtHR's judgment was published on the Internet site of the Ministry of Justice and in the legal journal Case law of the ECtHR. It was sent out to all authorities involved in the application of the Hague Convention.

Further information is expected on the results of the working group.

224. CZE / Havelka and others

23499/06
Judgment final on 21/09/07

Last examined: 1013, 2

Violation of the right to respect for private and family life on account of the fact that the applicant's three children had been taken into care on the sole ground that the family's economic and social conditions were not satisfactory (amongst other, because of the danger of eviction) (violation of Art. 8).

IM The CM is awaiting information on whether the children are still in public care and, if this is the case, what are the effective remedies available to the applicant to take legal action against this placement and on whether the applicant is still occupying the house in danger of eviction.

GM The general measures are being examined in the context of the execution of the case Wallova and Walla (No. 23848/04, Judgment final on 26/03/2007).

225. CZE / Wallová and Walla

23848/04
Judgment final on 26/03/07

Last examined: 1013-4.2

Violation of the right to respect for private and family life on account of the fact that the applicants' five children had been taken into public care on the sole ground that the family's housing was inadequate (violation of Art. 8).

IM In 2003, the oldest child reached the age of majority. The care orders concerning the other two children were annulled in February 2006 and they were able to return to live with their parents, under educational supervision. The custody of the two youngest children was given to a foster family in January 2005. The applicants have instituted civil proceedings with a view of terminating the foster care and obtaining the custody of the youngest children again. Information is awaited on the current state of these proceedings.

GM Information has been requested on measures taken or envisaged to ensure that in similar cases less drastic measures are used and to provide sufficient assistance and guidance to parents in difficulties. The authorities have provided certain information in response, which is being assessed.

226. **FIN / K.A.**

27751/95
Judgment final on 14/04/03

Last examined: 992-1.1
Final Resolution (2007)34

Failure of the authorities to take adequate measures to reunite the applicant with his children placed in foster care (violation of Art. 8).

Case closed by final resolution

IM When the ECtHR delivered its judgment, only one of the three children (born in 1986) was still a minor. Until he reached the age of majority, the youngest child met his parents each month and did not wish to leave his foster family. The applicant did not complain about this arrangement.

GM 1) **Legislative changes**: The new Child Welfare Act, in force as of 1/01/08, reviews and renders more explicit some aspects of child welfare such as child participation, the contents and extent of the needs of child welfare, the notifications to the social welfare authorities concerning the need of a child to be protected; the procedures connected to individual and family-oriented child welfare; the procedure for taking a child into custody; the situation and status of a child in substitute care; the procedure of decision-making concerning custody directly enforced by an Administrative Court.

2) A child welfare promotion programme, which aims at enhancing the knowledge of Social Affairs staff, is being carried out until the end of 2007 and an internet-based manual on child welfare will be prepared for the use of professionals.

3) The judgment of the ECtHR has been translated, published and distributed to the relevant authorities, the highest courts, the Parliamentary Ombudsman, etc.

227. **GER / Görgülü**

74969/01
Judgment final on 26/05/2004

Last examined: 1013-4.3

Disrespect by a domestic court of a father's right to custody of and access to his child born out of wedlock in 1999 and placed in a foster home (violation of Art. 8)

IM As regards the ***visiting rights*** specified by the ECtHR, considerable progress has been made since August 2005. In 2006 several visits took place and on 15/12/2006 the applicant obtained extended visiting rights. These were also implemented in the first part of 2007. After the child spent 3 weeks with the father during the summer holidays, the visiting arrangements were interrupted in September and October 2007. This problem was addressed by the German authorities and the contacts between the applicant and his son have been resumed since November 2007. The request for custody made by the father was finally rejected by the Federal Court on 26/09/2007 due to the lack of a sufficiently developed relationship between father and son (the Federal

Court stressed, however, that this was no fault of the applicant).

The adoption request made by the foster parents to the courts in 2001 was rejected at first instance on 02/08/2007 because of absence of the legally required consent of the father.

GM The judgment of the ECtHR has been published and distributed to the courts and authorities directly concerned with a view to informing them of the ECHR requirements. In view of the direct effect of the ECtHR's judgments in the German legal order these measures have been deemed sufficient.

228. GRC / Kosmopoulou

60457/00
Judgment final on 05/05/04

Last examined: 1013-5.1

Violation of the applicant's right to her family life on account of the suspension of her contacts with her daughter (born in 1988) from 1997 to 2002, in the context of proceedings concerning her visiting rights in respect of the child, custody of whom had been granted to the father (violation of Art. 8).

IM The child has attained majority in 2006. No individual measure is accordingly required.

GM The provisions of the Code of Civil Procedure (CCP) regarding interim measures require that the adverse party concerned by such measures is summonsed. This is a legal obligation, exceptions to which are allowed only in cases of imminent danger for the applicant. A provisional order lays down the measures necessary to preserve the applicant's rights until the delivery of a judicial decision regarding the interim measure requested. A new provision, added in 2005, provides that if no hearing is fixed within 30 days from the filing of a request for an interim order, the provisional order expires. New draft legislation provides that in cases of provisional orders concerning parents' visiting rights, measures similar to those related to labour cases apply: the parties must be summonsed, at the latest 24 hours before the hearing, to submit their arguments, so that the judge may have a global opinion on the parties' arguments before delivering a provisional order.

More information on the progress and indicative timetable for adoption of this draft legislation is awaited.

The judgment of the ECtHR has been translated, published and forwarded to the competent judicial authorities. The Greek authorities have assured the Committee that the practice of all judicial authorities is now in full conformity with the ECtHR's judgment in this case, which was moreover exceptional.

229. ITA / Bove

30595/02
Judgment final on 30/11/2005

Last examined: 1013-4.2

Failure to take adequate measures to enforce court decisions ordering a progressive resumption of contacts between father and daughter (violation of Art. 8).

IM Following meetings in 2006 between the daughter and a judge of the court in the presence of a psychological adviser, it appeared that no significant change in the daughter's attitude of rejection was possible without a change in the mother's attitude.

The Children's Section of the Naples Court of Appeal issued a decree on 22/03/2006 in which it:

- recognised both parents' authority in respect of the child;
- vested sole custody of the daughter with the mother;
- suspended contacts between father and daughter;
- ordered mediation between the parents to be continued.

Accordingly, encounters between the parents in 2006 and 2007 were held in an increasingly constructive spirit. Both parents have indicated their agreement to continuing in this way. The applicant's counsel however complained of the court

decision suspending father/daughter contacts and indicated that the mother had stopped encounters with the father in the second half of 2007.

GM The ECtHR's judgment in this case was published and disseminated. In this respect and in a general context, the Secretariat wrote to the Italian delegation on 01/02/2007 stressing the importance of publishing judgments on internet so as to raise the awareness of all actors in the judicial system as well as the public of the requirements of the ECHR as interpreted by the ECtHR.

230. ITA / Intrieri

16609/90
Judgment final on 29/08/1996
Interim Resolution (1997)50 of 28/01/97 (violation) under former Art. 32 of the ECHR

Last examined: 1013-1.1
Final Resolution (2007)155

Excessive length of proceedings brought by the applicant against a judicial decision declaring her son eligible to be adopted and thereby suspending her parental rights and her contacts with the child (violation of Art. 8).

Case closed by final resolution

IM The proceedings at issue in this case had already ended when the violation of the ECHR was found. They did not lead to a final decision on the merits, as the applicant's son had in the meantime become of age. Subsequently, he returned to live with the applicant.

GM Awareness-raising measures have been adopted to prevent, as much as possible, new violations similar to that found in the present case.
Firstly, the Italian Supreme Judicial Council (C.S.M.) addressed, in July 2000, a Resolution to judges and managers of judicial bodies underlining the need to take any appropriate measure in order to prevent any unjustified delay in this sort of proceedings requiring special diligence.
The C.S.M also decided to include the subject of human rights and the ECtHR's case-law in the curricula of all initial training courses for junior judges, in the annual programme of in-service training and in that of decentralised training courses.

Furthermore, in May 2001, it promoted the organisation of seminars, both at national and local level, aimed at training persons working in the field of family law, and in particular the judges of the Youth courts, on the requirements of the ECHR, as interpreted in the Strasbourg's case-law in this field.

As regards the more general problem of the functioning of judicial system in Italy, the government reaffirmed its commitment to prepare at the latest by 1/11/08 a new effective strategy and to keep the CM regularly informed of the reflections concerning the strategy to be implemented and the progress made in this regard (see Resolutions (97)336, (99)437, (2000)135, (2005)114 and (2007)2).

231. ITA / Scozzari and others

39221/98
Judgment final on 13/07/2000

Interim Resolutions (2001)65, (2001)151
Last examined: 997-4.1

Placement of the applicant's children into the "Forteto" community and failure to preserve family bonds through visits (violation of Art. 8).

IM The elder son attained his majority in 2005. No further measure is required as far as he is concerned. The placement continues in respect of the younger son, who will attain his majority in 2012. He is in the care of a married couple who are members of the "Forteto".
The Secretariat has organised several meetings with the delegations concerned i.e. the Italian and Belgian delegations with a view to clarifying outstanding matters in this case. Following these meetings, the Italian delegation presented a memorandum setting out replies to a number of questions asked by the Belgian Government. Moreover, at the wish of the elder son and in view of the readiness expressed by the Belgian authorities, a meeting was organised in early November in

Florence between the Belgian and Italian delegations, representatives of the Secretariat and the elder son.

At their December 2007 meeting, the Ministers' Deputies decided to close the aspect of the case concerning the placement of the minor applicant, in view of the efforts accomplished and assurances given by the Italian authorities, of the circumstances, currently different from those described by the ECHR in its judgment of 13/07/2000, of the development of the child in the foster family and of the time which has elapsed since his initial placement. As for the issue concerning the contacts between the applicant and her younger son, the Ministers' Deputies welcomed the co-operation between the Belgian and Italian authorities and encouraged them to pursue it in order to evaluate the circumstances making it possible to conclude that a resumption of contacts between them is made possible by the Italian authorities. The Ministers' Deputies decided to resume consideration of this issue at their March 2008 HR meeting.

GM The supervision of care measures was strengthened. In particular, a new law (No. 149 of 2001) entered into force, which regulates adoption and state guardianship. Under the law, placement orders must indicate how the person given responsibility over a child is to exercise that responsibility, and how the members of the family of origin are to maintain their links with the child thus placed in care. The order must also lay down the duration of the placement, which must be fixed in regard of all measures aimed at reintegration with the family of origin. The social service department responsible for the placement must inform the judge of any significant event. It must facilitate the minor's relations with, and return to its birth family. A 2003 Opinion by the Supreme Judicial Board (CSM) noted that the reinforced supervisory system instigated by Law 149/2003 is generally satisfactory. The CSM also requires that where children are placed with carers who have criminal records, youth magistrates must (a) exercise special attentiveness and vigilance, (b) duly justify their placement decisions, (c) examine carefully the advisability of making such placements continuous and (d) take due account of the legitimate preoccupations of those concerned.

Seminars have been organised to raise the awareness of youth magistrates and social workers of the requirements of the ECHR as interpreted by the Strasbourg case-law in respect of family law.

The ECtHR's judgment has been translated and published.

232. POL / Pawlik

11638/02
Judgment final on 19/09/2007

Last examined: 1013-2

Violation of the right to respect for family life due to the state's failure to meet its positive obligation to take steps to enforce the applicant's right of contact with his minor son (violation of Art. 8).

IM The applicant was awarded just satisfaction in respect of non-pecuniary damage and his son reached the age of majority in 2006. As a consequence, no further individual measures are required.

GM According to the Code of Civil Procedure on enforcement of non-pecuniary obligations, the court may fix time-limits for complying with an obligation on pain of a fine (see also the case of Zawadka).

Information is awaited as to the application in practice of these provisions in cases of enforcement of access arrangements as well as on any other measure envisaged or taken in order to prevent new similar violations.

233. POL / Zawadka

48542/99
Judgment final on12/10/2005

Last examined: 1013-4.1

Violation of the right to respect for family life due to the state's failure to meet its positive obligation to assist the applicant in the enforcement of his visiting rights after 1997. In particular, in 2000 the court seised with his complaints informed the applicant that the child had been brought to the

United Kingdom and in 2001 it suspended the proceedings because the mother could not be found (violation of Art. 8).

IM As a result of the violation, the applicant permanently lost contact with his child. According to the authorities, the applicant may institute proceedings on the basis of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, if his son is residing abroad, and/or request the reopening of proceedings concerning the execution of the judicial decision concerning his visiting rights. The need for individual measures is being assessed.

GM The ECtHR's judgment has been published and sent out to the presidents of courts of appeal with a circular drawing judges' attention to the ECtHR's reasoning in this case. It has been also sent out to the National Police Commander-in-Chief, who in turn requested the competent directors and commanders to publish it on the Police internet site and to include it in the police officers' training programme.

234. **PRT / Maire**

48206/99
Judgment final on 29/09/2003

Last examined: 997-1.1
Final Resolution (2007)88

Authorities' failure to enforce judicial decisions rendered between 1996 and 1999, relating to the exercise by the applicant of custody of his child (violation of Art. 8)

Case closed by final resolution

IM The applicant's child, born in 1995, was abducted in France by his mother, a Portuguese national, in 1997 and lived with her in Portugal thereafter. A judicial decision in 2004 awarded custody of the child to the mother, accepting the child's integration in his new environment. The applicant may exercise his visiting rights but may not leave Portugal with the child without the mother's permission. No further issue has been raised by the applicant.

GM The ECtHR's judgment was promptly translated, published and forwarded to the Portuguese Central Authority, the Deputy Minister of Justice, the Supreme Council of Judges, the Ministry of the Interior and the Government's Office of Legislative Policy and Planning. It has furthermore become part of the training offered by the Centre for Judicial Studies, a state organisation responsible for holding annual training sessions for judges and prosecutors involved in cases relating to child protection, in collaboration with the Portuguese Central Authority.
The Convention on Judicial Co-operation between Portugal and France on the protection of minors (signed in 1983) was applicable in the present case. The delays which occurred were exceptional and due to the attitude of the mother who remained in an irregular situation from 1997 to 2001. Statistical data have been provided concerning the application of this Convention between 2002 and 2004.

Additional safeguards for the prompt enforcement of judicial decisions in this field have been provided by an EU Council Regulation of 2003, applicable as from 01/03/2005, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

As a consequence, no further amendment appears necessary to the current legislation which provides a legal framework safeguarding the execution of judicial decisions and the fining or imprisonment (of up to one year) of child abductors who refuse to abide by the law.

In cases where the Court for family and children rejects a request for the return of a child and orders that it remains in Portugal, the Portuguese Central Authority provides the applicants with legal guidance.

235. **ROM / Ignaccolo-Zenide**

31679/96
Judgment final on 25/01/00 and 05/07/05

Last examined: 1013-4.2

Failure to enforce a court decision of 1994 ordering that two children unlawfully abducted to Romania by their father be returned to their mother, a French national, who had custody rights over them (violation of Art. 8).

IM In response to the ECtHR's judgment, the Ministry of Justice, in its capacity of Central Authority under the 1980 Hague Convention, engaged in June 2000 two sets of proceedings to secure the applicant at least appropriate visiting rights. These proceedings, both the emergency procedure and the ordinary action, did not allow, however, the mother to obtain visiting rights because the children became of age before the conclusion of the proceedings, in spite of the CM's request to accelerate them.

In parallel the applicant had obtained that the French Ministry of Justice contacts the Romanian authorities to try a "family mediation". The Romanian authorities had responded favourably and had tried to organise mediation: a meeting with the younger daughter (at the time still a minor), in the presence of her father was organised, but to no avail.

GM A law on the implementation of the Hague Convention entered into force in 2004 with a view to enhancing the efficiency of proceedings concerning the return of abducted children. Among the new measures mentioned are the creation of a special court competent to deal with requests for the return of children under the Hague Convention, and the establishment of a procedure through which the court may impose a deterrent fine on a parent who refuses voluntarily to fulfil his or her obligation to return a child or to allow access rights. Study of the provisions and the application of this law is a part of the initial training of legal trainees in family law as well as a priority in continuous training.

Although the law does not explicitly provide the possibility for the abducted child to undergo psychological preparation with a view to his/her being reunited with the bereft parent, the Romanian authorities consider that the judicial authority can take measures of psychological care of the child while the request for return is being examined.

In addition, in the context of proceedings, based on the Hague Convention, requesting the return of illegally abducted children, the Supreme Judicial Council considered that the Family code could be interpreted extensively: accordingly, the bereft parent can obtain provisional access rights both during the examination of the request and in the event of a refusal to return the child, in spite of the fact that the law does not provide explicitly for such access rights. Moreover, under the law of 2004, the child has a right to maintain personal relations and direct contacts with his parents, including when the parents usually live in different countries. The modalities of exercise of these rights are established by a judicial authority.

Additional information is awaited on the application of the new law by national authorities.

The ECtHR's judgment has been published and sent out to civil courts, the appropriate ministries and the social services with a circular letter underlining the provisions of the Hague Convention.

236. ROM / Lafargue

37284/02
Judgment final on 13/10/2006

Last examined: 1013-4.1

Failure by the respondent state to make adequate and sufficient efforts to ensure respect of the applicant's right of access to his child, both at national level and in the context of proceedings under the Hague Convention (violation of Art. 8).

IM The programme of meetings between the applicant and his child was not pursued after the first five months of 2005. Various steps to ensure the renewal of contacts have been taken.

By a judgment, which became final in May 2007, the Bucharest Court established a visiting schedule and holidays stays providing for the possibility to send the child during those periods to his father's residence in France. The Ministry of Justice requested a bailiff's office to undertake all necessary measures to ensure the implementation of this decision.

Further information is expected on the effective implementation of this decision.

GM As regards **access rights in general**, the CM is awaiting information on the general meas-

ures taken or envisaged in view of improving the respect of these rights.

As regards, in particular, **access rights in the framework of the implementation of the 1980 Hague Convention**, a new law entered into force in Romania on 29/12/2004. Specific provisions of this law relate to the right of access and provide for enforcement measures and for the preparation of the child for the contact with its parent. Furthermore, on 5/04/2005, the Ministry of Justice adopted Order No. 509/C to approve the Regulation on the modalities of exercising the duties of the Ministry of Justice as a Central Authority designated through Law No. 100/1992 on Romania's accession to the 1980 Hague Convention. The CM is awaiting relevant examples of the application of the Law of 2004 and Order No. 509/C showing the positive changes in practice of domestic authorities since the relevant facts in this case.

Information is furthermore awaited on the publication and dissemination of the ECtHR's judgment to relevant authorities.

237. SVK / Berecová

74400/01
Judgment final on 24/07/07

Last examined: 1013-4.2

Violation of the applicant's right to respect for her private and family life due to the unlawful placement of her children under institutional care in 2000 on the basis of administrative injunctions instead of a judicial decision (violation of Art. 8).

IM In 2002, a final judicial decision was rendered, ordering that the applicant's children should not be placed in an institution. On 31/01/2002 both children were returned to the applicant. No further measure appears to be necessary.

GM The relevant provisions then in force prevented the applicant from seeking a judicial review of the administrative injunctions and were contrary to the Constitution, they were accordingly struck down in 2002 and 2004.

The information provided on the provisions currently in force, governing the placement of children in institutional care, is being assessed

238. SUI / Bianchi

7548/04
Judgment final on 22/09/2006

Last examined: 1013-4.1

Failure by Swiss authorities to take adequate and sufficient action to enforce the applicant's right to have his son (born in 1999) returned to him, in Italy, after his abduction to Switzerland by the mother in 2003 (violation of Art. 8).

IM At the end of October 2007, the Italian judicial authorities and police, assisted by the Swiss authorities, found where the mother and her children, including the applicant's son, were hiding, in Mozambique. The mother was expelled for possession of forged travel documents and no valid residence permit. She was escorted back to Italy where, after a period in detention, she was able to return to Switzerland. The applicant and his son are at present reunited. In the light of these developments, the CM agreed that no further individual measure was required in this case.

GM The judgment of the ECtHR was sent out to the authorities directly concerned and brought to the attention of the Cantons via a circular. It was also published. The CM is assessing information on a new law which has been drafted proposing new measures to deal with cases of international abduction in Switzerland.

G. Cases concerning environmental protection

G.1. Non-respect of judicial decisions in the field of the environment

239. TUR / Ahmet Okyay and others

36220/97
Judgment of 12/10/2005

Interim Resolution (2007)4
Last examined: 1013-4.1

Government's non-compliance with domestic court decisions in 1996-1998 ordering suspension of activities of thermal power plants (operating under a joint venture with the government) polluting the environment (violation of Art. 6§1).

IM Given the absence of progress in the execution of this judgment, the CM adopted, in February 2007, **Interim Resolution (2007)4** urging the Turkish authorities to enforce the domestic court orders imposing either the closure of the power plants or the installation of the necessary filtering equipment without further delay. In April 2007, the Turkish authorities submitted that filter mechanisms had already been installed in one of the power plants and two others would be installed in August 2007. Awaiting installations, the power plants are being operated at minimum capacity so as not to cause any danger to the environment; Administrative fines were imposed in 2006 on the power plants for polluting the environment and compensation proceedings are also pending.

GM See the case Taşkin and others.

G.2. Non-protection of persons living in risk zones

240. RUS / Fadeyeva

55723/00
Judgment final on 30/11/2005

CM/Inf/DH(2007)7
Last examined: 1013-4.3

Non-respect of the positive obligation to protect the private life and home of the applicant living in a sanitary zone around a plant polluting the environment above maximum level allowed by domestic law (violation of Art. 8).

IM According to the Russian authorities, the applicant no longer lives within a sanitary zone, since a new zone of 1 kilometre from the sources of pollution has been established in 2004. Clarifications have been requested in this respect (see Memorandum CM/Inf/DH(2007)7).

GM The Russian authorities indicated that the operations of the steel plant were now in compliance with the environmental and health rules established by Russian law. In this respect, the authorities provided extensive information on the measures taken. Furthermore, they suggested that they would give priority to the determination of sanitary zones and to the elaboration of the draft Environmental Code. Information is awaited on the outstanding issues as pointed out in the Memorandum CM/Inf/DH(2007)7.

241. ESP / Moreno Gómez

4143/02
Judgment final on 16/02/2005

Last examined: 992-6.1

Failure of the authorities in their obligation to take action to deal with night-time disturbances (by night clubs) near the applicant's home (violation of Art. 8).

Case in principle closed on basis of available information – draft final resolution in preparation

IM In 1996, the City Council designated the applicant's neighbourhood as an "acoustically saturated zone", and therefore no new establishment

could be opened that would contribute further to this saturation.

GM The authorities nevertheless tolerated repeated breaches of the law and contributed themselves to such breaches, a fact which was at the origin of the violation found.
Both Spanish national and regional legislation provide protection against noise pollution. Since 1997 there has been an increasing number of cases condemning noise pollution in all autonomous communities in Spain. The cases have involved both civil and criminal liability, including sanctions such as imprisonment, severe fines and prohibition of economic activity. The legal framework is thus very advanced and Spanish courts have been very active in this field.

Moreover, the ECtHR's judgment has been published in Spanish and sent out to all relevant authorities.

242. TUR / Öneryıldız

48939/99 *Last examined: 1007-4.2*
judgment of 30/11/2004 – Grand Chamber

Failure to take necessary and sufficient measures to protect the life of the applicant's family, who died in an explosion in 1993 at a rubbish tip (substantial violation of Art. 2), lack of effective investigations capable of securing the full accountability of the authorities involved (procedural violation of Art. 2); failure to take the necessary steps to protect the applicant's house and property, which was destroyed in the explosion (violation of Art. 1 of Prot. No. 1) and absence of an effective remedy (violation of Art. 13).

IM The damage caused by the violations, including the unpaid sums awarded by domestic courts, has been covered by the just satisfaction awarded by the ECtHR.

GM The tip has been covered with earth, air ducts have been installed on it and a rehabilitation project has been put into force, planting trees and laying down a sport ground on the former site of the tip.

The new Criminal Code of 2005 sanctions both intentional and unintentional disposal of hazardous substances in a way that might cause damage to the environment. Any person disposing such hazardous substances shall be liable to terms of imprisonment ranging from two months to two years. The Code also provides that the terms of imprisonment shall be increased if the disposal of hazardous substance leaves permanent damage to human health and to the environment. Prison sanctions are also provided for any public official acting contrary to the requirements of public duty in a way that might constitute damage to the public or cause damage to individuals, including acts of negligence.
Having regard to the ECtHR's finding concerning the ineffectiveness of the investigation carried out at the domestic level following the explosion, the Turkish authorities are expected to clarify as to what measures they have taken, or envisage taking, so that a system of effective investigation capable of securing full accountability of state agents could be provided (including the issue of ensuring prosecutions even where administrative authorisations are required to prosecute). Information is also awaited as to how to ensure the executive's respect for domestic court decisions so that new violations of Art. 13 may be prevented. Information is also awaited as to how the provisions of the Regulation on Solid Waste of 1991 can prevent new violations.
Lastly, the confirmation is awaited of the publication of the ECtHR judgment and its wide dissemination to municipalities, metropolitan municipalities and administrative councils, possibly with a circular indicating their obligations under the ECHR.

243. TUR / Taşkin and others
TUR / Öçkan and others

46117/99, 46771/99 *Last examined: 1013-4.2*
Judgments final on 30/03/2005 and 13/09/2006

Violation of the applicants' right to their private and family life due to decisions by the executive authorities to allow in 2001-2002 the resumption and continuation of a gold-mining operation likely to cause harm to the environment (violation of Art. 8) and in this context also of their right of access to court because of the non-respect of a domestic court decisions ordering in 1996 the stay of production at the gold mine (violation of Art. 6).

IM According to a new environmental impact report of 2007, the mine currently operates under a new operating permit of 2004 and in accordance with environmental standards. New periodic checks will also be carried out in the mining area for a period of ten years, renewable.

More than 1500 applications concerning the resumption of the mining activity are pending before the ECtHR. Domestic proceedings against the resumption of the mining activity were launched in 2006 and are presently pending before the Izmir Administrative Court. Information is awaited notably on the outcome of the proceedings.

Since the events in question the urban plan for the area has been annulled, last by the Supreme Administrative Court in May 2007. Clarifications on the consequences of this decision are expected.

GM The government has referred to the possibilities offered by the existing law: the possibility of bringing compensation proceedings before the Supreme Administrative Court against the administration or the civil servant deliberately refusing to comply with a court decision and the possibility of imposing criminal liability. Relevant case-law examples have been provided. In addition, reference has been made to the new Criminal Code of 2007 sanctions both intentional and unintentional disposal of hazardous substances in a way that might cause damage to the environment.

Information on any further reflections as to necessary general measures has been requested taking into account notably the lessons to be learnt also from the Ahmet Okyay and others case.

Publication and dissemination of the judgments have been ensured.

H. Freedom of religion

244. **GRC / Agga No. 3**
GRC / Agga No. 4

32186/02 and 33331/02 *Last examined: 1013-4.2*
Judgments final on 13/10/2006

Unjustified interference with the applicant's right to manifest his religion on account of his criminal prosecution and convictions between 1997 and 2002 on the ground that in 1996 and in 1997 he had issued and signed messages in the capacity of Mufti, following his election by Muslims (violations of Art. 9).

IM The applicant is entitled to request the reopening of the criminal proceedings, following the ECtHR's judgments.

GM In the context of the execution of the judgments Serif and Agga No. 2 of 2000 and 2002, concerning violations similar to those found in the present cases, the Greek authorities indicated that the domestic case-law had changed and produced decisions and judgments of first-instance and appeal courts delivered in 2001 and 2002 interpreting the provision of the Criminal Code, at the origin of the ECHR violations, in the light of the ECtHR's case-law. On the basis of this information, the CM decided to close its examination of the Serif and Agga No. 2 cases (see Final Resolution (2005)88).

These positive developments have nonetheless not received the full support of the Greek Court of Cassation which still in 2002 failed to give effect to the ECHR requirements in the present cases.

Further general measures have therefore been requested and, in particular:

(a) the publication and widest possible dissemination, through a detailed circular, of the ECtHR's judgment and its earlier relevant case-law to all competent prosecuting and judicial authorities;

(b) measures for enhancing prosecutors' and judges' training in the ECHR case-law, especially as regards freedom of religion;

(c) new examples illustrating direct effect granted to the case-law of the ECtHR by domestic courts, especially by the Court of Cassation, in similar cases.

Information in response hereto has recently been provided by the Greek authorities. This information is being assessed.

245. MDA / Metropolitan Church of Bessarabia and others

45701/99
Judgment final on 27/03/2002

Interim Resolution (2006)12
Last examined: 1007-4.2

Failure of the government to recognise the applicant Church and absence of effective domestic remedy in this respect (violation of Art. 9 and 13).

IM Following the ECtHR's judgment, the Moldovan authorities recognised and registered the applicant Church on 30/07/2002 in accordance with the Moldovan Law on Religious Denominations, as amended on 12/07/2002. The Church has thus acquired legal personality opening the possibility for it to claim property entitlements, among other things. The applicant Church complains that obstacles continue to apply to the registration of its parishes with the competent authority. Additional information is awaited on the current situation regarding this issue.

A new complaint by the applicant Church is pending before the ECtHR since 2004 concerning property claims.

GM The judgment of the ECtHR was translated and published in the Official Journal of Moldova.

Furthermore, in 2002 the possibility to reopen domestic civil proceedings following violations of the ECHR found by the ECtHR was introduced in the Code of Civil procedure and legislative changes were made to the Moldovan legislation on religious denominations. These amendments were however found to be insufficient to prevent new, similar violations, inasmuch as they did not reflect the requirement of proportionality inherent in the ECHR and as the right of a religious community to take judicial proceedings to challenge a registration decision was not provided with sufficient clarity. New draft legislative amendments have been examined since then, in co-operation with the Secretariat and Council of Europe experts. In March 2006, the Committee of Ministers adopted Interim Resolution (2006)12, urging the Moldovan authorities to enact the necessary legislation rapidly and to adopt the necessary implementing measures so as to comply with the ECHR's requirements without further delay. It further encouraged the Moldovan authorities to take account of the conclusions and recommendations provided by the Council of Europe experts, with a view of concluding the ongoing reform in a satisfactory manner.

A new law on Religious Denominations was eventually promulgated and published in the Official Journal on 17/08/2007 but certain concerns expressed by the Committee, in particular in Interim Resolution (2006)12, do not appear to have been taken into account.

Information is awaited in this respect as well as on the adoption of a new regulation, replacing that of 1994.

246. RUS / Kuznetsov and other similar cases

184/02
Judgment final on 11/04/07

Last examined: 1013-4.2

Interference, without legal basis, with the exercise by Jehovah's Witnesses of freedom of religion on the occasion of a religious event organised in 2000 (violation of Art. 9) and unfairness of the civil proceedings instituted against the police officers who had raided the premises (violation of Art. 6).

IM The applicants complained that their premises had been raided again by the police in 2006 and 2007 and that the judgment of the ECtHR had been disregarded by the domestic courts.

The authorities have indicated that following this complaint, an internal inquiry into the facts of 2007 had taken place and had led to disciplinary sanctions. The CM is following the situation.

GM The Ministry of the Interior has taken measures to reinforce its control over the activities of its officers and to prevent new, similar violations. It has notified all local departments of their obligation to comply unconditionally with the judgment of the ECtHR and an additional training has been organised with the local department responsible for the interference.

The judgment of the ECtHR has been sent out to all domestic courts by letter of the Deputy President of the Supreme Court of the Russian Federation. Information is awaited on its publication.

The need for further measures is being assessed.

I. Freedom of expression and information

I.1. Defamation

247. FIN / Goussev and Marenk
FIN / Soini

35083/97 and 36404/97
Judgments final on 17/04/06

Last examined: 992-1.1
Final Resolution (2007)36

Interference with the applicants' right to freedom of expression due to the seizure of certain pamphlets and posters on uncertain legal grounds (violation of Art. 10).

