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(by country)**

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BELGIUM

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)25 concerning the judgment of the European Court of Human Rights of 5 February 2002 (final on 5 May 2002) in the case of ČONKA against Belgium

*(Adopted by the Committee of Ministers on 5 April 2006
at the 961st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of Čonka against Belgium (application 51564/99), delivered on 5 February 2002, in which the Court found violations of Article 5 §§ 1 and 4, Article 4 of Protocol No. 4 and Article 13 of the Convention taken together with Article 4 of Protocol No. 4, on grounds of the means deployed to secure the arrest of the applicants, Slovak nationals of Rom origin seeking asylum, and the conditions of their expulsion in 1999, as well as the haphazard treatment of the appeals they had lodged in this connection;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the Government of Belgium to inform it of the measures taken consequent to the European Court's judgment, having regard to Belgium's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling that the obligation for all member states to abide by the judgments of the Court (Article 46, paragraph 1, of the Convention) includes, *inter alia*, the obligation to adopt general measures to prevent new violations of the Convention similar to those found in the Court's judgments, including – as far as possible – interim measures until the necessary general reforms take effect;

Noting in this respect with satisfaction the interim measures taken swiftly following the Court judgment, including the publication of the judgment by the Ministry of Justice, the adoption by the Minister of the Interior of a circular addressed to the Director General of the Aliens Office (July 2002) and the adoption of a royal decree laying down the system and rules of functioning of the detention centres managed by the Aliens Office (August 2002);

Noting with great interest that the Minister of the Interior has embarked on a sweeping reform of the *Conseil d'Etat* and of proceedings relating to aliens, taking account of the requirements of the Convention, particularly in connection with the Čonka judgment, and that this reform bill should go before parliament in 2006;

Encourages the authorities to continue this reform;

Declares, after examining the information supplied by the Government of Belgium, that it has provisionally exercised its functions under Article 46, paragraph 2, of the Convention in this case,

Decides to resume consideration of this case as far as general measures are concerned once sufficient progress has been made on the legislative reforms, or at the latest at its first meeting in 2007.

Appendix to Interim Resolution ResDH(2006)25

*Information provided by the Belgian authorities
during the examination of the case of Čonka v. Belgium
by the Committee of Ministers*

Measures adopted in 2002

Concerning the violation of Article 5§1 and Article 4 of Protocol No. 4 (circumstances of placement in detention and expulsion from the territory)

The European Court judgment was promptly published on the Internet site of the Ministry of Justice. The judgment also received wide media coverage.

The Belgian authorities believe that, since European Court judgments are given direct effect in Belgium, this measure has made it possible to avoid any further violations of a similar nature. They note, in this respect, that no new violation of a similar nature has occurred since the Court judgment.

Concerning the violation of Article 5§4 (access to a remedy against the detention measure)

A royal decree adopted on 2 August 2002 provides that, upon arrival in a detention centre managed by the Aliens Office, each inmate shall be issued with an information brochure explaining *inter alia* the possibilities of appeal against detention, the possibilities of lodging a complaint concerning the circumstances of detention and of obtaining legal assistance. The brochure is to be available in at least the three national languages and in English (Article 17). According to the Belgian authorities, it is also available in fifteen or so other languages. Furthermore, the director of the centre, his deputy or a member of staff designated by him must indicate to the inmate the reasons for his detention, the legal and regulatory provisions applicable to him and the possible remedies against this decision. This must be done in a language understood by the inmate. The services of an interpreter must be called upon if necessary (Article 17).

The inmate is entitled to legal assistance. The director of the centre must ensure that the inmate is able to obtain the legal assistance provided for in law (Article 62).

The inmates are entitled to telephone their lawyer each day, free of charge, between eight o'clock in the morning and ten o'clock at night. A lawyer may telephone his client at any time. Telephone calls between an inmate and his lawyer may not be prohibited (Article 63). According to the Belgian authorities, the inmates of a centre may also fax documents to their lawyers if they expressly request to do so. Finally, lawyers and interpreters assisting them have access to the centre every day, at least between eight o'clock in the morning and ten o'clock at night, if they have a client there and on condition of being able to prove their credentials with a valid professional card. Visits by lawyers may not be prohibited (Article 64).

Concerning the violation of Article 13 taken together with Article 4 of Protocol No. 4 (nature of remedies against expulsion measures)

To give effect to the European Court's judgment, the Minister of the Interior adopted a circular on 19 July 2002, concerning the "execution of orders to leave the territory issued in respect of certain refused asylum seekers" addressed to the Director General of the Aliens Office. The circular lays down the rule that "in the event of a request being lodged with the *Conseil d'Etat* for a stay of execution under extremely urgent procedure of an order to leave the territory issued in respect of a refused asylum seeker, the order shall not be executed for as long as the *Conseil d'Etat* has not ruled on this request for a stay of execution under extremely urgent procedure". Does this circular apply to persons turned back at the border?

Legislative reform under way

Furthermore, the Belgian authorities have said that a sweeping reform of the *Conseil d'Etat* and of proceedings relating to aliens is under way. One of the measures envisaged in this connection is the

setting up of a Court for proceedings relating to aliens (*Conseil du contentieux des étrangers*). Where asylum is concerned, it is planned that this new court will have the power to make any order required by the justice of a case and that appeals lodged with it will be *ispo jure* suspensive. For the other aspects of proceedings relating to aliens, the prerogatives of the new court will be limited, in principle, to suspending and repealing orders and, in the event of a request for stay of execution being lodged, there is provision for a stay of expulsion for a certain period which may be extended.

Finally, the *Conseil d'Etat* will no longer be involved in proceedings relating to aliens, except as a court of cassation for the decisions taken by the new court. The Ministry of the Interior submitted two preliminary draft laws to the legislation section of the *Conseil d'Etat* on 10 January 2006 (one on reform of the *Conseil d'Etat* and the setting up of the Court for proceedings relating to aliens and the other concerning amendment of the law of 15 December 1980 on the entry, residence, settlement and expulsion of aliens). The legislation section issued its opinion on 21 February 2006. The Minister of the Interior hopes to put these two preliminary draft laws before parliament before summer.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)724 concerning the judgment of the European Court of Human Rights of 20 November 1995 and 3 July 1997 in the case of PRESSOS COMPANIA NAVIERA S.A. AND OTHERS against Belgium

*(Adopted by the Committee of Ministers on 3 December 1999
at the 688th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgments of the European Court of Human Rights in the Pressos Compania Naviera S.A. and others case delivered on 20 November 1995 and on 3 July 1997 and transmitted the same days to the Committee of Ministers;

Recalling that the case originated in an application (No. 17849/91) against Belgium, lodged with the European Commission of Human Rights on 4 January 1991 under Article 25 of the Convention by twenty-six companies, all involved in maritime accidents which happened before September 1988, and that the Commission declared admissible the complaints that the Belgian Law of 30 August 1988 which retroactively limited the liability of ships' pilots, constituted a breach of the right to the peaceful enjoyment of their possessions and a breach of the right to a fair trial due to direct interference with proceedings pending before the courts;

Recalling that the case was brought before the Court by the Commission on 9 September 1994 and, subsequently, by the Government of Belgium on 21 October 1994;

Whereas in its judgment of 20 November 1995 the Court:

- severed, unanimously, the sixth applicant's (City Corporation) complaints from those of the other applicants and decided to strike them out of the list;
- dismissed, unanimously, the government's preliminary objection regarding the non-exhaustion of domestic remedies;
- held, by eight votes to one, that there had been a violation of Article 1 of Protocol No. 1 and that it was not necessary to examine the case also under Article 6, paragraph 1, of the Convention;
- held, unanimously, that the government of the respondent state was to pay to the applicants, within three months, 8 000 000 Belgian francs in respect of costs and expenses, and reserved the question of the application of Article 50 as regards pecuniary damage since the latter was not ready for decision;

Whereas in its judgment of 3 July 1997 delivered under Article 50, the Court unanimously:

- considered that it was not appropriate to apply Article 50 to the applicants, with the exception of the twenty-fifth applicant company (Naviera Uralar S.A.), until the Belgian courts had given a final ruling in the disputes that the applicants brought before them, and decided accordingly to strike the case out of the list with respect to all the applicants except the twenty-fifth, reserving the power to restore the case in the list if necessary;
- held that the government of the respondent state was to pay the twenty-fifth applicant (Naviera Uralar S.A.), within three months, 4 843 019.50 Belgian francs for pecuniary damage, on which sum statutory interest was payable from 31 May 1997 until settlement;

- held that the present judgment constituted sufficient just satisfaction in respect of any non-pecuniary damage sustained by Naviera Uralar S.A. and dismissed the remainder of the claim for just satisfaction made by the applicant company;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgments of 20 November 1995 and 3 July 1997, having regard to Belgium's obligation under Article 53 of the Convention to abide by them;

Considering that High Contracting Parties are required to take the necessary measures to conform herewith, notably by preventing new violations of the Convention similar to those found in the Court's judgments;

Whereas the government of the respondent state provided the Committee of Ministers with information about the measures taken so far to this effect (this information appears in the appendix to this resolution);

Having satisfied itself that, within the time-limit set, the government of the respondent state paid the representative of the applicant companies the sum provided for in the judgment of 20 November 1995, and that it paid to the twenty-fifth applicant, Naviera Uralar S.A., the capital sum and the statutory interest provided for in the judgment of 3 July 1997,

Declares, after having taken note of the information supplied by the Government of Belgium, that it has provisionally exercised its functions under Article 54 of the Convention in this case,

Decides to resume consideration of this case, as far as general measures are concerned, when the reform of the act of 3 November 1967 on the piloting of sea-going ships, amended by the act of 30 August 1988, is completed or, at the latest, at one of its meetings in the autumn of 2000.

Appendix to Interim Resolution ResDH(99)724

Information provided by the Government of Belgium during the examination of the Pressos Compania Naviera S.A. and others case by the Committee of Ministers

The Government of Belgium recalls that the European Convention on Human Rights and the judgments of the European Court of Human Rights have a direct effect in Belgian law. Consequently, following the European Court's judgment of 20 November 1995 on the merits in the case of Pressos Compania Naviera S.A. and others, the Belgian courts have ceased to apply the 1988 act which was at the origin of the violation of Article 1 of Protocol No. 1 found in the present case. The Belgian Government has provided the Court and the Committee of Ministers with several examples attesting to this reversal in case-law (judgment of the Antwerp Commercial Court of 6 June 1996, judgment of the Ghent Court of Appeal of 31 October 1996).

On 10 May 1996, the government also approved a bill, amending Section 3 *bis* of the act of 3 November 1967 on the piloting of sea-going vessels, amended by the act of 30 August 1988. This bill sought to delete the reference to the retrospective exemption from pilots' liability provided for under the act of 30 August 1988 (Section 2.1 of the bill) and to introduce a new system of limited liability for maritime claims prior to the entry into force of this act. The new system provided for the possibility of the liability of the officer held responsible to be limited to 500 000 Belgian francs for each incident causing damage (Section 2.2 of the bill).

In its opinion (L. 25 534/9) on the bill delivered on 14 July 1997, the general assembly of the *Conseil d'Etat* nevertheless stated that in the light of the case-law of the European Court (in particular the Stran Greek Refineries and Stratis Andreadis judgment of 9 December 1994 and the Pressos Compania Naviera S.A. and others judgment (Article 50) of 3 July 1997), Section 2.2 of the bill was seriously "exposed to the risk of being contrary to Article 6 of the Convention" insofar as a limitation of liability applied with retrospective effect was intended "to have a direct influence on the settlement of

disputes currently before the courts". The *Conseil d'Etat* consequently concluded that that the "bill, therefore, needed to be reviewed in its entirety".

Following this negative opinion from the *Conseil d'Etat*, the government looked anew at the bill in question in order to bring it into line with the Convention as interpreted by the European Court. The government expects this work to result in a new bill in 1999 and anticipated that it could be passed by Parliament by the end of the year 2000.

