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STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

**Information on the general measures
taken for the purpose of execution of the relevant judgments of the
European Court of Human Rights
related to older persons¹**

89th meeting

Strasbourg, 19-22 June 2018

¹ Document prepared by the CDDH Secretariat in cooperation with the Department for the Execution of Judgments of the European Court of Human Rights.

Dodov v. Bulgaria (application no. 59548/00)

Case description: Right to life and access to and efficient functioning of justice: Absence in practice of effective judicial remedies allowing to establish the circumstances of the disappearance of the applicant's mother from a nursing home and to engage the responsibility of the persons and institutions concerned and excessive length of civil proceedings for compensation.

Status of execution: closed

Measures taken: Measures were taken with regard to potential omissions in the management, training, control or definition of duties of the different categories of staff in the nursing homes, including in 2002, amendments to the Social Assistance Act which established a new structure – the Social Assistance Agency (SAA). The Inspectorate to the Executive Director of SAA performs specialised control over the application of standards by the social service institutions as well as by service providers within the community. In case of breaches of the respective legislative provisions, inspectors are entitled to apply compulsory administrative measures. The Inspectorate issues compulsory instructions and may also propose deletion from the Register of Social Service Providers. SAA elaborates and imposes compulsory methodical instructions and guidelines, published on the Agency's website, and organises trainings and supervisions. The legislative amendments 2003 also provide for the preparation of individual plans including healthcare, educational, rehabilitation and recreational activities and family contacts. Individual plans are assessed and updated every six months. The Public Council to the respective municipality performs inspections for the application of State standards and good practices on a regular basis and upon necessity. Regular controls are also performed by the Social Assistance Agency via the Inspectorate and by other State institutions.

Farbtuhs v. Latvia (application no. 4672/02)

Case description: The applicant complained that, in view of his age (84 years) and infirmity, and the Latvian prisons' incapacity to meet his specific needs, his prolonged imprisonment had constituted treatment contrary to Article 3 of the Convention. The Court found that, in view of his age, infirmity and condition, the applicant's continued detention was not appropriate. The situation in which he had been put was bound to cause him permanent anxiety and a sense of inferiority and humiliation so acute as to amount to degrading treatment within the meaning of

Article 3. By delaying his release from prison for more than a year in spite of the fact that the prison governor had made a formal application for his release supported by medical evidence, the Latvian authorities had failed to treat the applicant in a manner that was consistent with the provisions of Article 3.

Status of execution: closed

Measures taken: The case was seen as an isolated case not requiring the adoption of specific general measures. However, to avoid the possible risk of new, similar violations, the judgment has been translated into Latvian and sent out to the relevant institutions. Furthermore, human rights protection in places of detention forms part of the curriculum of judges' and prosecutors' training since 2003.

Scoppola v. Italy (application no. 50550/06)

Cara-Damiani v. Italy (application no. 2447/05)

Contrada (No. 2) v. Italy (application no. 7509/08)

Case description: These cases concern the inhuman and/or degrading treatment suffered by the applicants on account of their continuous imprisonment, notwithstanding the impossibility to provide them in prison environment the medical care they require due to the serious pathologies they present and the inadequacy of the material detention conditions to the health condition of one of the applicants (violations of Article 3).

Status of execution: pending

Measures taken so far: The applicants were placed in home custody, a measure that has been regularly prolonged by the relevant courts.

The transfer of all functions concerning prison health from the Ministry of Justice to the National Health Service was completed in 2015. In January 2015 “Guidelines on the modalities of health-care provision in prison establishments for adults and the implementation of a national and regional health-care network” were adopted. The Guidelines aim to improve coordination and overcome regional disparities in the provision of health care to prisoners through measures such as the accreditation of health-care providers for the inmate population, as well as a monitoring system of the quality of health care provided to inmates. Some measures adopted in the framework of the *Torreggiani* pilot judgment in order to improve the material conditions of detention and reduce overcrowding are also relevant (e.g. establishment of a system of computerised monitoring of the living space and conditions of detention of each detainee and an independent internal mechanism of supervision of detention facilities). Updated information on

the current situation of the applicants and the implementation of the general measures indicated in the revised action plan is currently awaited.