Case closed by final resolution

IM The applicants were acquitted. Furthermore, the ECtHR awarded just satisfaction in respect of the non-pecuniary damage suffered by the applicants. No further individual measure thus seems necessary.

GM The Freedom of the Press Act was repealed by the Act on the Exercise of Freedom of Expression in Mass Media which entered into force on 1/01/04. The new Act served to clarify the relationship between legislative provisions on publications and the Coercive Measures Act.
The ECtHR's judgment has been published.

248. MDA / Busuioc
MDA / Savitchi

61513/00 and 11039/02
Judgments final on 21/03/2005 and 11/01/2006

Last examined: 1013-1.1
Final Resolution (2007)156

Civil conviction of journalists for defamation of civil servants (violation of Art. 10)

Case closed by final resolution

IM In both cases, the ECtHR awarded just satisfaction in respect of pecuniary and non-pecuniary damage, as well as all the costs incurred in connection with the convictions.

GM The violations found in the present cases arise from the fact that, when deciding on the allegations of defamation brought before them, the domestic courts did not distinguish correctly between facts and value judgments, as required by the well-established case-law under Art. 10 of the ECHR. Consequently, a change in domestic courts' practice in this respect appears to be necessary. To this end, and taking into account the direct effect afforded by the Moldovan authorities to judgments of the ECtHR, the judgments of the ECtHR have been translated, published and disseminated to all relevant authorities.

Furthermore, on 15-16/11/05, the Moldovan Ministry of Justice organised, together with the Council of Europe, a seminar for Moldovan judges on the application of Art. 10 of the ECHR. Moreover, out of the 23 civil cases in which the Supreme Court of Justice directly applied the case-law of the ECtHR in 2005, 5 cases concerned Art. 10 of the ECHR.

249. NLD / Veraart

10807/04
Judgment final on 28/02/2007

Last examined: 1013-4.1

Unnecessary interference with a lawyer's right to freedom of expression on account of an admonition given to him in 2003 by the Disciplinary Appeals Tribunal for having publicly questioned the competence of a psychotherapist (violation of Art. 10).

IM Information is awaited on measures taken or envisaged to remedy the consequences of the violation for the applicant and, in particular, on the erasure of the admonition from the applicant's professional record.

GM The problem at issue in the judgment does not seem to be systemic. Given the direct effect of ECtHR's judgments in the Netherlands, all authorities concerned are expected to align their practice to this judgment, which has been published.

250. PRT / Lopes Gomes da Silva

37698/97
Judgment final on 28/12/2000

Last examined: 1007-1.1
Final Resolution (2007)131

Disproportionate interference with the applicant's freedom of expression due to his conviction for defamation following the publication of an editorial criticising a candidate in a municipal election (violation of Art. 10)

Case closed by final resolution

IM The fine paid by the applicant as a consequence of the conviction has been reimbursed in the framework of the just satisfaction awarded by the ECtHR and his criminal record contains no mention of the conviction at issue. Accordingly, all the consequences for the applicant of the violation found in this case have been remedied.

GM To help competent courts adapt their interpretation of the limits of permissible criticism when assessing defamation cases, the judgment of the ECtHR was promptly translated into Portuguese and published and it has been the subject of pedagogical discussions at Universities and at the Centre for Judicial Studies in Portugal.

The government is of the opinion that, in view of the supra-legal status of the ECHR as interpreted by the ECtHR in Portuguese law, the Portuguese courts will interpret the relevant provisions in accordance with the ECHR so as to avoid new violations similar to that found in this case.

251. UKR / Ukrainian Media Group

72713/01
Judgment final on 12/10/05

Last examined: 987-1.1
Final Resolution (2007)13

Disproportionate interference in the freedom of expression of the applicant company due to its civil conviction for defamation (violation of Art. 10).

Case closed by final resolution

IM The ECtHR awarded just satisfaction in respect of all the damages suffered by the applicant company as a consequence of the violation.

GM The Ukrainian law on defamation was amended in 2003. A new Article was added, exempting value judgments from liability. The law, as amended, furthermore:

- prohibits state bodies and bodies of local self-government from demanding non-pecuniary damages for the publication of false information, although they may demand a right of refutation;
- provides a defence of conscientious publication, if the court rules that a journalist acted in good faith and verified the information;
- imposes compensation for non-pecuniary damage for defamation only in cases of malicious intent by the journalist or media outlet which disseminated the impugned expression.

The provisions of the Ukrainian Civil Code concerning defamation have also been modified in

2005 and now provide that "negative information shall be deemed to be false unless proven otherwise by the person who disseminated the said information" and that "[a]n individual disseminating information obtained from official sources (information of state bodies, bodies of local self-government, reports, records, etc.) is not obliged to verify its authenticity and shall not be held liable in the case of its refutation.

The judgment was translated into Ukrainian and published. Moreover, to ensure a direct effect of the ECHR in Ukrainian law as regards defamation proceedings, summary of the judgment was published in the official publication of the Supreme Court, which is distributed to all Ukrainian courts.

Furthermore, a number of round tables and seminars regarding this judgment were held, not least for judges of courts of all levels. The Union of Journalists of Ukraine, with the assistance of the Government Agent, held a special press-conference on the judgment.

252. UK / Steel and Morris

68416/01
Judgment final on 15/05/2005

Last examined: 1007-6.1

Violation of the principle of equality of arms in that the applicants were denied legal aid in defamation proceedings brought by two McDonalds companies against the applicants from 1990 to 2000 (violation of Art. 6§1); violation of their freedom of expression on account of the disproportionate damages awarded by the domestic courts against the applicants (violation of Art. 10).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The ECtHR awarded the applicants just satisfaction covering their non-pecuniary damages, as well as costs and expenses, but not in respect of pecuniary damage since the damages awarded by the domestic court had not been enforced. It should be noted, in this connection, that according to a constant practice of the British courts, execution of judgments awarding damages is refused after the expiry of more than six years from the date the judgment was enforceable, as in the present case.

GM **Lack of legal aid**, a) In England and Wales, subsequent to the facts of this case, the Access to Justice Act, concerning legal aid, came into force in 2000. Legal aid is in principle still excluded for defamation cases, but this Act nonetheless provides for the discretionary "exceptional funding" of cases otherwise falling outside the scope of legal aid. The guidance for allowing legal aid was updated following the judgment of the ECtHR and makes it clear that this judgment is to be considered the "benchmark" by which exceptional cases are to be considered. In addition, the government has undertaken to keep the guidance under review, and revise it as necessary to reflect any further developments in the jurisprudence of the ECtHR.

b) In Northern Ireland, legislative provision was made, and guidance issued, which is comparable to that made in England and Wales.

c) In Scotland, the Legal Aid (Scotland) Act 2007, relating to defamation or verbal injury, was passed, implementing the Steel and Morris judgment by ensuring that civil legal aid will be available to complainants and defendants alike, subject to an "exceptional cases test" which is set out in a ministerial direction. The Civil Legal Aid for Defamation or Verbal Injury Proceedings (Scotland) Direction 2007 came into force on 17/08/2007. In determining whether there is something exceptional about the person or the case, the deciding Board must be satisfied that the degree of exception is the same or approximately the same as in the case of Steel and Morris.

Freedom of expression: The judgment of the ECtHR has received wide coverage and comment in the national and local press, broadcast media and legal publications. In the view of the United Kingdom authorities, this will ensure that the competent courts are informed of the judgment and are able to put it into effect, with respect to both the question of legal aid in similar cases and the proportionality of damages.

I.2. Speech threatening public order or national security

253. TUR / Ergin No. 6
TUR / Düzgören

47533/99 and 56827/00
Judgments final on 04/08/2006 and 09/02/2007

Last examined: 1013-4.2

Violation of the applicants' freedom of expression as they were convicted for non-violently inciting to conscientious objection (violations of Art. 10); lack of independence and impartiality of military courts trying civilians (violation of Art. 6§1).

IM Mr Ergin's conviction has been erased from his criminal record. In the Düzgören case, the erasure of all consequences of the violation found is awaited, namely the removal of the applicant's conviction from his criminal record.

GM As regards the violation of **freedom of expression**, the new Criminal Code adopted in June 2005 does not appear to have decriminalised non-violent expression of opinions on conscientious objection, although it now requires an active element, in that, to be a crime, the incitement or encouragement should be capable of accomplishing its aim. The law does not seem to require any of the elements that the ECtHR has referred to, i.e., "incitement to hatred or violence" or "aim to provoke immediate desertion". Incitement to abstention through the media is even considered an aggravating factor, in spite of the ECtHR's finding in Ergin case that a newspaper article addressed to a general public could not be considered to aim at immediate desertion. Accordingly, information is expected on the legislative or other measures taken or envisaged to bring the relevant provisions in conformity with the ECHR.

The ECtHR's judgments were translated and sent out with a circular to the relevant courts, so that they could take into account of the ECHR requirements when applying domestic law on incitement to abstention from military service.

As regards the **independence and impartiality of military courts**, following a legislative change in 2003, (i.e. after the facts at the origin of these cases), military courts no longer have jurisdiction over civilians accused under the provision at issue in these cases. A new law of 2006 further limits to the jurisdiction of military courts over civilians: the only exception that remains concerns "military" crimes committed by a civilian in conspiracy with a military person.

254. TUR / Inçal and other similar cases

22678/93
Judgment final on 09/06/98
Last examined: 1007-4.2

Interim Resolutions (2001)106; (2004)38; (2003)43
Memorandum CM/Inf/DH(2007)20 revised

Unjustified interferences with the applicants' freedom of expression (conviction for publication of articles and books or the preparation of messages addressed to a public audience); lack of independence and impartiality of state security courts (violations of Art. 10 and 6)

IM In 2003, Article 8 of the Anti-terrorism Law No. 3713 was abrogated, thus erasing *ex officio* convictions under this provision and their mention in the criminal records, thereby automatically lifting any restrictions on applicants' civil and political rights.

Another law of 2003 allowed, under certain conditions, the erasing of convictions under different provisions related to freedom of expression in general.

Furthermore, reopening of domestic proceedings is possible since 2003 in cases which had already been decided by the ECtHR before 04/02/2003 and in all new cases brought before it after that date. Re-opening is not possible in cases which were pending before the ECtHR on 04/02/2003, as well as for cases resulting in friendly settlements.

For a detailed assessment of the individual measures taken and outstanding issues in these cases, as well as for the list of cases in which confirmation of the erasure of any remaining consequences of the violations are expected, see Memorandum

CM/Inf/DH(2007)20 revised and Interim Resolutions (2001)106, (2004)38 and (2003)43.

GM For a detailed assessment of the general measures taken and outstanding issues in these cases see Memorandum CM/Inf/DH(2007)20 revised.

255. **TUR / Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş**

64178/00
Judgment final on 30/06/06

Last examined: 1013-(4.2)

Unjustified interference with the applicant radio-broadcasting company's freedom of expression on account of warnings and licence suspensions imposed between 1998 and 1999 under the Broadcasting Law for relating articles already published and which did not constitute "hate speech" (violation of Art. 10).

IM The ECtHR awarded the applicant company just satisfaction in respect of the non-pecuniary damages sustained but not in respect of pecuniary damage, as the applicant company did not submit elements allowing such damage to be quantified. No further individual measure appears to be needed.

GM For the first time, the questions of the Turkish broadcasting system and of the interpretation given by the Turkish broadcasting regulatory authority (RTÜK) and administrative courts to the Broadcasting Law are raised in a case. In the light of the many significant legislative and other measures taken in the last few years to strengthen freedom of expression in Turkey (see the Inçal group), information is needed on the impact, if any, of such measures on the current application of the provisions at the origin of the violation of the ECHR in this case. Information is also awaited about any legislative or other measures envisaged in respect of the criteria for issuing warnings and suspending licences in the broadcasting system. The judgment should also be translated and disseminated with a circular to administrative courts and the RTÜK. A draft plan of action for the execution of this judgment is awaited.

256. **UK / Hashman and Harrup**

25594/94
Judgment of 25/11/99 – Grand Chamber

Interim Resolution (2005)59

UK / Hooper

42317/98
Judgment final on 16/02/2005

Last examined: 1007-6.1

Violation of the applicants' freedom of expression resulting from the "binding-over" orders not to breach the peace or behave *contra bonos mores* in the future issued by courts against the applicants in 1993 (violation of Art. 10).

Failure to allow the applicant or his legal representative to address the magistrates' court in 1997 prior to the imposition of a binding-over order in respect of which the applicant was later committed to prison for failing to comply with it (violation of Art. 6§1 and 6§3 in the Hooper case).

Case in principle closed on basis of available information – draft final resolution in preparation

IM It should be noted that binding-over orders are not criminal convictions. In the Hashman and Harrup case, the applicants do not appear to be suffering any consequences of the violation: the one-year binding-over order having expired in 1994, they would have been able to recover the sum for which they were bound over. In the Hooper case, the ECtHR awarded just satisfaction for non-pecuniary damage suffered through the loss of opportunity to make representations to the magistrates' court, and the applicant does not appear to be suffering any serious consequences of the violation.

1) Following the Hashman and Harrup judgment in 1998, and pending a full review of binding-over orders, interim measures were taken in the form of guidance issued to prosecutors in 2000, to the effect that they should not ask courts to consider binding-over orders unless there were evidence of past conduct which, if repeated, is likely to cause a breach of the peace. The guidance also suggested that courts could be encouraged to ensure that the behaviour to be avoided was made quite clear in the order. Statistics for 2005 on binding-over orders were also provided, showing a diminishing number of binding-over orders issued in 2005 in comparison to 2004.

2) Consolidated Criminal Practice Direction was amended in 2007. The amendments apply in Crown Court and Magistrates' Courts, which may impose binding-over orders. The Practice Direction as amended specifies that courts should no longer bind an individual over "to be of good behaviour" or to "keep the peace" in general terms, but rather identify the specific conduct or activity from which the individual should refrain.
As regards the possibility of making representations to the court before a binding-over order is imposed, the Practice Direction provides that the court should give the person to be bound over and the prosecutor the opportunity to make representations, as to both the issue of the order and its terms. When fixing the amount of the recognisance, courts should also have regard to the individual's financial circumstances and should hear representations from the individual or his or her legal representative regarding finances. In addition, before the court exercises the power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings, if the individual so wishes, and public funding should generally be granted to cover representation.

3) The judgments of the ECtHR have been published in several law reports.

J. Freedom of assembly and association

J.1. Political parties

257. BGR / UMO Ilinden-Pirin and others
BGR / UMO Ilinden and others

59489/00 and 59491/00 *Last examined 1007-4.2*
Judgments final on 20/01/2006 and 19/04/2006

Infringement of the freedom of association of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – dissolution of their political party and refusal to register their association, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (violation of Art. 11 and Art. 13).

IM Re-registration of the political party: following the judgment of the ECtHR the applicants have twice, in vain, sought re-registration of a political party with the same name and statutes as that unjustifiably dissolved. The last request was rejected by the Supreme Court of Cassation on 11/10/2007. Basic CM practice on the issue has been presented in document CM/Inf/DH(2007)8. The outstanding issues relate mainly to the maintenance in the new registration proceedings of the stricter membership requirements of the new law on political parties, which requirements would not have applied to the party had it not been unjustifiably dissolved and to the consequences flowing from the judgment of the Supreme Court of Cassation mentioned above.
In its last decision in this case in October 2007 (1007th meeting) the CM took note of the continuing commitment of the Bulgarian authorities to ensure without further delay full implementation of these judgments with a view to preventing any new violation of the freedom of association of the applicant organisations and their members. It also noted the applicants' complaints concerning the outcome of the last registration proceedings. It noted the different problems still raised by the issue of individual measures and invited the Bulgarian authorities in co-operation with the Secre-

tariat to examine possible solutions to these problems within the framework of the Bulgarian legal order. A seminar on the problems raised, with participation notably from the Supreme Court, the Sofia City Court and the prosecution office, was held in Sofia 17-18 December 2007. Consultations between the Secretariat and the Bulgarian delegation were still being pursued end of 2007.
The first refusal of re-registration is the object of a new application to the ECtHR.
Registration of the association: The ECtHR noted that in 2002-2004 the competent courts once again refused to register the applicant association. These facts are the object of another application, currently pending before the ECtHR. No further registration application appears to have been lodged after the ECtHR's judgment. The government, has, however, indicated that it appeared likely, having regard to the direct effect that the authorities should give to the ECHR and to the judgments of the ECtHR, that a possible new request will be examined in compliance with the requirements of the ECHR (see also the general measures).

GM **Dissolution of political parties**: In view of the direct effect of the ECtHR's case-law in Bulgarian law, the government considered it sufficient, in order to ensure an interpretation of Bulgarian law compliant with the ECHR, to send the ECtHR's judgment, with a covering letter indicating that the transmission was made in the context of Bulgaria's execution of the ECtHR's judgment, to the Constitutional Court and to the competent court for the registration of political parties. Additional information is awaited on further measures envisaged having regard to the outcome of the latest registration proceedings (see above). These measures could include training measures, as well as any other measures aimed at enhancing the direct effect of the ECHR and of the judgments of the ECtHR in Bulgarian law. Bilateral contacts are under way with the Bulgarian authorities on this issue.

Registration of associations: the ECtHR's judgment has been disseminated to relevant courts, with a note drawing their attention to Bulgaria's obligations under the ECHR.

Both cases: A number of awareness raising and training measures have already been taken and further are planned for 2008, notably under the auspices of the National Institute of Justice. The judgments of the ECtHR have been published on the website of the Ministry of Justice.

The CM has noted the ongoing training programs and the Bulgarian authorities' intention to enhance them.

258. CZE / Linkov

10504/03
Judgment final on 07/03/2007

Last examined: 1013-4.1

Unjustified refusal in 2001 to register a political party due to the fact that its programme, which aimed at "breaking the legal continuity with totalitarian regimes", was considered unconstitutional, while nothing indicated that the party sought to pursue this aim by unlawful and non-democratic means (violation of Art. 11).

IM If the applicant chooses to apply again for registration, the ground upon which his previous application was rejected will be considered as unlawful within the meaning of Article 11 of the ECHR. The Ministry of Internal Affairs, which is responsible for the registration procedure, has already issued a formal confirmation to this effect.

GM The ECtHR's judgment reveals no structural problem concerning the registration of political parties. Nevertheless, the judgment of the ECtHR has already been translated, published and sent out to the authorities concerned, namely the Ministry of Internal Affairs, the Supreme Administrative Court and the Constitutional Court.

259. GRC / Ouranio Toxo and others 74989/01

Judgment final on 20/01/2006

Last examined: 997-6.1

Violation of the freedom of association of the applicant political party and its members on account of the national authorities' acts and omissions in 1995; excessive length of proceedings in indictment divisions (violation of Art. 11 and 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The general measures adopted and under way (below) also cover the individual measures required to ensure the effective protection of the freedom of association of applicant political party and its members in accordance with the ECHR as interpreted by the ECtHR in this case. The ECtHR awarded the applicants just satisfaction in respect of pecuniary and non-pecuniary damages.

GM 1) Violation of Article 11: (a) after the facts of the case, the police adopted a new anti-crime strategy taking into consideration, *inter alia,* the relevant Recommendations of the CM. Thus, a series of new decrees, orders and decisions were issued by the police between 2002 and 2006 concerning in particular patrolling operations of police officers. Under the new rules, sensitive targets, including those of particular political interest, are under 24-hour surveillance so that any risk of aggression is avoided. Particular emphasis is placed on the need to provide immediate and effective assistance in case of riots against such targets. This order was sent out to all police headquarters with a letter of the Head of the Greek Police expressly mentioning that this order had been issued in compliance with the ECtHR's judgment, which was also appended. In addition, on 3/12/2004 the Policemen's Code of Conduct entered into force, providing policemen's obligation to respect every individual's right to life and personal security.
(b) The ECtHR's judgment was promptly transmitted to the Ministry of Public Order, the Head of Police and the Ministry of Justice and translated and published at the State Legal Council's site. It was also sent out to all competent judicial authorities by the Court of Cassation, as well as to the local authorities in Florina accompanied by an explanatory note.
2) Violation of Article 6§1: measures have already been adopted, see Final Resolution(2005)66 in the case of Tarighi Wageh Dashti.

260. MDA / Christian Democratic People's Party (CDPP)

28793/02 *Last examined: 1013-4.2*
Judgment final on 14/05/2006

Temporary ban of a Parliamentary political party on grounds found not to be relevant and sufficient (violation of Art. 11).

IM The temporary ban on the CDPP's activities was lifted on 8/02/2002, following an inquiry by the Secretary General of the Council of Europe under Article 52 of the ECHR. No further individual measure seems to be needed.

GM The judgment of the ECtHR was translated and published.

Information is expected on measures taken or envisaged to prevent new, similar violations resulting from erroneous interpretation of permissible grounds for banning political parties. The dissemination of the ECtHR's judgment among the relevant authorities and domestic courts is also expected, possibly together with circulars or explanatory notes stressing the problems identified by the ECtHR.

261. ROM / Partidul Comunistilor (Nepeceristi) and Ungureanu

46626/99 *Last examined: 1013-6.2*
Judgment final on 06/07/2005

Refusal, in 1996, to register a political party on account of its political programme, in spite of the fact that it did not call for the use of violence, uprising or any other form of rejection of democratic principles (violation of Art. 11).

Case in principle closed on basis of available information – draft final resolution in preparation

IM Following the publication of the ECtHR's judgment, the second applicant requested and obtained the revision of the 1996 court decision, whereby his application for the registration of the political group had been rejected.
In fact, in 2006, the Tribunal admitted the request for revision, it ordered the applicant's registration as a political party and allowed it a six-month period to fulfil the new requirements – in particular as regards the number of members – imposed by the new legislation of 2005 for the registration of political parties, notwithstanding the fact that the transitional period foreseen by the new legislation had already ended. This decision became final on 28/06/2006. By filling the legislative gap in this way, the Romanian courts have ensured, as far as possible, the "restitutio in integrum" required by the ECHR.

GM The law on political parties has changed since the facts of the case. The main problem resided, however, not in the requirements of the law itself but in the interpretation it was given. In this respect, and relying on the direct effect of the ECHR and the ECtHR case-law in Romanian law, the authorities have confirmed that, since the publication and dissemination of the ECtHR's judgment, the judicial practice has already been put into conformity with the ECHR, as evidenced from the above revision procedure.

262. TUR / United Communist party of Turkey and other similar cases

19392/92
Judgment final on 30/01/1998 – Grand Chamber and other similar cases

Last examined: 997-1.1
Interim Resolutions (99)245 et (99)529
Final Resolution (2007)100

Dissolution of political parties by the Constitutional Court between 1991 and 1997 (violation of Art. 11)

Case closed by final resolution

IM The CM has noted with satisfaction that all applicants have been able to resume their political activities without further interference contrary to the ECHR, both by taking part individually in elections and by securing the re-registration of their parties or the registration of new parties.
The obstacles to re-registering the dissolved parties or registering similar parties have thus been removed. Both the Socialist Party and the Communist Party were allowed by the authorities to re-register and take part in the 2003 general election. It is particularly noteworthy that the Communist party was accepted by the competent authorities although the constitutional and legal ban on parties using the denomination "communist" had not been formally repealed.
The CM has, however, deplored that, shortly after the delivery of the ECtHR's judgment in the case of the Socialist Party and others, one of the applicants was criminally convicted on the basis of the same facts as those at the origin of the dissolution of his party and that the consequences of this conviction could not be erased without successive interventions by the CM (see Interim Resolutions (99)245 and (99)529 followed by the conditional release of the applicant and restoration of his civil and political rights); and by the ECtHR, following a further application (No. 46669/99, judgment of 21/06/2005, awarding just satisfaction for remaining prejudice).

GM 1) **Constitutional reforms** took place in 1995 and 2001. As a result, the permanent prohibition placed on members of dissolved parties, from exercising political activity of any kind, was transformed into a five-year ban applicable only to party leaders. Furthermore, a political party cannot anymore be sanctioned without any evidence of clearly anti-democratic activity. A requirement of proportionality has also been introduced, providing recourse to lesser penalties than dissolution. In addition, the new text of Article 90 of the Constitution as amended in 2004 gives international human rights treaties a superior status to national law in case of conflict.
2) **Law reforms**: The Law on Political Parties (LPP) was amended on 11/01/03 so as to give effect to the constitutional changes of 2001. Accordingly, the conditions for political party membership have been eased; the criteria for imposing penalties and the proportionality of penalties have been revised; political parties have been given a right of appeal against motions for dissolution by the Prosecutor before the Constitutional

Court and the majority required for dissolving a political party has been increased.
3) **Changes in practice**: the fact that the Communist Party was authorised to take part in the 2003 general election even though the prohibition which was at the origin of the ECHR violation was still in place demonstrates the increasing direct effect of the ECtHR's judgments. This development has been further enhanced through the amendment of Article 90 of the Constitution (see above). In the light of these developments, the government now expects that all domestic courts, including the Constitutional Court, will give direct effect to the ECHR and the case-law of the ECtHR, not least when deciding matters relating to the dissolution of parties or the penalties to be imposed on their members.

4) All the judgments of the ECtHR in these cases have been translated and published.

J.2. Trade unions

263. DNK / Sørensen and Rasmussen

52562/99
Judgment final on 11/01/06

Last examined: 987-1.1
Final Resolution (2007)6

Violation of the applicants' freedom of association due to the obligation imposed on them by their employer to join a particular trade union (violation of Art. 11).

Case closed by final resolution

IM Neither applicant is still working for the same employer or obliged to be a member of a trade union. Thus no individual measure is called for.

GM A new law, which entered into force on 29/04/06, establishes that "the fact of belonging or not belonging to a union must not be taken into account for purposes either of recruitment or dismissal. The law extends the negative freedom of association, i.e. the right not to be a member of a union. As a consequence, any closed-shop agreements contained in collective agreements will be null and void and may not be concluded in the future".

Furthermore, the authorities have indicated that the judgment received massive press coverage in Denmark. The Ministry of Employment issued a press release and the judgment has been published.

264. TUR / Tüm Haber Sen and Çınar 28602/95

Judgment final on 21/05/2006

Last examined: 992-6.1

State's failure to comply with its positive obligation to secure to the applicant civil servants' trade union the enjoyment of its freedom of association (violation of Art. 11)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant trade union was active from 1992 until May 1995, when it was dissolved. The prohibition on civil servants' forming trade unions was lifted by legislative amendments shortly after the facts at the origin of this case.

GM The current legal framework as amended in 1995, 1997 and 2001, allows public servants to establish and/or become members of trade unions.

265. UK / Associated Society of Locomotive Engineers and Firemen (ASLEF)

11002/05
Judgment final on 27/05/2007

Last examined: 1007-2

Violation of freedom of association on account of the legal impossibility for a trade union to expel one of its members on account of his membership of a political party advocating views incompatible with those of the trade union (violation of Art. 11).

IM After the domestic decision, the applicant trade union was forced to re-admit the member in question to the membership of the union, against its own Rules. Given the wording of the relevant provisions, a case-law development allowing the applicant trade union to expel or exclude members on grounds of political party membership seems unlikely.
The issue of individual measures required in this case is accordingly to be linked to the legislative changes under way (see below).

GM The Trade Union and Labour Relations (Consolidation) Act 1992 will be amended in the Employment Bill, which the government introduced on 06/12/2007. Information is awaited on this.

The judgment has been published and circulated within government by the Human Rights Information Circular prepared by Ministry of Justice lawyers.

266. UK / Wilson and the National Union of Journalists, Palmer, Wyeth and the National Union of Rail, Maritime and Transport workers, Doolan and others

30668/96
Judgment final on 02/10/02

Last examined: 1013-4.2

Failure of the state in its positive obligation to secure freedom of association, by permitting employers to use financial incentives to induce employees to surrender important union rights (violation of Art. 11 as regards both the individual and the trade union applicants).

IM Each individual applicant was awarded just satisfaction in respect of non-pecuniary damage. The ECtHR also awarded a sum to the applicant trade unions with respect to their own legal costs and expenses, as well as the individual applicants' legal costs and expenses which had been paid for by the applicant trade unions.

GM The judgment of the ECtHR has been published.
Following consultations by the Department of Trade and Industry in 2003, a new Employment Relations Act came into force in 2004. The new law provides, *inter alia*, that workers receiving offers mainly aimed at inducing them to renounce union membership or activities may bring a complaint before an employment tribunal. The Act applies to members of independent trade unions which are recognised, or are seeking to be recognised, by the employer. Thus, non-recognised unions may benefit from the protection afforded by these provisions. In addition, it is open to tribunals to apply the law in a manner that is compatible with the present judgment, and at this stage there would appear to be no indication that they will fail to do so.

Information provided by the United Kingdom authorities is currently being assessed.

J.3. Other associations

267. ARM / Mkrtchyan

6562/03
Judgment final on 11/04/2007

Last examined: 1013-6.1

Breach of freedom of association and assembly on account of the applicant's sentence for having participated in a demonstration in 2002 on the basis of a law which was not formulated precisely enough to enable him to foresee the consequences of his actions (violation of Art. 11).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant was sentenced to a fine equivalent to one euro; he made no claim in respect of pecuniary damage. Moreover, the ECtHR held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

GM On 28/04/2004, the Armenian Parliament adopted a new law regulating the procedure for holding assemblies, rallies, street processions and

demonstrations. The judgment of the ECtHR was translated into Armenian and published.

268. BGR / UMO Ilinden and Ivanov
BGR / Ivanov and others

44079/98 and 46336/99 *Last examined: 1013-4.2*
Judgments final on 15/02/2006 and 24/02/2006

Infringement of the freedom of assembly of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – prohibition of their meetings between 1998 and 2003, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims; lack of effective remedies to complain against the prohibitions of their meetings (violations of Art. 11 and 13).

IM The Bulgarian authorities informed the Committee that in 2006 only 2 out of 10 requests for organisation of meetings were rejected. The police ensured the security of the participants and the public order at the authorised meetings. However, two other applications are at present pending before the ECtHR relating to the meetings prohibited between 2004 and 2006. Furthermore, a new ban was issued by the Governor in April 2007 on grounds already incriminated by the ECtHR. It appears the meeting was nevertheless held, however under conditions considered unsatisfactory by the applicants, which resulted in a new application with the ECtHR.
Information is awaited on the measures envisaged to guarantee the applicants' freedom of assembly and the effectiveness of the domestic remedies in this respect.

GM A copy of the judgments translated into Bulgarian and accompanied by a circular letter was sent to the mayors of the towns directly concerned by the cases, as well as to their district courts, competent prosecutors and to the directors of the National Security Service, of the Police Directorate of Sofia and of the Directorate of the Interior of Blagoevgrad. The authorities' attention was drawn to the main conclusion of the ECtHR in these cases, as well as to the fact that this communication was made within the framework of the adoption of the general measures for the execution of the ECtHR's judgments.

Training activities are under way. A seminar for judges and prosecutors on freedom of association and assembly with the participation of the Council of Europe was organised by the National Institute of Justice in October 2007. Further activities, including also governors, police and local authorities are planned for 2008.

Contacts are under way regarding these training and awareness raising measures.

A reflection was carried out within the Ministry of Justice on the need to amend the Meetings and Marches Act. In view of the development of the direct effect of the ECHR and the case-law of the ECtHR it was considered unnecessary to change the grounds on which a meeting may be banned, as these appear to leave room for a ECHR conform application and taking into account the awareness and training activities planned. The necessity of improving domestic remedies is, however, examined in order to allow that complaints against meeting bans to are examined before the date intended for the meeting.

Information is awaited on this issue, as well as on the time frame for the adoption of the draft law amending Meetings and Marches Act.

269. ITA / Maestri

39748/98 *Last examined: 987-6.1*
Judgment final on 17/02/04 – Grand Chamber

Unlawful interference with the freedom of association of a judge, on account of the disciplinary sanction imposed upon him in 1995, for having belonged to a masonic lodge until 1993 while the legal basis of the sanctions was not sufficiently clear, precise and predictable (violation of Art. 11).

Case in principle closed on basis of available information – draft final resolution in preparation

IM As the applicant resigned as a judge in 2005, no further measure appears necessary.