In the light of the above, the Government of Belgium believes that, in view of the direct effect attributed by the Belgian courts to the case-law of the European Court, Belgium has taken the initial steps necessary to comply with its obligation under Article 53 of the Convention. As it is necessary to reform current legislation on the piloting of sea-going ships in order to resolve completely the problems raised by the European Court's judgments in this case, the government proposes that the Committee of Ministers resume consideration of the execution of these judgments once a new legislative act has been passed or, at the latest, at one of its meetings in the autumn of 2000.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(98)133 regarding the FAIRNESS OF HEARINGS IN PROCEEDINGS BEFORE THE COUR DE CASSATION in Belgium

*(Adopted by the Committee of Ministers on 22 April 1998
at the 626th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Articles 32 and 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Stressing the necessity for all Contracting States to take rapidly all the measures required in order to comply with the judgments of the European Court of Human Rights and to the decisions of the Committee of Ministers notably to prevent new violations of the Convention similar to those found;

Having regard to the judgments of the European Court of Human Rights in the case of Borgers delivered on 30 October 1991, in the case of Vermeulen delivered on 20 February 1996 and in the case of Van Orshoven delivered on 25 June 1997, and to the decisions of the Committee of Ministers in the cases of Van Wijck (Application No. 17123/90), E.v.H. (Application No. 18613/91), Escobar Londono and others (Application No. 19171/92, Interim Resolution DH (95) 261), Vereecken (Application No. 20216/92), De Brabandere and others (Application No. 21010/92, Interim Resolution DH (97) 357, Ulens (Application No. 22113/96, Interim Resolution (97) 356), Rosenberg (Application No. 24906/94, Interim Resolution DH (98) 13) and S.P.R.L. Anca and others (Application No. 26363/95, Interim Resolution DH (97) 509;

Recalling that in all these cases the applicants complained that they had had no right to reply, at the hearing, to the opinions delivered by the Advocate General, and moreover that the latter had taken part in deliberations before the *Cour de cassation* in criminal (Borgers, Escobar Londono and others, Van Wijck, E. v. H. and Vereecken), civil (Vermeulen, De Brabandere, S.P.R.L. Anca and others and Ulmens) and disciplinary (Van Orshoven and Rosenberg) cases;

Whereas in all these cases the Court or the Committee of Ministers, agreeing with the opinions expressed by the European Commission of Human Rights in its reports, held that there had been a violation of Article 6 of the Convention;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 and 32 of the Convention;

Having invited the Government of the respondent State to inform it of the measures which had been taken in consequence of the finding of the above-mentioned violations having regard to Belgium's obligation under Article 53 and 32 paragraph 4 of the Convention to abide by them;

Whereas, during the examination of the case by the Committee of Ministers, the Government of the respondent State gave the Committee information about the measures already taken and measures envisaged to prevent new violations of the same kind as those found; this information appears in the appendix to this resolution,

Declares, after having taken note of the information supplied by the Government of Belgium, that it has fulfilled its functions under Articles 54 and 32 of the Convention, for the time being;

Decides to resume consideration of the question of general measures not later than six months hence.

Appendix to Interim Resolution ResDH(98)133

*Information provided by the Government of Belgium
during the examination by the Committee of Ministers
of the general measures to be adopted in cases
regarding the fairness of hearings in proceedings before the Cour de cassation*

The Government of Belgium recalls that interim measures have already been taken in order to prevent the repetition of the violation found in the cases in question, while awaiting the outcome of the reform of the Code of Judicial Procedure which is under way.

According to the *Cour de cassation* new practice, applicants may respond to submissions or opinions of the Advocate General who no longer participates in the deliberations. This new practice applies to all kind of proceedings. In criminal proceedings this measure was taken immediately after the European Court of Human Rights rendered its judgment in the case of Borgers. This measure was taken, in civil proceedings, immediately after the European Court rendered its judgment in the case of Vermeulen and, in disciplinary proceedings, immediately after the European Court rendered its judgment in the case of Van Orshoven.

The reformed Code of Judicial Procedure will provide that the Advocate General will no longer take part in the deliberations of the *Cour de Cassation* and that the applicant will have the right to reply to his submissions or opinions.

The Government of Belgium consider that it has fulfilled its obligations under Articles 54 and 32, paragraph 4, of the Convention for the time being and invites the Committee of Ministers to resume consideration of these general measures not later than six months hence.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(96)676 concerning the judgment of the European Court of Human Rights of 26 May 1988 in the case of PAUWELS against Belgium

*(Adopted by the Committee of Ministers on 15 November 1996
at the 576th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Pauwels case delivered on 26 May 1988 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 10208/82) against Belgium, lodged with the European Commission of Human Rights on 19 November 1982 under Article 25 of the Convention by Mr Pauwels Willy, a Belgium national, and that the Commission declared admissible the complaint based on article 5 paragraph 3 of the Convention in regard to the role played by the Judge Advocate or one of his deputies;

Recalling that the case was brought before the Court by the Commission on 13 March 1987.

Whereas in its judgment of 26 May 1988 the Court unanimously:

- held that there has been a violation of Article 5 paragraph 3 of the Convention;
- held that the respondent State was to reimburse the applicant 150 000 Belgian francs in respect of costs and expenses;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the Government of Belgium to inform it of the measures which had been taken in consequence of the judgment of 26 May 1988, having regard to Belgium's obligation under Article 53 of the Convention to abide by it;

Whereas, during the examination of the case by the Committee of Ministers, the Government of Belgium gave the Committee information about the measures taken in consequence of the judgment, which information appears in the appendix to this resolution;

Having satisfied itself that the Government of Belgium paid the applicant the sum provided for in the judgment of 26 May 1988,

Declares, after having taken note of the information supplied by the Government of Belgium, that it has for the time being exercised its functions under Article 54 of the Convention in this case;

Decides to resume consideration of this case with the view to adopting the final resolution, within two years, as soon as the draft Bill reforming the military Courts is definitively adopted.

Appendix to Interim Resolution ResDH(96)676

*Information provided by the Government of Belgium
during the examination of the case of Pauwels
by the Committee of Ministers*

The Government of Belgium recalls that measures had already been adopted in order to prevent the repetition of the violation found in the current case and this by way of internal circulars dated 29 March 1983, 11 March 1985 and 28 October 1991. These circulars prevent a military magistrate who has had investigative functions from exercising a prosecuting function in the same case.

Furthermore, considering the withdrawal of the Belgian forces stationed in Germany, the increase in numbers of sorties by Belgian troops abroad, the demilitarisation of the "Gendarmerie" and the reorganisation of the jurisdiction of the military tribunals, a more general Bill including a reform of the military tribunals has been deemed necessary. This Bill has been approved by the Counsel of Ministers and has been examined by the "Conseil d'Etat" which gave its opinion on 3 July 1996 in which it refers to several cases, in particular the Pauwels case, and invites the Government to modify certain provisions which are not deemed to be in compliance with the European Convention of Human Rights.

As a result, the Government of Belgium is of the opinion that the Committee of Ministers should resume consideration of this case within two years, as soon as the draft Bill is definitively adopted.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(88)13 concerning the judgment of the European Court of Human Rights of 27 November 1987 in the BEN YAACOUB case (friendly settlement)

*(adopted by the Committee of Ministers on 29 September 1988
at the 419th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Ben Yaacoub case, delivered on 27 November 1987 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application against the Kingdom of Belgium lodged with the European Commission of Human Rights on 30 June 1982 under Article 25 of the Convention by Mr Borhane Ben Yaacoub, a Tunisian citizen, who alleged that criminal charges against him had not been heard by an "impartial tribunal" within the meaning of Article 6, paragraph 1, of the Convention;

Recalling that the Commission declared the application admissible on 4 May 1983 and in its report adopted on 7 May 1985 expressed the opinion, by six votes to four, that the applicant's case had not been heard by an "impartial tribunal" within the meaning of Article 6, paragraph 1, of the Convention and that there had been, therefore, a breach of that provision;

Recalling that the case was brought before the Court by the Commission on 11 July 1985;

Whereas in its judgment of 27 November 1987 the Court, having taken formal note of a friendly settlement reached by the Government of Belgium and the applicant and having satisfied itself that there were no reasons of public policy (ordre public) necessitating the continuation of the proceedings, decided unanimously to strike the case out of its list;

Whereas under the above-mentioned friendly settlement it was agreed that:

- the Belgian Government would lift, with effect from 30 August 1992, the effects of an expulsion order made against Mr Ben Yaacoub;
- prior to that date, any request for safe-conduct enabling him to enter Belgium would be examined, provided that it was based on valid reasons and was supported by appropriate evidence;
- the Government would pay to the applicant 100 000 Belgian francs by way of agreed damages;
- the costs and fees occasioned by both the appeal on points of law and the proceedings before the Convention institutions would be refunded in the amount of 200 000 Belgian francs;

Recalling that Rule 48, paragraph 3, of the Court's Rules provides that the striking out of a case shall be effected by means of a judgment which the President shall forward to the Committee of Ministers in order to allow it to supervise, in accordance with Article 54 of the Convention, the execution of any undertakings which may have been attached to the discontinuance or solution of the matter;

Having invited the Government of Belgium to inform it of the measures taken so far for the execution of the undertakings attached to the solution of the case;

Whereas, during the examination of the case by the Committee of Ministers, the Government of Belgium gave the Committee information about the measures taken, which information appears in the appendix to this resolution;

Having satisfied itself that the Government of Belgium has paid the applicant the sums provided for in the friendly settlement;

Declares, after having taken note of the information supplied by the Government of Belgium, that it has provisionally exercised its functions under Article 54 of the Convention in this case;

Decides to resume consideration of this case at its first meeting after 30 August 1992, or earlier if appropriate.

Appendix to Interim Resolution ResDH(88)13

*Information provided by the Government of Belgium
during the examination of the Ben Yaacoub case
before the Committee of Ministers*

In accordance with the friendly settlement reached in this case, the Government of Belgium paid to the applicant, on 4 July 1988, 100 000 Belgian francs by way of agreed damages and 200 000 Belgian francs in respect of costs and fees.

The Belgian Government undertakes to notify the Committee of Ministers of the date on which the effects of the expulsion order against Mr Ben Yaacoub are lifted. Prior to that date, it undertakes to examine any request for safe-conduct enabling Mr Ben Yaacoub to enter Belgium, provided that it is based on valid reasons and is supported by appropriate evidence.

In the light of the above, the Belgian Government considers that it has provisionally complied with its obligations under Article 53 of the European Convention on Human Rights.

BULGARIA

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

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

*(Adopted by the Committee of Ministers on 17 October 2007,
at the 1007th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, (hereinafter “the Convention”),

Having regard to the judgments of the European Court of Human Rights delivered in the case of Velikova and 7 other cases (for more details see Appendix I), and transmitted to the Committee of Ministers once they had become final under Articles 44 and 46 of the Convention;

Recalling that the violations of the Convention found by the Court in these cases concern the ill-treatment inflicted on the applicants or on their relatives and the resulting deaths in the cases of Velikova, Anguelova and Ognyanova and Choban, as well as the lack of an effective investigation into these facts (for more details see Appendix I);

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the judgment, the adoption by the respondent state, where appropriate, of

- individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- general measures preventing, similar violations;

Having examined, in accordance with the Rules of the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention, the measures adopted to this effect by the respondent Government, the detail of which appears in Appendix II ;

Having noted in this respect that the issue concerning the deficiencies of the legal framework existing in Bulgaria for regulation of the use of firearms by police officers, raised in the case of Tzekov, is being examined in the framework of the supervision of the execution of the case of Nachova and others against Bulgaria (judgment of 6 July 2005);

Individual measures

Notes that the judgments in these cases have recently been transmitted to the Prosecutor General, who is competent to ask for the reopening of the investigations into the deaths and the ill-treatment criticised by the European Court;

Recalls in this respect the obligation for the respondent state, according to the Convention, to conduct effective investigation “in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible”, as well as the position established by the Committee of Ministers according to which a

continuing obligation exists to carry such investigations in these cases where procedural violations of Articles 2, 3 and 13 have been found;

Calls upon the government of the respondent state to rapidly adopt all required individual measures in these cases and to inform the Committee of Ministers regularly about this issue;

General measures

Notes with interest the information provided by the government of the respondent state on general measures adopted so far or envisaged with the aim of complying with these judgments (see for more details Appendix II);

Notes, however, 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 guarantees during detention on remand, in particular through the effective implementation of the new regulation concerning the obligation to inform persons on remand of their rights and the formalities to be followed concerning the registration 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;

Calls upon the government of the respondent state rapidly to adopt all outstanding measures and to regularly inform the Committee of Ministers 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;

DECIDES to pursue the supervision of the execution of the present judgments until all general measures necessary for the prevention of new, similar violations of the Convention are adopted and their effectiveness does not raise any doubt, and until the Committee of Ministers is satisfied that all necessary individual measures are taken, in order to erase, as far as possible, the consequences of the violations found in respect of the applicants,

DECIDES also to resume consideration of these cases as regards individual measures at each of its DH meetings and, as regards the general measures at the latest within ten months.