Taştan v. Turkey (application no. 63748/00)

Case description: The case concerns a violation of the applicant's right not to be subjected to degrading treatment on account of having to perform military service at the age of 71 (violation of Article 3). The case further concerns a violation of the applicant's right to have an effective remedy in conjunction with his complaints under Article 3 (violation of Article 13).

Status of execution: pending

Measures taken so far: According to the action plan submitted by the Turkish Government in 2015, the relevant legislation was amended in 2012, so that those obliged to perform military service shall be examined by their family physician in order to enable the officials to obtain information on their state of health before their recruitment. As a result of medical examination, conscription can be postponed or the person can be found non-eligible for the military service. Bilateral consultations are currently underway.

Vasileva v. Denmark (application no. 52792/99)

Case description: The applicant, a 67 year old woman in poor health, was arrested for failing to disclose her personal details to the police on request. She was taken to the police station, where she was detained from 9.30 p.m. until 11 a.m. the next day; following her release, the applicant collapsed and was hospitalised for three days with high blood pressure. The Court considered that the authorities by extending the applicant's detention to thirteen and a half-hour failed to strike a fair balance between the need to ensure the fulfilment of the obligation and the right to liberty.

Status of execution: closed

Measures taken: Isolated incident. On 31/10/2003, the Ministry of justice sent out a circular underlining the essential points of the judgment to the police and the prosecution to avoid similar incidents in the future. The judgment was published and disseminated.

Jablonská v. Poland (application no. 60225/00)

Case description: The 81-year-old applicant complained that the length of proceedings concerning the annulment of a notarial deed had exceeded a reasonable time. The Court held that there had been a violation of her right to fair trial in respect of the length of proceedings, having regard more particularly to the fact that in view of the applicant's old age – she was already 71 years old when the litigation started – the Polish courts should have displayed particular diligence in handling her case.

Status of execution: closed

Measures taken: The Committee of Ministers continues to supervise the measures to reduce the length of civil proceedings in the framework of the *Majewski* group of cases. A wide range of legislative and organisational measures have been adopted by the authorities, regarding length of civil proceedings in general (such as changes to the Code of Civil Procedure aiming at the simplification and acceleration of proceedings, continuing computerisation and increases in the number of judges and the court budget). In its decision of 20 June 2017 concerning the *Zaluska v. Poland* and *Rogalska v. Poland* cases, the European Court held that the above reform had addressed a number of issues that were the root of the violation of Articles 6 of the Convention.

X and Y v. Croatia (application no. 5193/09)

Case description: This case concerns a violation of the applicants' right to respect for their private life on account of the shortcomings in the proceedings for divesting them of their legal capacity (violations of Article 8). It also concerns a violation of the right to a fair trial of the first applicant, born in 1923, bedridden and suspected to be suffering from dementia, in that she was not notified of the proceedings concerning her legal capacity and was therefore deprived of using any remedy against the decision divesting her of legal capacity because that decision was never served on her.

Status of execution: closed

Measures taken: In the Action report of 4/12/2017 the authorities indicated that in 2015 the new Family Act has been adopted according to which a person may no longer be fully divested of legal capacity. Divestments can only be partial regarding a specific area in which the person is incapable of caring of their own needs and interests. Moreover, the possibility of partial divestment of persons with mental disability is limited to those cases in which a less intrusive measure cannot be applied. All existing decisions ordering divestment which were rendered prior to 2015 Family Act are currently being reviewed in order to bring them in line with the

Court's standards. The 2015 Family Act furthermore prescribed that judges conducting divestment proceedings are obliged to summon persons whose legal capacity is examined and that they are obliged to hear them and enable their active participation in the proceedings.