GM A new order clearly stating that membership of masonic associations is incompatible with the exercise of judicial functions was adopted in 1993 and the ECtHR's findings were brought to the attention of the competent judicial authorities. The judgment was also published in Italian.

270. ITA / N.F.

37119/97
Judgment final on 12/12/01

Last examined: 1013-4.1

Unlawful interference with the freedom of association of a judge, on account of the disciplinary sanction imposed upon him in 1994, for having belonged to a masonic lodge until 1992 while the legal basis of the sanctions was not sufficiently clear, precise and predictable (violation of Art. 11).

IM In 2003, the judgment of the ECtHR was added to the applicant's professional file, but the disciplinary sanction of 1994 has not been erased, no remedy being available in this respect in Italian law.

The applicant complains that, as a consequence, he is still suffering from negative effects: in 2000 he was denied a promotion, in 2003 he was denied a retroactive career development for the period 1997-2000 and in 2005 his application for a post of Section President in the Appeal Court was dismissed.

The Italian authorities indicate that these decisions were based on their discretionary assessment of the facts at the origin of the disciplinary sanction, and not on the disciplinary sanction itself.

It should be noted that the decision of 2000 denying the applicant a promotion was overturned in 2002 by the regional administrative tribunal. The Ministry of Justice appealed against it, and a decision is awaited from the Council of State. At the end of 2007, the CM was awaiting the outcome of this procedure.
In 2007, the ECtHR, rejected as inadmissible a new complaint by the applicant alleging a violation of Articles 1, 11 and 46 of the ECHR on account of Italy's failure to annul the disciplinary sanction or to reopen the domestic proceedings.

GM A new order clearly stating that membership of masonic associations is incompatible with the exercise of judicial functions was adopted in 1993 and the ECtHR's findings were brought to the attention of the competent judicial authorities. The judgment was also published in Italian.

271. TUR / Çetinkaya

75569/01
Judgment final on 27/09/2006

Last examined: 997-6.1

Unnecessary interference with the applicant's freedom of association on account of his conviction in 2000 for having been present, as director of a human rights association, at a press conference which had been labelled de facto an "illegal assembly" by the authorities, without any consideration being given to whether it had been conducted peacefully or not, or to the applicant's behaviour (violation of Art. 11).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant's sentence to a fine was suspended and his conviction has been removed from criminal records. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained.

GM The law at the origin of the violation was abrogated and replaced by a new Law on Associations, which entered into force on 23/11/04. This new legislation does not contain a prohibition similar to that at the origin of the violation found in this case.

272. **TUR / Tunceli Kültür ve Dayanışma Derneği**

61353/00 *Last examined: 1007-6.1*
Judgment final on 12/02/2007

Dissolution in 2000 of a cultural association by the authorities and conviction of its chairperson due to statements (made or authorised by its board of directors) considered contrary to the association's social aim (violation of Art. 11)

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicant association does not seem to have requested its reestablishment, with a view to resuming its activities. Under the new Law on Associations, the re-establishment of the association is, however, possible.

GM The old Law on Associations at the origin of the violation was repealed and replaced by the new above mentioned law in 2004. The new law contains no provision similar to those at the origin of the violation found.

273. **TUR / Yeşilgöz and Firik**

58459/00+ *Last examined: 997-6.1*
Judgment final on 27/09/2006

Unjustified interference with the applicants' freedom of expression on account of their criminal conviction in 1998 and of the dissolution of their cultural association in 2000 under the former Law on Associations (violation of Art. 10); unfairness of the criminal proceedings, in that the written opinion submitted by the Principal Public prosecutor to the Court of Cassation on the merits of the applicants' appeal was not communicated to them (violation of Art. 6§1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM The applicants' sentences were deferred and their convictions have been removed from their criminal records. The ECtHR awarded them just satisfaction in respect of the non-pecuniary damage sustained.

GM As regards the violation of the applicants' **freedom of expression**, a new Law on Associations entered into force in 2004, contains none of the provisions at the origin of the violation.
The problem related to the non-communication of the written opinion submitted by the Principal Public prosecutor was solved by the general measures taken in the framework of the execution of the case Göç (36590/97).

K. Right to marry

274. **UK / B. and L.**

36536/02 *Last examined: 1007-6.1*
Judgment final on 13/12/2005

Prohibition of marriage between a father-in-law and his daughter-in-law in 2002 due to legislation prohibiting marriage between parents-in-law and their children-in-law unless both their former spouses have died (violation of Art. 12).

Case in principle closed on basis of available information – draft final resolution in preparation

IM There is no longer a prohibition on the applicants' marrying: see general measures.

GM Legislative reforms were adopted, repealing the offending sections in all areas of the United Kingdom.
In England and Wales, the prohibition on marriage between fathers-in-law and daughters-in-

law was removed by a remedial Order which came into force on 01/03/2007.
In Scotland, the Family Law (Scotland) Act 2006 came into force on 04/05/2006, removing this prohibition.
In Northern Ireland, an order to amend the relevant legislation and remove the prohibition was made by the Privy Council on 19/07/2006 and came into operation two months after the date of promulgation
The judgment of the ECtHR was published and is available on Her Majesty's Court Service website.

L. Effective remedies – specific issues

N.B. This section only includes cases where a violation of Article 13 of the ECHR is the only one found.

275. FRA / Ramirez Sanchez

59450/00 *Last examined: 1007-4.2+3.B*
Judgment final on 04/07/06 – Grand Chamber

Lack of effective remedy to challenge the decisions to prolong the applicant's detention in solitary confinement from 1994 until 2002 (violation of Art. 13).

IM The violation found relates to a period which ended in 2002. The applicant has not been held in solitary confinement since January 2006. The applicant made no claim for compensation of any damage sustained.

GM In a judgment of 2003, the *Conseil d'Etat* changed its case-law to admit that judicial review of solitary confinement decisions should be available before administrative courts. Henceforth a judge may, if appropriate, quash such decisions "given the importance of the effects they have on conditions of detention".
This case-law change has now been confirmed by two Decrees on solitary confinement of 2006, which change the legal status from "internal measures" (without possibility of judicial review) to "individual administrative decisions", which can be challenged before the Administrative Courts. These courts are competent to rule on the external (form) and internal (law) legality of the act and are entitled to annul it. French Administrative Magistrates directly apply the ECHR as interpreted by the ECtHR. The Decrees of 2006 also provide further guarantees for detainees during proceedings concerning placement in solitary confinement.

Prison staff have been informed in detail of the new regulations through a ministerial circular in 2006 and via training.

The ECtHR's judgment has been sent out to the relevant courts and authorities. Details on the exact scope of the judgment's publication / dissemination are awaited.

Clarification is also awaited on how detainees are informed of their right to appeal against solitary confinement decisions.

276. GRC / Dactylidi and Fotopoulou

52903/99 and 66725/01 *Last examined: 1013-(4.2)*
Judgments final on 09/07/03 and 18/02/05

Lack of an effective remedy whereby the applicants might have compelled the local authorities to comply with decisions taken by administrative organs, in 1990 and 1993, ordering the demolition of illegal constructions built in the vicinity of and adversely affecting the applicants' houses (violations of Art. 13); violation also of the applicant's property rights (violation of Art. 1 of Prot. No 1); excessive length of proceedings before the Supreme Administrative Court from 1992 to 1999 and from 1995 to 1999 (violation of Art. 6§1).

IM In the Dactylidi case, the applicant was awarded just satisfaction covering the non-pecuniary damage sustained. The impugned constructions have in the meantime been legalised since they had been completed before the revocation of the building permits which had been granted with

no fault of the beneficiaries. The applicant has not made known to the Committee any further claim. In the Fotopoulou case, the applicant was awarded the full amount of pecuniary damage she had incurred prior to the judgment, as well as non-pecuniary damages. Urgent information is awaited on whether the impugned construction has been or is to be demolished as well as on the follow-up given to the applicant's complaints since 2004, which were still under examination in 2006.

GM As regards the **lack of effective remedies** against the violation of property rights resulting from the authorities' failure to execute decisions ordering the demolition of illegal buildings, a law of 2004 provides that everyone with a legitimate interest has the right to file an application with the competent administrative organs, who must reply within 50 days. If this deadline is not respected, the interested party has a right to compensation covering both pecuniary and non-pecuniary damage. The modalities of payment are set out in an inter-ministerial decision of 2004. Information is awaited on examples of the application of the law of 2004 and the payment of full compensation to individuals.

Furthermore, a law of 2003 provides that any person affected by acts or omissions by the administration may lodge a complaint with the Ombudsman, who can investigate, report to the competent services and intervene in order to find a solution. The Ombudsman may impose on the administration a deadline by which he must be informed of the measures taken. Public servants are obliged by law to assist him during his investigations and are subject to disciplinary sanctions in case of failure to co-operate. Examples are awaited of the administration's compliance with the Ombudsman's opinions in cases similar to these.

As regards the **excessive length of proceedings** before the Supreme Administrative Court, information is awaited on measures envisaged to accelerate them as well as to provide an effective remedy for excessively lengthy judicial proceedings (see also the Manios group of cases raising similar issues).

277. **ITA / F.L.**

25639/94
Judgment final on 20/03/02

Last examined: 1013-4.2

Lack of effective remedy to claim payment of privileged debts or to challenge the acts of the liquidators during compulsory liquidation proceeding (violation of Art. 13).

IM According to the information provided by the Italian delegation, the applicant made no claim when he could have done so. As a consequence, the final liquidation balance sheet and the scheme for distribution became final as far as he was concerned, in accordance with national law.

GM The provisions at the origin of the violation found have not been amended. Information is awaited on the measures envisaged or taken to solve this issue.

278. **UK / Bubbins**

50196/99
Judgment final on 17/06/05

Last examined: 997-1.1
Final Resolution (2007)101

Absence of an effective remedy whereby the applicant might seek compensation for non-pecuniary damage following the lawful killing of her brother by a police officer (violation of Art. 13).

Case closed by final resolution

IM The ECtHR awarded just satisfaction in respect of the non-pecuniary prejudice resulting from the violation of Article 13.

GM Following the entry into force on 2/10/2000 of the Human Rights Act 1998, a person in the situation of the applicant may bring a claim against the police in respect of allegations of a breach of Article 2 of the ECHR and claim compensation for non-pecuniary damages in respect of any civil liability of the police. The United Kingdom authorities furnished an example of case-law in this respect.

M. Property rights

M.1. Expropriations, nationalisations

279. ALB / Beshiri and others

7352/03
Judgment final on 12/02/2007

Last examined: 1013-4.2

Violation of the right to a fair trial and the right to protection of property due to the lack of enforcement of a final judicial decision of 2001 granting compensation to the applicants in respect of plots of land which had been nationalised (violations of Art. 6§1 and Art. 1, Prot. No. 1).

IM The ECtHR awarded the applicants a lump sum as just satisfaction in respect of non-pecuniary and pecuniary damage, including an amount corresponding to the current value of the plots. No additional measure seems to be required.

GM As regards the Violation of Article 1 of Prot. No 1, the government indicated that it was assessing the amendments to the Restitution and Compensation Act adopted during the last 12 months. A document in this respect was expected by the end of 2007.
Furthermore, in order to improve and accelerate the process of restitution of or compensation for property, a group of experts has been set up and has prepared a working document, which will serve as a basis for proposals to be submitted to the government by March 2008.

Information is awaited on the follow up given to the measures under way as well as on any other measure possibly envisaged or taken to prevent new, similar violations.

The ECtHR's judgment was translated into Albanian and published. A written confirmation is awaited of its dissemination to the relevant domestic judicial, legislative and executive authorities.

Violation of Article 6§1: see case Qufaj (judgment of 18/11/2004).

280. FRA / Draon
FRA / Maurice

1513/03 and 11810/03
Judgments of 06/10/2005 and of 21/06/2006 – Friendly settlements – Grand Chamber

Last examined: 982-4.2+3.A

Breach of the applicants' property rights on account of the withdrawal by law, in 2002, of their entitlement to pecuniary damages following medical failure to diagnose severe congenital disabilities of their children during prenatal examination. As the law was adopted with retroactive effect while proceedings were pending before domestic courts, the applicants lost an essential existing "asset" which they had previously possessed (violation of Art. 1, Prot. No. 1)

IM The parties reached a friendly settlement on just satisfaction, whereby the respondent state undertook to pay certain sums in respect of the damage sustained on account of the error of the hospital concerned and of the retroactive character of the law of 2002.

GM The supreme courts complied with the interpretation indicated by the ECtHR: in 2006, the Court of Cassation, in a judgment in a similar case, held that the retroactive application of the law of 2002 was incompatible with the ECHR. The *Conseil d'Etat* also delivered a judgment with the same conclusion.

In view of this case-law change, it may be concluded that similar judicial proceedings still pending will be ended by judgments meeting the requirements of the ECHR. The problem only concerns in fact a limited number of persons and is restricted to a certain period of time (proceedings which were ongoing on 04/03/2002).

281. **GRC / Papastavrou**
GRC / Katsoulis

46372/99 and 66742/01
Judgments final on 18/02/05 and 8/10/04

Interim Resolution (2006)27
Last examined: 966-5.1

Reafforestation by state of land possessed in good faith by applicants and violation of their property rights; excessive length of proceedings before the Council of State (violation of Art. 1, Prot. No. 1 and 6§1)

IM **T**he ECtHR and awarded the applicants just satisfaction covering the pecuniary damage. Possible consequences of the violation still suffered by the applicants should be remedied in the context of the interim and long-term general measures (see below). The applicants have not communicated any further claims.

GM **S**ee for details Interim Resolution (2006)27

Interim measures – Direct effect

Both judgments were translated, published and sent to the Ministry of Justice and to the Council of State. The Greek Government noted that the ECHR and the ECtHR's case-law enjoy direct effect in Greek law as proved, in particular, by a judgment of the Plenary of the Court of Cassation in 2005 stressing the supra-statutory force of Article 1 of Prot. No 1 to the ECHR in cases regarding reafforestation and protection of individual land property rights. In its Interim Resolution (2006)27, the CM encouraged the rapid development of a remedy capable of providing compensation for bona fide landowners such as the applicants, affected by reafforestation decisions and involved in lengthy litigation related to recognition of the ownership of forests.

The government noted that, under Greek law, compensation may always be awarded to individuals after their land or forest ownership has been recognised by courts. This compensation may cover any potential damage that individuals may have suffered during the period during which they had been unable to use their property due to pending proceedings concerning ownership.

Long-term general measures under way – Progress report on the national land and forest register project

The Greek Government stressed that the project of national land and forest register initiated in 1994 and consisting of 4 stages is a priority of national importance.

In 2005 the Greek Technical Chamber (TEE), acting as consultant to the Greek state, submitted a study to the Ministry of the Environment, Urban Planning and Public Works, taking stock of the work accomplished during the first 10 years of the project and making proposals for its conclusion. It is foreseen that the second stage of the project (2005-2008) will cover all urban centres and may materialise without state funding which may instead be used for the third and fourth stages (2009-2016).

On 5 May 2006 the Minister of Environment, Urban Planning and Public Works submitted a new Bill to the Greek Parliament, which aims at the acceleration of the completion of the national land register, in particular by simplifying the land registration procedure.

General measures adopted and under way to accelerate proceedings before administrative courts, with a view to preventing new, similar violations of Article 6, paragraph 1

See the measures adopted in the framework of the execution of other cases (see Final Resolution (2005)65 on Pafitis and others and 14 other cases against Greece). Further measures are under way (see Manios group of cases) concerning in particular provision of an effective domestic remedy in case of excessively lengthy judicial proceedings.

282. **GRC / Tsirikakis and other similar cases**

46355/99
Judgment final on 10/07/02 (merits) and on 09/07/03 (Art. 41)

Last examined: 1013-4.1

Violations of right to protection of property and to a fair trial in the context of land expropriation proceedings (violations of Art. 1, Prot. No. 1 and 6§1). The main issues raised are: a) deprivation of land without compensation or with depreciated compensation; b) excessively lengthy proceedings or multiplication of proceedings in order to obtain full compensation following expropriation; c)

lack of a national land registry; d) excessive length of civil proceedings in the context of expropriations or e) administration's refusal to abide by judicial decisions fixing compensation for or lifting expropriation.

IM The applicants have been awarded just satisfaction by the ECtHR, including compensation in respect of the pecuniary damage suffered. Further information is awaited in some cases on the outcome of proceedings still pending (Nastou case), on complaints made by the applicants' (Azas case, Ouzounoglou case) or on further measures (case of Satka and others, case of Beka-Koulocheri).

GM 1. A new Code of Expropriation has been adopted in 2001-2002, following the facts of these cases:

a) expropriation decisions are to be taken and notified within specific deadlines;

b) the registration of land subject to expropriation is to be carried out by the authorities upon the initiation of the expropriation procedure; the individual concerned may challenge this registration without interrupting the progress of the procedure;

c) it is now possible to have joint proceedings on both compensation and ownership recognition;

(d) in cases of delayed payment of compensation, if the individual concerned is not responsible of the delay, he may be awarded additional compensation.

As regards the issue of presumption of benefit to the expropriated person, a new law adopted in 2001 integrated the change already made in domestic case-law following the ECtHR's judgments in the cases of Katikaridis, Tsomtsos and Papachelas (see Final Resolutions (2002)105, (2002)103, (2002)104 respectively). This law provides that the presumption is no longer "irrebuttable". It also provides specific, short proceedings – which do not suspend the expropriation procedure – to enable persons subject to expropriation to rebut the presumption.

As regards the reimbursement of lawyers' fees, the new Code of Expropriations of 2001, as amended in 2003, has abrogated the imposition of a maximum amount of legal fees payable. In cases where individuals prove that they have not benefited from the land expropriation, the state bears the relevant costs and expenses (see also Final Resolution (2007)81 in the case of Yagtzilar and others).

2. New domestic case-law on land expropriation complying with the ECtHR's "global evaluation" case-law:
Following the Azas judgment, the Court of Cassation (Plenary) since 2004 adopted the case-law of the ECtHR by accepting that proceedings for compensation for expropriated immovable property should involve a global evaluation by the competent courts of the following issues:

a) the granting of compensation in relation with the value of the expropriated property;

b) the recognition of the persons entitled to compensation;

c) the potential benefit to the owner engendered by the expropriation if their left property looks over a new public road;

d) claims regarding costs and expenses. These judgments of the Court of Cassation have been widely disseminated in Greece. Lower competent courts have strictly followed the above Court of Cassation case-law. Moreover, the Court of Cassation, in 2005, further specified that, after a land expropriation, the individual affected has a right to compensation covering not only the devaluation of their property proportionate to the reduction in size but also any other potential damage that may be entailed for the individual's property by the public work finally carried out.

3. A project for the completion of the national land and forest registry is under way since 1995 (see the cases of Papastavrou and Katsoulis and others).

4. A series of comprehensive constitutional, statutory and regulatory measures for the enforcement by the administration of domestic judicial decisions has been adopted (see Final Resolution (2004)81 on Hornsby and other similar cases). The authorities indicated that the three judicial councils established by the law of 2002 on the administration's compliance with domestic judgments have been operational since 2004 and provided statistical data thereon.

5. a series of legislative measures were adopted from 2001-2005 to accelerate proceedings in civil courts (see Final Resolution (2005)64 on Academy Trading Ltd and others and other similar cases). Following the entry into force of this new legislation, first-instance proceedings are now concluded within 1½ years maximum, while in the past they lasted up to four years. Legislation

providing an effective domestic remedy in this context is also currently in preparation.

283. ISL / Ásmundsson Kjartan

60669/00
Judgment final on 30/03/05

Last examined: 1013-(4.2)

Interference with the applicant's property rights due to the reassessment of the disability pension scheme in 1992, resulting in the applicant's loss of his right to a disability pension in 1997 (violation of Art. 1, Prot. No. 1).

IM The ECtHR compensated through the just satisfaction the loss of the applicant's disability pension entitlements. The applicant claimed however before the CM that not all the consequences of the violation found had been remedied, since his old-age pension was also affected. The Icelandic authorities pointed out that this issue had not been addressed by the ECtHR and judicial remedies had not been exhausted. Furthermore, it was premature to establish whether the applicant's allegations were founded since he has not yet reached the required age for old-age pension.

GM The authorities have been invited to contact the 53 individuals in a situation similar to that of the applicant and to inform them of the possibility of claiming damages. So far, only a few of them have addressed the Ministry of Justice, who has advised them to contact the office of Attorney General in order to claim for compensation. No such compensation has, however, yet been paid since those concerned were not deemed to be in the same situation as the applicant.

The Icelandic authorities indicated moreover that the judgment of the ECtHR was easily accessible as it had been translated and published on the home page of the Ministry of Justice's website. No further general measures were thus envisaged. The situation is being assessed.

284. ITA / Belvedere Alberghiera Srl and other similar cases

31524/96
Judgment final on 30/08/00 (merits) and on 30/01/04 (just satisfaction)

Interim Resolution (2007)3

Last examined: 987-4.2

Inadequate guarantees to secure the lawfulness of emergency expropriations ("constructive expropriations") by local authorities and excessively restrictive compensation rules (violations of Art. 1, Prot. No. 1).

IM The Italian authorities have been invited urgently to find the adequate means to erase the continuing effects of the violations found by setting up an effective domestic system to secure the return of property expropriated *de facto* and/or to pay adequate compensation in respect of expropriation or damages.

GM In 2003, a Compendium of measures reforming expropriation entered into force, whose Article 43 allows, in some cases, for the validation of expropriations made without respecting the normal expropriation procedure. In recent judgments (see for example the judgment of 2006 in the case of Prenna), the ECtHR found that the system of constructive expropriation is still not in conformity with the ECHR.

In February 2007, the CM adopted Interim Resolution (2007)3, whereby it encouraged the Italian authorities to continue their efforts and rapidly take all further measures needed to bring an end definitively to the practice of "constructive expropriation" and to ensure that any occupation of land by the public authority complies with the requirement of legality as required by the ECHR. In this respect, the government expressed the view that the procedure provided by Article 43 of the Compendium might fulfil the requirements of the ECHR provided that it is applied in line with a Council of State's decision of 2005, i.e. that:

- its application and interpretation are clear, consistent and predictable;
- it remains an exceptional measure to be used only in case of proved urgent public interest;

- formal acquisition is established promptly by the relevant public administrative authority;
- if no acquisition is thus established the property is promptly restored;
- under no circumstance should the acquisition of property be considered automatic on the grounds that public works or other transformations have been carried out;
- it is applied as far as possible to all cases of illicit occupation even if they occurred before the entry into force of the Compendium.

The government expressed its encouragement and support to the broadest possible extension of the direct effect of the ECtHR's judgments in Italian law.
Furthermore, a law was adopted in 2006 providing that damages awarded to individuals in respect of illegal occupation of land are covered by the budget of the public authority responsible and that the public authority concerned might sue the individual public agent at the origin of the illegal act.

285. **ITA / Scordino 1**
ITA / Stornaiuolo

36813/97 and 52980/99
Judgments final on 29/03/06 (Grand Chamber) and 08/11/06

Last examined: 1013-(4.2)

Systemic violation due to the excessive length of civil proceedings seeking compensation for expropriation and inadequacy of domestic remedy against this violation (violations of Art. 6§1) unfair civil proceedings due to the adoption of legislation retrospectively reducing compensation for expropriation and affecting ongoing judicial proceedings (violation of Art. 6§1) and violation of the applicants' property rights as a result of such disproportionately low compensation (violations of Art. 1, Prot. No. 1).

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

GM As regards the **inadequately low compensation in the expropriation proceedings**, the ECtHR noted that the scope of the problem is wide and touches many people and the state should effectively and rapidly ensure the right to compensation in relation to those subject to expropriation measures. In 2006, the Court of Cassation raised the question of the conformity of the legislative provision at issue with the Italian Constitution and the ECHR. Pending the decisions of the Constitutional Court on these questions, information is awaited on general measures to remedy the structural problem at the origin of the violations. These measures should include a mechanism whereby the persons concerned may seek redress – retroactively if necessary – for the violation of the ECHR.

As regards the structural problem of **excessive length of proceedings**, see case Ceteroni and, notably, IR(2007)2.

As regards the **effectiveness of the compensatory remedy** (Pinto Act): the Court of Cassation in 2004 changed its jurisprudence and declared the primacy of the jurisprudence of the ECtHR with regard to the application of the Pinto Act. Information is awaited on the large dissemination of the judgments of the ECtHR in order to allow a correct application of the case-law of the ECtHR by Italian courts of appeal.

286. **MDA / Roşca**

6267/02
Judgment final on 22/06/05

Last examined: 992-1.1
Final Resolution (2007)56

Right to a fair hearing and to the peaceful enjoyment of possessions, breached as a result of the quashing of a final judgment favourable to the applicant (violations of Art. 6 §1 and Art. 1, Prot. No. 1)

Case closed by final resolution

IM The ECtHR considered that the domestic judgment of 15/12/04 had restored the applicant to his rights. The initial judgment has now been

enforced and the sums due were paid to the applicant.

GM The law in force at the material time was repealed by the new Code of Civil Procedure which entered into force on 12/06/03, according to which final judgments may no longer be annulled on the basis of a request lodged by the Prosecutor General.

The judgment of the ECtHR has been translated, published and sent out to all judicial authorities, to the Department of Execution of Judicial Decisions and to other state organs.

287. POL / Broniowski

31443/96
Judgment of 22/06/2004 – Grand Chamber and of 28/09/2005 – Friendly settlement (Art. 41),

Interim Resolution (2005)58

Last examined: 997-4.2

Lack of an effective mechanism to implement the applicant's right to compensation for property abandoned as a result of boundary changes in the aftermath of the Second World War (violation of Art.1, Prot. No. 1).

IM The parties reached a friendly settlement by which the payment of a lump sum would constitute the final settlement of the case. No further measure appears necessary.

GM In this case the ECtHR for the first time provided indications in the operative provisions of a judgment on the general measures that the respondent state should take to remedy a systemic problem identified already in the judgment (cf. CM Resolution (2004)3 on judgments revealing an underlying systemic problem and Recommendation (2004)6 on the improvement of domestic remedies). The ECtHR furthermore decided to adjourn all similar applications pending the adoption of measures at the national level.
On 05/07/2005 the Committee of Ministers adopted **Interim Resolution (2005)58**, taking stock of the measures adopted so far and indicating the outstanding questions. Shortly thereafter, on 08/07/2005, Parliament passed the law on the implementation of the right to compensation for property left beyond the present borders of the Polish state. According to this law compensation may be implemented in two forms, depending on the claimant's choice: either, as previously, through an auction of certain state lands or through cash payment to be distributed from a special compensation fund. In the friendly settlement of 28/09/05 the government undertook to take some further general measures. The ECtHR noted in this respect that the measures taken by the government had demonstrated an active commitment to remedying the systemic defects found in this case.

All the measures necessary for the implementation of the new Bug River legislation of 2005 are now adopted.

Additional information is presently awaited on the full implementation of the compensation mechanism. An evaluation by the ECtHR of the latest developments is expected within the framework of its examination of applications pending before it.

The ECtHR's judgment has been published on the Internet site of the Ministry of Justice.

288. POL / Zwierzyński

34049/96
Judgment final on 19/09/2001 (merits) and on 06/11/2002 (Art. 41)

Last examined: 1013-4.1

Excessive length of civil proceedings lodged by the State Treasury in 1992 concerning title to a building illegally expropriated in 1952 (violation of Art. 6§1). Infringement of the applicant's right to the peaceful enjoyment of his possessions on account of the authorities' refusal to return the building in spite of an administrative decision retrospectively restoring the title to the property to the applicant's father (violation of Art. 1, Prot. No. 1).

IM The proceedings at the origin of the violation ended on 21/09/2001, when the Treasury's action was dismissed. Under Art. 41 of the ECHR, the ECtHR decided that the respondent state had

to restore the property to the applicant or to pay him a certain sum before 6/02/03. The government took steps to return the building, but the applicant indicated that he preferred to be paid the pecuniary damage afforded by the ECtHR. In the meantime, third persons contested before the domestic courts the property right of the applicant's father and in November 2003 the domestic courts ruled that the property at issue had not constituted a part of the succession after the applicant's parents. As a consequence, the Polish authorities have seized the ECtHR with requests for revision of its judgment, but these have been rejected The ECtHR has recalled that the modalities of restoring the property in question and payment of the amounts awarded in the judgment under Art. 41 are exclusively within the competence of the Ministers' Deputies. Discussion is under way regarding the measures needed for the execution of the judgments here at stake.

GM As regards the excessive length of civil proceedings, see case Podbielski.

As regards the question of the **applicant's property rights**, the judgment of the ECtHR was communicated to the Ministry of Justice for dissemination to courts, and to the Ministry of Internal Affairs for dissemination, in particular to the police. It has also been distributed to judges and prosecutors. Moreover, the judgment was published.

289. ROM / Brumărescu and other similar cases

28342/95
Judgment final on 28/10/1999 – Grand Chamber

Last examined: 997-1.1
Final Resolution (2007)90

Violations of the applicants' right to the peaceful enjoyment of their possessions as well as of their right to have their claims examined by a court, in fair proceedings, on account of the Supreme Court's annulment of final court decisions delivered at first instance establishing the validity of the applicants' title to property previously nationalised (violations of Art.6§1 and of Art. 1, Prot. No. 1)

Case closed by final resolution

IM In accordance with the decisions of the ECtHR, the state has, in all these cases, under Art. 41 of the ECHR, either returned the properties at issue to the applicants or paid an amount of money corresponding to the current value of the properties at issue.

GM Article 330 of the Civil Code of Procedure, as amended in 2000, was abrogated by the government in 2003. This reform was approved by the Parliament in 2004. Accordingly, it is no longer possible to annul final judicial decisions, including those establishing the right to have nationalised property restored.

290. ROM / Străin and others and other similar cases

57001/00
Judgment final on 30/11/05

Last examined: 1007-(4.2)

Failure to restore nationalised buildings to their owners or to compensate them, following the sale of the buildings by the state to third persons (violation of Art. 1, Prot. No. 1).

IM The ECtHR awarded just satisfaction for non-pecuniary damage and ordered the return of the properties in question or payment of just satisfaction for pecuniary damage corresponding to their market value within three months of the date on which its judgments became final. Information is awaited on the current situation of the applicants, in particular, whether their properties have been returned or if they have received just satisfaction for pecuniary damage.

GM A new law of 2005 applies the principles expressed in international case-law related to illegal or de facto expropriation. It qualifies as illegal the nationalisations carried out by the communist regime and provides an obligation of restitution in kind or, if that is impossible, compensation equivalent to the market value of the property. Those so entitled might be compensated in the form of participation, as shareholders, in a mutual investment fund organised as a Romanian limited company (S.A.). However, this company, Proprietatea, is not yet effectively able

to provide the applicants with compensation. Moreover, the law does not take into consideration prejudice resulting from the prolonged absence of compensation of persons who, like the applicants, were deprived of their property despite final judgments ordering its return.
Information is expected as to whether the Proprietatea is now operational and on measures taken or envisaged to address the issue of lack of compensation for the period between the final judgments providing the restitution of properties to their owners and their actual enforcement.

The judgments of the ECtHR in the Străin, Păduraru and Porteanu cases were published and disseminated.

291. SMR / Beneficio Cappella Paolini

40786/98 *Last examined: 1013-(4.2)*
Judgments final on 13/10/2004 and on 03/08/2007
Friendly settlement

Failure to restore land expropriated on grounds of public utility but not used for public works (violation of Art. 1, Prot. No. 1), excessive length of civil proceedings to obtain restitution (violation of Art. 6§1) and lack of access to a court on account domestic courts' failure to reply to a question regarding the right to restitution (violation of Art. 6§1).

IM In addition to the just satisfaction awarded by the ECtHR, the respondent state and the applicant reached a friendly settlement, whereby the government undertook to restore the land at issue. Confirmation is awaited of the payment of the just satisfaction granted by the ECtHR in its judgment of 13/07/2004 as well of the restitution of the land.