Appendix I to Interim Resolution CM/ResDH(2007)107

Details relating to the applications, the judgments and the violations found by the European Court

Application No.	Name of the case	Date of the judgment	Date of the final judgment	Payment of the just satisfaction on	Time limit for payment
41488/98	Velikova	18/05/2000	04/10/2000	27/12/2000	04/01/2001
38361/97	Anguelova	13/06/2002	13/09/2002	13/12/2002	13/12/2002
42027/98	Toteva	19/05/2004	19/08/2004	16/11/2004	19/11/2004
50222/99	Krastanov	30/09/2004	30/12/2004	21/03/2005	30/03/2005
43233/98	Osman	16/02/2006	16/05/2006	11/08/2006.	16/08/2006
46317/99	Ognyanova and Choban	23/02/2006	23/05/2006	23/08/2006	23/08/2006
45500/99	Tzekov	23/02/2006	23/05/2006	23/08/2006	23/08/2006
55061/00	Kazakova	22/06/2006	22/09/2006	13/12/2006	22/12/2006

- Violations of Article 2 due to the deaths of the applicants' relatives as a result of ill-treatment inflicted by police officers (cases of Velikova, Anguelova and Ognyanova and Choban);
- Violation of Article 2 due to the lack of rapid medical assistance during the applicant son's detention (Anguelova case);
- Violations of Articles 2 and 13 due to the lack of effective investigations on the applicants' relatives' deaths (cases of Velikova, Anguelova and Ognyanova and Choban);
- Violations of Article 3 due to the ill-treatment inflicted by police officers to the applicants or to members of their families (cases of Anguelova, Krastanov, Toteva, Ognyanova and Choban, Osman and Tzekov);
- Violations of Article 3 due to the lack of effective investigations concerning the ill-treatment inflicted on the applicants (cases of Toteva, Krastanov, Osman and Tzekov) and concerning arguable claims of ill-treatment (Kzakova case);
- Violations of Article 5§1 due to unlawful detention of members of the applicants' families (cases of Anguelova and Ognyanova and Choban);
- Violation of Article 6§1 due to the excessive length of certain civil proceedings for compensation initiated by the applicant (Krastanov case);
- Violation of Article 1 of Protocol No. 1 due to the unlawful destruction of certain property belonging to the applicants during an attempt for their eviction from this property (Osman case).

Appendix II to Interim Resolution CM/ResDH(2007)107

*Information provided to the Committee of Ministers by the Government of Bulgaria
concerning individual and general measures taken to date or envisaged so as to comply with
the judgments of the European Court of Human Rights*

I. Individual measures

On 22 May 2007 the Ministry of Justice forwarded a copy of the Court's judgments in these cases to the Prosecutor General, to whom it falls to request the re-opening of criminal proceedings contested by a judgment of the Court (Articles 421§2 and 422§1, p. 4 of the Code of Criminal Procedure). The Prosecutor General's attention was drawn to the Bulgarian authorities' ongoing obligation to conduct effective investigations into deaths and ill-treatment, or allegations thereof, in cases where the Court has found procedural violations of Articles 2, 3 and 13.

II. General measures

1) Improvement of vocational training for members of the police

Training in human rights, and in particular in the Convention standards, is part of the compulsory training dispensed to police officers by the Academy of the Ministry of the Interior. During the 2003-2004 academic year, 443 higher-ranking officers and 121 sergeants underwent initial training in this field, and 266 and 81 respectively received further training. Similar activities were run in 2004-2005. In addition, between 1999 and 2003 hundreds of police officers attended seminars and other training activities on compliance with the Convention requirements and the CPT's recommendations in the performance of their duties.

In 2000 a specialist Human Rights Committee was set up within the National Police Directorate. Its main tasks are organising human rights training for the police, analysing the CPT's reports concerning Bulgaria and drawing up proposals for tangible measures to prevent cases of ill-treatment by the

police. In 2002 this committee's work led to the introduction of a new declaration form setting out information on detainees' basic rights (the rights to be assisted by a lawyer, to be examined by a doctor and to inform a third party of the detention). This declaration is signed by detainees immediately after they have been taken into custody, the aim being to make police action transparent and provable (Article 54 of the Regulations implementing the Act on the Ministry of the Interior).

A Code of Police Ethics was also introduced in October 2003 by order of the Minister of the Interior. The provisions of this code were drafted in co-operation with the Council of Europe and take account of the Committee of Ministers' Recommendation R(2001)10 on the European Code of Police Ethics.

2) Effective internal remedies in the event of alleged ill-treatment by the police

a) Direct effect of the Convention in Bulgarian law

Bulgarian case-law is constantly evolving so as to take better account of the Convention and the case-law of the European Court of Human Rights, as can be seen from a number of domestic judgments which refer directly to the Convention and to judgments of the Court. This development results in enhanced judicial oversight of public prosecutors' decisions concerning police custody or provisional detention. Two interpretative judgments delivered by the Supreme Court of Cassation in 2002 and a number of judgments by domestic courts making direct reference to the Convention and to Court judgments, particularly with regard to Articles 5 and 6 of the Convention, have been forwarded to the Committee of Ministers (the Supreme Court of Cassation's judgments Nos. 1 of 25.06.2002 and 2 of 2002 and decisions Nos. 1558/2001 and 1515/2001 of the Plovdiv regional court, Nos. 285/2002 and 559/2002 of the Bourgas district court and No. 4306/2001 of the Sofia regional court).

At the same time, a number of training sessions on the Convention for members of the judiciary were held between 2001 and 2006, in particular by the Judicial Training Centre set up in 1999 in co-operation with the Council of Europe.

b) Effective investigation of allegations of ill-treatment by the police

Legislative amendments adopted on 27/04/2001 provide for judicial review of public prosecutors' decisions to close criminal proceedings and empower the courts to send files back to prosecutors with instructions to carry out specific investigation measures (Article 237 of the Code of Criminal Procedure). It should also be noted that under Bulgarian criminal procedure prosecutors need no authorisation of any kind to investigate alleged offences by police officers.

The military prosecution service has drawn up a report on the results of investigations into allegations of police violence over the period 1996-2005. According to this report, 2,950 investigations into complaints of ill-treatment by the police were conducted during this period. These investigations led to the opening of 874 criminal cases against police officers accused of ill-treatment, resulting in 349 convictions (including 10 for homicide, 3 for having provoked the victim to commit suicide, 329 for assault and 7 for illegal deprivation of liberty). In the eleven cases described in detail in the report, the sentences imposed ranged from twenty years' imprisonment to suspended prison sentences. Over the same period no tendency towards an increase or decrease in cases of ill-treatment by the police could be noted.

3) Guarantees against illegal detention by the police

Section 72§1 of the Act on the Ministry of the Interior of 1997 provides, as did section 35§1 of the repealed National Police Act of 1993, that a written warrant must be issued for the detention of an individual by the police. In addition, under Article 54§5 of the Regulations implementing the Act on the Ministry of the Interior, adopted by the Minister of the Interior in 1998, this warrant must be recorded in a special register. Furthermore, in a circular letter dated 13/03/2002, the Director of the National Police reminded all the regional police chiefs of their obligation to take all necessary measures to ensure strict compliance with these rules.

4) Publication and dissemination

The Velikova judgment has been translated and sent by the Ministry of Justice to the Director of the National Police, the Prosecutor General and the head of the Special Investigations Department for distribution to all officials reporting to them, along with a circular drawing these officials' attention to the Court's findings. This judgment has also been published on the Ministry of the Interior's web-site, www.mjeli.government.bg, and distributed to judges by the Judicial Training Centre. The Anguelova, Toteva and Krastanov judgments have also been published on the same web-site. The Krastanov judgment has been distributed, with an accompanying explanatory letter, to directors in the national police, the national office for combating organised crime, the directorate of internal affairs of the city of Sofia and the head of the specialised anti-terrorism unit. The Toteva judgment has been distributed to the police department and public prosecution service of the city of Sevlievo, with an accompanying letter focusing on the Court's key findings. Lastly, the Velikova and Anguelova judgments have been distributed to the military courts, the military prosecution service, the Ministry of the Interior and the Ministry of Defence, so that these bodies can take any measures they deem appropriate (not least of a legislative nature) within their sphere of competence.

III. Conclusion

The Government of Bulgaria is convinced that the above measures show its determination to take all the individual and general measures necessary to enforce these judgments and, more specifically, to enhance vocational training of members of the police and implement procedural guarantees to ensure the effective prevention of any further violation of the Convention of a similar kind. The Bulgarian authorities will continue to adopt the measures necessary to this end and will keep the Committee of Ministers informed of any new elements, particularly regarding the impact of the measures taken.

FRANCE

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)1 concerning the judgment of the European Court of Human Rights of 30 January 2001 (final on 5 September 2001) in the case of VAUDELLE against France

*(Adopted by the Committee of Ministers on 7 February 2005
at the 914 th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Vaudelle case (No. 35683/97), delivered on 30 January 2001, in which the Court held in particular that there had been a violation of Article 6 of the Convention, due to the inequity of criminal proceedings brought against the applicant, who was under supervisory guardianship (*curatelle*), in that, although he was not fully capable of acting for himself on account of his mental disabilities, he was not given assistance to defend himself against the criminal charges in question;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 30 January 2001, having regard to France's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling that the obligation for all member states to abide by the judgments of the Court (Article 46, paragraph 1, of the Convention) includes, *inter alia*, the obligation promptly to adopt general measures effectively to prevent new violations similar to those found in the Court's judgments;

Recalling that it emerges from the Court's judgment that, in French positive law, there is no obligation for the criminal courts to adopt measures in order to take account of the incapacity of a person in the applicant's situation;

Noting that the government of the respondent state submitted to the Committee of Ministers information on the prompt publication of the Judgment in several high circulation law journals, which, in the light of the direct effect that the competent French courts give to the Convention and to the Court's case-law, minimised the possibilities of new, similar violations;

Noting with great interest that the Ministry of Justice is preparing a bill on the protection of vulnerable persons having attained their majority, notably providing for the systematical grant of an assistance to such vulnerable persons to defend themselves against criminal charges brought against them, and this bill should be submitted to Parliament in 2005;

Declares, after having taken note of the information supplied by the Government of France, that it has provisionally exercised its functions under Article 46, paragraph 2, of the Convention in this case,

Decides to resume consideration of this case as far as general measures are concerned once the legislative reforms have been carried out, or at the latest at its first meeting in 2006.

GERMANY

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(89)8 concerning the judgments of the European Court of Human Rights of 21 February 1984 and 23 October 1984 in the case of ÖZTÜRK against Germany

*(Adopted by the Committee of Ministers on 2 March 1989
at the 424th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 (art. 54) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the convention"),

Having regard to the judgments of the European Court of Human Rights in the Öztürk case, delivered on 21 February 1984 and 23 October 1984 and transmitted the same days to the Committee of Ministers;

Recalling that the case originated in an application against the Federal Republic of Germany lodged with the European Commission of Human Rights on 14 February 1979 under Article 25 (art. 25) of the convention by Mr Abdalbaki Öztürk, a Turkish national, who complained that the Heilbronn District Court had ordered him to pay the costs incurred through recourse to the services of an interpreter at a hearing before that court concerning an alleged regulatory offence, and claimed that there had been a violation of Article 6, paragraph 3.e (art. 6-3-e), of the convention;

Recalling that the case was brought before the Court by the Government of the Federal Republic of Germany on 13 September 1982 and by the Commission on 15 October 1982;

Whereas in its judgment of 21 February 1984 the Court held:

- by thirteen votes to five, that Article 6, paragraph 3.e (art. 6-3-e), was applicable in the instant case;
- by twelve votes to six, that there had been a breach of the said article (art. 6-3-e);
- unanimously, that the question of the application of Article 50 (art. 50) of the convention was not ready for decision;

Whereas in its judgment of 23 October 1984 the Court unanimously rejected the applicant's claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 (art. 54) of the convention;

Having invited the Government of the Federal Republic of Germany to inform it of the measures which had been taken in consequence of the judgment of 21 February 1984, having regard to its obligation under Article 53 (art. 53) of the convention to abide by it;

Whereas, during the examination of the case by the Committee of Ministers, the Government of the Federal Republic of Germany gave the Committee information about the measures taken in consequence of the judgment, which information appears in the appendix to this resolution,

Declares, after having taken note of the information supplied by the Government of the Federal Republic of Germany, that it has provisionally exercised its functions under Article 54 (art. 54) of the convention in this case;

Decides to resume consideration of this case at its first meeting after 1 September 1991, or earlier if appropriate.