Schlumpf v. Switzerland (application no. 29002/06)

Case description: The applicant, born in 1937, decided in 2002 to change sex and from then on lived her daily life as a woman. On 30 November 2004 she underwent the sex-change operation despite her health insurer's refusal to reimburse the attendant costs. Her action against the insurance company before the Swiss courts to recover the costs of the operation was unsuccessful; hearing of medical experts was refused as she had undertaken the operation before the expiry of the two-year observation period as required by its case-law. The European Court considered that it was disproportionate not to accept expert opinions, especially as it was not in dispute that the applicant was ill. By refusing to allow the applicant to adduce such evidence on the basis of an abstract rule which had its origin in two of its own decisions in 1988, the Federal Insurance Court had substituted its view for that of the medical profession, whereas the Court had previously ruled that determination of the need for sex-change measures was not a matter for judicial assessment.

The Court also found that a hearing should have taken place at least at one level of jurisdiction and that the applicant's right to respect for her private life required account to be taken of the medical, biological and psychological facts, expressed unequivocally by the medical experts, to avoid a mechanical application of the two-year period.

Status of execution: closed

Measures taken: According to the Swiss authorities, the violations resulting from the lack of oral hearing and from the disregard of expert opinions constituted isolated incidents resulting from the particular circumstances of the case; publication and dissemination of the Court's judgment to the relevant authorities should thus prevent similar violations. Furthermore, the Federal Court held that although the two-year observation period, set up by the national jurisprudence, should persist in general, an individual evaluation would be possible in specific cases and reimbursement of medical expenses would not automatically be refused solely because of the fact that the required two years had not yet passed. By so deciding, the Federal Court re-adjusted the domestic case-law in line with the Court's judgment.

McDonald v. the United Kingdom (application no. 4241/12)

Case description: Interference with private life not in accordance with the domestic law: reduction of the level of personal care at home provided by local authorities to a seriously incapacitated woman of 65 years of age.

Status of execution: closed

Measures taken: Isolated case. The judgment was translated, published and disseminated. In addition, the provision of social care has been comprehensively reviewed as part of the reforms implemented by the Care Act 2014. Statutory guidance and regulations have been published in order to guide local authorities in the implementation of their respective responsibilities.

Grant v. the United Kingdom (application no. 32570/03)

Case description: This case concerns the failure to recognise legally the applicant's change of gender and the refusal to pay her a state pension at the age applicable to women. The applicant, a post-operative male-to-female transsexual person, applied for a pension in 1997 to begin on her 60th birthday but was refused by the Adjudication Officer on the grounds that the applicant was not eligible for pension until 65, the retirement age applicable to men.

Status of execution: closed

Measures taken: In response to the case of Christine Goodwin v. the United Kingdom (application no. 28957/95), the government passed the Gender Recognition Act 2004 (entered into force on 4 April 2005), which allowed transsexual people to be legally recognised in their acquired gender, for matters including social security benefits and the receipt of a state pension, upon issue of a Gender Recognition Certificate. Furthermore, the judgment was published and disseminated.

Heinisch v. Germany (application no. 28274/08)

Case description: Freedom of expression: disproportionate interference due to dismissal of a geriatric nurse without notice after having brought a criminal complaint against her employer, a state-owned company, alleging deficiencies in the care provided (so-called "whistle blowing").

Status of execution: closed

Measures taken: In 2001, the Federal Constitutional Court had held that in accordance with the rule of law the discharge of a citizen's duty to give evidence in criminal investigations could not in itself entail disadvantages under civil law, pointing out that even in the event that an

employee reported the employer to the public prosecution authorities on his or her own initiative, the rule of law required that such exercise of a citizen's right could, as a rule, not justify a dismissal without notice from an employment relationship, unless the employee had knowingly or frivolously reported incorrect information. The judgment was translated, published and disseminated.

Tešić v. Serbia (applications no. 4678/07 and 50591/12)

Case description: This case concerns a violation of the applicant's right to freedom of expression in that she was convicted in civil proceedings on account of defamation of her former counsel to pay substantial damages and costs, being roughly sixty times greater than her pension. Furthermore by virtue of an enforcement order two thirds of the applicant's pension were to be transferred to her former counsel's bank account each month (violation of Article 10).