GM As regards the **failure to restore land expropriated but not used**, the adoption of clear rules is expected.
As regards the **length of proceedings**, see the Vanessa Tierce case.
The judgment of the ECtHR has been made public and sent out to various authorities concerned.

292. TUR / Yıltaş Yıldız Turistik Tesisler A.Ş.

30502/96 *Last examined: 1007-6.1*
Judgments final on 23/09/03 and on 23/10/2006, rectified on 12/12/2006

Unreasonable low amount of compensation awarded in expropriation proceedings (violation of Art. 1, Prot. No. 1).

Case in principle closed on basis of available information – draft final resolution in preparation

IM In this case, exceptionally, the ECtHR calculated a reasonable compensation on the basis of an official on-site visit.

GM Since the events giving rise to this case, the Turkish law on expropriation has undergone extensive modifications. The new Law on Expropriation that entered into force on 01/01/2000 provides a friendly settlement mechanism between the property owner and the expropriating authorities before expropriation may take place. If the authorities are not willing to pay the amount asked by the owner, they are supposed to file a court claim to have the value calculated. The calculation shall be done using criteria generally accepted in the property sector and by reference to the value of similarly situated immovable properties. Domestic courts may also require an expert valuation.

The judgment of the ECtHR was translated and disseminated to the judicial authorities.

M.2. Disproportionate restrictions to property rights

293. ITA / Luordo and other similar cases

32190/96 *Judgment final on 17/10/03*

Interim Resolution (2007)27 *Last examined: 992-4.2*

Disproportionate restrictions of the applicants' rights due to excessively long bankruptcy proceedings: violations of the right to property (violation of Art. 1, Prot. No. 1); the right of access to a court (violation of Art. 6§1); the freedom of movement (violation of Art. 2, Prot. No. 4); the right to respect for correspondence (violation of Art. 8); the right to an effective remedy (violation of Art. 13 – Bottaro and Neroni case only).

IM Following the reform of 2006 (see GM below) the restrictions on correspondence and freedom of movement as well as the disqualifications and the suspension of electoral rights have been lifted with immediate effect. In addition, avenues of complaint against acts and omissions by liquidators and judges have been improved. No further measure is necessary in respect of these restrictions with regard to any of the cases at issue. In the only pending case, the government indicated that the competent authorities were fully aware of the pressing need to accelerate these proceedings as far as possible.

GM In 2006, the bankruptcy law was amended, thus remedying some of the shortcomings found. In particular:

- respect for correspondence and freedom of movement were improved;
- personal disqualifications and the suspension of electoral rights do not apply anymore;
- the acts or omissions of liquidators and magistrates can be challenged;
- procedures have been simplified with a view to accelerate bankruptcy proceedings.

The judgments have been published in Italian and have been brought to the attention of the competent authorities.

Questions are outstanding as regards the respect of property rights, the right to a court and the excessive length of proceedings.

In its Interim Resolution (2007)27, the CM decided to examine these cases in conjunction with those related to the more general problem of the excessive duration of judicial proceedings (see Interim Resolution (2007)2) and called on the Italian authorities to keep it regularly informed of progress achieved in setting up the new national strategy to overcome the general problem of the duration of judicial proceedings in Italy as well as on the effects of the reform on the acceleration of bankruptcy proceedings.

294. **POL / Hutten-Czapska**

35014/97 *Last examined: 1007-4.2*
Judgment final on 19/06/06 – Grand Chamber

Violation of the applicant's right of property due to limitations on use of property by landlords, and in particular the rent control scheme (violation of Art. 1, Prot. No. 1).

IM The applicant's house was definitively made available to her in February 2006. As regards the pecuniary damage sustained, the ECtHR has reserved the application of Art. 41. It awarded, however, directly non-pecuniary damage and certain costs and expenses. No further individual measure seems to be required at this stage.

GM Applying the "pilot-judgment" procedure, the ECtHR concluded that the violation found was the result of a structural problem linked to a malfunctioning of national legislation and that the respondent state must secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community in accordance with the principles of the protection of property rights under the ECHR. The ECtHR took the view that, in spite of a judgment of the Polish Constitutional Court of 2005 (i.e. rendered after the Chamber judgment of 22/02/2005) the general situation had not yet been brought into line with the standards of the ECHR.

On 1/01/2007, an Amendment to the Act of 2001 on the protection of the rights of tenants and the housing resources of municipalities entered into force: consequently, annual rent increases of more than 3% of the reconstruction value of the dwelling may be made, but only in justified cases, which are detailed in the law. Although the newly adopted amendments extend and specify landlords' rights as regards rent increases, some issues remain outstanding, notably as regards the notion of "decent profit", which is to be determined on a

case-by-case basis by domestic courts. In this respect, the authorities provided an example of a judicial decision of 2007.
Following a judgment by the Constitutional Court in 2006, the provision limiting municipalities' civil liability for damage resulting from failure to provide welfare accommodation to tenants entitled to it has been repealed. Nowadays, landlords may claim full compensation for such damage.
In addition, a new Act entered into force in December 2006 aiming at solving the problem of the shortage of welfare accommodation in municipalities by providing means whereby the state may finance the construction of such housing.
In July 2007, the Act on Real Estate Management was amended so as to introduce the "rent-mirror system", i.e. a system for monitoring the levels of rent in all municipalities. It provides information on average rent levels in a given region and should serve as an auxiliary instrument enabling the courts to assess the basis for fixing or increasing rents.

Other legislative measures are being prepared.

Further information is awaited on the development of domestic courts' case-law concerning the definition of "decent profit", the legislative work under way as well as on other measures to prevent new, similar violations. Clarifications would be also useful concerning the determination of the scope of the notion of "basic rent" and its introduction into the legislative framework.

295. TUR / Institut de Prêtres français and others

26308/95
Judgment final on 14/03/2001 – Friendly settlement

Interim Resolution (2003)173

Last examined: 1013-4.1

Judicial decision revoking in 1994 the earlier recognition of the applicants' property rights to certain religious property, notably as the property was partly used for commercial purposes; also non-recognition of the applicant's legal personality (complaints under Article 9 and 1, Prot. No. 1); undertakings, notably, to give the usufruct of the property to the priests in charge of the institution.

Implementation of the friendly settlement

Several concrete steps were taken to implement the undertakings of the friendly settlement, notably after the CM's Interim Resolution (2003)173. The judgment remains nonetheless to be executed, notably due to the parties' diverging interpretations regarding certain undertakings.
The CM is awaiting information on the progress of the ongoing contacts between the parties as well as on the situation as to the incomes collected during the period of non-execution of the friendly settlement.

296. TUR / I.R.S and others

26338/95
Judgment final on 15/12/04 (merits)
Judgment final on 31/12/05 (just satisfaction)

Last examined: 997-1.1
Final Resolution (2007)98

Applicants' inability to obtain compensation following the occupation of their land for purposes of public use without expropriation (violation of Art. 1, Prot. No. 1)

Case closed by final resolution

IM In view of the compensation awarded by the ECtHR for pecuniary damages suffered by the applicants, no further individual measure is needed.

GM The provision at the origin of the violation was declared unconstitutional in 2003 on the grounds that its application was not in conformity with the principle of the rule of law and that it violated the requirements of the ECHR. As a result the provision at issue is null and void.

297. TUR / Loizidou

15318/89
Judgment final on 18/12/1996

Interim Resolutions (99)680, (2000)105, (2001)80, (2003)190, (2003)191
Last examined: 1013-4.3

Continuous denial of access by the applicant to her property in the northern part of Cyprus and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).

IM After the payment of just satisfaction on 02/12/2003 (see Interim Resolutions (2003)190 et (2003)191), the CM resumed consideration of the merits of the case in November 2005.

In April 2007, the CM took note of the information provided by the Turkish authorities concerning the present situation of the applicant's property, as well as concerning the examination *ex proprio motu* of her case by the "Immovable Property Commission". In June and October 2007, it noted with concern that to date the Turkish authorities had not made any concrete proposal to the applicant and urged them to adopt without further delay the measures necessary to remedy the consequences of the continuing violation of the applicant's property rights.

In December 2007 the CM welcomed the fact that an offer had been made to the applicant by the Turkish authorities in response to its request. It took note with interest of the response by the applicant on the merits of this offer and invited the Turkish authorities to respond without undue delay and to keep the CM informed on any development in this context.

298. TUR / Xenides-Arestis

46347/99
Judgment final on 22/03/2006 (merits) and 23/05/07 (Art. 41)

Last examined: 1013-4.3

Violation of the right to respect for applicant's home (violation of Art. 8) due to continuous denial of access to her property in the northern part of Cyprus and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).

IM 1) Payment of just satisfaction:

- concerning the applicant's claim for payment of VAT on the sums awarded in the judgment of 22/12/05 (final on 22/03/06), the CM considered that the elements brought to its attention indicate that the VAT had been included in the sums awarded by the ECtHR, which have already been paid (for details, see Memorandum CM/Inf/DH(2007)19);
- concerning the delay in the payment of the sums awarded in the judgment of 07/12/06 (final on 23/05/07), the CM urged Turkey to pay these amounts without any delay.

2) ***Other measures***, the CM has been seized with the question whether the sum awarded by the ECtHR in respect of the pecuniary damage should be considered to include both the damage suffered on account of the loss of use of the property and the value of that property and or whether it only covers the loss of use of that property, without prejudice of the property rights over the home.

GM In 2005, an "Immovable Property Commission" was established and started concluding friendly settlements, providing either for the restitution of the property in question, for compensation for the current market value of the property or for an exchange of property. The constitutional challenges to the law setting up this Commission have been rejected.

In June 2007, the CM decided to pursue the examination of the case in the light of the finding of the ECtHR in its judgment on the application of Article 41, that "the new compensation and restitution mechanism, in principle, has taken care of the requirements of the decision of the ECtHR on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005". The CM noted, however, also the fact that the ECtHR pointed out "that the parties failed to reach an agreement on the issue of just satisfaction where, like in the case of Broniowski v. Poland […], it would have been possible for the ECtHR to address all the relevant issues of the effectiveness of this remedy in detail".

In October and December 2007, the Turkish authorities provided information on the functioning of the "Immovable Property Commission" established in the northern part of Cyprus. The

Committee invited the authorities to continue to keep it informed on this subject.

N. Right to education

299. **NOR / Folgerø and others**

15472/02
judgment of 29/06/2007 – Grand Chamber

Last examined: 1007-2

Refusal by the domestic authorities to grant to the applicants' children full exemption from Christianity, Religion and Philosophy ("KRL") classes taught throughout the ten-year compulsory schooling, the syllabus for which suggests clear quantitative and qualitative preponderance of Christianity (violation of Art. 2, Prot. No. 1).

IM Assuming that the applicant's children are still in compulsory education, individual measures are linked to the adoption of general measures. The ECtHR considered that the finding of the violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants, not least since the respondent government has stated that it is ready to review the KRL course.

GM The government has undertaken to reform the legal framework following a decision of the United Nations Human Rights Committee in 2004 (seized by different applicants) declaring the laws incompatible with the International Covenant on Civil and Political rights of 1996. In 2005, the 1998 Education Act was amended. The reform of the legislative framework is being assessed. Information is awaited on progress achieved with this reform as well as on any further measures taken or envisaged to execute this judgment.

300. **TUR / Mürsel Eren**

60856/00
Judgment final on 03/07/2006

Last examined: 1013-4.1

Violation of the applicant's right to education in that the Higher Education Council arbitrarily decided to annul the applicant's results in the university entrance examination in 1997 (violation of Art. 2, Prot. No. 1)

IM Following the judgment of the ECtHR, and upon the applicant's request, the Council of State reopened the proceedings on the basis of the Law on Administrative Proceedings and on 19/01/2007 it annulled the decision of the Higher Education Council characterising it as arbitrary and not supported by sufficient evidence. It therefore found that the decision constituted a violation of the applicant's right to education guaranteed by the Constitution, as well as the relevant legislation. The Higher Education Council has appealed the ruling and the proceedings are pending. Information is awaited on the outcome of the pending appeal.

GM The judgment of the ECtHR has been published and disseminated to the Higher Education Council.

O. Electoral rights

301. **CYP / Aziz**

69949/01
Judgment final on 22/09/2004

Last examined: 997, 1.1
Final resolution (2007)77

Discriminatory exclusion of Cypriots of Turkish origins from exercising electoral rights (violation of Art. 3, Prot. No. 1 of Art. 14 in conjunction with Art. 3, Prot. No. 1).

Case closed by final resolution

IM The applicant's enjoyment of the right to vote in the Republic of Cyprus depends on the general measures below. No other individual measure was necessary.

GM Immediately after the ECtHR issued its judgment, the Cypriot authorities began to draft new legislation in order to comply fully with the judgment. A new law entered into force on 10/02/2006 and gave effect to the right to vote and to be elected in parliamentary, municipal and community elections to Cypriot nationals of Turkish origin who have their usual place of residence in the Republic of Cyprus. Thus new similar violations will be prevented from occurring. In addition, Cypriot nationals of Turkish origin now have the right to vote in presidential elections.

Finally, the ECtHR's judgment was promptly translated and published. It was also immediately and directly applied by the Supreme Court.

302. RUS / Russian Conservative Party of Entrepreneurs and others

55066/00 *Last examined: 1013-(4.2)*
Judgment final on 11/04/07

Refusal to register the applicant party's full list of candidates to elections in 1999 because of incorrect information submitted by certain candidates (violation of Art. 3, Prot. No. 1); lack of effective remedies in this respect resulting from the lack of access to supervisory-review procedure (violation of Art. 13) and the refusal to return the applicant party's election deposit (violation of Art. 1, Prot. No. 1).

IM The ECtHR awarded compensation to the applicant party in respect of pecuniary damage sustained as a result of the non-return of the deposit. No further individual measures appear to be necessary since the violation concerned the applicant party's right to stand for the elections in 1999 without impeding its right to stand for subsequent elections and since the party's full enjoyment of its rights under the ECHR is contingent on the adequacy of the legal framework. This issue is addressed under general measures.

GM as regards the **breach of electoral rights**, the Elections Act has been changed following the decision of the Constitutional Court of Russian Federation of April 2000 which declared the relevant part (Article 51(11)) of the Elections Act unconstitutional.

Information is awaited on possible changes introduced in response to the Constitutional Court's decision and the current rules governing the situation of those in the applicant's position.

Information is also awaited on the publication and dissemination of the judgment of the ECtHR to the relevant authorities, including the Central Electoral Commission and the Supreme Court.

The problem of **effective remedies** is linked to the general problem of supervisory review dealt with in the context of the Ryabykh group.

303. UK / Hirst No. 2

74025/01 *Last examined: 1013-4.2*
Judgment of 06/10/2005 – Grand Chamber

General exclusion from vote for convicted prisoners irrespective of specific circumstances (violation of Art. 3, Prot. No. 1).

IM On 25/05/2004, the applicant was released from prison on licence. He may therefore vote.

GM A first consultation paper setting out the principles, context and options was published on 01/12/2006, followed by a revised Action Plan: The first stage of consultation ended on 07/03/2007, and analysis of the responses is under way. If legislation is chosen as the method of executing the judgment, the introduction of draft legislation would take place from May 2008 onwards, with its timing being subject to parliamentary business.

Additional information is required on the progress made in the consultation process and the follow-up to that process.

P. Freedom of movement

304. HUN / Földes and Földesné Hajlik

41463/02
Judgment final on 26/03/2007

Last examined: 1013 – 4.2

Disproportionate restriction of the applicant's freedom of movement due to the withdrawal of his passport, since 1994, on account of pending criminal proceedings against him, without any regular intermediate reassessment of the need to maintain the restriction (violation of Art. 2§2, Prot. No. 4).

IM The proceedings against the applicant ended in 2006. The confirmation is awaited of the lifting of the travel ban, imposed in 1994. If the applicant cannot be issued a passport yet, information is expected on the latest reassessment of the decision.

GM The need for specific general measures, other than publication and dissemination of the judgment, is currently being assessed.

305. RUS / Bartik

55565/00
Judgment final on 21/03/07

Last examined: 1013-4.2

Disproportionate restriction of the applicant's freedom of movement due to the authorities' refusal to authorise him to travel abroad for a total of twenty years on the sole ground that he had access to "state secrets" during his professional career (violation of Art. 2, Prot. No. 4).

IM None as the restriction on the applicant's right to leave the country expired on 14/08/2001. The applicant now resides in the United States of America. The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage he sustained.

GM Information is awaited on the measures taken or planned with a view to modifying the provisions impugned by the judgment. The ECtHR recalled in this context that the Russian Federation, when it acceded to the Council of Europe, undertook to abolish the restriction on international travel for private purposes.

306. RUS / Tatishvili

1509/02
Judgment final on 09/07/07

Last examined: 1007-2

Unjustified interference with the applicant's right to freedom of movement in refusing her residence registration in breach of domestic law (violation of Art. 2, Prot. No. 4). Violation of the applicant's right to a fair trial due to the domestic courts' deficient reasoning (violation of Art. 6§1).

IM The ECtHR awarded just satisfaction to the applicant in respect of both pecuniary and non-pecuniary damage sustained and considered that the applicant, being a "former USSR national", was a lawful resident in Russia.

However, it follows from the ECtHR's judgment that the absence of residence registration prevented the applicant from exercising certain fundamental social rights, such as access to medical assistance, social security, old-age pension, the right to possess property, to marry, etc.

It appears that on 11/09/2007 the applicant was registered at her place of residence in Moscow. On an unspecified date she was also granted the citizenship of the Russian Federation on the basis of Art. 13§1 of the law of 28/11/1991 No. 1948-1 on the citizenship of the Russian Federation. Confirmation of this information is awaited.

GM As regards the **freedom of movement** the ECtHR noted that the guidelines given by the Constitutional Court on implementing of the Regulations for registering residence, although

binding, were disregarded by the authorities in this particular case. Information is thus awaited on measures taken or planned with a view to ensuring compliance by executive authorities with these guidelines. Information would also be useful on instructions which might have been issued following the ruling of the Constitutional Court on training measures for judges and the police and on their administrative and disciplinary responsibility.

As regards the **absence of motivation**, information is awaited on the dissemination of the ECtHR's judgment to all courts, possibly together with a circular letter from the Supreme Court drawing their attention to their obligations under the ECHR.

Q. Discrimination

307. AUT / L. and V.

39392/98
Judgment final on 9/04/2003

Last examined: 1007, 1.1
Final resolution (2007)111

Discrimination on the basis of sexual orientation, due to a criminal conviction in 1997 for consensual male homosexual acts by adults with teenagers aged between fourteen and eighteen whereas consensual heterosexual or lesbian acts between adults and persons over fourteen were not punishable (violation of Art. 14 combined with Art. 8).

Case closed by final resolution

IM The applicants may apply for the reopening of the proceedings in order to have the consequences of their convictions erased.

GM The relevant criminal provision, Article 209, was repealed with effect from 14 August 2002. A summary of the ECtHR's judgments and decisions concerning Austria is regularly prepared by the Federal Chancellery and disseminated widely to relevant Austrian authorities as well as to Parliament and courts. Furthermore, judgments of the ECtHR are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS).

308. AUT / Zeman

23960/02
Judgment final on 29/09/2006

Last examined: 1013-4.2

Sexual discrimination under the Amended Pension and Pension Allowance Act, entitling widowers to 40% of the pension their deceased wife had acquired before January 1995 while widows would be entitled to 60% of the pension of their deceased husband, without this distinction being objectively justified (violation of Art. 14 in conjunction with Art. 1, Prot. No. 1).

IM The reopening of the domestic administrative proceedings appears unlikely. The ECtHR reserved the question of the just satisfaction.

GM The judgment of the ECtHR was transmitted to the Presidency of the domestic court concerned. A summary thereof was also disseminated widely to relevant Austrian authorities as well as to Parliament and courts. The judgment is furthermore accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice.

Information is awaited on further legislative or other measures envisaged or taken to prevent new, similar violations and ensuring an equal treatment of survivor's pension rights acquired prior to 1995.

309. CZE / Bucheň

36541/97
Judgment final on 26/02/2003

Last examined: 1007-1.1
Final Resolution (2007)116

Discriminatory suspension of pensions of certain former military judges (violation of Art. 14 combined with Art. 1, Prot. No. 1)

Case closed by final resolution

IM The Ministry of Defence has decided, on the basis of the primacy of international law over domestic law, to end the suspension of the payment of the allowance at issue to the applicant, as well as to all the other persons (a dozen) covered by the impugned measure.

GM The judgment of the ECtHR has been published on the Internet site of the Ministry of Justice.

310. MLT / Adami Zarb

17209/02
Judgment final on 20/09/06

Last examined: 1013-4.2

Sexual discrimination, in 1997, due to the practice of enrolling many more men than women on the jurors' list although the law in force neither provided nor justified such difference of treatment (violation of Art. 14 in conjunction with Art. 4§3 d).

IM The applicant was exempted from jury service in April 2005. Thus no individual measures appear necessary.

GM The judgment of the ECtHR was automatically sent out to competent authorities and is publicly available via the website of the Ministry of Justice and Home affairs. Since 1997, an administrative process has been set in motion in order to bring the number of women registered as jurors in line with that of men. Recent data on the ratio of men and women currently enrolled on the list of jurors are expected, together with information on measures envisaged or taken to ensure the change of practice of domestic authorities and courts.

311. ROM / Moldovan and others (No. 2) and other similar cases

41138/98
Judgments final on 5/07/2005 (judgment No. 1 – friendly settlement) and on 30/11/2005 (judgment No. 2 – finding of violations)

Last examined: 1013-4.2

Cases concerning the consequences of racially motivated violence against Roma, between 1990 and 1993: improper living conditions following the destruction of the applicants' houses, failure to protect the applicants' rights and degrading treatment by the authorities (violation of Art. 3 and 8); excessive length of judicial proceedings (violation of Art. 6§1); discrimination based on the applicants' Roma ethnicity (violation of Art. 14, 3, 6 and 8).

IM In the Moldovan and others case (no. 2), the CM is awaiting information about the possibility of opening an investigation against the police officers involved in the violent events of September 1993. Information is also awaited on the outcome of the pending procedure of forced execution of the sums granted to the applicants by the decision of the domestic authorities of 25/02/2005.

GM In some of these cases, friendly settlements have been reached, on the basis of the Romanian authorities' undertakings aimed at preventing discrimination against Roma, at carrying out adequate and effective investigations and at adopting social, economic and educational policies to improve the conditions of the Roma community. The National Agency for the Roma, an organ subordinated to the Romanian Government, has drawn up a "General Plan of Action" on the implementation of these undertakings. In conformity with this plan of action, a "Community Development Programme" was drafted and approved by the government, which addresses issues such as education, the fight against discrimination, the prevention of family or community conflicts, professional training, employment and the development of infrastructure, culture, etc.

In 2006, Romanian authorities ratified Prot. No. 12 to the ECHR and indicated that they envisaged amending the legislation concerning the fight against discrimination, in order to create a direct and effective possibility to obtain redress for discriminatory acts. Moreover, the National Agency for the Roma signed an agreement with UNDP (United Nations Development Programme). The parties committed themselves to establish six assistance social centres for Roma to facilitate their socio-economic integration.

The CM is awaiting information on the progress achieved in the implementation of the plan of action and other possible measures.

The judgments in the Moldovan and others case have been translated into Romanian, published in the Official Journal and included in the training programme for judges and prosecutors of the National Institute of Magistrate.

R. Co-operation with the ECtHR and respect of right of individual petition

312. ESP / Olaechea Cahuas

24668/03
Judgment final on 11/12/2006

Last examined: 1013-4.2

Failure to comply in 2003 with an interim measure indicated under Rule 39 of Rules of ECtHR in a case concerning the expulsion of a presumed terrorist to Peru (violation of Art. 34).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damages sustained. In view of the nature of the violation no special individual measure appears necessary (the ECtHR found among other things that expulsion would not violate Art. 3).

GM The Spanish authorities have been invited to provide an action plan on legislative or other measures taken or envisaged,to ensure that all competent authorities comply in future with their obligation under the ECHR to abide by the ECtHR's decisions indicating interim measures, thus ensuring the effective exercise of the right of individual application guaranteed under Art. 34. Given the particular importance of this right, emphasis has also been put on the publication and wide dissemination of the judgment to all relevant authorities.

313. GEO and RUS / Shamayev and 12 others

36378/02
Judgment final on 12/10/05

Last examined: 1007-4.2+3.B

Unlawful detention of thirteen applicants of Chechen origin in Georgia with a view to their extradition to Russia (violations of Art. 5 and 3); ill-treatment inflicted on the applicants while in detention (violation of Art. 3); absence of effective remedy (violation of Art. 13) and violation of the right of individual petition (violation of Art. 34) in Georgia; violation by the Russian Federation of the right of individual petition as well as of the obligation to furnish to the ECtHR necessary facilities for the effective conduct of the case (violation of Art. 34 and 38).

IM The Georgian authorities informed the CM that the extradition order in respect of Mr Guelogaev was cancelled by the Supreme Court of Georgia in 2006 and that the applicant therefore is running no risk of extradition from Georgia to Russia.

GM As regards Georgia:

1) Violations related to the **detention and lack of remedies**: the Georgian Code of Criminal Procedure was amended in 2005 and now provides for clear time-limits for judicial review of extradition orders and the courts competent to hear them; furthermore? ?any person subject to extradition is granted the full defence rights recognised under Georgian criminal procedure.

Additional information provided by the authorities is being assessed.

2) Violation of the **right of individual petition**: Georgian authorities were invited to ensure

that all competent authorities comply in future with their obligation under the ECHR to abide by the ECtHR's decisions imposing interim measures. The authorities indicated their readiness to adopt such measures while stating that the supra-legal status of the ECHR in Georgia may in itself prevent new, similar violations. The Georgian version of the judgment has been published. Confirmation is awaited of the dissemination to all competent authorities of the judgment and of Resolution (2001)66 which stresses the fundamental importance of the principle of co-operation with the ECtHR and calls upon the governments to ensure that all relevant authorities comply strictly with this obligation.

The Georgian authorities have indicated that decisions of the ECtHR on interim measures are notified to the competent authorities and that their attention is drawn to their obligation to comply with the ECtHR's decisions. Information is awaited as to whether this is merely practice or based on rules known to the authorities competent for the execution of the interim measures (police agencies, prosecutors' offices and penitentiary authorities).

As regards the **Russian Federation**:

Violation of the **obligation to co-operate with the ECtHR**: although the ECHR has direct effect in the Russian Federation in accordance with the Constitution and the Code of Criminal Procedure, this has not prevented the violation found in this case. The authorities have therefore been invited to consider measures to ensure that the duty of co-operation with the ECtHR is effectively implemented by all judicial and other authorities. For example,

- as an interim measure, the Supreme Court could draw all courts' attention to their obligation to co-operate with the ECtHR (see Resolution (2001)66, which should furthermore be widely disseminated to all authorities concerned);
- appropriate legislative or regulatory measures may be subsequently envisaged: the role of the Representative of the Russian Federation before the ECtHR may in particular be strengthened and the ministries and agencies concerned may be invited to establish the appropriate procedures and/or to revise the existing ones (see also the Memorandum on the failure to co-operate with the ECHR organs CM/Inf/DH(2006)20).

The ECtHR judgment will be published in Russian and sent out to all authorities including courts; written confirmation of this information is awaited; moreover, information on other measures taken or envisaged to prevent new similar violations of Art. 34 and Art. 38 is awaited.

314. RUS / Poleshchuk

60776/00 — *Judgment final on 07/01/2005*

Refusal by a prison administration to dispatch the applicant's letters to the ECtHR in May and December 1999 allegedly grounded on the applicant's failure to submit to domestic courts the complaints made in his letters (violation of Art. 34).

Case in principle closed on the basis of available information – draft final resolution in preparation

IM Linked to the general measures.

GM Certain general measures were adopted after the facts of the present case and have already been noted in the ECtHR's judgment. First, the Chief Penitentiary Directorate of the Ministry of Justice issued a circular letter on 23/10/2001 to its territorial bodies prohibiting the hindering of the dispatch of applications sent by detainees to the ECtHR. On 22/02/2002, the Directorate designated officials authorised to monitor the unhindered dispatch of applications to the ECtHR from penitentiary institutions. Secondly, the Deputy Prosecutor General issued a circular letter of 29/03/2002 to regional prosecutors inviting them to take measures to ensure the unhindered exercise of the detainees' right of individual petition and to point out violations of this right to the General Prosecutor.

Moreover, following the present judgment, the Chief Penitentiary Directorate issued a new circular letter of 14/02/2005 to its territorial bodies prohibiting the hindering of the dispatch of detainees' applications to the ECtHR and published the Russian translation of the present judgment in the Bulletin of the penitentiary system.

These instructions have implemented the general principles provided in existing texts allowing detainees to send applications to the ECtHR (Articles 12 and 91 of the Enforcement of Sentences Code and Article 21 of the federal law of 15 July

1995 on detention of indicted persons accused to have committed a felony).

315. TUR / Mamatkulov and Askarov

46827/99 *Last examined: 1013-4.2*
Judgment of 04/02/2005 – Grand Chamber

Failure to comply with an interim measure ordered by the ECtHR, thus hindering the effective exercise of the right of petition to the ECtHR: the applicants' expulsion to Uzbekistan in 1999, in spite of the ECtHR's order to suspend it, prevented the ECtHR from effectively examining their complaints that they risked being tortured in Uzbekistan and that the extradition proceedings in Turkey had been unfair, as well as the criminal proceedings against them in Uzbekistan, which led to their conviction to 20 and 11 years' imprisonment respectively (violation of Art. 34).

IM The case raises the general question of the extent to which the respondent state can and should rectify the consequences of its failure to comply with interim measures ordered by the ECtHR especially when this failure has as a result that the ECtHR cannot rule on the merits of the applicants' claims. The aforementioned question is all the more relevant in the light of the ECtHR's new conclusion that the failure to comply entails a violation of the ECHR. In 2005, the Turkish authorities indicated that the Turkish Ambassador in Uzbekistan, where the applicants remaining prison, has been following the developments concerning the applicants' situation and that the CM would be informed of any new developments.
The payment of just satisfaction has raised some problems and the Turkish authorities have been invited to obtain declarations from the applicants designating persons who could either withdraw the amounts in escrow or give valid powers of attorney to the applicants' representatives in Turkey who in turn could withdraw those amounts.

GM Information is awaited on legislative or other measures envisaged to ensure in the future that all competent authorities comply with their obligation under the ECHR to abide by the ECtHR's decisions imposing interim measures, thus ensuring the effective exercise of the right of individual application guaranteed under Art. 34 (see CM Resolutions (2001)66 and (2006)45 stressing the fundamental importance of the principle of co-operation with the ECtHR and calling upon all relevant authorities to comply strictly with this obligation).

Information is also expected concerning the publication and wide dissemination of the judgment of the ECtHR, in particular to the Council of Ministers and to all other relevant authorities.

316. UKR / Nevmerzhitsky and other similar cases

54825/00 *Last examined: 1007-4.2*
Judgment final on 12/10/2005

Inhuman and degrading treatment in detention on remand between 1997 and 2000 resulting from unacceptable detention conditions including overcrowding, inadequate medical care, unsatisfactory hygiene and sanitary conditions, force-feeding while on hunger strike (violations of Art. 3); lack of an effective and accessible remedy (violations of Art. 13). Unlawful pre-trial detention of the applicant (violations of Art. 5§3 and 5§1(c)); failure of the Ukrainian authorities to furnish all necessary facilities to the ECtHR in its task of establishing the facts (violation of Art. 38§1(a)).

IM In two cases the applicants were released. In the the Koval case information on the applicant's current situation is awaited.

GM As regards the **degrading detention conditions**, see the Kuznetsov group of cases.

As regards **force-feeding**, amounting to "torture", a special working group, set up in 2006, is finalising a draft law providing for a new single procedure for all confined persons, whereby the decision ordering force-feeding should only be taken by a judge. The draft law should have had to be submitted to the government by the end of No-

vember 2006 and, once approved, to the Ukrainian Parliament. Information is awaited on any progress in this respect as well as on whether the provisions of 1992 on force-feeding criticised by the ECtHR are still in force.