Appendix to Interim Resolution ResDH(89)8

Information provided by the Government of the Federal Republic of Germany during the examination of the Öztürk case before the Committee of Ministers

The Federal Ministry of Justice has prepared and discussed with the Länder legal provisions amending the Court Costs Act (No. 1904 in the schedule thereto). Under these provisions, in criminal proceedings, or in court proceedings under the Regulatory Offences Act, interpretation costs will be charged to an accused or interested party who is not conversant with the German language only if these costs have been imposed on him by the court on the grounds that he incurred them unnecessarily, either through negligence or otherwise.

The Federal Government expects that it will be possible for an amendment of the law to this effect to enter into force by the middle of 1991 at the latest.

GREECE

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2007)74 on excessively lengthy proceedings in Greek administrative courts and the lack of an effective domestic remedy (Group of cases MANIOS and 84 other cases)

*(Adopted by the Committee of Ministers on 6 June 2007,
at the 997th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter referred to as "the Convention" and "the Court"),

Having regard to the large number of judgments of the Court finding Greece in violation of Article 6, paragraph 1, of the Convention on account of the excessive length of judicial proceedings before administrative courts, in particular before the Supreme Administrative Court (Council of State) (see Manios group of cases in Appendix to this resolution);

Having regard to the fact that in many of the above cases as well as in cases concerning civil courts (see the Konti-Arvaniti group in Appendix), the Court also found that there had been a violation of Article 13 of the Convention as the applicants had no effective domestic remedy whereby they might enforce their right to a "hearing within a reasonable time", as guaranteed by Article 6, paragraph 1, of the Convention;

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations, as well as to adopt general measures preventing new violations of the Convention similar to those found, including provision of effective domestic remedies against possible violations;

Stressing the importance of rapid adoption of such measures in the cases at issue as they reveal structural problems giving rise to a large number of new, similar violations of the Convention;

Recalling that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law;

Recalling furthermore the Committee of Ministers' Recommendation to member states [Rec\(2004\)6](#) regarding the need to improve the efficiency of domestic remedies;

Measures to accelerate proceedings before administrative courts

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (*restitutio in integrum*), having invited them in particular to accelerate, as far as possible, the proceedings which were still pending after the findings of violations by the Court;

Welcoming the subsequent termination of proceedings before the Council of State in the cases of Kabetsis, Kaskaniotis, Makedonopoulos, Moïsidis and Tsantiris, which were pending at the time of the Court's judgments;

Recalling the constitutional, legislative and other reforms adopted so far by the authorities in order to remedy the problems related to the excessive length of proceedings in administrative courts (see Final Resolution ResDH(2005)65 concerning cases of excessive length of proceedings before administrative courts (Pafitis and other cases));

Noting with concern, however, that the European Court continues to find violations of Article 6, paragraph 1, due to excessively lengthy proceedings before Greek administrative courts, in particular before the Council of State;

Considering therefore that further general measures are required to comply with the Court's judgments;

Noting with interest the new draft law which has been prepared and is entitled "improvement and acceleration of administrative court proceedings", currently pending before Parliament, which in particular imposes limitations on the possibilities for parties to request and obtain adjournments of hearings, provides the possibility of services to be effected on behalf of an individual party by court clerks' offices and provides strict deadlines within which administrative court judges should deliver their judgments after the hearings;

Measures to set up an effective domestic remedy

Noting with concern that the problem of lack of effective remedy, highlighted for the first time in the Konti-Arvaniti case mentioned above in 2003, still remains unresolved;

Welcoming the work accomplished by the Greek authorities leading to the preparation of a draft law entitled "Compensation of litigants due to excessively lengthy judicial proceedings", which provides for a domestic remedy in the form of compensation in cases of excessive length of proceedings, at any stage whatsoever, before administrative, civil or criminal courts;

Stressing however that the creation of the new domestic remedy will not obviate the obligation to pursue with diligence the adoption of general measures required to remedy the underlying systemic problem of excessive length of proceedings in Greece, notably of the proceedings before the administrative courts and the Council of State,

URGES the Greek authorities, in view of the gravity of the systemic problem at the basis of the violations:

- to accelerate the adoption of the new draft legislation aimed at the acceleration of proceedings before all administrative courts and to envisage additional measures such as further increase of the posts of judges and of administrative staff in these courts and further improvement of their infrastructure;
- to make all possible efforts to accelerate the adoption of the new draft legislation providing for a remedy and to ensure that this is implemented in accordance with the requirements of the Convention and the case-law of the Court;

DECIDES to resume consideration of these cases, at the latest, at its 1013th meeting (3-5 December 2007) (DH).

* * *

Appendix to Interim Resolution CM/ResDH(2007)74

- 85 cases of excessively length of proceedings concerning civil rights and obligations before administrative courts (and the lack of an effective remedy)

70626/01	Manios , judgment of 11/03/2004, final on 11/06/2004
19841/02	Agathos and 49 others, judgment of 23/09/04, final on 02/02/05
43848/02	Aggelopoulos, judgment of 09/06/2005, final on 09/09/2005
37429/02	Anagnostopoulos, judgment of 10/02/2005, final on 10/05/2005
10803/04	Andoniadis, judgment of 06/07/2006, final on 06/10/2006
33523/02	Andreadaki and others, judgment of 10/02/2005, final on 10/05/2005
21824/02	Andrianesis and others, judgment of 10/02/2005, final on 06/07/2005
34206/02	Apostolaki, judgment of 17/03/2005, final on 17/06/2005
34339/02	Athanasiadis and others, judgment of 28/04/2005, final on 30/11/2005
10691/04	Athanasiou., judgment of 01/06/2006, final on 01/09/2006
38302/02	Charmantas and others, judgment of 10/02/2005, final on 10/05/2005
13320/03	Damilakos, judgment of 30/03/06, final on 30/06/06
13332/03	Ekdoseis N. Papanikolaou A.e., judgment of 04/05/2006, final on 04/08/2006
18830/03	Fraggalexi, judgment of 09/06/2005, final on 09/09/2005
36251/03	Galatalis, judgment of 13/07/2006, final on 13/10/2006
5077/03	Gavalas, judgment of 04/08/2005, final on 04/11/2005
25324/03	Georgopoulos and others, judgment of 08/12/05, final on 08/03/06
15689/03	Giakoumeli and others, judgment of 08/12/05, final on 08/03/06
70314/01	Gialamas, judgment of 21/10/04, final on 21/01/05
72285/01	Giamas and others, judgment of 10/02/2005, final on 10/05/2005
33339/02	Gika and 9 others, judgment of 17/03/2005, final on 17/06/2005
394/03	Gika and five others, judgment of 30/06/2005, final on 30/09/2005
14173/03	Gili and others, judgment of 08/12/05, final on 08/03/06
72983/01	Goutsia and others, judgment of 10/02/2005, final on 10/05/2005
72030/01	Hadjidjanis, judgment of 28/04/05, final on 28/07/05
5072/03	Ioannidis, judgment of 04/08/2005, final on 04/11/2005
5973/03	Kabetsis, judgment of 21/04/2005, final on 21/07/2005
67591/01	Kalkanis, judgment of 08/07/2004, final on 08/10/2004
33173/02	Kalliri-Giannikopoulou and others, judgment of 10/02/2005, final on 10/05/2005
38688/02	Kallitsis No. 2, judgment of 17/02/2005, final on 06/07/2005
21276/03	Karagiannis Charalambos, judgment of 09/06/2005, final on 09/09/2005
27806/02	Karagiannis Stamatios, judgment of 10/02/2005, final on 10/05/2005
6706/02	Karellis, judgment of 02/12/2004, final on 02/03/2005
37420/02	Karobeis, judgment of 10/02/2005, final on 10/05/2005
21279/03	Kaskaniotis and others, judgment of 09/06/2005, final on 09/09/2005
32279/02	Katsaros Charalambos, judgment of 10/02/2005, final on 10/05/2005
5957/03	Kollias, judgment of 21/04/2005, final on 21/07/2005
10304/03	Kollokas, judgment of 30/03/06, final on 30/06/06
31259/04	Kortessi, judgment of 13/07/2006, final on 11/12/2006
33819/02	Kosti-Spanopoulou, judgment of 10/02/2005, final on 10/05/2005
33191/02	Kotsanas, judgment of 10/02/2005, final on 10/05/2005
5967/03	Koufogiannis, judgment of 21/04/2005, final on 21/07/2005
72289/01	Kouremenos and others, judgment of 10/02/2005, final on 10/05/2005
34362/02	Koutroubas and others, judgment of 10/02/2005, final on 10/05/2005
73669/01	Kozyris and others, judgment of 10/02/2005, final on 10/05/2005
72211/01	Lagouvardou-Papatheodorou and others, judgment of 10/02/2005, final on 10/05/2005
65430/01	Lalousi-Kotsovos, judgment of 19/05/2004, final on 19/08/2004
31282/04	Lazaridi, judgment of 13/07/2006, final on 11/12/2006
19731/02	Loumidis, judgment of 04/08/2005, final on 04/11/2005
16106/03	Makedonopoulos, judgment of 19/05/2005, final on 19/08/2005
43841/02	Makris, judgment of 07/04/2005, final on 07/07/2005
25536/04	Mantzila, judgment of 04/05/2006, final on 04/08/2006
34358/02	Mikros, judgment of 10/02/2005, final on 10/05/2005
16109/03	Moïsidis, judgment of 19/05/2005, final on 19/08/2005
22029/03	Nafpliotis, judgment of 02/06/2005, final on 02/09/2005
6711/02	Nastos, judgment of 15/07/2004, final on 10/11/2004

31273/04 Nikas and Nika, judgment of 13/07/2006, final on 11/12/2006
 21978/03 Nikolopoulos, judgment of 02/06/2005, final on 02/09/2005
 32168/03 Nikopoulou, judgment of 29/09/2005, final on 29/12/2005
 42589/02 Oikonomidis, judgment of 17/02/2005, final on 17/05/2005
 8694/02 Palaska, judgment of 19/05/2004, final on 10/11/2004
 33808/02 Papamichail and others, judgment of 10/02/2005, final on 10/05/2005
 18602/03 Patelaki-Skamagga and others, judgment of 30/06/2005, final on 30/09/2005
 18582/03 Patsouraki and others, judgment of 30/06/2005, final on 30/09/2005
 5038/03 Plastarias, judgment of 21/04/2005, final on 21/07/2005
 33518/02 Refene-Michalopoulou and others, judgment of 17/03/2005, final on 17/06/2005
 14165/03 Renieri and others, judgment of 08/12/05, final on 08/03/06
 64756/01 Sadik Amet and others, judgment of 03/02/2005, final on 03/05/2005
 37428/02 Selianitis, judgment of 10/02/2005, final on 10/05/2005
 5081/03 Spyropoulos, judgment of 04/08/2005, final on 04/11/2005
 14127/03 Stamos, judgment of 19/05/2005, final on 19/08/2005
 34366/02 Stathoudaki and others, judgment of 10/02/2005, final on 10/05/2005
 42108/02 Tavlikou-Vosynioti, judgment of 09/06/2005, final on 09/09/2005
 16696/02 Theodoropoulos and others, judgment of 15/07/2004, final on 15/10/2004
 9673/03 Tsamou, judgment of 21/04/2005, final on 21/07/2005
 42320/02 Tsantiris, judgment of 01/12/05, final on 01/03/06
 5085/03 Tsaras, judgment of 04/08/2005, final on 04/11/2005
 13464/04 Tsiotras, judgment of 01/06/2006, final on 01/09/2006
 17965/03 Tzaggaraki and others, judgment of 26/01/2006, final on 26/04/2006
 72270/01 Vasilaki and others, judgment of 10/02/2005, final on 10/05/2005
 19431/02 Vayopoulou, judgment of 15/07/2004, final on 15/10/2004
 72267/01 Veli-Makri and others, judgment of 10/02/2005, final on 10/05/2005
 65501/01 Vergos, judgment of 24/06/2004, final on 24/09/2004
 27802/02 Vlasopoulos and others, judgment of 10/02/2005, final on 10/05/2005
 5076/03 Vozinos, judgment of 04/08/2005, final on 04/11/2005

- 5 cases of excessively length of proceedings before civil courts and the lack of an effective remedy

53401/99 **Konti-Arvaniti**, judgment of 10/04/03, final on 10/07/03
 77198/01 Athanasiou, judgment of 29/09/05, final on 29/12/05
 20898/03 Chatzibyrrros and others, judgment of 06/04/06, final on 06/07/06
 11720/03 Inexco, judgment of 27/04/06, final on 27/07/06
 3257/03 Sflomos, judgment of 21/04/05, final on 21/07/05

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)27

on judgments by the European Court of Human Rights concerning issues of reafforestation and violations of property rights in Greece in the cases:

- PAPASTAVROU AND OTHERS, judgments of 10 April 2003, final on 10 July 2003 and of 18 November 2004, final on 18 February 2005

- KATSOULIS AND OTHERS, judgments of 8 July 2004, final on 8 October 2004 and of 24 November 2005, final on 24 February 2006

(adopted by the Committee of Ministers on 7 June 2006, at the 966th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention");

Having regard to the judgments of the European Court of Human Rights delivered in the cases of Papastavrou and others, and Katsoulis and others, transmitted to the Committee of Ministers once they had become final under Articles 44 and 46 of the Convention;

Recalling that the case of Papastavrou and others originated in an application (No. 46372/99) against Greece, lodged with the European Commission of Human Rights on 6 October 1998 under former Article 25 of the Convention by twenty-five Greek nationals;

Recalling that the case of Katsoulis and others originated in an application (No. 66742/01) against Greece, lodged with the European Court of Human Rights on 6 December 2000 under Article 34 of the Convention by thirty-nine Greek nationals;

Recalling that in its respective judgments of 10 April 2003 and 8 July 2004, the Court unanimously held that there had been violations of Article 1 of Protocol No 1 to the Convention due to a decision by the Prefect of Athens in 1994 to reafforest plots of land possessed in good faith by the applicants (in pending domestic court proceedings the state has claimed property rights itself), thus confirming a 1934 ministerial decision to the same effect, without a fresh assessment of the situation described in the latter decision;

Recalling, furthermore, that the Court also found in the case of Katsoulis and others a violation of Article 6, paragraph 1, of the Convention on account of the excessive length of the proceedings before the Council of State (Supreme Administrative Court);

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Recalling that the obligation of all member states to abide by the judgments of the European Court of Human Rights in accordance with Article 46, paragraph 1, of the Convention involves an obligation to adopt rapidly individual measures in order to grant the applicants, to the extent possible, full redress for the violations found (*restitutio in integrum*), as well as to adopt without delay general measures, including, to the extent possible, interim measures, to stop ongoing violations of the Convention and to prevent the recurrence of violations similar to those found by the Court;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgments of 10 April 2003 and 8 July 2004, having regard to Greece's obligation under Article 46, paragraph 1, of the Convention to abide by them;

Whereas during the examination of the cases by the Committee of Ministers, the government of the respondent state gave the Committee information about interim and long-term general measures taken and under way in order to prevent new violations of the same kind as those found in the present judgments; this information appears in the appendix to this resolution;

Stressing, in particular, that the violations established in these cases have highlighted the problems inherent in the present absence of a functioning, up-to-date national forest register;

Noting, however, that the setting up of such a forest register is intimately linked to that of setting up also a functioning land register and that this latter situation is at the origin of a number of further violations established by the Court of Articles 6 of the Convention and 1 of Protocol No. 1 (see e.g. the Tsirikakis group of cases, judgment of 17 January 2002, final on 10 July 2002 and other similar cases);

Noting with concern the delay taken in setting up the national forest and land register foreseen since 1994, and stressing the need, in view of the problems caused by the present situation, to bring this project to an end as rapidly as possible;

Noting also the absence of any proposal to introduce through legislation, pending the completion of the forest register, a remedy capable of providing compensation for *bona fide* landowners affected by reforestation decisions and involved in lengthy litigation related to the recognition of the ownership of forests, as is the case with the applicants;

Noting, however, in this context the direct effect granted to the Convention and the Court's case-law in cases regarding reforestation and protection of individual land property rights, as was expressly affirmed in 2005 by the Plenary of the Court of Cassation (see Appendix) and awaiting information on the consequences of this development, particularly for the right of compensation;

Noting with interest that Greece has adopted certain general measures to accelerate proceedings before all administrative courts (see Final Resolution ResDH(2005)65 on Pafitis and others and 14 other cases against Greece, 18 July 2005) and that additional problems revealed by recent judgments of the Court (see e.g. Manios, judgment of 11/03/04) are being addressed by Greece under the Committee's supervision;

Underlining in this connection the importance attached to following up the Committee's 2004 Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" and the Recommendations referred to therein, in particular, Recommendation Rec(2004)5 to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention and Recommendation Rec(2004)6 on the improvement of domestic remedies¹;

ENCOURAGES the competent Greek authorities, in particular the Ministry of Environment, Urban Planning and Public Works, to intensify and accelerate their efforts to complete the national land and forest register;

ENCOURAGES the rapid development of a remedy capable of providing compensation for *bona fide* landowners such as the applicants, affected by reforestation decisions and involved in lengthy litigation related to recognition of the ownership of forests;

INVITES the Greek government to keep the Committee regularly informed of the progress of the national land and forest register project and of the other relevant developments of national law;

DECIDES to examine at one of its meetings, not later than at the end of the planned 2nd stage of the forest and land register reform, i.e. by December 2008, further progress achieved in the adoption of the general measures necessary effectively to prevent similar violations of Article 1 of Protocol No 1 to the Convention.

¹ See documents at: www.coe.int/t/cm.

Appendix to Interim Resolution ResDH(2006)27

*Information supplied by the Government of Greece
during the consideration of the cases of Papastavrou and others and Katsoulis and others
by the Committee of Ministers*

I. Introductory note

The government is aware of the present need to guarantee the long-term effectiveness of the European Convention system and has approached the execution problems raised in these cases, as indeed those raised in all cases presently pending before the Committee of Ministers for supervision of execution, in the light of the Committee's 2004 Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" and the different Recommendations mentioned therein, including Recommendation Rec(2004)5 to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the Convention and Recommendation Rec(2004)6 on the improvement of domestic remedies.

II. Individual measures

In both cases the European Court found that the applicants had suffered a "drastic limitation of their property's use"² and awarded them just satisfaction covering the pecuniary damage that had been caused. 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.

III. Interim and long-term general measures adopted and under way with a view to preventing similar violations of Article 1 of Protocol No 1 to the Convention

III.1 Interim measures – Direct effect granted to the Convention and the Court's case law

Both judgments (merits), immediately after their delivery, were translated and published on the website of the State Legal Council (www.nsk.gr). They have also been sent by the State Legal Council to the Ministry of Justice and to the Council of State. Further dissemination of both judgments to competent administrative authorities is currently envisaged, possibly with a circular explaining their practical implications for these authorities.

The Greek government notes that the effectiveness of these interim measures is corroborated by the fact that the Convention and the Court's case law enjoy direct effect in Greek law. In particular, the Plenary of the Court of Cassation, by its judgment no 21/2005 of 1 April 2005 (published in the widely-read Athens Bar journal *Nomiko Vima*, 2005, 1084-7) recognised and stressed the supra-statutory force of Article 1 of Protocol No 1 to the Convention in cases regarding reforestation and protection of individual land property rights.

The government does not exclude that a case-law development following this Supreme Court Plenary decision may provide for a possibility of reparation to *bona fide* landowners, such as the applicants, affected by reforestation decisions. The situation is being kept under supervision in order to ensure that the Court is not seised with unnecessary applications.

It is to be 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.

III.2 Long-term general measures under way - Progress report on the national land and forest register project

1. The Greek government stresses that the project of national land and forest register initiated in 1994 is a priority of national importance.

² See above-mentioned judgments (just satisfaction) in the cases of Papastavrou and others, §16 and Katsoulis and others, §21.

The project consists of four stages. Approximately 800 specialised companies have been involved in it collaborating with 300 law firms and 170 offices of forest experts. The procedure of land registration consists of 11 stages:

- Inclusion of an area in the register;
- Publication of the announcement of the register in the press and its notification to State and local administrative entities;
- Lodging of registration requests by the beneficiaries;
- Processing of the requests and drafting of register tables;
- Publication of the above tables;
- Possible lodging of objections by interested parties;
- Judgments on objections and amendment of register tables;
- Second publication of corrected tables;
- Lodging of objections against corrected tables;
- Judgments on the objections against corrected tables;
- Registration in the register.

2. 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:

(a) The first 10 years produced the groundwork by laying down guidelines facilitating the management of various land property problems in Greece (problems relating to public areas, forests, *usucapio*, non-registered land transactions etc);

(b) After the conclusion of the first stage, the legal and technical framework is in position to support the next stages. The human resources and the infrastructures already in place at state and private levels are capable of leading to the conclusion of the project;

(c) The delays encountered so far have been caused primarily by the lack of official forest maps and by the enormous volume of land ownership-related declarations submitted by natural or legal persons;

(d) 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).

3. 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 (item 1 above) laying down, in cases of objections, simpler administrative procedures and providing for the possibility of short, *ex parte* proceedings.

IV. 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

Greece has adopted a number of legislative and other measures with a view to accelerating proceedings before all administrative courts (see Final Resolution ResDH(2005)65 on Pafitis and others and 14 other cases against Greece, adopted on 18 July 2005). Additional problems in this field, including that of an effective domestic remedy against this kind of violations, have been highlighted in more recent judgments (see Manios group of cases) and are being addressed by the Greek authorities under the Committee's supervision. Such measures include in particular, provision of an effective domestic remedy in case of excessively lengthy judicial proceedings.

V. Conclusion

The Greek government believes that the measures above demonstrate the efforts that it has made with a view to fully executing the Court's present judgments, in accordance with Article 46, paragraph 1, of the Convention. The Greek authorities will continue to adopt measures to that effect and will keep the Committee of Ministers regularly informed of all new developments, in particular those relating to the completion of the national land and forest register.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)21 concerning the issue of conditions of detention in Greece, raised in the cases of DOUGOZ against Greece (judgment of 6 March 2001, final on 6 June 2001) and PEERS against Greece (judgment of 19 April 2001)

*(adopted by the Committee of Ministers on 7 April 2005,
at the 922nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention");

Having regard to the judgments of the European Court of Human Rights in the cases of Dougoz (judgment of 6 March 2001) and Peers (judgment of 19 April 2001) transmitted to the Committee of Ministers under Article 46 of the Convention for the supervision of their execution;

Recalling that these cases primarily concern the violations by Greece of Article 3 of the Convention due to degrading treatments suffered by the applicants, a Syrian and a British national respectively, during their detention in police detention centres or in a prison, in 1997-1998 and in 1994 respectively;

Recalling, in particular, that these violations were due to the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period of detention in such conditions in the Dougoz case and to poor sanitary conditions of the applicant's detention (no natural light or ventilation, absence of adequate toilet facilities) diminishing the applicant's human dignity in the Peers case;

Recalling furthermore that the Court also found in the case of Dougoz violations of Article 5 of the Convention on account of the applicant's unlawful detention pending expulsion and of the lack of judicial review of lawfulness of this detention; and in the case of Peers, a violation of Article 8 of the Convention due to the opening by prison administration of the applicant's correspondence with the former European Commission of Human Rights;

Recalling that the obligation of all member states to abide by the judgments of the European Court of Human Rights in accordance with Article 46, paragraph 1, of the Convention involves an obligation to adopt rapidly the individual measures necessary to erase the consequences of the violations of the applicants' rights, as well as to adopt without delay general measures to prevent the recurrence of violations similar to those found by the Court;

Stressing that the need to adopt such measures in the present cases is of particular concern in view of the nature of the violations of Article 3, revealing structural shortcomings in the Greek penitentiary system capable of leading to a number of new similar violations;

Drawing attention in this connection to the Committee's Recommendations and Declaration aimed at ensuring the long-term effectiveness of the European Court of Human Rights and improving the execution of its judgments (see, in particular, Rec(2004)4 to member states on the European Convention on Human Rights in university education and professional training and Rec(2004)6 on the improvement of domestic remedies);

Bearing also in mind the Committee of Ministers' Recommendation R(99)22 to the member states concerning prison overcrowding and prison population inflation, which contains in its Appendix particularly helpful guidelines to all member states;

Noting the information provided by Greece on the general measures taken or envisaged in response to the Court's judgments so as effectively to prevent new violations as those found in the present cases;

Welcoming the comprehensive legislative, regulatory and infrastructure measures adopted or being taken by Greece to improve the conditions of detention in both police facilities and prisons and also the professional training efforts undertaken;

Noting with satisfaction, in particular, the rapid measures adopted in respect of the detention facilities at issue in the present judgments;

Considering, however, that further measures are called for in this field to remedy the structural problems highlighted by the present judgments, thus preventing new, similar violations of Article 3 on account of detention conditions in Greece;

INVITES the competent Greek authorities, in particular the Ministry of Public Order and the Ministry of Justice, to continue and intensify their efforts to align the conditions of detention with the requirements of the Convention as set out in particular in the Court's judgments and to look into the question of ensuring the availability of effective domestic remedies;

ENCOURAGES in particular the Greek authorities rapidly to conclude the projects relating to the construction of new detention centres and prisons as reported to the Committee of Ministers;

INVITES the Greek government to keep the Committee informed of the implementation of these projects and of the practical effects of the measures adopted, in particular by providing statistics relating to the overcrowding and sanitary and health conditions in detention facilities;

DECIDES to examine at one of its meetings, not later than October 2006, further progress achieved in the adoption of the general measures necessary effectively to prevent this kind of violations of the Convention.