Status of execution: closed

Measures taken: In a decision rendered in June 2016 the Constitutional Court expressly referred to the European Court's findings in this case indicating that the amount of any compensation awarded in defamation cases should bear a relationship of proportionality with the non-pecuniary damage sustained. In 2016 new Enforcement Procedure Act was also adopted. Pursuant to its Article 56, public bailiffs have an obligation to respect the principle of proportionality in enforcement proceedings. Trainings were furthermore offered to judges dealing with defamation cases to raise their awareness on the Convention requirements in this respect. The judgment was translated, published and disseminated.

Georgel and Georgeta Stoicescu v. Romania (application no. 9718/03)

Case description: Protection of private life and access to and efficient functioning of justice: failure to comply with the obligation to protect the applicant's physical and psychological integrity due to lack of sufficient measures taken by the authorities in addressing the issue of stray dogs, combined with their failure to provide appropriate redress to the applicant as a result of the injuries sustained and lack of an effective right of access to a court due to dismissal of the applicant's civil case without an examination on the merits, on the ground that she had failed to identify the authority against which she should have brought her claim.

Status of execution: closed

Measures taken: Regarding the development of legal framework in this matter, Emergency Ordinance no. 155/2001 (in force at the time of the events) was amended by Law no. 258, in force since 26/09/2013, providing for ways of tackling the stray dogs' issue, that is, their placement in public shelters, adoption and euthanasia, in specific conditions. According to the Authority for Surveillance and Protection of Animals (ASPA) attached to the Bucharest City Hall, that from September 2013 to February 2016, 59,229 stray dogs were captured out of which 25,575 dogs were adopted, 32,229 underwent euthanasia and the rest are still in public shelters. As of February 2016, an average number of 800 dogs were being captured every month. The reported estimated number of the stray dogs in March 2013, before these measures being taken, was 64,704. According to information submitted by the Hospital for Infections and Contagious Illnesses "Victor Babes", 17 patients accused they had been bitten by stray dogs in 2013, 19 patients in 2014 and 4 patients in the first half of 2015. The new law is clear and foreseeable as to the authority against which a victim of stray dogs can bring a civil claim. The courts of Bucharest have developed a well-established case law in which the Authority for Surveillance and Protection of Animals has been obliged to pay damages for such aggressions occurred within the territory of Bucharest Municipality. In other cases, the city halls were found accountable for failing to tackle the stray dogs' issue when persons were injured by animals, and obliged to pay damages. The judgment was translated, published and disseminated.

Klaus and Iouri Kiladze v. Georgia (applications no. 7975/06)

Case description: Deficient legal framework granting compensation to nationals who sustained various forms of political persecution and oppression on the territory of the former Soviet Union between 1921 and 1990; lack of implementing legislation defining the amount and modalities of payment of the relevant compensation.

Status of execution: closed

Measures taken: The Law of 11 December 1997 and the Code of Administrative Procedure were amended in order to allow the victims of repression to benefit from the right guaranteed by Article 9 of that Law. Therefore, the victims of Soviet political repression and their first generation heirs were entitled to submit the applications for monetary compensation. The determination of the appropriate amount of compensation was initially the sole competence of the Tbilisi City Court, resulting in the granting of compensation in 6914 cases. However, further amendments were adopted on 31 October 2014, setting an amount of compensation legally determined, and extending the territorial jurisdiction of the national courts.

Kunitsyna v. Russia (application no. 9406/05)

Case description: The case concerned defamation proceedings brought against the applicant following the publication of an article she had written about a care home for the elderly where the mother of a well-known politician had been resident. The Court found that the standards according to which the national authorities examined the claim against the applicant were not in conformity with the principles embodied in Article 10.

Status of execution: pending

Measures taken: A comprehensive action plan/report in the relevant leading cases is awaited.