As regards the **lack of remedies**, information is awaited on measures taken or envisaged to introduce an effective legal remedy in respect of the detainees' complaints concerning the treatment in detention and detention conditions.

As regards the **unlawfulness of pre-trial detention**, as from 2001 the Ukrainian Constitution provides that detention on remand must be based on substantiated court decisions. Clarification is awaited on the legislative provisions currently governing the procedure of prolonging detention on remand, as well as on measures envisaged to ensure that the legal provisions concerning the maximum period for detention on remand are respected in practice. Information is also awaited on measures envisaged by the Ukrainian authorities in response to the ECtHR's criticism in the judgment and on measures to ensure that court decisions ordering extension of detention on remand are dully reasoned and explicitly indicate the factual and legal grounds.

As regards the **failure to co-operate with the** ECtHR, the authorities' attention was drawn to the CM Resolution (2001)66 calling upon all relevant authorities to comply strictly with their obligation to co-operate. The publication and wide dissemination of the judgment, together with the Resolution mentioned above and accompanied by a circular letter, to courts, prosecutors and penitentiary authorities is also expected.

The authorities' attention was also drawn to the Memorandum on the failure to co-operate with the organs of the ECHR (CM/Inf/DH(2006)20). An action plan has been awaited since February 2006 on legislative or other measures envisaged to ensure that the state authorities fully co-operate with the ECtHR in the process of establishing the facts of the cases brought before it.

S. Inter-state case(s)

317. **TUR / Cyprus**

25781/94

Judgment final on 10/05/2001

Interim Resolutions (2005) 44 and (2007)25

Memoranda CM/Inf/DH(2007)10rev4, CM/Inf/DH(2007)10/1rev, CM/Inf/DH(2007)10/3rev, CM/Inf/DH(2007)10/6

Last examined: 1013-4.3

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning: Greek Cypriot missing persons and their relatives (violation of Art. 2, 5, 3); Home and property of displaced persons (violation of Art. 8, 1 Prot. 1, 13), Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Art. 9, 10, 1 Prot. 1, 2 Prot. 1, 3, 8, 13); Rights of Turkish Cypriots living in the northern part of Cyprus (violation of Art. 6).

Following the measures adopted by the authorities of the respondent state with a view to complying with the present judgment, the CM decided to close the examination of the issues concerning the military courts, as well as those relating to the living conditions of the Greek Cypriots in the northern part of Cyprus, to secondary education, to censorship of schoolbooks and to freedom of religion (for further details see Interim Resolutions (2005)44 and (2007)25, as well as documents CM/Inf/DH(2005)6/4 and CM/Inf/DH(2007)10/3rev2).

As regards the ***question of missing persons*** (see CM/Inf/DH(2007)10/1 rev), the Committee on Missing Persons in Cyprus (CMP) was reactivated in 30/08/04 and has met regularly since then. At each examination of the case, the Turkish delegation presents the main work carried out in this context. The Exhumation and Identification Programme was launched on 21/08/2006 and has led, until 01/11/2007, to the exhumation of 352 missing persons and the return of the remains of 57 persons to their relatives. The exhumation activities are being pursued. A special information unit for families started to function on 12/11/04 within the Office of the Turkish Cypriot Member of the CMP.

The CM is awaiting information on the developments of the Exhumation and Identification Programme, as well as on additional measures fore-

seen to fully comply with the judgment of the ECtHR, i.e. to ensure effective investigations into the causes of the disappearances and the circumstances in which they occurred.

As regards the ***specific questions concerning the property rights of the Greek Cypriots in the northern part of Cyprus*** (see CM/Inf/DH(2007)10/6), according to a decision of July 2002, Greek Cypriots leaving definitively the northern part of Cyprus can transfer their property to persons of their choice, within a time limit of one year from their departure. They can furthermore apply to the "Immovable Property Commission" (established in 2005) in order to obtain an evaluation of their property, with a view to receiving compensation or an exchange of property.

As regards the inheritance rights of persons living in the southern part of Cyprus in respect of property of deceased Greek Cypriots in the northern part of Cyprus, the Turkish authorities indicated that the heirs can exercise their rights provided they start the procedure within a time limit of a year from the date of the death of their relative. If they decide not to live in the northern part of Cyprus, they will be in the same situation as those who definitively leave the northern part of Cyprus.

The CM is awaiting additional information on the regulation of the property rights mentioned above, as well as on the remedies in this regard.

As regards the demolition, since April 2007, of several houses belonging to Greek Cypriots and situated in the Karpas region, the Turkish authorities provided information on the legal basis regulating the demolition of dangerous buildings. Further clarification is expected on the provisions regarding such demolition, as well as on the remedies available to owners wishing to challenge demolition or to obtain compensation, if appropriate.

As regards the ***issues concerning the home and property of displaced persons***, the CM has adopted in April 2007 **Interim Resolution (2007)25,** urging the Turkish authorities to provide without delay information on the current situation of immovable property belonging to displaced persons as well as on measures taken to safeguard the property rights of displaced persons as recognised in the judgment of the ECtHR, without prejudging the redress required by the ECHR, be it restitution, compensation, exchange or otherwise.

In June 2007, the CM recalled this Interim Resolution and took note of the finding of the ECtHR in its Xenides-Arestis judgment, (which became final on 23/05/2007) and invited the Turkish authorities regularly to provide all additional information on the functioning of the new compensation and restitution mechanism set up in the northern part of Cyprus, as well as on the concrete results achieved in this context.

In October 2007, the CM once again invited the Turkish authorities to provide without delay the information requested in Interim Resolution (2007)25 of 4/04/2007. The CM also invited the Turkish authorities to continue to keep it informed on the functioning of the "Immovable Property Commission".

During the last examination of this case in December 2007, the CM observed that the information provided by the Turkish authorities still does not answer the request for information made in the Interim Resolution mentioned above and instructed the Secretariat to clarify the questions relevant for the full execution of the judgment with regard to the issues concerning the home and property of displaced persons.

State-by-state index of cases

Appendix 2

Statistics

Introduction

The data presented in this chapter are based on the internal database of the Department for the Execution of Judgments of the European Court of Human Rights. Due to the ongoing work to improve the efficiency of the database, certain statistics presented still remain approximate, notably those relating to the qualitative distinction between cases: leading; clone/repetitive; isolated. Moreover, the statistics on new cases for this first annual report refer to the cases examined at the HR meetings and not to the cases in which judgments have become final in 2007. However, the statistics provide a reliable indication of the current situation and trends.

This presentation highlights **"leading cases"**. By this term, reference is made to cases which reveal a new systemic/general problem in a respondent state and which thus require the adoption of new general measures, more or less important according to the case(s). Leading cases include *a fortiori* pilot judgments delivered by the European Court of Human Rights. The data concerning leading cases reflect accordingly the number of systemic problems dealt with by the CM, regardless of the number of single cases.

"Other cases" include:

- **"Clone" or "repetitive" cases**, i.e. those relating to a systemic or general problem already raised before the CM in one or several leading cases; these cases are usually grouped together for the purposes of the CM's examination.
- **"Isolated" cases**, i.e. cases which do not fall in any of the above categories. In particular, the violation(s) found in these cases is (are) linked only to the specific circumstances of each case.

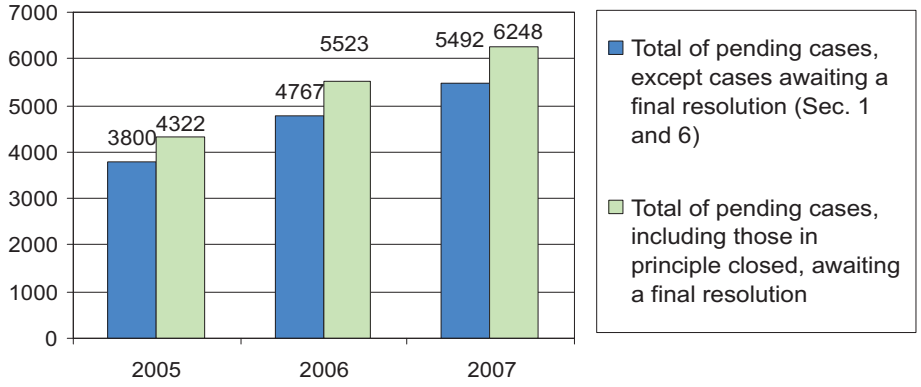
Friendly settlements are comprised in one of the above mentioned groups of cases depending on the nature of the undertakings agreed and on the specific character of the situation at issue.

Reference to the sections used for the presentation of cases to the CM is made in several places. The sections are explained in the introduction to the appendices, page 25.

2.1. General statistics

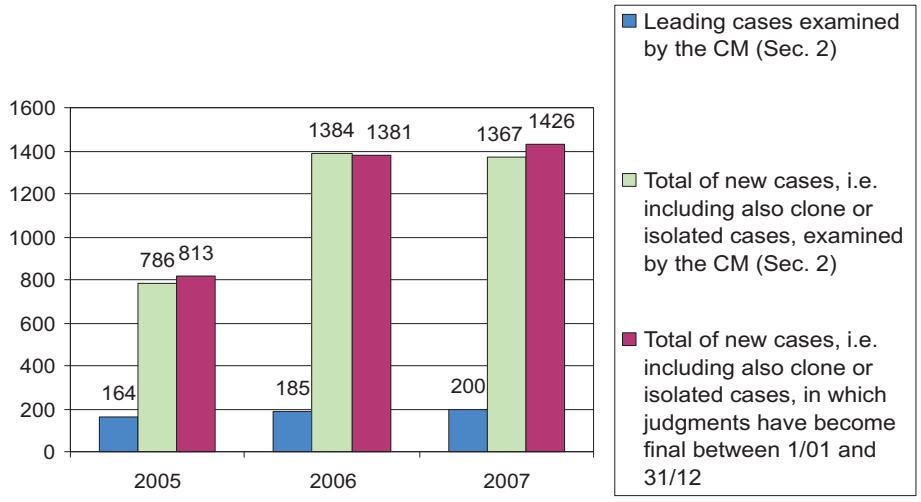
As demonstrated by the tables below, the number of cases pending before the CM has uninterruptedly increased over the last years. In particular, it can be noted that in 2007 this increase has been confirmed, notwithstanding a slowing down in the increase of the incoming new cases and of an important increase of the number of outgoing cases (i.e. cases in which the supervision procedure was closed).

Table 1: Cases pending at the last HR meeting of the year



The global number of cases pending for supervision at the last HR meeting of the year has increased by almost 28% from 2005 to 2006. The number of such cases has further increased – by approximately 13% – from 2006 to 2007 (see Table 1). The increase in pending cases in 2006-2007 is even more important – almost 15% – if the cases in principle closed, awaiting a final resolution, are excluded (cases presented to the CM under sections 1 and 6).

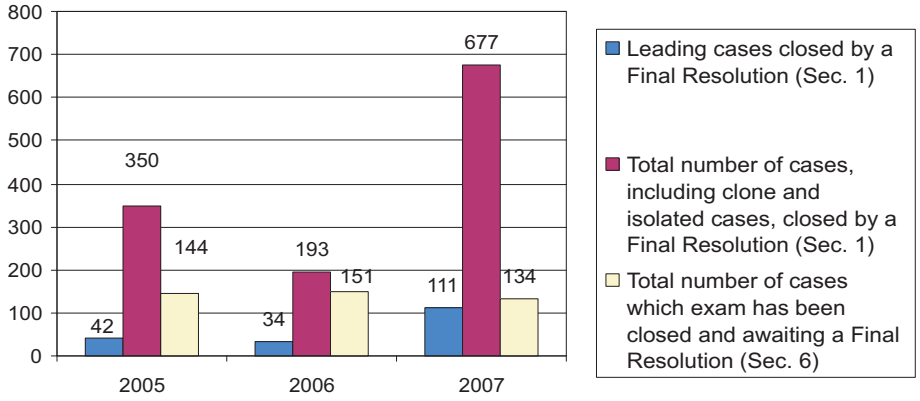
Table 2: New cases



The number of new judgments having become final between 2005 and 2006 has grown considerably, almost 70%. This increase has come to a relative stability subsequently, between 2006 and 2007, when the number of new cases increased by approximately 3%. Considering the time needed

for a case to be effectively examined by the CM, the number of cases listed on the agenda of HR meetings in 2007 has even suffered an almost imperceptible decrease, less than 1%. Judgments having become final end 2007, but not yet examined by the CM, will be examined in 2008.
The table includes on an indicative basis also data regarding the number of leading cases examined by the CM at its HR meetings. The proportion of such cases has increased by 8% from 2006 to 2007. These cases thus represent in 2007 some 15% of the total amount of new cases, whereas other cases represent 85% (clone/repetitive cases, isolated cases or others).

Table 3: Cases closed at the HR meetings of the year (Final Resolution adopted or in preparation)



In 2007 the number of cases closed by final resolution has grown in a spectacular way, by almost 251% as compared to 2006 (see Table 3, page 205). Even considering only the leading cases, the increase has been of some 226% from 2006 to 2007.
The increase in the number of final resolutions adopted is, however, notably linked to the efforts deployed to ensure the formal adoption of final resolutions in a great number of old cases in which the execution measures had already been taken much earlier – and thus also the decision to close the case – but in which no final resolution had been prepared at the time because of a lack of resources.

2.2. Detailed statistics for 2007

The data below present an overview of the nature and number of execution issues raised by different cases examined by the CM in 2007.

Cases closed in 2007 or awaiting a final resolution at 31/12/2007

The figures in Table 4 refer to the data in Table 5 (page 206).

Table 4: Total cases awaiting a final resolution at 31/12/2007, their examination having been closed in 2007 or earlier (section 6.2)

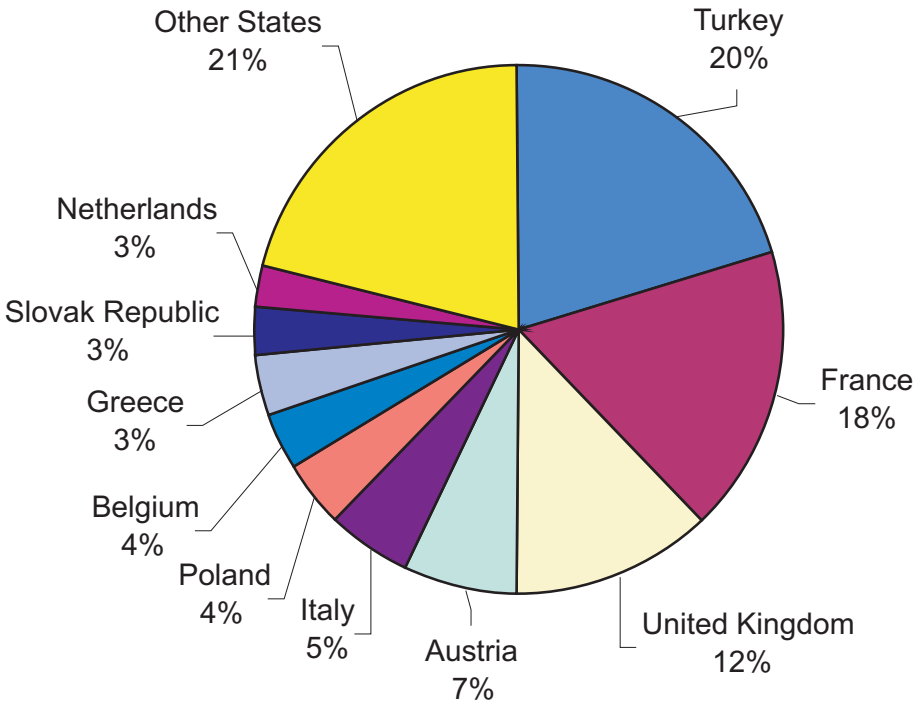


Table 5: Leading cases / Other cases – by state (cases closed during the HR meetings in 2007 and total number of cases awaiting a final resolution at 31/12/2007)

States	Cases closed by a Final Resolution in 2007 (section 1)		Cases which examination has ended in 2007 and awaiting a Final resolution (section 6.1)		Total cases awaiting a final resolution at 31/12/2007, their examination having been closed in 2007 or earlier (section 6.2)
	Leading cases	Other cases	Leading cases	Other cases	
Albania					
Andorra					
Armenia			1		1
Austria	6	10	6	4	54
Azerbaijan					

Table 5: Leading cases / Other cases – by state (cases closed during the HR meetings in 2007 and total number of cases awaiting a final resolution at 31/12/2007) (continued)

States	Cases closed by a Final Resolution in 2007 (section 1)		Cases which examination has ended in 2007 and awaiting a Final resolution (section 6.1)		Total cases awaiting a final resolution at 31/12/2007, their examination having been closed in 2007 or earlier (section 6.2)
	Leading cases	Other cases	Leading cases	Other cases	
Belgium		1	3	1	28
Bosnia and Herzegovina					
Bulgaria	3	9	1		5
Croatia	2	8	1	3	11
Cyprus	2				1
Czech Republic	6	7	2	4	13
Denmark	1		1		4
Estonia	3	1			1
Finland	4	2	3		11
France	21	56	6	5	137
Georgia					
Germany	8	5	4	2	18
Greece	2	28	4		27
Hungary		6			2
Iceland	1				1
Ireland			1		2
Italy	6	249	3	3	41
Latvia	1		1		7
Liechtenstein	1		1		1
Lithuania	2	3	1		6
Luxembourg			1		6
Malta	3	2			
Moldova	2	3	1	1	4
Monaco					
Montenegro					
Netherlands	6		4	2	20
Norway					4
Poland			2		30
Portugal	3		1		12
Romania	5	31	4	2	8
Russian Federation			3	1	10
San Marino					
Serbia	1				
Slovak Republic	1	13	3	3	24
Slovenia					3
Spain			1	1	3

Table 5: Leading cases / Other cases – by state (cases closed during the HR meetings in 2007 and total number of cases awaiting a final resolution at 31/12/2007) (continued)

States	Cases closed by a Final Resolution in 2007 (section 1)		Cases which examination has ended in 2007 and awaiting a Final resolution (section 6.1)		Total cases awaiting a final resolution at 31/12/2007, their examination having been closed in 2007 or earlier (section 6.2)
	Leading cases	Other cases	Leading cases	Other cases	
Sweden	4	3	3		6
Switzerland	3	1	3	1	13
"the former Yugoslav Republic of Macedonia"					5
Turkey	8	127	7	2	156
Ukraine	1		3	2	5
United Kingdom	5	1	11	11	94
TOTAL	**111**	**566**	**82**	**52**	**774**

Cases pending before the CM end 2007

(excluding cases in principle closed, awaiting a final resolution under sections 1 or 6)

The figures in Tables 6 to 8 refer to the data in Table 9 (page 212), i.e the situation at 31/12/2007. It should be noted that the high number of cases concerning certain countries is mainly explained by the large number of clone cases. Thus, if Italy e.g. has a total of 2 388 cases, representing 45% of the total of cases pending for execution, it has to be borne in mind that 2 183 of these cases relate to one single problem, the excessive length of judicial proceedings.

It should also be noted that the number of cases in Table 1 (page 204) is that established at the time of the last HR meeting of the year.

To obtain the number of pending cases at 31/12 of the year, one has to add new judgments which have become final and subtract final resolutions adopted, and, as the case may be, also cases in principle closed and awaiting a final resolution. These calculations have only been made as from 2007.

Table 6: Leading cases by state at 31/12/2007 (in relation to the total number of pending cases)

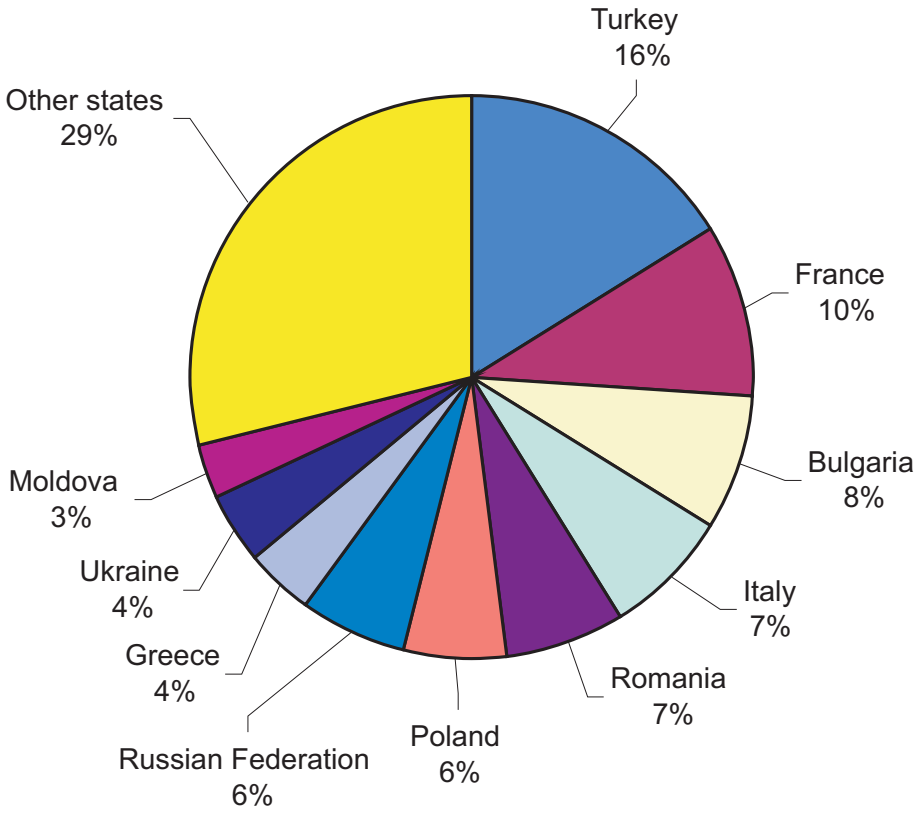


Table 7: Total cases by state at 31/12/2007 (in relation to the total number of pending cases)

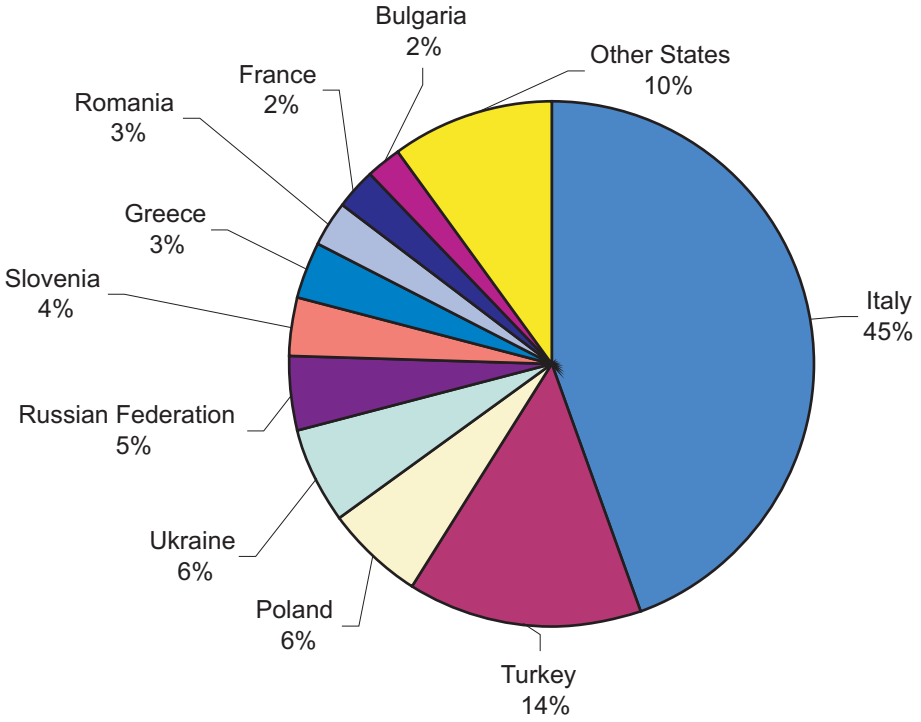


Table 8: Types of case pending before the CM at 31/12/2007 by state. Leading cases/Other cases

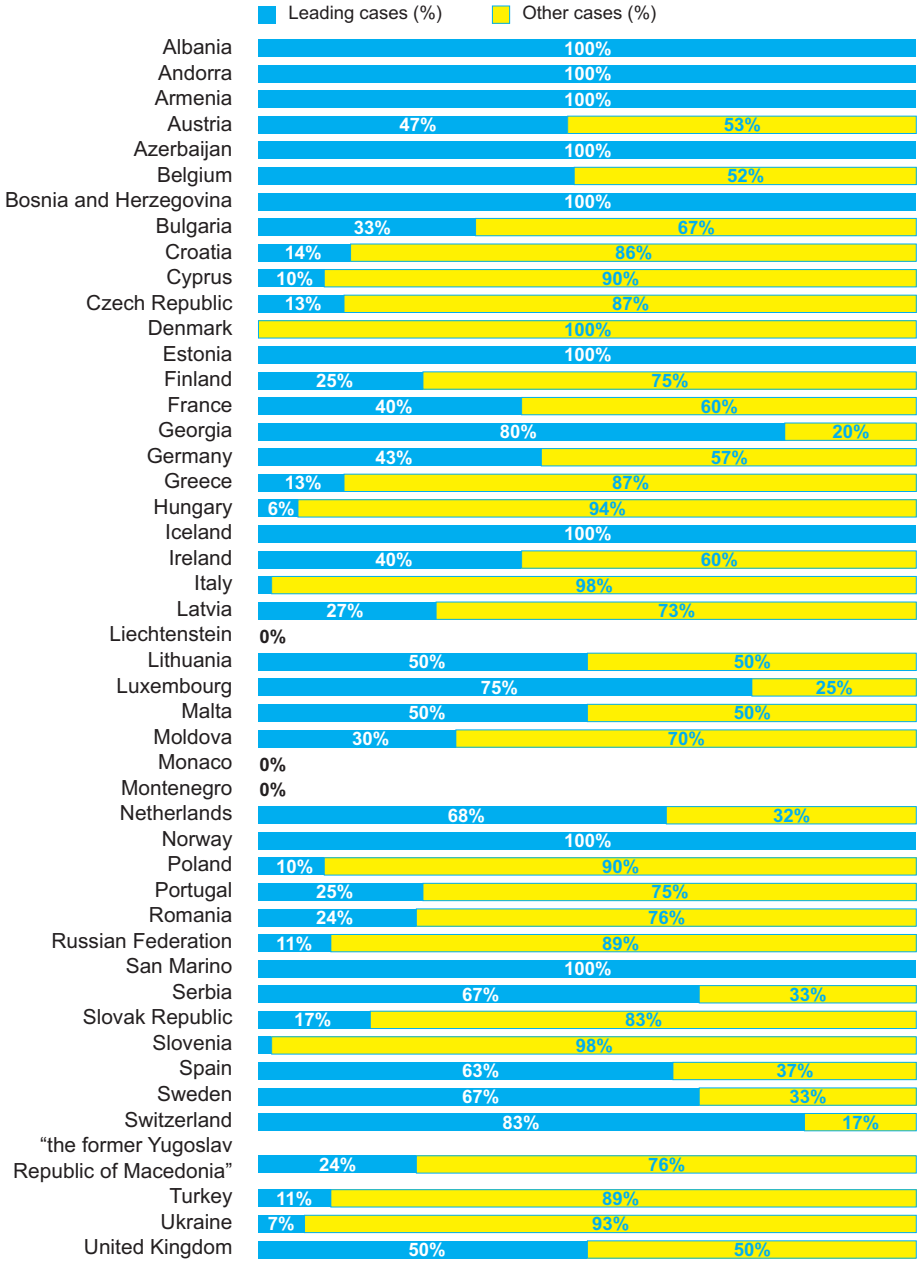


Table 9: Types of case pending at 31/12/2007 by state – details (except cases in principle closed, awaiting a final resolution under section 1 and 6)

State	Leading cases		Clone/repetitive or isolated cases		Cases by state	
	Number	% of all cases	Number	% of all cases	Number	% of all cases against all states
Albania	3	100%	0	0%	3	0.06%
Andorra	1	100%	0	0%	1	0.02%
Armenia	1	100%	0	0%	1	0.02%
Austria	7	47%	8	53%	15	0.28%
Azerbaijan	3	100%	0	0%	3	0.06%
Belgium	12	48%	13	52%	25	0.46%
Bosnia and Herzegovina	1	100%	0	0%	1	0.02%
Bulgaria	41	33%	83	67%	124	2.29%
Croatia	5	14%	32	86%	37	0.68%
Cyprus	2	10%	18	90%	20	0.37%
Czech Republic	11	13%	71	87%	82	1.52%
Denmark	0	0%	1	100%	1	0.02%
Estonia	1	100%	0	0%	1	0.02%
Finland	7	25%	21	75%	28	0.52%
France	52	40%	77	60%	129	2.38%
Georgia	8	80%	2	20%	10	0.18%
Germany	3	43%	4	57%	7	0.13%
Greece	23	13%	149	87%	172	3.18%
Hungary	5	6%	72	94%	77	1.42%
Iceland	3	100%	0	0%	3	0.06%
Ireland	2	40%	3	60%	5	0.09%
Italy	38	2%	2350	98%	2388	44.12%
Latvia	3	27%	8	73%	11	0.2%
Liechtenstein	0	0%	0	0%	0	0%
Lithuania	2	50%	2	50%	4	0.07%
Luxembourg	6	75%	2	25%	8	0.15%
Malta	5	50%	5	50%	10	0.18%
Moldova	16	30%	37	70%	53	0.98%
Monaco	0	0%	0	0%	0	0%
Montenegro	0	0%	0	0%	0	0%
Netherlands	3	100%	0	0%	3	0.06%
Norway	8	32%	5	38%	13	0.24%
Poland	33	10%	300	90%	333	6.15%
Portugal	9	25%	27	75%	36	0.67%
Romania	38	24%	119	76%	157	2.9%
Federation of Russia	30	11%	237	89%	267	4.93%
San Marino	2	100%	0	0%	2	0.04%
Serbia	2	67%	1	33%	3	0.06%

Table 9: Types of case pending at 31/12/2007 by state – details (except cases in principle closed, awaiting a final resolution under section 1 and 6) (continued)

State	Leading cases		Clone/repetitive or isolated cases		Cases by state	
	Number	% of all cases	Number	% of all cases	Number	% of all cases against all states
Slovak Republic	6	17%	30	83%	36	0.67%
Slovenia	4	2%	187	98%	191	3.53%
Spain	5	63%	3	37%	8	0.15%
Sweden	4	67%	2	33%	6	0.11%
Switzerland	5	83%	1	17%	6	0.11%
"the former Yugoslav Republic of Macedonia"	4	24%	13	76%	17	0.31%
Turkey	84	11%	695	89%	779	14.39%
Ukraine	22	7%	283	93%	305	5.64%
United Kingdom	15	50%	15	50%	30	0.55%
Total	**535**	**10%**	**4876**	**90%**	**5411**	**100%**

New cases effectively examined by the CM in 2007 at its DH meetings (section 2)

The figures in Tables 10 to 12 refer to the data in Table 13 (page 217).