Appendix to Interim Resolution ResDH(2005)21

*Information supplied by the Government of Greece
during the consideration of the cases of Dougoz and Peers
by the Committee of Ministers*

Introduction

I. General measures in respect of the detention centres at issue

The Government recalls that in the case of Dougoz, the applicant was a foreign national who had been detained in two police detention centres (Drapetsona, Piraeus, and Alexandras Avenue, Athens, Police Headquarters) awaiting his expulsion, while, in the case of Peers, the applicant was also a foreign national, detained on remand in, *inter alia*, the segregation unit of the Delta Wing of Koridallou prison.

With regard to the police detention centres and the prison in question in these cases, the Government notes that: the Alexandras Avenue Police Headquarters is no longer used for the detention of aliens awaiting expulsion; also, the Drapetsona police detention centre has been refurbished to create the best possible conditions of hygiene and decent living for detainees; finally, with regard to Koridallou prison, the biggest prison in Greece, necessary maintenance work is carried out there on a regular basis.

II. Measures adopted to improve detention conditions in police detention centres

In order to avoid new, similar violations of the Convention, Greece has adopted more comprehensive legislative, regulatory and infrastructural measures.

A. Legislative and administrative reforms

New Code of Practice for Policemen

On 3 December 2004 Presidential Decree 254/2004 was promulgated containing the first Code of Practice for Policemen, which in particular obliges all policemen to:

- (a) Facilitate the access of persons in police detention to legal aid, to their relatives and, in cases of aliens, to their consular authorities;
- (b) Maintain detention conditions guaranteeing the safety, health and protection of the detainees' human dignity and to look to the separation of criminals from other detainees, men from women, minors from adults;
- (c) Take care of detainees' health and to make sure that in cases of emergency medical aid is promptly provided;
- (d) Prevent and promptly report, *inter alia*, any action that constitutes torture or another form of inhuman, cruel or degrading treatment or punishment.

Shortening detention prior to expulsion or deportation

As regards in particular aliens subject to expulsion or deportation as in the case of Dougoz, since the delivery of the European Court's judgments, coordinated efforts have been made by the competent authorities to shorten these persons' detention. In particular:

- (a) Diplomatic authorities are notified for the issue of passports and, when required, the Ministry of Foreign Affairs is requested to intervene with the consular authorities in Greece or the competent diplomatic authorities abroad;
- (b) In cases where, for different reasons, the issue of a passport by a consulate is not possible, and provided that the other conditions are met (air connection, agreement of an airline), the foreign citizen is provided with a Greek travel document for departure, as provided for by law;
- (c) Following the entry into force of Immigration Law 2910/2001 (Article 44, paragraph 3), detention may never exceed three months.
- (d) The regularisation procedures, since 1998, for illegal immigrants in Greece have substantially eased the overcrowding of detention facilities because many were released to submit their requests provided they met the conditions of the law.

B. Renovation and construction of new police detention facilities

The Hellenic Police Force Command has given specific instructions to all police services of the country for the refurbishment and maintenance of all detention facilities operating in public and privately leased buildings, as well as for the upgrading of existing detention facilities and the construction of future ones, so as to secure satisfactory detention, taking into account the European Court's judgment in the case of Peers and the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Moreover, new detention facilities have been built at many police stations, including the Athens airport and the police stations of Soufli, Egaleo, Ioannina and Ferres (Evros). A modern building is also currently under construction at Petrou Ralli Street, Athens (Attica Immigration Centre, of 25,000m²).

In accordance with Article 48 of Immigration Law 2910/2001, seven new detention centres for aliens subject to deportation or expulsion have also been created in eastern border areas of the country.

II. Measures adopted for the improvement of conditions of detention in prisons

A. Legislative reform

Subsequent to the facts in these cases, a new *Prison Code* entered into force on 24 December 1999 (Law 2776/1999), which codifies all laws previously in force and further enacts a number of progressive provisions with regard to the improvement of living conditions in prisons, the education and professional training of inmates, conditional release and social rehabilitation, having as its aim to

prevent inhuman treatment of prisoners in Greek prisons and, thus, violations similar to those found in the case of *Peers*. It also aims to improve relations between prisoners and penitentiary personnel, and to achieve the best administration of prisons and their effective supervision by the prosecutors and supervisors.

This Code has enacted the following *major general regulations*:

- (a) It establishes three new councils which take care of the prisoners' problems: the three-member Prison Board, the five-member Labour Board for prisoners, and the Disciplinary Board which also handles matters related to the leave of prisoners;
- (b) It facilitates prisoners' social rehabilitation after their release from prison through the creation of *Epanodos*, a private-law legal body, under the supervision of the Ministry of Justice;
- (c) It regulates the system of "work credits", whereby a prisoner who works may decrease the duration of imprisonment;
- (d) It significantly expands the circle of persons who may be entitled to visit a prisoner, other than those already provided for by the Code, subject to the authorisation of the Prison Board;
- (e) It establishes that prisoners may work for their own account, either in the prison or outside it;
- (f) It introduces semi-liberty centres, which will become fully operational once the first of the nine new prisons under construction is finished. The prisoners are thereby given the opportunity, if they fulfil the necessary requirements, to attend courses outside the prisons corresponding to all degrees of education;
- (g) It amends the composition and the functions of the Central Advisory Board on Prisons, a special advisory body to the Ministry of Justice. The membership of the Board has been increased to 11, as follows: five members of the academic teaching staff of the Greek higher education institutes (mainly lawyers); an expert in penitentiary, criminal or constitutional law; an expert in penology, prisoner psychology or the treatment of drug addicts; a district attorney to the Court of Appeal; the director general of penitentiary policy; the head of the supervision directorate; the health control inspector and the head of the social work service of the Ministry, all for a three-year term in office.

Furthermore, the 1999 Prison Code contains the following *major specific provisions*:

- (a) In the case of an illegal action or order against prisoners, the latter are entitled to address a written complaint to the Prison Board. Every letter or report is transmitted by the prison director within a period of three days; its content is confidential and it is kept in a special protocol book (Art. 6);
- (b) Young prisoners who attend continuous educational or vocational training programmes are allowed to remain in juvenile detention centres until the age of 25 (Art. 12);
- (c) Women offenders with young children are permitted to keep their children with them until the age of 3, in a separate area of the prison (Art. 13);
- (d) Special attention is provided for persons detained on remand in matters of medical treatment (Art. 15);
- (e) Besides the obligatory medical examination upon arrival at the prison, a medical examination is made every six months, or whenever a prisoner requests one (Art. 27);
- (f) The prisoner, or his/her legal representative, as well as the supervising district attorney and the competent prison administration may, if required, have access to the prisoner's medical file (Art. 28);
- (g) Any kind of medical or similar experiments on prisoners is prohibited, even if they consent thereto. Also, the confidentiality of their medical files is ensured (Art. 29);
- (h) Particular attention is given to prisoners' active participation in individual or artistic events and the creative use of their time, with a view to granting them special benefits (Art. 38);
- (i) Under the responsibility of the prison director, a post box of the Greek postal service is kept in a place accessible to prisoners, and the timely sending and delivery of cables or registered letters from and to prisoners is ensured (Art. 53);
- (j) A prisoner whose sentence has been commuted to a fine may ask the court to allow him or her to serve part of the sentence in prison (Arts. 63 and 64);
- (k) As far as disciplinary proceedings for petty ("A" class offences) are concerned, the presence of a lawyer during these proceedings is permitted (Art. 66);
- (l) A disciplinary petty offence is time-barred after six months following its commission (Art. 68);
- (m) Disciplinary penalties are not taken into account for the granting of regular leave and conditional release (Art. 69).

B. Construction of new prisons

There has been a long-term project of the Ministry of Justice for the improvement of detention conditions in prisons, especially for the elimination of overcrowding, a problem compounded in recent years by the presence of foreign national offenders, since nearly half of the prisoners are aliens of nearly 100 nationalities. Thus, although space is available for 5,300 prisoners, the inmate population stands at 8,600.

One of the most important ways of fighting overpopulation is the construction of new prisons, which will fulfil all requirements of secure living conditions for prisoners, and meet their needs in education and vocational training, with modern dormitories, classrooms, workshops, entertainment, etc. The Ministry of Justice has prepared, for that purpose, a building project for the construction of 17 new prisons in various regions of Greece and of 2 rehabilitation centres for drug addicts. The more than 3,000 places that will be added to those already existing will effectively put an end to the overcrowding of prisons and its consequences, once all the prisons under construction are completed.

Two of these buildings have been completed and are operative: the prison of Malandrinos and the centre for drug-addict rehabilitation in Eleona (Thebes). The first has a capacity of 280 inmates and is now operating in modern premises. The second is now also ready for operation, with the same capacity and with specialised personnel for drug addicts.

III. Other general measures adopted in response to the judgments

As regards the violations in the Dougoz case of Article 5, paragraphs 1 and 4, on account of the applicant's unlawful detention pending expulsion and of the lack of judicial review of lawfulness of this detention, an Inter-ministerial Decision 137954 (OJHR B 1255/16.10.2000) was issued under Aliens Law 1975/1991 to regulate aliens' detention and expulsion following a court order. According to this Inter-ministerial Decision, which expressly refers to Article 5, paragraph 1, of the Convention, the lawfulness of aliens' detention pending their expulsion ordered by a court may henceforth be challenged before a public prosecutor and courts.

As regards the violation of Article 8 in the Peers case, the Penitentiary Code introduced by Law 2776/1999 may now be regarded as providing sufficient safeguards for the protection of prisoners' correspondence. Its Article 53, paragraph 4, expressly forbids monitoring of prisoners' correspondence and any other form of communication, unless such monitoring is justified by reasons relating to national security or the examination of specially serious crimes. Article 53, paragraph 7 provides that in case where any kind of restriction of correspondence or communication is imposed, prisoners may appeal to the competent judge, in accordance with Law 2225/1994 on freedom of correspondence and communication.

Conclusion

The Greek government believes that all the above measures demonstrate its determination and the strenuous efforts that it has already made with a view to bringing the conditions of detention in Greece and procedural safeguards for the detainees fully in line with Convention requirements, as set out in the Court's judgments. The Greek authorities will continue to adopt measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(96)251 concerning the judgment of the European Court of Human Rights of 9 December 1994 in the case of STRAN GREEK REFINERIES and STRATIS ANDREADIS against Greece

*(Adopted by the Committee of Ministers on 15 May 1996
at the 564th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of Stran Greek Refineries and Stratis Andreadis delivered on 9 December 1994 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 13427/87) against Greece, lodged with the European Commission of Human Rights on 20 November 1987 under Article 25 of the Convention by a private limited Greek company, Stran Greek Refineries and its sole shareholder, Mr Stratis Andreadis ;

Recalling that the Commission declared admissible the complaints concerning the right to a fair trial, the length of the proceedings and the right to the peaceful enjoyment of possessions, complaints lodged following the annulment by legislative measure of an arbitration award of 27 February 1984, while the validity of this award, recognised by the courts of first instance and of appeal, was pending before the Court of Cassation ;

Recalling that the arbitration award had found fully justified certain claims for just satisfaction made by the company Stran, in so far as they did not exceed 116 273 442 Greek drachmas, US\$ 16 054 165 and 614 627 French francs ;

Recalling that the case was brought before the Court by the Commission on 12 July 1993 ;

Whereas in its judgment of 9 December 1994 the Court unanimously:

- held that there had been a violation of Article 6, paragraph 1, as regards the right to a fair trial
- held that there had been no violation of Article 6, paragraph 1, as regards the length of the proceedings
- held that there had been a violation of Article 1 of Protocol No. 1
- held that the respondent state was to reimburse the applicants, within three months, the amount of the debt established by the arbitration award, plus simple interest at 6% from 27 February 1984 to the date of the present judgment for pecuniary damage and to pay the sum of 125 000 pounds sterling for costs and expenses
- dismissed the remainder of the claim for just satisfaction

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention

Having invited the Government of Greece to inform it of the measures which had been taken in consequence of the judgment of 9 December 1994, having regard to Greece's obligation under Article 53 of the Convention to abide by it

Finding that the Government of Greece still has not paid the just satisfaction, notwithstanding the expiry of the time-limit set by the European Court of Human Rights in its judgment of 9 December 1994 (namely 9 March 1995);

Whereas, the Government of Greece has declared that, considering the size of the just satisfaction awarded to the applicants and the economic problems in Greece, it is not able to make immediate full payment,

Concluding that the modalities of payment envisaged by the Government of Greece cannot be considered to be in conformity with the obligations following from the Court's judgment,

Strongly urges the Government of Greece to proceed without delay to the payment of the amount corresponding to the value of the just satisfaction at 9 March 1995;

Decides accordingly, if need be, to resume consideration of the present case at each of its forthcoming meetings.