Table 10: New leading cases per state (in relation to the total number of new leading cases)

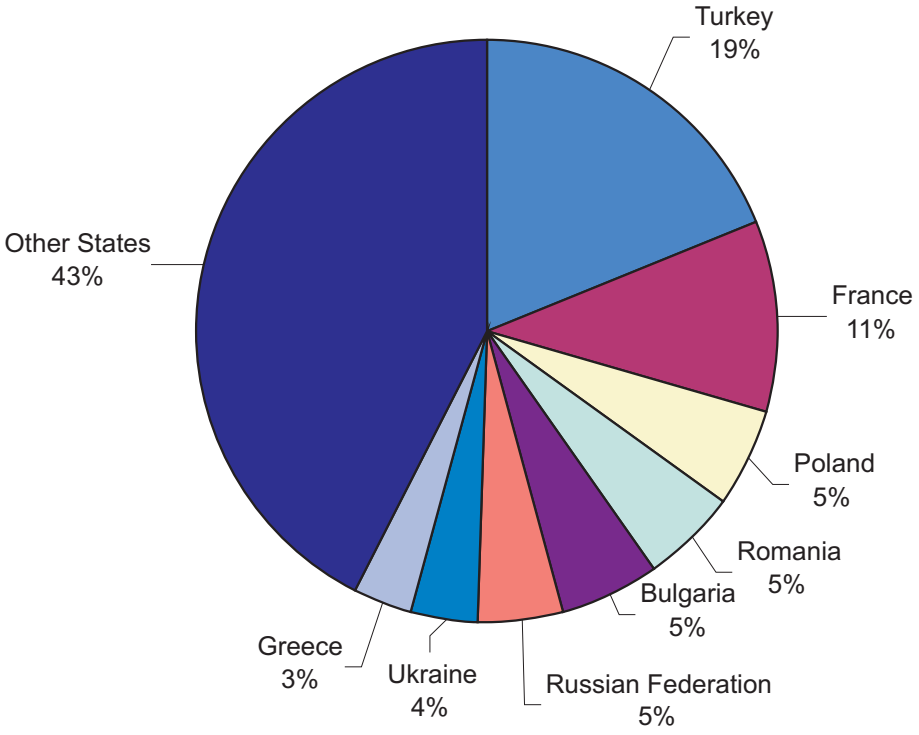


Table 11: Total of new cases per state (in relation to the total number of new cases)

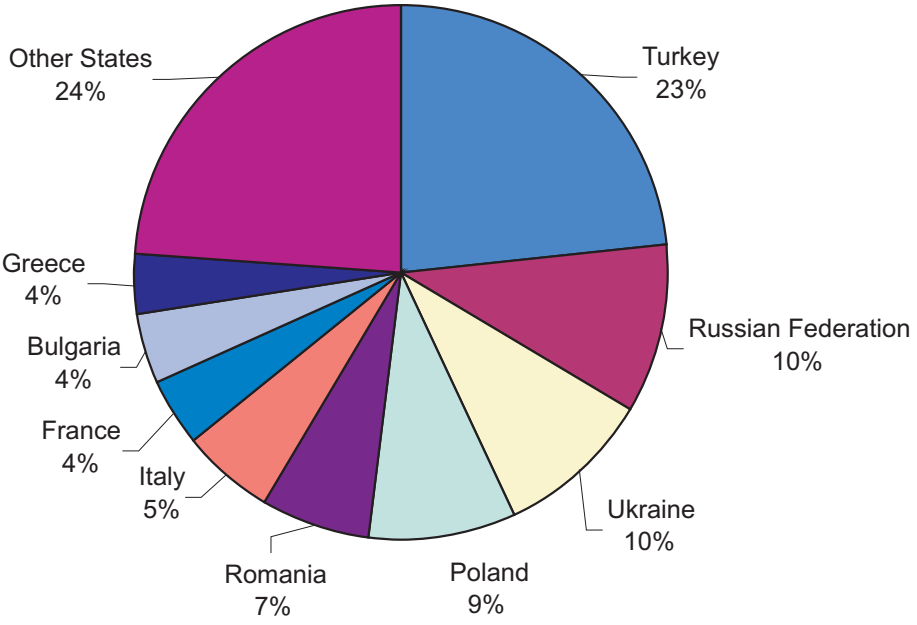


Table 12: Types of new case examined in 2007 by state (leading, clone/repetitive, isolated cases)

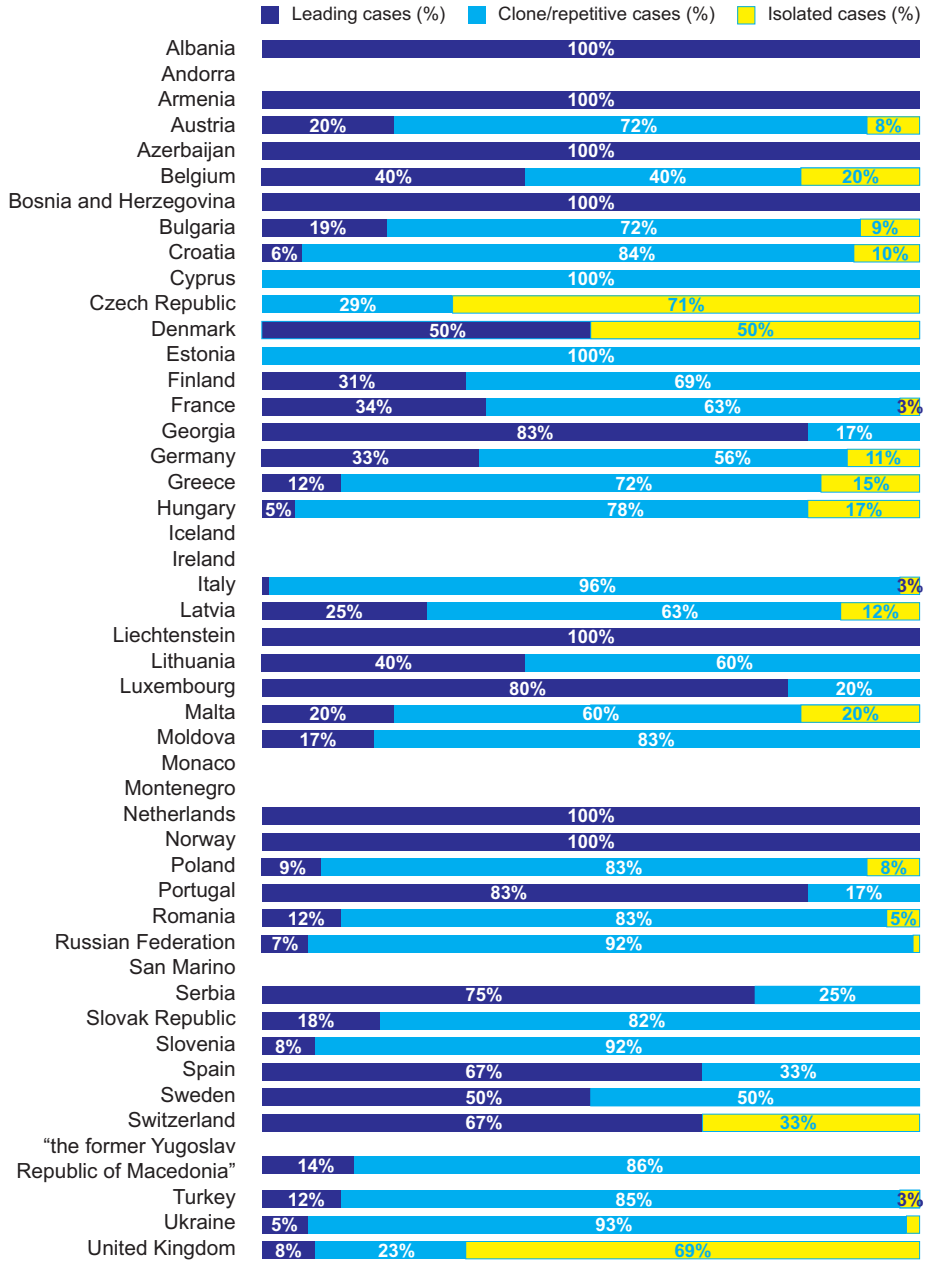


Table 13: Types of new case examined in 2007 – by state – details (section 2)

State	Leading cases		Clone/repetitive cases		Isolated cases		Cases by state in relation to the global number of cases	
	Number	% of the total of cases by state	Number	% of the total of cases by state	Number	% of the total of cases by state	Number	% of the total of cases for all states
Albania	2	100%	0		0		2	0.15%
Andorra	0		0		0		0	0.00%
Armenia	2	100%	0		0		2	0.15%
Austria	5	20%	18	72%	2	8%	25	1.83%
Azerbaijan	3	100%	0		0		3	0.22%
Belgium	2	40%	2	40%	1	20%	5	0.37%
Bosnia and Herzegovina	1	100%	0		0		1	0.07%
Bulgaria	11	19%	41	72%	5	9%	57	4.17%
Croatia	2	6%	26	84%	3	10%	31	2.27%
Cyprus	0		5	100%	0		5	0.37%
Czech Republic	5	29%	12	71%	0		17	1.24%
Denmark	1	50%	0		1	50%	2	0.15%
Estonia	0		1	100%	0		1	0.07%
Finland	5	31%	11	69%	0		16	1.17%
France	20	34%	37	63%	2	3%	59	4.32%
Georgia	5	83%	1	17%	0		6	0.44%
Germany	3	33%	5	56%	1	11%	9	0.66%
Greece	6	12%	36	72%	8	16%	50	3.66%
Hungary	1	5%	14	78%	3	17%	18	1.32%
Iceland	1	100%	0		0		1	0.07%
Ireland	0		0		0		0	0.00%
Italy	1	1%	70	96%	2	3%	73	5.34%
Latvia	2	25%	5	63%	1	12%	8	0.59%
Liechtenstein	1	100%	0		0		1	0.07%
Lithuania	2	40%	3	60%	0		5	0.37%
Luxembourg	4	80%	1	20%	0		5	0.37%
Malta	1	20%	3	60%	1	20%	5	0.37%
Moldova	5	17%	25	83%	0		30	2.19%
Monaco	0		0		0			0.00%
Montenegro	0		0		0			0.00%
Netherlands	3	100%	0		0		3	0.22%
Norway	4	100%	0	0%	0		4	0.29%
Poland	11	9%	100	83%	10	8%	121	8.85%
Portugal	5	83%	1	17%	0		6	0.44%
Romania	11	12%	77	83%	5	5%	93	6.80%
Russian Federation	10	7%	129	92%	1	1%	140	10.24%

Table 13: Types of new case examined in 2007 – by state – details (section 2) (continued)

State	Leading cases		Clone/repetitive cases		Isolated cases		Cases by state in relation to the global number of cases	
	Number	% of the total of cases by state	Number	% of the total of cases by state	Number	% of the total of cases by state	Number	% of the total of cases for all states
San Marino	0		0		0		0	0.00%
Serbia	3	75%	1	25%	0		4	0.29%
Slovak Republic	4	18%	18	82%	0		22	1.61%
Slovenia	3	8%	33	92%	0		36	2.63%
Spain	2	67%	1	33%	0		3	0.22%
Sweden	3	50%	3	50%	0		6	0.44%
Switzerland	2	67%	0		1	33%	3	0.22%
"the former Yugoslav Republic of Macedonia"	2	14%	12	86%	0		14	1.02%
Turkey	37	12%	272	85%	10	3%	319	23.34%
Ukraine	7	5%	121	93%	2	2%	130	9.51%
United Kingdom	2	8%	6	23%	18	69%	26	1.90%
TOTAL	**200**	**15%**	**1090**	**80%**	**77**	**5%**	**1367**	**100%**

Respect of payment deadlines expiring in 2007

The figures in Tables 14 and 15 refer to the data in Table 16 (page 221).

It should be noted that the data on respect of the payment deadlines concern all cases in respect of which just satisfaction awards became due for payment in 2007.

Cases are shown as paid within the deadline or after the deadline where the CM has received information to this effect. Otherwise, cases are shown as "Pending for control of payment" according to the data available at 31/12/2007. This does not mean that payment has not been made, but only that the information confirming it has not yet reached the CM or is being assessed. In particular, as payment confirmation may take some time, such confirmation is frequently missing in cases where the payment deadline expired toward the end of 2007.

Table 14: Respect of payment deadlines

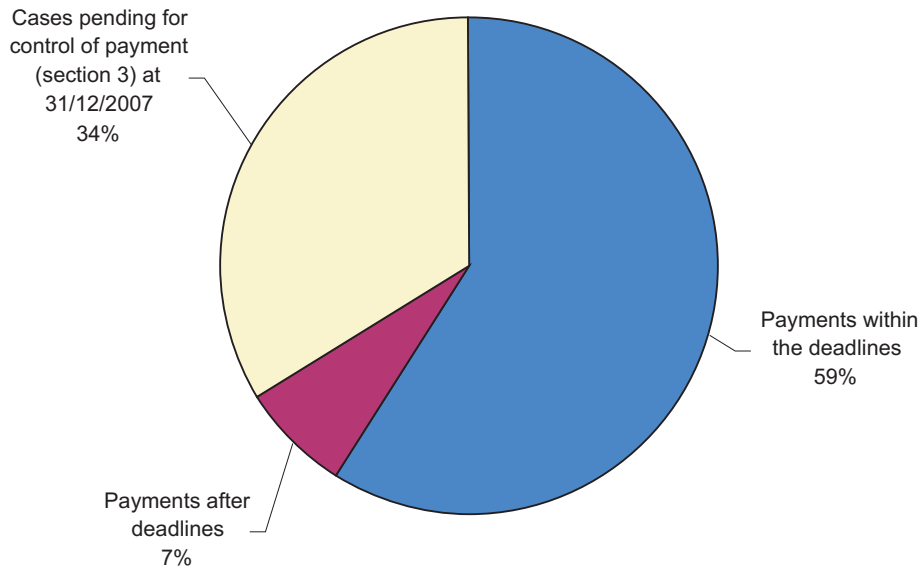


Table 15: Respect of payment deadlines by states

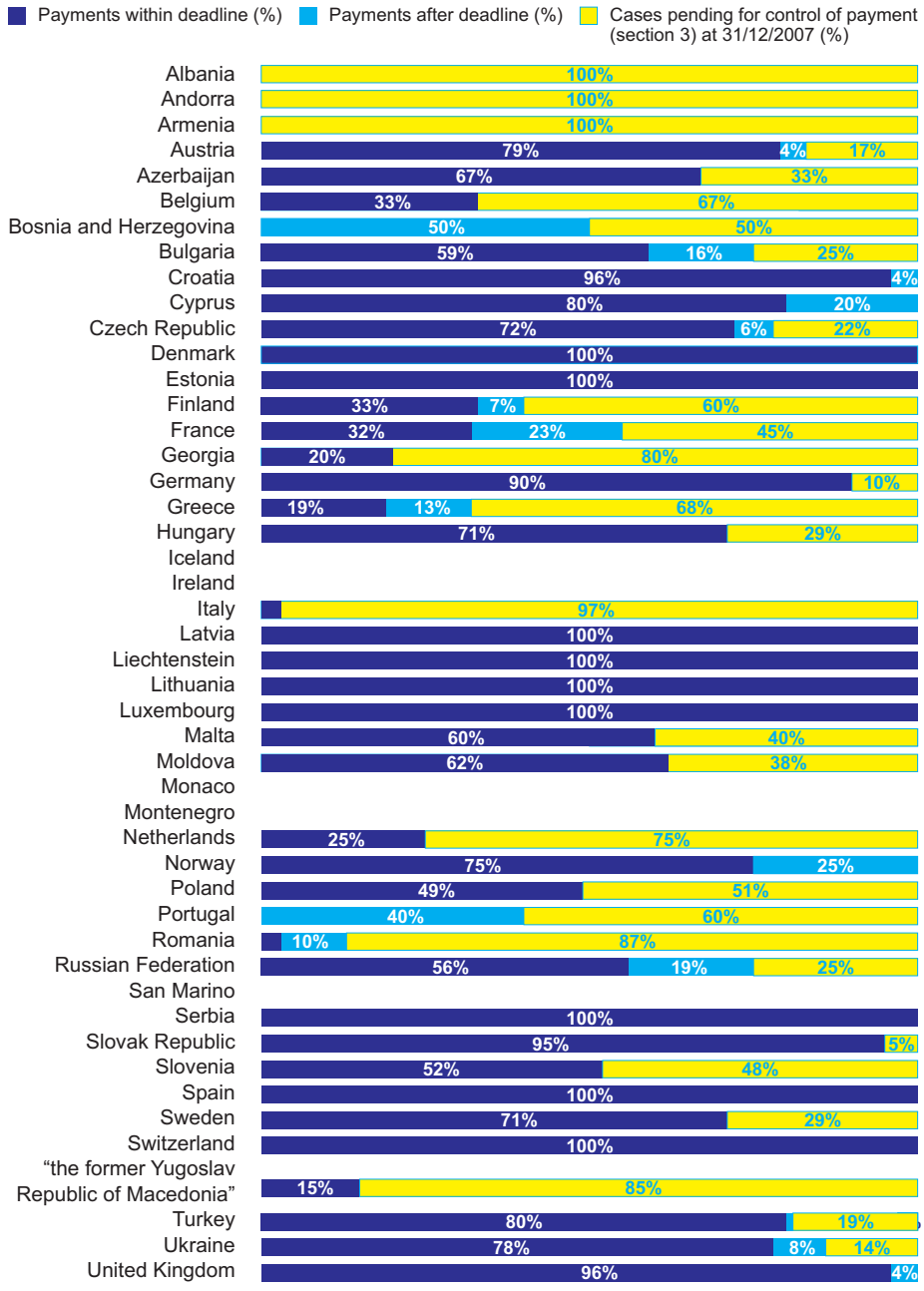


Table 16: Respect of payment deadlines by state – detail (on the basis of all cases in respect of which the deadline for payment expired in 2007)

State	Payments within deadlines		Payments after deadlines		Cases pending for control of payment (section 3) at 31/12/2007		Total
	Number	%	Number	%	Number	%	
Albania	0		0		1	100%	1
Andorra	0		0		1	100%	1
Armenia	0		0		1	100%	1
Austria	18	79%	1	4%	4	17%	23
Azerbaijan	2	67%	0		1	33%	3
Belgium	1	33%	0		2	67%	3
Bosnia and Herzegovina	0		1	50%	0	50%	1
Bulgaria	33	59%	9	16%	14	25%	56
Croatia	27	96%	1	4%	0		28
Cyprus	4	80%	1	20%	0		5
Czech Republic	13	72%	1	6%	4	22%	18
Denmark	2	100%	0		0		2
Estonia	2	100%	0		0		2
Finland	5	33%	1	7%	9	60%	15
France	17	32%	12	23%	24	45%	53
Georgia	1	20%	0		4	80%	5
Germany	9	90%	1	10%	0		10
Greece	9	19%	6	13%	33	68%	48
Hungary	12	71%	0		5	29%	17
Iceland	0	0%	0		0		0
Ireland	0	0%	0		0		0
Italy	1	3%	0		32	97%	33
Latvia	3	100%	0		0		3
Liechtenstein	1	100%	0		0		1
Lithuania	5	100%	0		0		5
Luxembourg	4	100%	0		0		4
Malta	3	60%	0		2	40%	5
Moldova	18	62%	0		11	38%	29
Monaco	0	0%	0		0		0
Montenegro	0	0%	0		0		0
Netherlands	1	25%	0		3	75%	4
Norway	3	75%	1	25%	0		4
Poland	55	49%	0		57	51%	112
Portugal	0		2	40%	3	60%	5
Romania	3	3%	9	10%	75	87%	87
Russian Federation	68	56%	23	19%	31	25%	122
San Marino	0	0%	0		0		0
Serbia	4	100%	0		0		4

Table 16: Respect of payment deadlines by state – detail (on the basis of all cases in respect of which the deadline for payment expired in 2007) (continued)

State	Payments within deadlines		Payments after deadlines		Cases pending for control of payment (section 3) at 31/12/2007		Total
	Number	%	Number	%	Number	%	
Slovak Republic	18	95%	0		1	5%	19
Slovenia	25	52%	0		23	48%	48
Spain	2	100%	0		0		2
Sweden	5	71%	0		2	29%	7
Switzerland	6	100%	0		0		6
"the former Yugoslav Republic of Macedonia"	2	15%	0	0%	11	85%	13
Turkey	234	80%	2	1%	56	19%	292
Ukraine	87	78%	9	8%	16	14%	112
United Kingdom	26	96%	1	4%	0		27
Total	**729**	**59%**	**81**	**7%**	**426**	**34%**	**1 236**

Just satisfaction awarded in new cases examined by the CM in 2007

The figures in Tables 17 and 18 refer to the data in Table 19 (page 226).

The present data take into account payment awards in all new cases examined by the CM in 2007.

It should be noted that the sums are those indicated in the judgment – usually in euros – and do not cover default interest. In order to facilitate comparison, sums awarded in other currencies than euro have also been converted into euros. For the purposes of these statistics the rate used has been that applicable at 30/12/2007.

Table 17: Total just satisfaction (€) awarded in the new cases examined by the CM in 2007 during its HR meetings

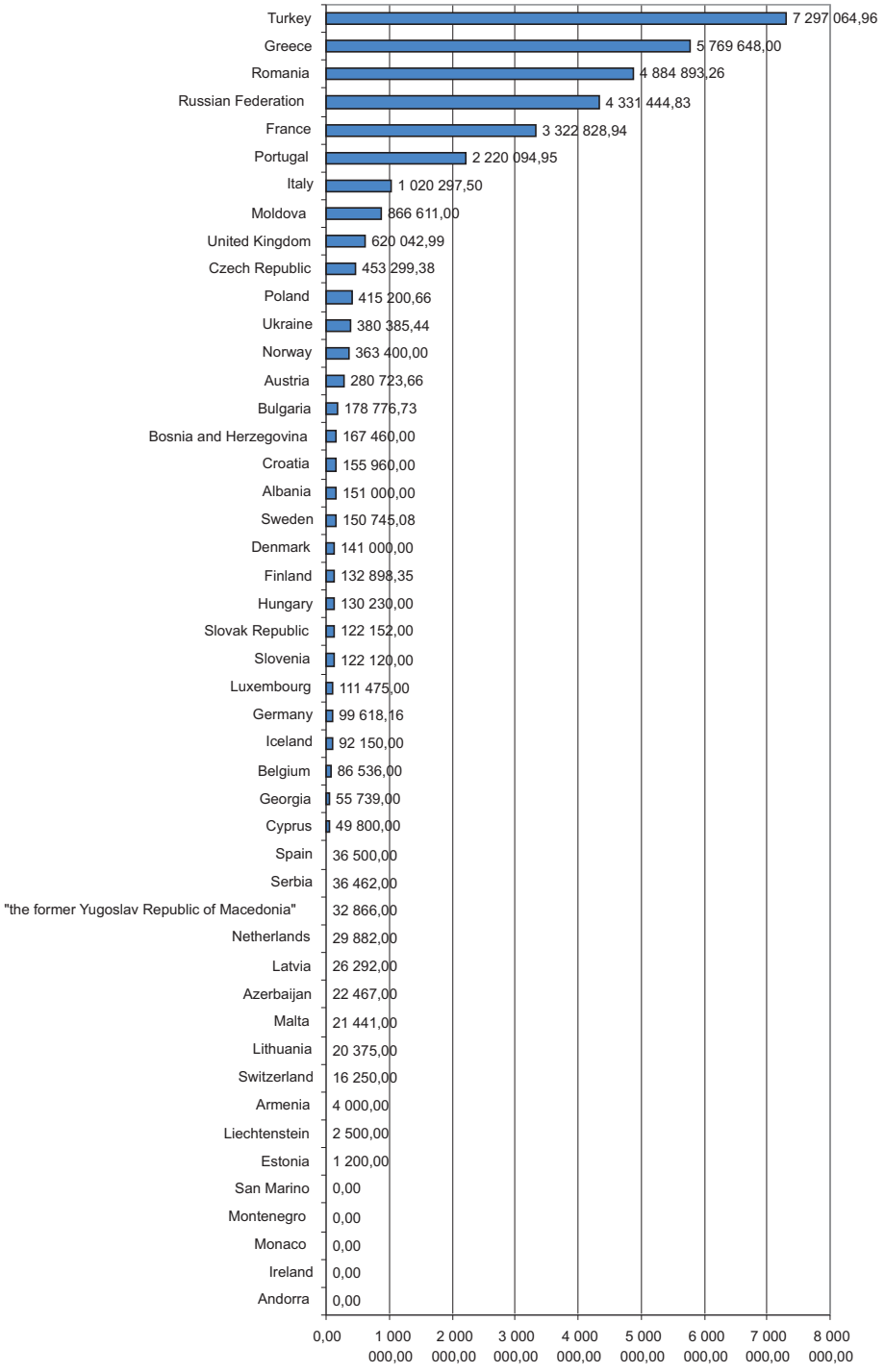


Table 18: Average just satisfaction awarded by case in the new cases examined by the CM in 2007 during its HR meetings

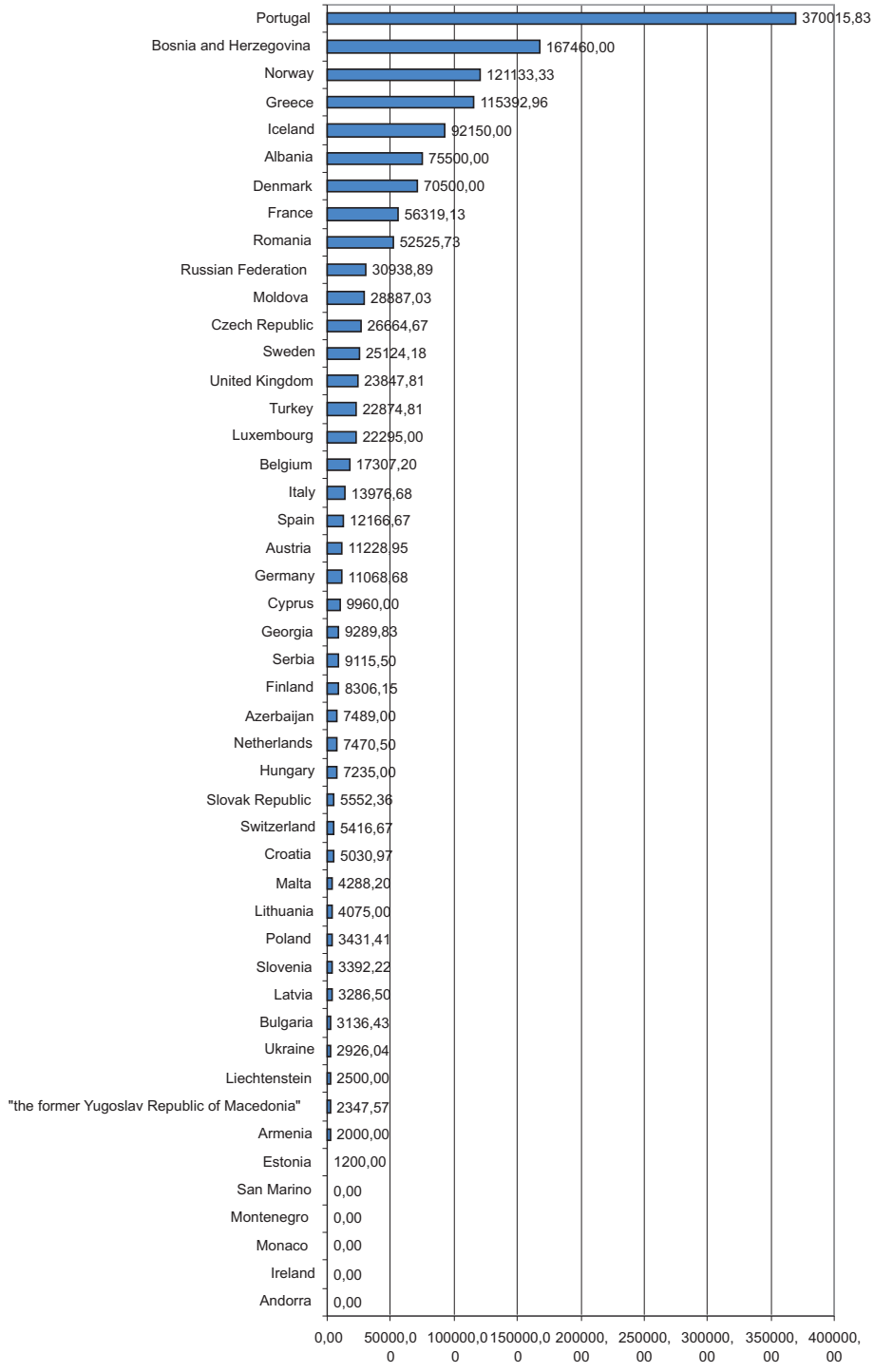


Table 19: Sums awarded as just satisfaction by state – detail (in the new cases examined by the CM in 2007 at its HR meetings)

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)	Costs and expenses (€)	Global sum (€)	Total (€)
Albania	2	75 500		15000	120000	16000		151000
Andorra								
Armenia	2	2 000		4000				4000
Austria	25	11 228.95	77 518.03	44500		158705.63		280724
Azerbaijan	3	7 489		17000		5467		22467
Belgium	5	17 307.20		55000		14036	17500	86536
Bosnia and Herzegovina	1	167 460	163460	4000				167460
Bulgaria	57	3 136.43	589.23	110750	14000	51537.50	1900	178777
Croatia	31	5 030.97	22000	101100		25860	7000	155960
Cyprus	5	9 960		47000		2800		49800
Czech Republic	17	26 664.67	150	80500		12175	360474.38	453299
Denmark	2	70 500		6000			135000	141000
Estonia	1	1 200		900		300		1200
Finland	16	8 306.15		66500		62154.35	4244	132898
France	59	56 319.13	237979.52	180500	1706000	234099.42	964250	3322829
Georgia	6	9 289.83		38520		17219		55739
Germany	9	11 068.68		62000		16118.16	21500	99618
Greece	50	115 392.96	5276648	380500		112500		5769648
Hungary	18	7 235		118265		11965		130230
Iceland	1	92 150			75000	17150		92150
Ireland								
Italy	73	13 976.68	600000	270000		150297.50		1020298
Latvia	8	3 286.50	10292	13000		3000		26292
Liechtenstein	1	2 500				2500		2500
Lithuania	5	4 075		9000		1375	10000	20375
Luxembourg	5	22 295	715	83500		27260		111475
Malta	5	4 288.20	1460	3000		16981		21441
Moldova	30	28 887.03	680946	114300	12900	29465	29000	866611
Monaco		0						
Montenegro		0						
Netherlands	4	7 470.50		20000		9882		29882
Norway	3	121 133.33	90000			253400	20000	363400

Table 19: Sums awarded as just satisfaction by state – detail (in the new cases examined by the CM in 2007 at its HR meetings) (continued)

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)	Costs and expenses (€)	Global sum (€)	Total (€)
Poland	121	3 431.41	10500	359200		45500.66		415201
Portugal	6	370 015.83	1214560.95	950000		55534		2220095
Romania	93	52 525.73	4280623	330000	199000	72270.26	3000	4884893
Russian Federation	140	30 938.89	2882370.56	1078250	2000	368824.27		4331445
San Marino								
Serbia	4	9 115.50		27500		8962		36462
Slovak Republic	22	5 552.36		103900		18252		122152
Slovenia	36	3 392.22		101400		20720		122120
Spain	3	12 166.67		30000		6500		36500
Sweden	6	25 124.18		42722.30		106439.42	1583.36	150745
Switzerland	3	5 416.67		5000		11250		16250
"the former Yugoslav Republic of Macedonia"	14	2 347.57		19100		11296	2470	32866
Turkey	319	22 874.81	4943844	1533042	352905	443773.96	23500	7297065
Ukraine	130	2 926.04	76747	207231	42800	7116.20	46491.24	380385
United Kingdom	26	23 847.81	11861.16€	11000	40000	121 721.49	435 460.34	620043
TOTAL €	**1367**	**25182**	**20582264**	**6643180**	**2564 605**	**2550408**	**2083373**	**34423831**

Table 19a: Sums awarded in national currency (see below) have been converted into euros in the above table at the rate applicable at 30/12/2007, in order to allow the presentation of the total amount in euros. An exact calculation would take into account the rate applicable at the date of payment

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)	Costs and expenses (€)	Global sum (€)	Total (€)
Czech Republic (Czech crown, CZK)							9598528 CZK	9598528 CZK
Russian Federation (rouble, RUR)			2217398.55 RUR			152543.74 RUR		2369942 RUR
Sweden (Swedish crown, SEK)				40000 SEK		148160 SEK	15000 SEK	203160 SEK
United Kingdom (pound sterling, GBP)			5849.55 GBP			17075.04 GBP	319758.53 GBP	342683 GBP

Length of execution[1] of leading cases pending before the CM at 31/12/2007

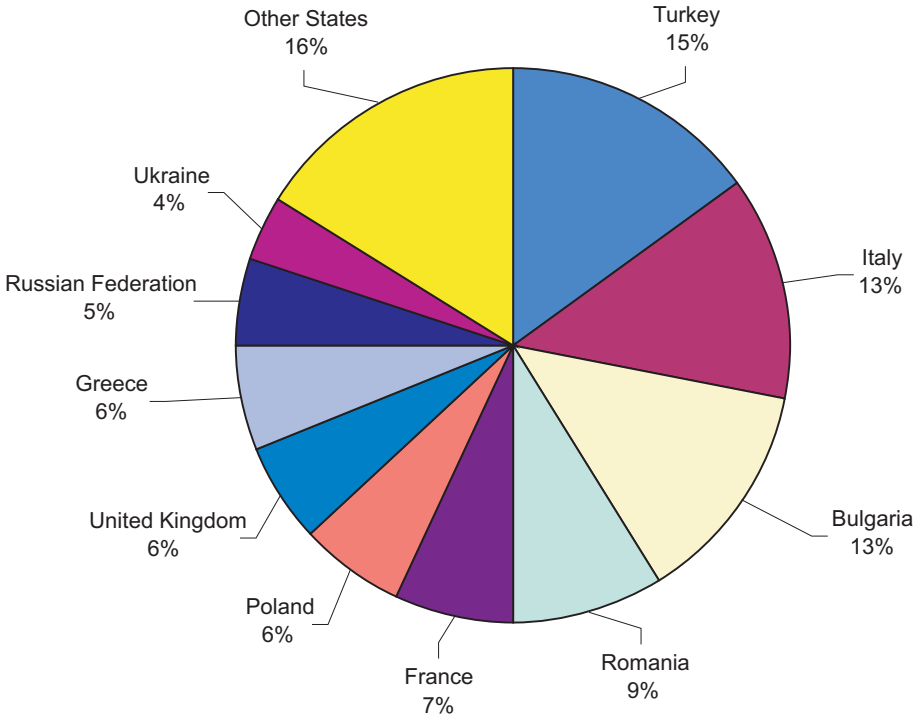
(less than 2 years; between 2 and 5 years; more than 5 years)

The figures in Tables 20 to 22 refer to the data in Table 23 (page 232).