IRELAND

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2003)149 concerning the judgments of the European Court of Human Rights of 21 December 2000 (final on 21 March 2001) in the cases of QUINN and HEANEY and MCGUINNESS against Ireland

*(Adopted by the Committee of Ministers on 22 July 2003
at the 847th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgments of the European Court of Human Rights in the Quinn and Heaney and McGuinness cases delivered on 21 December 2000 and transmitted to the Committee of Ministers once they had become final under Article 44 of the Convention;

Recalling that the case originated in two applications (Nos. 36887/97 and 34720/97) against Ireland, lodged with the European Commission of Human Rights on 6 March 1997 and 17 January 1997 respectively under former Article 25 of the Convention by Mr Paul Quinn and Mr Anthony Heaney and Mr William McGuinness, Irish nationals, and that the Court, seised of the cases under Article 5, paragraph 2 of Protocol No. 11, declared admissible the complaint that Section 52 of the Offences Against the State Act 1939, had breached the applicants' rights to remain silent and not to incriminate themselves as well as the presumption of their innocence;

Whereas in its judgments of 21 December 2000 the Court, unanimously:

- held that there had been a violation of Article 6, paragraphs 1 and 2, of the Convention in respect of both cases in relation to the applicants' right to silence and their right not to incriminate themselves and in relation to the presumption of their innocence;
- held that no separate issue arose under Article 10 of the Convention in the Quinn case and Articles 8 and 10 in the Heaney and McGuinness case;
- held that the government of the respondent state was to pay, within three months, 4 000 Irish Pounds as regards non-pecuniary damage to each of the applicants and 11 341,08 Irish Pounds (inclusive any value-added tax) less 5 000 French Francs paid by the Court in legal aid (Quinn case) and 9 377,50 Irish Pounds (inclusive any value-added tax) less 5 000 French Francs paid by the Court in legal aid (Heaney and McGuinness) for costs and expenses and that simple interest at an annual rate of 8% should be payable from the expiry of the above-mentioned three months until settlement;
- dismissed, unanimously, the remainder of the claims for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgments of 21 December 2000, having regard to Ireland's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Whereas the government of the respondent state provided the Committee of Ministers with information about the general measures taken so far to this effect (this information appears in the appendix to this resolution);

Having satisfied itself that on 16 March 2001, within the time-limit set, the government of the respondent state paid the applicants the sum provided for in the judgments of 21 December 2000,

Declares, after having taken note of the information supplied by the Government of Ireland, that it has exercised its functions, as far as general measures are concerned, under Article 46, paragraph 2 of the Convention in this case,

Decides to resume consideration of this case, as far as individual measures are concerned, as soon as the judicial review proceedings brought by Mr Quinn before the Irish courts have ended or at the latest within one year from today.

Appendix to Interim Resolution ResDH(2003)149

*Information provided by the Government of Ireland
during the examination of the Quinn and Heaney and McGuinness cases
by the Committee of Ministers*

General Measures

Under the Good Friday Peace Agreement of 10 April 1998, reforms of the Offences against the State Acts 1939 – 1985 (subsequently extended to 1998) are envisaged. In this respect the Minister of Justice, Equality and Law Reform established a committee to examine all aspects of the 1939 Acts and to report to the Minister with recommendations for reform. The final report of the Review Group on the Offences against the State Acts was submitted to the Minister for Justice, Equality and Law reform in August 2002. The Report is available on the website of the Department of Justice, Equality and Law Reform.³

In Chapter VIII of the Report (pp 183 to 212), the problems raised under the Quinn and Heaney and McGuinness cases were extensively examined by the committee, which recommended, *inter alia*, that Section 52 of the 1939 Act and Section 2 of the 1972 Offences against the State Act (having amended the 1939 Act) be either modified (respecting the case-law of the European Court of Human Rights in this particular field) or repealed.

Section 52 of the 1939 Act reads as follows:

“1. Whenever a person is detained in custody under the provisions in that behalf contained in Part IV of this Act, any member of the Garda Síochána may demand of such person, at any time while he is so detained, a full account of such person’s movements and actions during any specified period and all information in his possession in relation to the commission or intended commission by another person of any offence under any section or sub-section of this Act or any scheduled offence.

2. If any person, of whom any such account or information as is mentioned in the foregoing sub-section of this section is demanded under that sub-section by a member of the Garda Síochána, fails or refuses to give to such member such account or any such information or gives to such member any account or information which is false or misleading, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to imprisonment for a term not exceeding six months.”

The Irish authorities are giving consideration to amending the existing section 52 of the 1939 Act and section 2 of the 1972 Act (having amended the 1939 Act), and have decided that the Garda Síochána are not to avail of Section 52 of the 1939 Act until the legislative issue is resolved.

³ (www.justice.ie at <http://www.justice.ie/80256976002CB7A4/vWeb/fsWMAK4Q7JKY>).

Furthermore, any uncertainty which existed concerning the admission into evidence of statements made under section 52 of the 1939 Act has been resolved by the judgment of 21 January 1999 of the Supreme Court in the case of *Re. National Irish Bank Ltd (No. 1)*.⁴ . In its judgment, the Supreme Court found that a confession of a bank official obtained by Inspectors as a result of the exercise by them of their powers under Section 10 of the Companies Act 1990 would not, in general, be admissible at a subsequent criminal trial of that official unless, in any particular case, the trial judge was satisfied that the confession was voluntary (see paragraph 28 of the judgments of the European Court in both cases). The Supreme Court considered that compelling a person to confess and then convicting that person on the basis of the compelled confession would be contrary to Article 38 of the Constitution.

In the Irish legal system, a judgment of the Supreme Court is part of the law of Ireland. It should be noted that the Supreme Court is the highest Court in the country. A judgment of the Supreme Court such as that given in the *National Irish Bank Ltd.* case must be applied by all criminal courts.

The position in Irish law now is that a statement obtained as a result of a statutory demand would be inadmissible in evidence where the trial judge decided that statement was not given voluntarily.

Furthermore, the European Convention on Human Rights Act 2003, which is now part of Irish law and will be brought into force by late 2003, will require the Irish courts to interpret and apply the law in a manner compatible with the Convention and to take due account of the case law of the Court in such interpretations and application.

Lastly, the judgments of the European Court are now accessible on the Irish Courts Service website (www.courts.ie) and are also available in legal libraries.

The Irish Government is of the opinion that the judgment of the Supreme Court in the *National Irish Bank Ltd.* case is in itself sufficient to prevent any future violation similar to those found by the Court, in its judgments of 21 December 2000, concerning Section 52 of the 1939 Act.

As far as individual measures are concerned, the Government suggests the postponement of the Committee of Ministers' examination of these cases, to the first meeting after the decision in the case of Quinn before the Irish courts has been rendered or at the latest within a period of one year.

⁴ which can be found at <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IESC/1999/18.html&query=National%20Irish%20Bank>.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

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

(Adopted by the Committee of Ministers on 4 April 2007, at the 992nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee shall supervise the execution of the final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”),

Considering the judgments listed in Appendix II, in which the Court found that the restrictions imposed on individuals' rights and freedoms in the context of bankruptcy proceedings violated various provisions of the Convention, in particular:

- the right to respect for correspondence (violations of Article 8);
- the right of freedom of movement (violations of Article 2 of Protocol No. 4);
- the right to the peaceful enjoyment of one's possessions (violations of Article 1 of Protocol No. 1);
- and
- the right to an effective remedy in respect these violations (violations of Article 13);
- the right of access to a court (violation of Article 6, paragraph 1);

Recalling the Court's finding that the need for these restrictions, which were not open to criticism in themselves diminishes with the passage of time so that the excessive length of bankruptcy proceedings upsets the balance between the individual interest of the bankrupt and the general interest of the creditors;

Recalling further that Court considered that the imposition of certain personal disqualifications resulting from the public registration of bankrupts was not necessary in a democratic society and ran counter to the respect of the right to private life (violations of Article 8);

Underlining states' obligation under the terms of Article 46, paragraph 1, of the Convention, to comply with the Court's judgments by adopting individual measures designed to put an end to the violations found, and to erase their consequences to ensure as far as possible *restitutio in integrum*, as well as general measures to prevent similar violations in the future;

Noting that many of the restrictions at issue originated from Royal Decree No. 267 of 16 March 1942 which imposed on declared bankrupts the supervision of their correspondence, the prohibition on leaving their place of residence without judicial authorisation as well as certain personal disqualifications and banned them from administering their property and from going to law with regard to such property;

Noting further that Decree No. 223 of 20 March 1967 by the President of the Republic, as amended by Law No. 15 of 16 January 1992 provided the suspension of bankrupts' electoral rights for five years following the declaration of their bankruptcy;

Noting however that the most intractable cause of the violations remains the structural problem of the excessive length of judicial proceedings in Italy;

Welcoming the reform brought in on 9 January 2006 by Legislative Decree No. 5/2006 which introduced new rules, lifting most of the restrictions previously imposed in bankruptcy proceedings, thus making good a number of the violations found by the Court (for more details, see Appendix I);

Noting with satisfaction that the restrictions on bankrupts have thus been lifted with immediate effect in all proceedings still pending, that the rules governing complaints against acts of liquidators and magistrates in bankruptcy matters have been effectively changed and that the suspension of their electoral rights and the personal disqualifications have also been lifted;

Noting that the reform also introduced measures to accelerate bankruptcy proceedings, the efficacy of which will be examined in the context of the general problem of the excessive length of proceedings;

Recalling in this respect that the general problem of the length of judicial proceedings continues to exist in Italy and also affects bankruptcy proceedings, leading in addition to violations of the requirement of reasonable time and other related violations(right to the peaceful enjoyment of possessions and right of access to a court);

Emphasising that the problem of the excessive duration of judicial proceedings, by dint of its persistency and scope, represents a concrete danger for the respect of the Rule of Law in Italy (see Interim Resolution ResDH(2005)114) and that Italy still has to comply with its obligation under the Convention to solve this structural problem which has given rise to so many, varied violations of the Convention since the 1980s;

Recalling that, in its last Interim Resolution on the subject, CM/ResDH(2007)2, the Committee of Ministers invited the Italian authorities to undertake interdisciplinary action involving all the major judicial actors and co-ordinated at the highest political level, to draw up a new, effective strategy to overcome this structural problem;

Also recalling its decision to resume consideration of the progress achieved setting up this strategy before 1 November 2008 and welcoming the Italian authorities' intention of co-operating closely and regularly with the Council of Europe Secretariat in this respect,

Noting with concern where individual measures are concerned all proceedings have been closed except for those in the case of S.C., V.P., F.C. and E.C which are still pending after 14 years, which means that certain effects of the violation of Article 1 Protocol No. 1 found by the Court remain,

INVITES the authorities to bring an end as soon as possible to the 14-year-old proceedings in the case of S.C., V.P., F.C. and E.C and to erase thus all remaining effects of the violations found by the European Court;

WELCOMES the 2006 reform of bankruptcy proceedings and its immediate effect in erasing many restrictions of rights and freedoms criticised in the Court's judgments;

DECIDES examine these cases in conjunction with those related to the more general problem of the excessive duration of judicial proceedings and to resume examination of the measures required in the context of its next examination of that problem which is scheduled for before 1 November 2008;

CALLS ON the Italian authorities and the Secretariat 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 the effects of the reform on the acceleration of bankruptcy proceedings.

* * *

Appendix I to Interim Resolution CM/ResDH(2007)27

Information provided by the Government on measures adopted to erase the consequences of the violations found by the Court and to prevent new, similar violations

Individual measures

Following the reform of 2006 (see General measures 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, means 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, that of S.C., V.P., F.C. and E.C., the length of the proceedings is not solely the fault of the authorities but also due to the conduct of the applicants which has obliged the liquidator to take measures to recover certain property fraudulently misappropriated from the property due to the creditors. However, the competent authorities are fully aware of the pressing need to accelerate these proceedings as far as possible.