It should be noted that the cases pending for execution supervision are presented as the situation was reported at 31/12/2007. This means that execution measures may in certain cases recently have been taken although this has not been reported to the CM. In certain other cases, information on relevant measures may already have been submitted, but no decision has yet been taken as to the sufficiency of the measures for the purposes of Article 46.

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

Table 20: Leading cases by state pending for more than 2 years



1. Calculated on the basis of the date at which the judgment became final.

Table 21: Length of leading cases pending before the CM – global situation

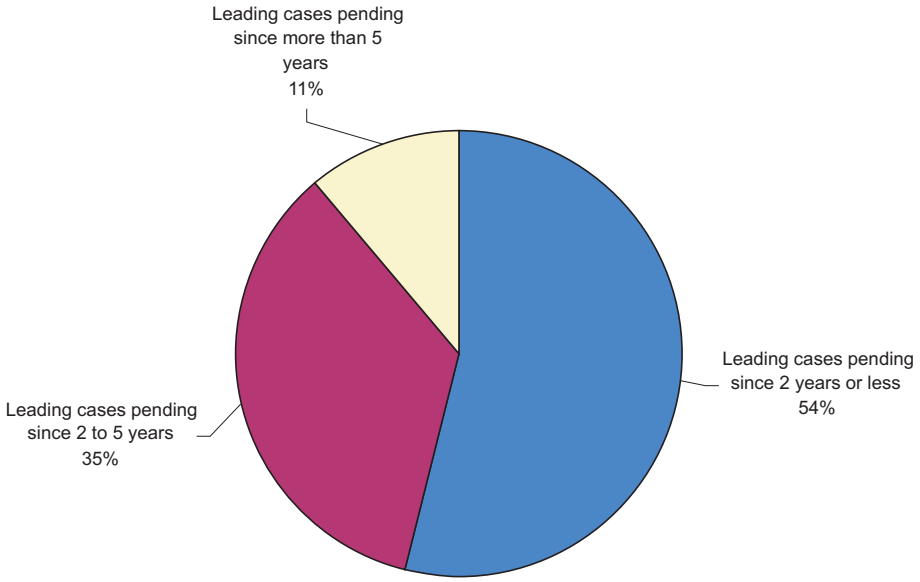


Table 22: Leading cases pending before the CM at 31/12/2007 by state

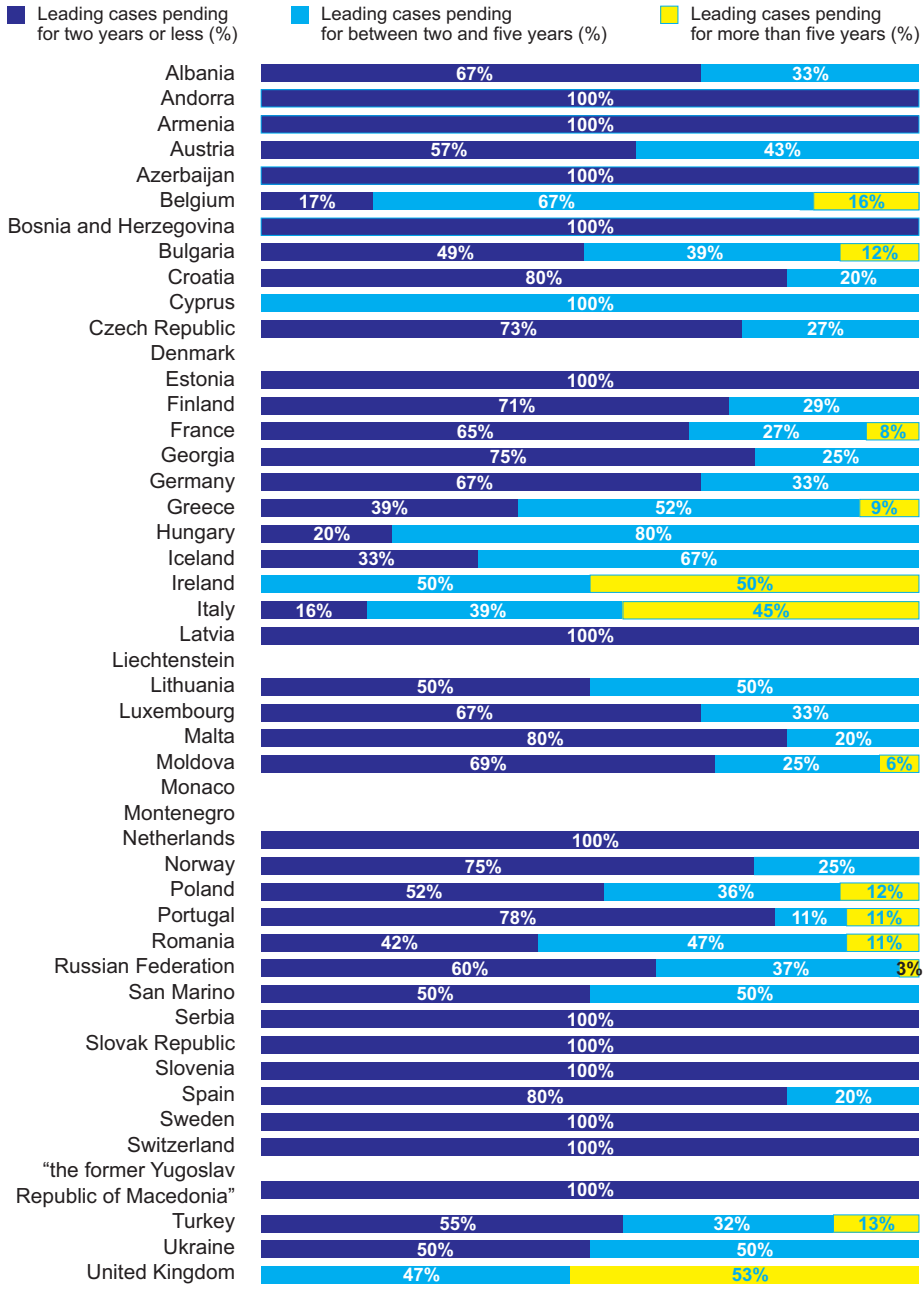


Table 23: Leading cases pending at 31/12/07 – Length of execution by state – details (less than 2 years, from 2 to 5 years, more than 5 years*

State	Leading cases pending for supervision for two years or less		Leading cases pending for supervision for two to five years		Leading cases pending for supervision for more than five years	
	No.	%	No.	%	No.	%
Albania	2	67%	1	33%	0	
Andorra	1	100%	0		0	
Armenia	1	100%	0		0	
Austria	4	57%	3	43%	0	
Azerbaijan	3	100%	0		0	
Belgium	2	17%	8	67%	2	16%
Bosnia and Herzegovina	1	100%	0		0	
Bulgaria	20	49%	16	39%	5	12%
Croatia	4	80%	1	20%	0	
Cyprus	0		2	100%	0	
Czech Republic	8	73%	3	27%	0	
Denmark	0		0		0	
Estonia	1	100%	0		0	
Finland	5	71%	2	28%	0	
France	34	65%	14	27%	4	8%
Georgia	6	75%	2	25%	0	
Germany	2	67%	1	33%	0	
Greece	9	39%	12	52%	2	9%
Hungary	1	20%	4	80%	0	
Iceland	1	33%	2	67%	0	
Ireland	0		1	50%	1	50%
Italy	6	16%	15	39%	17	45%
Latvia	3	100%	0		0	
Liechtenstein	0		0		0	
Lithuania	1	50%	1	50%	0	
Luxembourg	4	67%	2	33%	0	
Malta	4	80%	1	20%	0	
Moldova	11	69%	4	25%	1	6%
Monaco	0		0		0	
Montenegro	0		0		0	
Netherlands	6	75%	2	25%	0	
Norway	3	100%	0		0	
Poland	17	52%	12	36%	4	12%
Portugal	7	78%	1	11%	1	11%
Romania	16	42%	18	47%	4	11%
Russian Federation	18	60%	11	37%	1	3%
San Marino	1	50%	1	50%	0	
Serbia	2	100%	0		0	
Slovak Republic	6	100%	0		0	

Table 23: Leading cases pending at 31/12/07 – Length of execution by state – details (less than 2 years, from 2 to 5 years, more than 5 years*

State	Leading cases pending for supervision for two years or less		Leading cases pending for supervision for two to five years		Leading cases pending for supervision for more than five years	
	No.	%	No.	%	No.	%
Slovenia	4	100%	0		0	
Spain	4	80%	1	20%	0	
Sweden	4	100%	0		0	
Switzerland	5	100%	0		0	
"the former Yugoslav Republic of Macedonia"	4	100%	0		0	
Turkey	46	55%	27	32%	11	13%
Ukraine	11	50%	11	50%	0	
United Kingdom	0		7	47%	8	53%
TOTAL	**288**	**54%**	**186**	**35%**	**61**	**11%**

* Calculated on the basis of the date at which the judgment became final.

Appendix 3

Final Resolutions adopted and cases closed in 2007

For descriptions of measures adopted, see overview of issues examined in 2007 – Appendix 1, page 27– and/or the full text of the resolutions available under the HUDOC database of the ECtHR (see Appendix 7, page 257).

Final resolutions adopted

987th CMDH meeting (February 2007)

Resolution ResDH (2007) 1: Execution of the judgment of the European Court of Human Rights ÖCALAN against Turkey

TUR **Section 1.1**

Resolution ResDH (2007) 5: concerning the judgment of the European Court of Human Rights of 18 February 1999 in the case of LARKOS against Cyprus

CYP **Section 1.1**

Resolution ResDH (2007) 6: Execution of the judgment of the European Court of Human Rights SØRENSEN and RASMUSSEN against Denmark

DNK **Section 1.1**

Resolution ResDH (2007) 7: Execution of the judgment of the European Court of Human Rights EPPLE against Germany

GER **Section 1.1**

Resolution ResDH (2007) 8: concerning the judgments of the European Court of Human Rights between 29 April 1999 and 9 January 2003 in the cases of SABEUR BEN ALI, AQUILINA, T.W. and KADEM against Malta

MLT **Section 1.1**

Resolution ResDH (2007) 9: Execution of the judgment of the European Court of Human Rights CALLEJA against Malta

MLT **Section 1.1**

Resolution ResDH (2007) 10: Execution of the judgment of the European Court of Human Rights KRUMPEL and KRUMPELOVÁ against the Slovak Republic

SVK **Section 1.1**

Resolution ResDH (2007) 11: Execution of the judgment of the European Court of Human Rights MUNARI against Switzerland

SUI **Section 1.1**

Final Resolution ResDH (2007) 12: Human Rights Application No. 27613/95 P.B. against Switzerland

SUI **Section 1.1**

Resolution ResDH (2007) 13: Execution of the judgment of the European Court of Human Rights UKRAINIAN MEDIA GROUP against Ukraine

UKR **Section 1.1**

Resolution ResDH (2007) 14: Execution of the judgment of the European Court of Human Rights BOWMAN against the United Kingdom

UK **Section 1.1**

Resolution ResDH (2007) 15: Execution of the judgment of the European Court of Human Rights HALFORD against the United Kingdom

UK **Section 1.1**

Final Resolution ResDH (2007) 16: Human Rights Application No. 25658/94 ASLANTAŞ against Turkey

TUR **Section 1.2**

Resolution ResDH (2007) 17: Execution of the judgments of the European Court of Human Rights in the case of FADIL YILMAZ v. Turkey and 12 other cases concerning the administration's delay in payment of additional compensation for expropriation against Turkey

TUR **Section 1.2**

Resolution ResDH (2007) 18: Execution of the judgment of the European Court of Human Rights MOCANU against Romania

ROM Section 1.4

Resolution ResDH (2007) 19: Execution of the judgment of the European Court of Human Rights ÇALIŞLAR against Turkey

TUR Section 1.4

Resolution ResDH (2007) 20: concerning the judgments of the European Court of Human Rights delivered between 11 July 2002 and 2 October 2003 (Friendly settlements) in the case of ÖZLER v. Turkey and 5 other cases relating to freedom of expression

TUR Section 1.4

Resolution ResDH (2007) 21: Execution of the judgment of the European Court of Human Rights ÖZKAN KILIÇ against Turkey

TUR Section 1.4

Resolution ResDH (2007) 22: Execution of the judgment of the European Court of Human Rights YALÇIN KUÇUK (No. 2) against Turkey

TUR Section 1.4

Resolution ResDH (2007) 23: Execution of the judgment of the European Court of Human Rights KAMIL T. SÜREK against Turkey

TUR Section 1.4

Resolution ResDH (2007) 24: Execution of the judgment of the European Court of Human Rights AHMET TURAN DEMIR against Turkey

TUR Section 1.4

992nd CMDH meeting (April 2007)

Resolution CM/ResDH (2007) 29: Execution of the judgment of the European Court of Human Rights NAPIJALO against Croatia

CRO Section 1.1

Resolution CM/ResDH (2007) 30: Execution of the judgments of the European Court of Human Rights PINCOVÁ and PINC against the Czech Republic and ZVOLSKÝ and ZVOLSKÁ against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 31: Execution of the judgment of the European Court of Human Rights SOUDEK against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 32: Execution of the judgment of the European Court of Human Rights ALVER against Estonia

EST Section 1.1

Resolution CM/ResDH (2007) 33: Execution of the judgments of the European Court of Human Rights SULAOJA against Estonia and PIHLAK against Estonia

EST Section 1.1

Resolution CM/ResDH (2007) 34: Execution of the judgment of the European Court of Human Rights K.A against Finland

FIN Section 1.1

Resolution CM/ResDH (2007) 35: Execution of the judgment of the European Court of Human Rights N. against Finland

FIN Section 1.1

Resolution CM/ResDH (2007) 36: Execution of the judgments of the European Court of Human Rights GOUSSEV and MARENK against Finland and SOINI and others against Finland

FIN Section 1.1

Resolution CM/ResDH (2007) 37: Execution of the judgment of the European Court of Human Rights ANNONI DI GUSOLA and DEBORDES and OMER against France

FRA Section 1.1

Resolution CM/ResDH (2007) 38: Execution of the judgment of the European Court of Human Rights ARISTIMUÑO MENDIZABAL against France

FRA Section 1.1

Resolution CM/ResDH (2007) 39: Execution of the judgments of the European Court of Human Rights in the case of ETCHEVESTE and BIDART v. France and 9 other cases concerning the excessive length of criminal proceedings against France

FRA Section 1.1

Final Resolution CM/ResDH (2007) 40: CAZES against France

FRA Section 1.1

Final Resolution CM/ResDH (2007) 41: DELBEC I against France

FRA Section 1.1

Resolution CM/ResDH (2007) 42: Execution of the judgments of the European Court of Human Rights DELBEC III, D.M., L.R. and LAIDIN against France

FRA Section 1.1

Resolution CM/ResDH (2007) 43: G.B. against France

FRA Section 1.1

Resolution CM/ResDH (2007) 44: Execution of the judgments of the European Court of Human Rights in the case of KRESS against France and 5 other cases concerning the right to a fair trial before the Conseil d'Etat (participation of the Government Commissioner in the deliberations)

FRA Section 1.1

Final Resolution CM/ResDH (2007) 45: PIERRE LEMOINE against France
FRA **Section 1.1**

Resolution CM/ResDH (2007) 46: Execution of the judgment of the European Court of Human Rights MAYALI against France
FRA **Section 1.1**

Resolution CM/ResDH (2007) 47: Execution of the judgment of the European Court of Human Rights MOTAIS DE NARBONNE against France
FRA **Section 1.1**

Resolution CM/ResDH (2007) 48: Execution of the judgments of the European Court of Human Rights in the case of RICHARD v. France and 6 other cases requiring "exceptional diligence" before the administrative courts
FRA **Section 1.1**

Resolution CM/ResDH (2007) 49: Execution of the judgments of the European Court of Human Rights SEGUIN, WIOT and JULIEN FERDINAND against France
FRA **Section 1.1**

Final Resolution CM/ResDH (2007) 50: SLIMANE-KAÏD against France
FRA **Section 1.1**

Resolution CM/ResDH (2007) 51: Execution of the judgment of the European Court of Human Rights SLIMANI against France
FRA **Section 1.1**

Resolution CM/ResDH (2007) 52: Execution of the judgment of the European Court of Human Rights TRICARD against France
FRA **Section 1.1**

Resolution CM/ResDH (2007) 53: Execution of the judgment of the European Court of Human Rights PEZONE against Italy
ITA **Section 1.1**

Resolution CM/ResDH (2007) 54: Execution of the judgment of the European Court of Human Rights FARBTUHS against Latvia
LVA **Section 1.1**

Resolution CM/ResDH (2007) 55: Execution of the judgment of the European Court of Human Rights FROMMELT against Liechtenstein
LIE **Section 1.1**

Resolution CM/ResDH (2007) 56: Execution of the judgment of the European Court of Human Rights ROŞCA against Moldova
MDA **Section 1.1**

Resolution CM/ResDH (2007) 57: Execution of the judgment of the European Court of Human Rights CAMP and BOURIMI against the Netherlands
NLD **Section 1.1**

Resolution CM/ResDH (2007) 58: Execution of the judgment of the European Court of Human Rights ENHORN against Sweden
SWE **Section 1.1**

Resolution CM/ResDH (2007) 59: Execution of the judgment of the European Court of Human Rights JANOSEVIC against Sweden
SWE **Section 1.1**

Resolution CM/ResDH (2007) 60: Execution of the judgment of the European Court of Human Rights TIBBLING against Sweden
SWE **Section 1.1**

Resolution CM/ResDH (2007) 61: Execution of the judgment of the European Court of Human Rights VÄSTBERGA TAXI AKTIEBOLAG and VULIC against Sweden
SWE **Section 1.1**

Final Resolution CM/ResDH (2007) 62: DARMAGNAC against France
FRA **Section 1.2**

Final Resolution CM/ResDH (2007) 63: FERVILLE C. and P. against France
FRA **Section 1.2**

Resolution CM/ResDH (2007) 64: Execution of the judgment of the European Court of Human Rights MORTIER against France
FRA **Section 1.2**

Final Resolution CM/ResDH (2007) 65: VENOT against France
FRA **Section 1.2**

Resolution CM/ResDH (2007) 66: Execution of the judgments of the European Court of Human Rights in the case of FEJES and 5 other cases concerning the length of criminal proceedings against Hungary
HUN **Section 1.2**

Resolution CM/ResDH (2007) 67: Execution of the judgments of the European Court of Human Rights in the case of BERNÁT and 12 other cases against the Slovak Republic concerning the excessive length of civil proceedings and the right to an effective remedy
SVK **Section 1.2**

Resolution CM/ResDH (2007) 68: Execution of the judgments of the European Court of Human Rights in the case of ACAR and others and 47 other cases concerning the administration's delay in payment of additional compensation for expropriation against Turkey
TUR **Section 1.2**

Resolution CM/ResDH (2007) 69: Execution of the judgments of the European Court of Human Rights PRAMOV and NESHEV against Bulgaria
BGR **Section 1.3**

Final Resolution CM/ResDH (2007) 70: PICARD against France
FRA Section 1.3

Resolution CM/ResDH (2007) 71: Execution of the judgment of the European Court of Human Rights ERDEMLI against Turkey
TUR Section 1.4

Resolution CM/ResDH (2007) 72: Execution of the judgment of the European Court of Human Rights OKATAN against Turkey
TUR Section 1.4

997th CMDH meeting (June 2007)

Resolution CM/ResDH (2007) 76: concerning the judgment of the European Court of Human Rights in a case relating to lack of a hearing in compensation proceedings under the Austrian Media Act (A.T. against Austria, judgment of 21 March 2002, final on 21 June 2002))
AUT Section 1.1

Resolution CM/ResDH (2007) 77: Execution of the judgment of the European Court of Human Rights AZIZ against Cyprus
CYP Section 1.1

Resolution CM/ResDH (2007) 78: Execution of the case of LEMOINE DANIEL against France
FRA Section 1.1

Resolution CM/ResDH (2007) 79: Execution of the judgment of the European Court of Human Rights YVON against France
FRA Section 1.1

Resolution CM/ResDH (2007) 80: Execution of the judgment of the European Court of Human Rights BUCK against Germany
GER Section 1.1

Resolution CM/ResDH (2007) 81: Execution of the judgment of the European Court of Human Rights YAGTZILAR and others against Greece
GRC Section 1.1

Resolution CM/ResDH (2007) 82: Execution of the judgment of the European Court of Human Rights ARNARSSON against Iceland
ISL Section 1.1

Final Resolution CM/ResDH (2007) 83: Execution of the decisions of the Committee of Ministers - Case of DORIGO against Italy
ITA Section 1.1

Resolution CM/ResDH (2007) 84: Execution of the judgments of the European Court of Human Rights – Non-execution of court orders to evict tenants – IMMOBILIARE SAFFI and 156 other cases against Italy
ITA Section 1.1

Resolution CM/ResDH (2007) 85: Execution of the judgment of the European Court of Human Rights BAARS against the Netherlands
NLD Section 1.1

Final Resolution CM/ResDH (2007) 86: Human Rights Application No. 14084/88 R.V. and others against the Netherlands
NLD Section 1.1

Resolution CM/ResDH (2007) 87: Execution of the judgment of the European Court of Human Rights VAN VLIMMEREN and VAN ILVEREN-BEEK against the Netherlands
NLD Section 1.1

Resolution CM/ResDH (2007) 88: concerning the judgment of the European Court of Human Rights of 26 June 2003 (final on 26 September 2003) in the case of MAIRE against Portugal, pertaining to international child abduction and the right to respect for bereft parent's family life
PRT Section 1.1

Resolution CM/ResDH (2007) 89: Execution of the judgment of the European Court of Human Rights SALGUEIRO DA SILVA MOUTA against Portugal
PRT Section 1.1

Resolution CM/ResDH (2007) 90: Execution of the judgments of the European Court of Human Rights BRUMĂRESCU (Grand Chamber judgment of 28 October 1999) and 30 other cases against Romania, final between 9 July 2002 and 3 May 2005
ROM Section 1.1

Final Resolution CM/ResDH (2007) 91: Human Rights Application No. 32922/96 C.C.M.C. against Romania
ROM Section 1.1

Resolution CM/ResDH (2007) 92: Execution of the judgment of the European Court of Human Rights PETRA against Romania
ROM Section 1.1

Resolution CM/ResDH (2007) 93: Execution of the judgment of the European Court of Human Rights SURUGIU against Romania
ROM Section 1.1

Resolution CM/ResDH (2007) 94: Execution of the judgment of the European Court of Human Rights VASILESCU against Romania
ROM Section 1.1

Resolution CM/ResDH (2007) 95: Execution of the judgment of the European Court of Human Rights MATIJAŠEVIĆ against Serbia
SER Section 1.1

Resolution CM/ResDH (2007) 96: Execution of the judgments of the European Court of Human

Rights DAĞ and YAŞAR against Turkey and KARAGÖZ against Turkey

TUR Section 1.1

Resolution CM/ResDH (2007) 97: Execution of the judgments of the European Court of Human Rights GÜNERI and others and 5 other cases against Turkey

TUR Section 1.1

Resolution CM/ResDH (2007) 98: Execution of the judgment of the European Court of Human Rights I.R.S and others against Turkey

TUR Section 1.1

Resolution CM/ResDH (2007) 99: Execution of the judgment of the European Court of Human Rights ABDURRAHMAN KILINÇ and others against Turkey

TUR Section 1.1

Resolution CM/ResDH (2007) 100: Execution of the judgments of the European Court of Human Rights UNITED COMMUNIST PARTY OF TURKEY (judgment of Grand Chamber of 30/01/1998) and 7 other cases against Turkey concerning the dissolution of political parties between 1991 and 1997

TUR Section 1.1

Resolution CM/ResDH (2007) 101: Execution of the judgment of the European Court of Human Rights BUBBINS against the United Kingdom

UK Section 1.1

Resolution CM/ResDH (2007) 102: Execution of the judgment of the European Court of Human Rights in the case of DEBELIC and 8 other cases against Croatia concerning the excessive length of civil proceedings and the lack of an effective remedy

CRO Section 1.2

Resolution CM/ResDH (2007) 103: Execution of the judgment of the European Court of Human Rights KATSAROS against Greece and 4 other judgments

GRC Section 1.2

Resolution CM/ResDH (2007) 104: Execution of the judgment of the European Court of Human Rights PAPAGEORGIOU against Greece and 12 other judgments

GRC Section 1.2

Resolution CM/ResDH (2007) 105: Execution of the judgments of the European Court of Human Rights in the case of BAKIR and 21 other cases concerning the administration's delay in payment of additional compensation for expropriation against Turkey

TUR Section 1.2

1007th CMDH meeting (October 2007)

Resolution CM/ResDH (2007) 110: Execution of the judgment of the European Court of Human Rights ALGE and others against Austria

AUT Section 1.1

Resolution CM/ResDH (2007) 111: Execution of the judgments of the European Court of Human Rights L. AND V. against Austria and S. L. against Austria

AUT Section 1.1

Resolution CM/ResDH (2007) 112: Execution of the judgment of the European Court of Human Rights MORSCHER against Austria

AUT Section 1.1

Resolution CM/ResDH (2007) 113: Execution of the judgments of the European Court of Human Rights SCHWEIGHOFER and others against Austria

AUT Section 1.1

Resolution CM/ResDH (2007) 114: Execution of the judgment of the European Court of Human Rights TSONEV against Bulgaria

BGR Section 1.1

Resolution CM/ResDH (2007) 115: Execution of the judgment of the European Court of Human Rights BĚLEŠ and others against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 116: Execution of the judgment of the European Court of Human Rights BUCHEŇ against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 117: Execution of the judgment of the European Court of Human Rights CREDIT and INDUSTRIAL BANK against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 118: Execution of the judgment of the European Court of Human Rights KRASNIKI against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 119: Execution of the judgments of the European Court of Human Rights SINGH against the Czech Republic and VEJMOLA against the Czech Republic

CZE Section 1.1

Resolution CM/ResDH (2007) 120: Execution of the judgment of the European Court of Human Rights CEVIZOVIC against Germany

GER Section 1.1

Resolution CM/ResDH (2007) 121: Execution of the judgment of the European Court of Human Rights KELES against Germany

GER Section 1.1

Resolution CM/ResDH (2007) 122: Execution of the judgment of the European Court of Human Rights GISELA MÜLLER against Germany
GER **Section 1.1**

Resolution CM/ResDH (2007) 123: Execution of the judgment of the European Court of Human Rights STORCK against Germany
GER **Section 1.1**

Resolution CM/ResDH (2007) 124: Execution of the judgment of the European Court of Human Rights VON HANNOVER against Germany
GER **Section 1.1**

Resolution CM/ResDH (2007) 125: Execution of the judgment of the European Court of Human Rights YILMAZ against Germany
GER **Section 1.1**

Resolution CM/ResDH (2007) 126: Execution of the judgment of the European Court of Human Rights PELLEGRINI against Italy
ITA **Section 1.1**

Resolution CM/ResDH (2007) 127: Execution of the judgments of the European Court of Human Rights GIRDAUSKAS against Lithuania, MEILUS against Lithuania, JAKUMAS against Lithuania and KUVIKAS against Lithuania
LIT

Resolution CM/ResDH (2007) 128: Execution of the judgment of the European Court of Human Rights JANKAUSKAS against Lithuania
LIT

Resolution CM/ResDH (2007) 129: Execution of the judgment of the European Court of Human Rights CILIZ against the Netherlands
NLD **Section 1.1**

Resolution CM/ResDH (2007) 130: Execution of the judgment of the European Court of Human Rights M.M. against the Netherlands
NLD **Section 1.1**

Resolution CM/ResDH (2007) 131: Execution of the judgment of the European Court of Human Rights LOPES GOMES DA SILVA against Portugal
PRT **Section 1.1**

Resolution CM/ResDH (2007) 132: Execution of the judgments of the European Court of Human Rights CONTARDI and SPANG against Switzerland
SUI **Section 1.1**

Resolution CM/ResDH (2007) 133: Execution of the judgment of the European Court of Human Rights MCGLINCHEY and others against the United Kingdom
UK **Section 1.1**

Resolution CM/ResDH (2007) 134: Execution of the judgments of the European Court of Human Rights T and V against the United Kingdom
UK **Section 1.1**

Resolution CM/ResDH (2007) 135: Execution of the judgment of the European Court of Human Rights BALŠÁN against the Czech Republic
CZE **Section 1.2**

Resolution CM/ResDH (2007) 136: Execution of the judgment of the European Court of Human Rights ČERVEŇÁKOVÁ and others against the Czech Republic
CZE **Section 1.4**

Resolution CM/ResDH (2007) 137: Execution of the judgment of the European Court of Human Rights ŠOLLER against the Czech Republic
CZE **Section 1.4**

Resolution CM/ResDH (2007) 138: Execution of the judgment of the European Court of Human Rights UDOVIK against the Czech Republic
CZE **Section 1.4**

Resolution CM/ResDH (2007) 139: Execution of the judgment of the European Court of Human Rights IVANOFF against Finland
FIN **Section 1.4**

Resolution CM/ResDH (2007) 140: Execution of the judgment of the European Court of Human Rights NIVA against Finland
FIN **Section 1.4**

Resolution CM/ResDH (2007) 141: Execution of the judgments of the European Court of Human Rights in the case of ASCIERTO and 60 other cases concerning the excessive length of certain proceedings related to civil rights and obligations before labour courts against Italy
ITA **Section 1.4**

Resolution CM/ResDH (2007) 142: Execution of the judgments of the European Court of Human Rights in the case of BIFFONI and 13 other cases concerning non-execution of court orders to evict tenants against Italy
ITA **Section 1.4**

Resolution CM/ResDH (2007) 143: Execution of the judgments of the European Court of Human Rights in the case of CAPURRO and others and 12 other cases concerning excessive length of certain civil proceedings against Italy
ITA **Section 1.4**

Resolution CM/ResDH (2007) 144: Execution of the judgments of the European Court of Human Rights in the case of CENTIONI and 2 other cases concerning the excessive length of certain proceedings related to civil rights and obligations before the administrative courts against Italy
ITA **Section 1.4**

Resolution CM/ResDH (2007) 145: Execution of the judgments of the European Court of Human Rights in the cases MAS. A. ALTRI and M.L. and others concerning the length of certain civil proceedings brought by haemophiliacs seeking compensation for damages suffered following blood transfusions infected with various viruses against Italy

ITA Section 1.4

Resolution CM/ResDH (2007) 146: Execution of the judgment of the European Court of Human Rights SERGI against Italy

ITA Section 1.4

Resolution CM/ResDH (2007) 147: Execution of the judgment of the European Court of Human Rights DANELL and others against Sweden

SWE Section 1.4

Resolution CM/ResDH (2007) 148: Execution of the judgment of the European Court of Human Rights JONASSON against Sweden

SWE Section 1.4

Resolution CM/ResDH (2007) 149: Execution of the judgment of the European Court of Human Rights SALI against Sweden

SWE Section 1.4

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Resolution CM/ResDH (2007) 151: Execution of the judgment of the European Court of Human Rights PANDY against Belgium

BEL Section 1.1

Resolution CM/ResDH (2007) 152: Execution of the judgment of the European Court of Human Rights TREIAL against Estonia

EST Section 1.1

Resolution CM/ResDH (2007) 153: Execution of the judgment of the European Court of Human Rights KHALFAOUI against France

FRA Section 1.1

Resolution CM/ResDH (2007) 154: Execution of the judgments of the European Court of Human Rights in the case of POITRIMOL against France and in 3 other cases regarding the right to a fair trial

FRA Section 1.1

Resolution CM/ResDH (2007) 155: Execution of the Committee of Minister's decisions in the case of INTRIERI against Italy

ITA Section 1.1

Resolution CM/ResDH (2007) 156: Execution of the judgments of the European Court of Human Rights BUSUIOC against Moldova and SAVITCHI against Moldova

MDA Section 1.1

Resolution CM/ResDH (2007) 157: Execution of the judgments of the European Court of Human Rights JOSAN and MACOVEI and others against Moldova

MDA Section 1.1

Resolution CM/ResDH (2007) 158: Execution of the judgments of the European Court of Human Rights in the case of HRISTOV and 8 other cases against Bulgaria concerning the system of pre-trial detention in force until the legislative reform of 1 January 2000

BGR Section 1.2

Resolution CM/ResDH (2007) 159: Execution of the judgment of the European Court of Human Rights A.C. against France

FRA Section 1.2

Resolution CM/ResDH (2007) 160: Execution of the judgments of the European Court of Human Rights in the case of COSTE and 3 other cases against France regarding the right of access to the Cour de cassation (forfeiture of appeals on point of law in application of former Article 583 of the Code of criminal procedure)

FRA Section 1.2

Resolution CM/ResDH (2007) 161: Execution of the judgments of the European Court of Human Rights in the case of FARANGE S.A. and 8 other cases against France regarding the right to a fair tial before the Conseil d'Etat (Participation of the Government Commissioner in the deliberations – case-law Kress

FRA Section 1.2

Resolution CM/ResDH (2007) 162: Execution of the judgment of the European Court of Human Rights PAPON against France

FRA Section 1.2

Resolution CM/ResDH (2007) 163: Execution of the judgment of the European Court of Human Rights NIEDERBÖSTER against Germany and 4 other cases concerning the excessive length of proceedings before the Federal Constitutional Court

GER Section 1.2

Resolution CM/ResDH (2007) 164: Execution of the judgment of the European Court of Human Rights DRAKIDOU against Greece and 5 other judgments

GRC Section 1.2

Resolution CM/ResDH (2007) 165: Execution of the judgments of the European Court of Human Rights IOANNIS PAPADOPOULOS against Greece and 4 other judgments

GRC Section 1.2

Resolution CM/ResDH (2007) 166: Execution of the judgments of the European Court of Human Rights in the case of ACAR and 18 other cases con-

cerning the administration's delay in payment of additional compensation for expropriation against Turkey

TUR **Section 1.2**

Resolution CM/ResDH (2007) 167: Execution of the judgment of the European Court of Human Rights MAURICE RICCOBONO against France

FRA **Section 1.3**

Resolution CM/ResDH (2007) 168: Execution of the judgment of the European Court of Human Rights COHEN and SMADJA against France

FRA **Section 1.4**

Resolution CM/ResDH (2007) 169: Execution of the judgments of the European Court of Human Rights in the cases of DIARD and LOYEN concerning allegations related to the excessive length of certain administrative proceedings against France

FRA **Section 1.4**

Resolution CM/ResDH (2007) 170: Execution of the judgments of the European Court of Human Rights in the cases of FENTATI and GARON concerning allegations related to the excessive length of certain civil proceedings before labour courts against France

FRA **Section 1.4**

Resolution CM/ResDH (2007) 171: Execution of the judgment of the European Court of Human Rights LEMORT against France

FRA **Section 1.4**

Resolution CM/ResDH (2007) 172: Execution of the judgment of the European Court of Human Rights MEIER against France

FRA **Section 1.4**

Resolution CM/ResDH (2007) 173: Execution of the judgment of the European Court of Human Rights PULVIRENTI against France

FRA **Section 1.4**

Cases the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution (section 6.1)

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Appl. No.	Name of case	Country
5208/03; 29052/03; 13876/03	3 cases of length of civil proceedings and of lack of an effective remedy • Antonić-Tomasović, judgment of 10/11/2005, final on 10/02/2006 • Nogolica No. 2, judgment of 17/11/2005, final on 17/02/2006 • Šundov, judgment of 13/04/2006, final on 13/07/2006	CRO
38885/02	N., judgment of 26/07/2005, final on 30/11/2005	FIN
33656/96	Lemoine Daniel, Interim Resolution DH (2000) 16	FRA
57671/00	Slimani, judgment of 27/07/2004, final on 27/10/2004	FRA
34720/97	Heaney and McGuinness, judgment of 21/12/00, final on 21/03/01, Interim Resolution ResDH (2003) 149	IRL
77924/01; 77955/01; 77962/01	3 cases concerning bankruptcy proceedings • Albanese, judgment of 23/03/2006, final on 03/07/2006 • Campagnano, judgment of 23/03/2006, final on 03/07/2006 • Vitiello, judgment of 23/03/2006, final on 03/07/2006	ITA
39748/98	Maestri, judgment of 17/02/04 – Grand Chamber	ITA
48321/99	Slivenko, judgment of 09/10/03 – Grand Chamber CM/Inf/DH (2005) 32 revised	LVA
58438/00	Martínez Sala and others, judgment of 02/11/2004, final on 02/02/2005	ESP
56529/00	Enhorn, judgment of 25/01/2005, final on 25/04/2005	SWE
59129/00	Tibbling, judgment of 11/10/2005, final on 11/01/2006	SWE
49771/99	Stephen Jordan No. 2, judgment of 10/12/02, final on 10/03/03	UK

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Appl. No.	Name of case	Country
45963/99	Tsonev, judgment of 13/04/2006, final on 13/07/2006	BGR
71615/01	Mežnarić No. 1, judgment of 15/07/2005, final on 30/11/2005	CRO
51277/99	Krasniki, judgment of 28/02/2006, final on 28/05/2006	CZE
39481/98+	Mild and Virtanen, judgment of 26/07/2005, final on 26/10/2005	FIN
63313/00	André, judgment of 28/02/2006, final on 28/05/2006	FRA
36378/97	Bertuzzi, judgment of 13/02/03, final on 21/05/03	FRA
50344/99	E.R., judgment of 15/07/03, final on 15/10/03	FRA
35683/97	Vaudelle, judgment of 30/01/01, final on 06/09/01, Interim Resolution ResDH(2005)1	FRA
38460/97	Platakou, judgment of 11/01/01, final on 06/09/01	GRC
67629/01	Assymomitis, judgment of 14/10/2004, final on 14/01/2005	GRC
50435/99	Rodriguez Da Silva and Hoogkamer, judgment of 31/01/2006, final on 03/07/2006	NLD
38064/97	Turczanik, judgment of 05/07/2005, final on 30/11/2005	POL
22687/03	SC Maşinexportimport Industrial Group SA, judgment of 01/12/2005, final on 01/03/2006	ROM
48995/99	Surugiu, judgment of 20/04/2004, final on 10/11/2004	ROM
4143/02	Moreno Gómez, judgment of 16/11/2004, final on 16/02/2005	ESP
28602/95	Tüm Haber Sen and Çınar, judgment of 21/02/2006, final on 21/05/2006	TUR
61333/00	Tregubenko, judgment of 02/11/2004, final on 30/03/2005	UKR
47676/99+ 29798/96+	Beet and others, judgment of 01/03/2005, final on 06/07/2005 Lloyd and others, judgment of 01/03/2005, final on 06/07/2005	UK
30308/96	Faulkner Ian, judgment of 30/11/99 – Friendly settlement	UK
8866/04	Hussain, judgment of 07/03/2006, final on 07/06/2006	UK
46295/99; 19365/02; 75362/01; 67385/01	4 cases concerning the lack of proper review of the lawfulness of the applicants' continued detention • Stafford, judgment of 28/05/02 – Grand Chamber • Hill, judgment of 27/04/2004, final on 27/07/2004 • Von Bülow, judgment of 07/10/03, final on 07/01/04 • Wynne No. 2, judgment of 16/10/03, final on 16/01/04	UK

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Application no.	Name of the case	Country
76900/01	Öllinger, judgment of 29/06/2006, final on 29/09/2006	AUT
55193/00; 76293/01	Schelling, judgment of 10/11/2005, final on 10/02/2006 Brugger, judgment of 26/01/2006, final on 26/04/2006	AUT
58547/00; 66298/01+; 46389/99; 60899/00	4 cases concerning freedom of expression • Wirtschafts-Trend Zeitschriften-Verlags GmbH No. 2, judgment of 27/10/2005, final on 27/01/2006 • Wirtschafts-Trend Zeitschriften-Verlags GmbH No. 3, judgment of 13/12/2005, final on 13/03/2006 • Albert-Engelmann-Gesellschaft mbH, judgment of 19/01/2006, final on 19/04/2006 • Kobenter and Standard Verlags GmbH, judgment of 02/11/2006, final on 02/02/2007	AUT

997th CMDH meeting (June 2007) (continued)

Application no.	Name of the case	Country
51564/99	Čonka, judgment of 05/02/02, final on 05/05/02, Interim Resolution ResDH (2006) 25	BEL
37370/97	Stratégies and Communications and Dumoulin, judgment of 15/07/02, final on 15/10/02	BEL
5424/03	Šroub, judgment of 17/01/2005, final on 03/07/2006	CZE
41673/98	Bruncrona, judgment of 16/11/2004, final on 16/02/2005 and of 25/04/2006, final on 25/07/2006	FIN
59765/00	Carabasse, judgment of 18/01/2005, final on 18/04/2005	FRA
56588/00	Chesnay, judgment of 12/10/2004, final on 12/01/2005	FRA
5949/02	Joye, judgment of 20/06/2006, final on 20/09/2006	FRA
58453/00; 59140/00	Niedzwiecki, judgment of 17/10/2005, final on 15/02/2006 Okpisz, judgment of 25/10/2005, final on 15/02/2006, rectified on 14/11/2005	GER
38033/02	Stork, judgment of 13/07/2006, final on 13/10/2006	GER
74989/01	Ouranio Toxo and others, judgment of 20/10/2005, final on 20/01/2006	GRC
65545/01	Rizos and Daskas, judgment of 27/05/2004, final on 27/08/2004	GRC
33286/96	Dorigo Paolo, Interim Resolutions DH(99)258 du 15/04/99 (finding of a violation), ResDH(2002)30, ResDH(2004)13 and ResDH(2005)85; CM/Inf/DH (2005) 13	ITA
61513/00; 11039/02	Busuioc, judgment of 21/12/2004, final on 21/03/2005 Savitchi, judgment of 11/10/2005, final on 11/01/2006	MDA
2345/02	Said, judgment of 05/07/2005, final on 05/10/2005	NLD
5379/02; 62015/00	Nakach, judgment of 30/06/2005, final on 30/09/2005 Schenkel, judgment of 27/10/2005, final on 27/01/2006	NLD
46300/99	Marpa Zeeland B.V. and Metal Welding B.V., judgment of 09/11/2004, final on 09/02/2005	NLD
54789/00	Bocos-Cuesta, judgment of 10/11/2005, final on 10/02/2006	NLD
61302/00	Buzescu, judgment of 24/05/2005, final on 24/08/2005	ROM
32926/96; 33176/96	Canciovici and others, judgment of 26/11/02, final on 24/09/03 Moşteanu and others, judgment of 26/11/02, rectified on 04/02/03, final on 26/02/03	ROM
78028/01	Pini and Bertani and Manera and Atripaldi, judgment of 22/06/2004, final on 22/09/2004	ROM
72701/01; 69889/01	Yakovlev, judgment of 15/03/2005, final on 06/07/2005 Groshev, judgment of 20/10/2005, final on 20/01/2006	RUS
4856/03	Dubinskaya, judgment of 13/07/2006, final on 13/10/2006	RUS
77785/01	Znamenskaya, judgment of 02/06/2005, final on 12/10/2005	RUS
69146/01	Babylonová, judgment of 20/06/2006, final on 20/09/2006	SVK
57678/00	Bíro, judgment of 27/06/2006, final on 27/09/2006	SVK
54797/00	H.F., judgment of 08/11/2005, final on 08/02/2006	SVK
65575/01	Horváček, judgment of 06/12/05, final on 06/03/06	SVK
64001/00	Mikulová, judgment of 06/12/05, final on 06/03/06	SVK
13284/04	Bader and others, judgment of 08/11/2005, final on 08/02/2006	SWE
55894/00	Fuchser, judgment of 13/07/2006, final on 13/10/2006	SUI
53146/99	Hurter, judgment of 15/12/2005, final on 20/02/2006	SUI
75569/01	Çetinkaya, judgment of 27/06/2006, final on 27/09/2006	TUR

997th CMDH meeting (June 2007) (continued)

Application no.	Name of the case	Country
58459/00+	Yeşilgöz and Firik, judgment of 27/06/2006, final on 27/09/2006	TUR
21040/02	Lyashko, judgment of 10/08/2006, final on 10/11/2006	UKR
23496/94; 22384/93; 28135/95; 18731/91; 36408/97	Quinn, Interim Resolution DH (98) 214 Murray Kevin, Interim Resolution DH (98) 156 Magee, judgment of 06/06/00, final on 06/09/00 Murray John, judgment of 08/02/96, Interim Resolution DH (2000) 26 Averill, judgment of 06/06/00, final on 06/09/00, Interim Resolution ResDH (2002) 85	UK
6563/03	Shannon, judgment of 04/10/2005, final on 04/01/2006	UK
46387/99+	Whitfield and others, judgment of 12/04/2005, final on 12/07/2005	UK

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Application no.	Name of the case	Country
42780/98	I.H., judgment of 20/04/2006, final on 20/07/2006	AUT
10523/02; 62539/00	Coorplan-Jenni GmbH and Hascic, judgment of 27/07/2006, final on 11/12/2006 Jurisic and Collegium Mehrerau, judgment of 27/07/2006, final on 11/12/2006	AUT
*13583/02	Pandy, judgment of 21/09/2006, final on 12/02/2007	BEL
5989/03	Iversen, judgment of 28/09/2006, final on 28/12/2006	DNK
54810/00	Jalloh, judgment of 11/07/2006 - Grand Chamber	GER
27250/02	Nold, judgment of 29/06/2006, final on 11/12/2006	GER
66491/01	Grässer, judgment of 05/10/2006, final on 26/03/2007	GER
5010/04	Von Hoffen, judgment of 27/07/2006, final on 11/12/2006	LIE
60255/00	Pereira Henriques, judgment of 09/05/2006, final on 09/08/2006	LUX
75088/01	Urbino Rodrigues, judgment of 29/11/2005, final on 01/03/2006	PRT
73604/01	Monnat, judgment of 21/09/2006, final on 21/12/2006, rectified on 11/01/2007	SUI
77551/01	Dammann, judgment of 25/04/2006, final on 25/07/2006	SUI
24245/03	D. and others, judgment of 22/06/2006, final on 23/10/2006	TUR
61353/00	Tunceli Kültür ve Dayanışma Derneği, judgment of 10/10/2006, final on 12/02/2007	TUR
20868/02	Turan Metin, judgment of 14/11/2006, final on 14/02/2007	TUR
50959/99	Odabaşı and Koçak, judgment of 21/02/2006, final on 03/07/2006	TUR
30502/96	Yıltaş Yıldız Turistik Tesisler A.Ş., judgment of 24/04/03, final on 23/09/03 and of 27/04/2006, final on 23/10/2006, rectified on 12/12/2006	TUR
25921/02	Fedorenko, judgment of 01/06/2006, final on 01/09/2006	UKR
63566/00	Pronina, judgment of 18/07/2006, final on 18/10/2006	UKR
23436/03	Melnyk, judgment of 28/03/2006, final on 28/06/2006	UKR
68890/01	Blake, judgment of 26/09/2006, final on 26/12/2006	UK
68416/01	Steel and Morris, judgment of 15/02/2005, final on 15/05/2005	UK
12350/04	Wainwright, judgment of 26/09/2006, final on 26/12/2006	UK
36536/02	B. and L., judgment of 13/09/2005, final on 13/12/2005	UK
25594/94; 42317/98	Hashman and Harrup, judgment of 25/11/99 - Grand Chamber, Interim Resolution ResDH (2005) 59 Hooper, judgment of 16/11/2004, final on 16/02/2005	UK

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Application No.	Name of the case	Country
6562/03	Mkrtchyan, judgment of 11/01/2007, final on 11/04/2007	ARM
41872/98	Van Rossem, judgment of 09/12/2004, final on 09/03/2005	BEL
49478/99; 57567/00; 74328/01; 6019/03	Kadlec and others, judgment of 25/05/2004, final on 25/08/2004 Bulena, judgment of 20/04/2004, final on 20/07/2004 Zedník, judgment of 28/06/2005, final on 28/09/2005 Zemanová, judgment of 13/12/2005, final on 13/03/2006	CZE
66701/01	Deshayes No. 1, judgment of 28/02/2006, final on 28/05/2006	FRA
11760/02	Raffi, judgment of 28/03/2006, final on 13/09/2006	FRA
39676/98	Rojas Morales, judgment of 16/11/00, final on 16/02/01	ITA
30165/02	Jurevičius, judgment of 14/11/2006, final on 14/02/2007	LIT
27715/95	Berliński Roman and Sławomir, judgment of 20/06/02, final on 20/09/02	POL
62202/00	Radio Twist, a.s., judgment of 19/12/2006, final on 19/03/2007	SVK
71867/01	Gök and others, judgment of 27/07/2006, final on 27/10/2006	TUR

Appendix 4

Interim Resolutions adopted in 2007

987th CMDH meeting (February 2007)

Title of the adopted interim resolution	Country	Section
Interim Resolution ResDH (2007) 2 concerning the problem of excessive length of judicial proceedings in Italy – Case of **CETERONI** and 2182 other cases against Italy	ITA	/
Interim Resolution ResDH (2007) 3 Systemic violations of the right to the peaceful enjoyment of possessions through "indirect expropriation" by Italy – Case of **BELVEDERE ALBERGHIERA S.R.L** and 583 other cases against Italy	ITA	/
Interim Resolution ResDH (2007) 4 Execution of the judgment of the European Court of Human Rights in the case of **AHMET OKYAY** and others against Turkey	TUR	/

992nd CMDH meeting (April 2007)

Title of the adopted interim resolution	Country	Section
Interim Resolution CM/ResDH (2007) 25 concerning the judgment of the European Court of Human Rights of 10 May 2001 in the case of **CYPRUS** against Turkey	CYP/ TUR	4.3
Interim Resolution CM/ResDH (2007) 26 **HULKI GÜNEŞ** against Turkey	TUR	4.3
Interim Resolution CM/ResDH (2007) 27 Bankruptcy proceedings in Italy: Progress achieved and problems remaining in the execution of the judgments of the European Court of Human Rights – Case of **LUORDO** and 28 other cases	ITA	4.2
Interim Resolution CM/ResDH(2007)28 concerning the judgments of the European Court of Human Rights in the case of **PODBIELSKI** and 142 other cases against Poland relating to the excessive length of criminal and civil proceedings and the right to an effective remedy	POL	4.2

997th CMDH meeting (June 2007)

Title of the adopted interim resolution	Country	Section
Interim Resolution CM/ResDH (2007) 73 Action of the Security Forces in Northern Ireland (Case of **McKERR** against the United Kingdom and five similar cases)	UK	4.3

997th CMDH meeting (June 2007) (continued)

Title of the adopted interim resolution	Country	Section
Interim Resolution CM/ResDH(2007)74 on excessively lengthy proceedings in Greek administrative courts and the lack of an effective domestic remedy – Case of **MANIOS** and 84 other cases against Greece	GRC	4.2
Interim Resolution CM/ResDH (2007) 75 concerning the judgments of the European Court of Human Rights in the case of **TRZASKA** and 43 other cases against Poland relating to the excessive length of detention on remand	POL	4.2

1002nd CM meeting (July 2007)

Title of the adopted interim resolution	Country	Section
Interim Resolution CM/ResDH(2007)106 concerning the judgments of the European Court of Human Rights in the case of **ILAŞCU** and others against Moldova and the Russian Federation	MDA/ RUS	4.3

1007th CMDH meeting (October 2007)

Title of the adopted interim resolution	Country	Section
Interim Resolution CM/ResDH (2007) 107 concerning the judgments of the European Court of Human Rights in the case of **VELIKOVA** and 7 other cases against Bulgaria relating in particular to the ill-treatment inflicted by police forces, including three deaths, and the lack of an effective investigation	BGR	4.2
Interim Resolution CM/ResDH (2007) 108 concerning the judgments of the European Court of Human Rights in the case of **OLIVEIRA MODESTO** and others and 24 other cases against Portugal relating to the excessive length of proceedings	PRT	4.2
Resolution CM/ResDH (2007) 109 Execution of the judgment of the European Court of Human Rights **ÜLKE** against Turkey	TUR	4.2

1013th CMDH meeting (December 2007)

Title of the adopted interim resolution	Country	Section
Resolution CM/ResDH (2007) 150 Execution of the judgment of the European Court of Human Rights **HULKI GÜNEŞ** against Turkey	TUR	4.3

Appendix 5

Memoranda and other relevant public documents prepared by the Department for the Execution of Judgments of the European Court of Human Rights

Country	Date of the document	Title of the document	Reference of the document	Leading/ pilot case (appl. no.)	Theme
BGR	07/02/2007	United Macedonian Organisation Ilinden – Pirin and others against Bulgaria – Judgment of 20 October 2005	CM/Inf/DH (2007) 8	United Macedonian Organisation Ilinden – Pirin and others (no. 59489/00)	Freedom of association
ITA	08/02/2007	2006 Annual Report regarding the problem of length of judicial proceedings – General remarks – Information submitted by the Italian delegation	CM/Inf/DH(2007)9	Ceteroni and 2182 other cases (no. 22461/93)	Length of proceedings
RUS	12/02/2007	Detention on remand in the Russian Federation: measures required to comply with the European Court's judgments	CM/Inf/DH (2007) 4	Klyakhin (no. 46082/99)	Detention on remand
RUS	13/02/2007	Industrial pollution in breach of the European Convention: measures required by a European Court judgment	CM/Inf/DH (2007) 7	Fadeyeva (no. 55723/00)	Industrial pollution
TUR	30/03/2007	Freedom of Expression in Turkey: Progress achieved – Outstanding issues	CM/Inf/DH (2007) 20	Inçal (no. 22678/93)	Freedom of expression
RUS	04/06/2007	Non-enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court's judgments	CM/Inf/DH (2006) 19 rev3	Timofeyev (no. 58263/00)	Non-enforcement
RUS	12/06/2007	Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments	CM/Inf/DH (2006) 32 rev2	Khashiyev (no. 57942/00)	Actions of security forces
UKR	13/06/2007	Non-enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court's judgments	CM/Inf/DH (2007) 30 rev	Group Zhovner (no. 56848/00)	Non-enforcement

Country	Date of the document	Title of the document	Reference of the document	Leading/ pilot case (appl. no.)	Theme
BGR GEO GRC MDA POL ROM RUS UKR	28/06/2007	Round Table on "Non-enforcement of domestic courts decisions in member states: general measures to comply with European Court judgments" - Conclusions of the Round Table in Strasbourg, 21-22 June 2007	CM/Inf/DH (2007) 33		Non-enforcement
TUR	12/09/2007	Freedom of expression in Turkey: Progress achieved - Outstanding issues	CM/Inf/DH (2007) 20 rev	Inçal (No; 22678/ 93)	Freedom of expression
TUR	10/10/2007	Actions of Security Forces in Turkey: Progress achieved and outstanding issues	CM/Inf/DH (2006) 24 rev2	Aksoy (no. 21987/ 93)	Actions of security forces

Appendix 6

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

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

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[1] 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[2] have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

Rule 7
Control intervals

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

Rule 8
Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;
b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

1. For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the re-opening 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).

2. 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.

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,[1] on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

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.

1. 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 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 7

Where to find further information on the execution of judgments

On the Internet

Further information on the cases mentioned in the previous chapters as well as on all the other cases is available on

- the CM website: **http://www.coe.int/cm/**

and also from

- the special Council of Europe website dedicated to the execution of the ECtHR's judgments kept by the Directorate General of Human Rights and Legal Affairs, Department for the Execution of Judgments of the European Court of Human Rights at **http://www.coe.int/Human_Rights/execution/**.

The text of resolutions adopted by the CM can also be found through the HUDOC database at **http://www.echr.coe.int/**

As a general rule, information concerning the state of progress of the adoption of the execution measures required is published some 15 days after each HR meeting in the document called "annotated agenda and order of business" which is available on the Committe of Minister's website: **http://www.coe.int/cm/** (see Article 14 of the new Rules for the application of Article 46 § 2 of the Convention, adopted in 2006).

How to search for information on the CM website

Click on the link to **`Human Rights (DH) meetings`** (see right).
From there, the "Links" section gives access to the special Council of Europe website dedicated to the execution of the ECtHR's judgments as well as to the HUDOC database.
The CM website gives access to the relevant meeting documents either grouped by their respective meeting (click on **`Human Rights (DH) meetings since January 2003`**) or by type of document: agendas, orders of business, memoranda and information documents, information communicated to the Committee of Ministers, decisions, resolutions, interim resolutions, declarations, replies to the Parliamentary Assembly, recommendations and press releases. Further information on where to find different documents relating to the CM's execution supervision is found in the tables below.

To find and consult the latest public information on the state of execution of a case and the decisions adopted

On the CM website: **http://www.coe.int/cm/humanrights_en.asp**	Consult the orders of business of the latest CMDH meetings and search for the case (Ctrl+F): this will allow you to identify the latest meeting at which the case was examined and the section under which the case was examined.* You can then consult the agenda of the relevant meeting, where you will also find the decision adopted at the meeting (these can also be found separately under "Decisions").
On the Execution website: **http://www.coe.int/T/E/Human_Rights/execution/**	Consult the country-by-country "state of execution" of cases (under construction) where you will also find the decisions and summary indications concerning recent information received since the last examination and not yet reflected in the notes nor examined by the Committee of Ministers.
In the Hudoc database: **http://www.echr.coe.int/echr**	Not available.

* For a description of the sections,see the introduction to the appendices of this document.

To find and consult final and interim (execution) resolutions

On the CM website: **http://www.coe.int/cm/humanrights_en.asp**	All resolutions can be consulted in their chronological order of adoption under "Meetings of the CM" and then, for each meeting, "Resolutions". "Interim resolutions" are also specially presented under "Adopted texts". A link to the Hudoc database is also available.
On the Execution website: **http://www.coe.int/T/E/Human_Rights/execution/**	Click on "Documents". Under "Information on cases", consult "Collection of Interim Resolutions adopted by the CM 1988-2007 (regularly updated). Extracts from the final resolutions, i.e. the descriptions of significant individual and general measures taken as part of the execution of ECHR cases, can also be found in the "Lists of General measures adopted…" and "List of Individual measures adopted…". These documents (regularly updated) are accessible from the Execution portal, under the "where to find…" menu. A link to the Hudoc database is also available.
In the Hudoc database: **http://www.echr.coe.int/echr**	Click on "Resolutions" on the left of the screen and search the database by the application number and/or by the name of the case. For grouped cases, resolutions can be found more easily by their number: in the "text" search field type the reference year and serial number of the resolution. Example: "(2007) 75" (do not forget the quotation marks). For a more precise search, click on the "+" next to "Resolutions" to expand the list and select "Execution": this will exclude the resolutions on the merits adopted under former Article 32 of the ECHR, in which the CM itself decided whether or not there was a violation of the ECHR. [Another search field is under construction.]

To find and consult information documents, memoranda, etc.

On the CM website: **http://www.coe.int/cm/humanrights_en.asp**	Consult "meeting documents" for the type of documents you are looking for: • CM information documents; • Documents communicated by applicants, governments or others; • Information made available under Rule 8.2.a, 9.1 and 9.2 of the CM Rules; • ECtHR correspondence.
On the Execution website: **http://www.coe.int/T/E/Human_Rights/execution/**	Click on "Documents" then consult the type of document you are looking for under "Committee of Ministers' Human Rights meetings": • CM information documents; • Documents communicated by applicants, governments or others.
In the Hudoc database: **http://www.echr.coe.int/echr**	Not available.

To find and consult Parliamentary Assembly positions on execution and CM replies

On the CM website: **http://www.coe.int/cm/humanrights_en.asp**	Under "Adopted texts", consult "Committee of Ministers replies to the Parliamentary Assembly".
On the Execution website: **http://www.coe.int/T/E/Human_Rights/execution/**	Click on "Documents", then "Parliamentary Assembly".
In the Hudoc database: **http://www.echr.coe.int/echr**	Not available.

To find and consult press releases

On the CM website: **http://www.coe.int/cm/humanrights_en.asp**	Consult "Press releases".
On the Execution website: **http://www.coe.int/T/E/Human_Rights/execution/**	Click on "Documents", then under "Press releases".
In the Hudoc database: **http://www.echr.coe.int/echr**	Not available, except for ECtHR press releases.

To find and consult reference documents

On the CM website: **http://www.coe.int/cm/humanrights_en.asp**	The site includes access to: • the CM Rules for the supervision of the execution of judgments and of the terms of friendly settlements (Article 46, paragraphs 2 to 5, and Article 39, paragraph 4 of the European Convention on Human Rights); • CM recommendations.
On the Execution website: **http://www.coe.int/T/E/Human_Rights/execution/**	The site contains most of the reference documents, including in particular (under "Documents" and "Reference Documents"): • the CM Rules for the supervision of the execution of judgments and of the terms of friendly settlements; • the working methods for supervision of the execution of the ECtHR's judgments; • documents concerning the reopening of judicial proceedings; • documents adopted at the European Ministerial Conference on Human Rights in 2000; • CM Recommendations, Resolutions and Declarations. Furthermore, a comprehensive overview of individual and general measures adopted in the context of execution is also available directly from the Execution portal, under "List of Individual measures…" and "List of General measures…".
In the Hudoc database: **http://www.echr.coe.int/echr**	Not available.

Appendix 8

The Committee of Ministers

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

47 member states

Albania
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Monaco
Montenegro
Netherlands
Norway
Poland
Portugal
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Russian Federation
San Marino
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Spain
Sweden
Switzerland
"the former Yugoslav Republic of Macedonia"
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Appendix 9

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