General measures

1) Legislative measures adopted in 2006: Italy has reformed its bankruptcy law through Legislative Decree No. 5/2006, of 9 January 2006, which brought about a number of modifications to remedy the violations found, in particular:

- *Respect for correspondence:* (Article 48 of the Decree):

The bankrupt now receives all his correspondence and is obliged to transmit to the liquidator only communications concerning the bankruptcy proceedings, whereas beforehand all letters were diverted directly to the liquidator;

- *Freedom of movement:* (Article 49):

The only obligation remaining now the bankrupt is to inform the competent authorities of any change of residence, whereas formerly he could not leave his residence without authorisation;

- *Personal disqualifications* (Article 47):

The public bankruptcy register has been abolished.

- *Suspension of electoral rights* (Article 152):

The relevant provisions have been repealed.

- *Complaints against the acts or omissions of liquidators and magistrates* (Article 26 and 36 of the Decree):

This new rule, which abolished preventive supervision of correspondence, should also resolve the problem found by the Court concerning remedies. In any event, the new reform has improved remedies in that decisions must be given rapidly and in that omissions by the liquidator may be challenged.

- *Right to a trial within a reasonable time:*

According to information already provided by the government in the course of consideration of the cases of length of judicial proceedings, the recent reform of bankruptcy law has modified many specific rule governing bankruptcy to avoid opening proceedings where possible or otherwise to accelerate them by simplifying them and introducing deadlines and more efficient mechanisms.

2) Publication of the European Court's judgments: The judgments in Luordo and Bottaro have been published in Italian in the Ministry of Justice's Bulletin, No. 1 of 15 January 2004 and have been brought to the attention of the competent authorities. Certain judgments in this group of cases have been published on Italian legal websites (see: <http://www.dirittuomo.it/Corte%20Europea/Italia/2003/Fallito2003.htm>).

3) Questions still outstanding: Property rights, right to a court, excessive length of proceedings

For the duration of bankruptcy proceedings, the liquidator administers the property and is responsible before the courts for all questions relating to it. The reform did not cover this aspect because it is inherent in the very aim of the bankruptcy procedure. In this respect, the European Court underlined that such interference in the administration and representation of property was not to be called into question in itself but only insofar as they lasted too long. The origin of the violation is thus to be found in the excessive length of bankruptcy proceedings.

The government is thus of the view that the general measures which remain to be taken for compliance with the judgments in these cases are closely linked with those to be envisaged to overcome the general problem of the excessive length of judicial proceedings. The adoption of such measure, including setting up the new national strategy, will remain under the supervision of the Committee of Ministers in the framework of its role pursuant to Article 46, paragraph 2, of the convention (see Interim Resolution CM/ResDH(2007)2).

* * *

Appendix II to Interim Resolution CM/ResDH(2007)27

List of cases

32190/96	Luordo, judgment of 17/07/03, final on 17/10/03
56298/00	Bottaro, judgment of 17/07/03, final on 17/10/03
47778/99	Bassani, judgment of 11/12/03, final on 11/03/04
25513/02	Bova, judgment of 24/05/2006, final on 11/12/2006
17175/02	Calicchio and Urriolabeitia, judgment of 29/06/2006, final on 11/12/2006
21757/02	Campello, judgment of 06/07/2006, final on 06/10/2006
3649/02	Chiumiento, judgment of 29/06/2006, final on 11/12/2006
6597/03	Ciaramella Pietro, judgment of 06/07/2006, final on 11/12/2006
10644/02	Collarile, judgment of 08/06/2006, final on 08/09/2006
77986/01	Forte, judgment of 10/11/2005, final on 10/02/2006
3643/02	Francesca Carmine, judgment of 24/05/2006, final on 11/12/2006
3647/02	Francesca Cosimo, judgment of 24/05/2006, final on 11/12/2006
55984/00	Goffi, judgment of 24/03/2005, final on 06/07/2005
3653/02	La Frazia, judgment of 29/06/2006, final on 11/12/2006
3656/02	Marrone, judgment of 24/05/2006, final on 11/12/2006
42053/02	Matteoni, judgment of 08/06/2006, final on 08/09/2006
7774/02	Minicozzi, judgment of 24/05/2006, final on 11/12/2006
10399/02	Moretti Francesco, judgment of 24/05/2006, final on 11/12/2006
7503/02	Neroni, judgment of 20/04/2004, final on 10/11/2004
21120/02	Pantuso, judgment of 24/05/2006, final on 11/12/2006
39884/98	Parisi and 3 others, judgment of 05/02/04, final on 05/05/04
20662/02	Pernici, judgment of 24/05/2006, final on 11/12/2006
44521/98	Peroni, judgment of 06/11/03, final on 06/02/04
52985/99	S.C., V.P., F.C. and E.C., judgment of 6/11/03, final on 6/02/04
3641/02	Taiani Pio and Ermelinda, judgment of 20/07/2006, final on 20/10/2006
3638/02	Taiani Vincenzo, judgment of 13/07/2006, final on 13/10/2006
51703/99	Vadalà, judgment of 20/04/2004, final on 20/07/2004
29871/02	Vertucci, judgment of 29/06/2006, final on 11/12/2006
27394/02	Ziccardi, judgment of 08/06/2006, final on 08/09/2006

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

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

(adopted by the Committee of Ministers on 14 February 2007 at the 987th meeting of the Ministers’ Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2 of the Convention for the protection of Human Rights and Fundamental Freedoms (“the Convention”),

Considering the judgments of the European Court of Human Rights (“the Court”) finding violations of Article 1 of Protocol No. 1 to the Convention by Italy on account of the resort to what is known as “indirect expropriation”, a practice characterised by:

- emergency occupation of land by local administrative authorities pursuant to Law No. 85 of 1971, without any formal expropriation procedure, the occupation subsequently becoming irrevocable on account of the transformation of the property by the realisation of public works;
- the lack of clear and predictable rules covering the transfer of property and compensation;
- the absence of adequate mechanisms to afford redress, including the inadequacy of compensation awarded;

Recalling that the Committee of Ministers has been examining the problems at the origin of these violations and the means of solving them since 2000 in the framework of the execution of two judgments against Italy, namely the cases of Belvedere Alberghiera and Carbonara and Ventura, as well as many similar subsequent judgments (see appendix II);

Recalling the declarations by the Committee of Ministers as well as the Warsaw Summit underlining the importance of executing the Court’s judgments promptly, which is particularly necessary in cases like these which reveal structural problems and thus give rise to an influx of new applications before the Court;

Stressing states’ obligation under Article 46, paragraph 1, of the Convention to comply with the Court’s judgments by adopting individual measures to erase as far as possible the consequences of violations for the applicants (*l’ estitution in integrum*) as well general measures to put an end to any ongoing situation and avoid new, similar violations;

Having noted with interest that following the initial judgments related to this problem Italy adopted, through Presidential Decree No. 327 of 8 June 2001, a general “Consolidated Text” on expropriation, Article 43 of which authorised public authorities to issue formal deeds of expropriation which are valid for the future but also acknowledge the unlawfulness of such acquisitions in the past;

Noting in this respect that in the government’s view (see Appendix I) the new procedure will constitute a break with the practice of indirect expropriation and will rule out any undue interference by the administration with property rights as recognised by the Convention, provided it is correctly and consistently implemented.

Underlining that the Court noted contradictory applications found in past case-law as well as contradictions between case-law and statute law, including the Consolidated Text (see judgment in the case of Prenna and Others of 9 February 2006, paragraphs 40-43, 65);

Supporting the government’s firm intention to do everything in its power to bring procedures in this area into complete conformity with the obligations flowing from the Convention and the Court’s judgments (see appendix I);

Welcoming the recent case-law of the Italian Council of State (Decision No. 2 of 2005) which contains some provisions needed to sanction unlawful action by administrative authorities and secure the return of property to its owner irrespective of any transformation carried out;

Being of the opinion that this case-law must be followed by the Italian judiciary and further developed in order to overcome the remaining points of uncertainty inherent in Article 43 of the "Consolidated Text";

Welcoming generally the increasing efforts made by the senior Italian Courts to give direct effect to the Court's judgments and the government's will to have this direct effect consolidated and strengthened at every level of the Italian judicial and administrative systems;

Convinced that the measures taken or to be taken in national law must result in adequate and effective redress which complies with the requirements of the Convention as embodied in the Court's case-law;

Considering that redress mechanisms must also, to the fullest possible extent, allow victims of violations already found by the European Court to be fully compensated, given that the Court has systematically reserved the question of just satisfaction, leaving it initially to the Italian authorities to provide such reparation;

Noting with satisfaction the new law which aims to discourage resort to indirect appropriation by providing a right to oblige responsible administrations to cover the cost of reparation due following the finding of a violation by the European Court (Article 1, paragraph 1217, of Law No. 296 of 2006);

Being of the view that this law will further contribute to preventing public authorities from benefiting from their own unlawful acts,

ENCOURAGES the Italian authorities to continue their efforts and rapidly take all further measures needed to bring an end definitively to the practice of "indirect expropriation" and to ensure that any occupation of land by the public authority complies with the requirement of legality as required by the Convention;

INVITES the authorities to ensure that redress mechanisms are rapid, efficient and able to the fullest possible extent of discharging the Court of its function under Article 41 of the Convention;

DECIDES to continue supervision of the measures required by the Court's judgments and to resume consideration of the cases at issue in the light of the progress achieved, at the latest at their second human rights meeting in 2008.

Appendix I

Information provided by the Italian government to the Committee of Ministers in the context of the supervision of judgements of the Court concerning indirect expropriation in Italy

Through Presidential Decree No. 327 of 8 June 2001 (modified in 2002 and in force since 30 June 2003), introducing a general Consolidated Text on expropriation, Italy has improved the procedures for expropriation in the public interest.

Article 2 of this Consolidated Text provides that each expropriation must be carried out according to law; Articles 20 *et seq* require that expropriation proceedings are based on respect for the rules in force.

Thus, in general and besides exceptional, urgent public works, authorities may no longer occupy property unless or until they own it.

Article 43 authorises the public authority to issue "deeds of expropriation", valid *ex nunc*. Such deeds do not regularise past illegalities, but rather define the situation with reference to the future, guaranteeing a just balance between the public interest (which must be particularly important and is subject to the strict supervision of a magistrate) and that of the individual, who is entitled to receive,

within a reasonable time and in addition to reimbursement of the market value of the property, overall damages in respect of the prejudice sustained up until the date of issue of the deed.

The *travaux préparatoires* of the Consolidated Text explicitly show that the aim of this article is to rule out indirect expropriation so as to give full effect to the relevant judgments rendered by the European Court of Human Rights since 2000.

The recent provisions and decisions have not yet been examined in depth by the European Court which has so far gone no further than declaring that indirect expropriation should not be regarded as a valid alternative to a proper expropriation procedure, referring in doing so to the parallel declaration by the Council of State contained in the decision mentioned above (see the Prenna judgment, §§43-66).

The prime competence for ensuring respect of Article 43 lies with the magistrates of administrative tribunals, one of whose institutional roles is to protect the interests of individuals against illicit acts by public authorities (see decision No. 191 of 2006 of the Constitutional Court).

The higher administrative courts in Italy, which are competent for disputes concerning the application of Article 43, have already interpreted the article in the light of the requirements of the Convention as they flow from the European Court's judgments (Council of State, Plenary Assembly, decision No. 2 of 2005; Sicilian Regional Council of Administrative Justice, decisions Nos. 934 of 2005 and 440 and 442 of 2006).

In the government's view, the procedure provided by Article 43 might fulfil the requirements of the Convention provided that it is interpreted along the following lines:

1. The application and interpretation of Article 43 must be clear, consistent and predictable so as to embody the relevant discretionary powers of the state and thus satisfy the Convention's requirement relating to the *quality* of the law;
2. The procedure provided by Article 43 is not an alternative to the ordinary procedure provided for expropriation and thus is not generally applicable: on the contrary it is an exceptional measure to be used only in case of demonstrably urgent public interest;
3. Formal acquisition must be established promptly and only by the relevant public administrative authority;
4. If no acquisition is thus established, under Article 43, the property must be promptly restored;
5. Under no circumstance may acquisition of property be considered automatic on the grounds that public works or other transformations have been carried out;
6. The procedure must, as far as possible, be applied to all cases of illicit occupation even if this came about before the entry into force of the Consolidated Text.

The government is encouraging all national authorities to apply the Consolidated Text in this way so as to comply with its obligations under the Convention and the Court's judgments, i.e., to redress the violations committed and to prevent further similar violations. The government considers that the direct effect recently given to the Court's judgments by the higher Italian courts in various fields of jurisdiction establishes the conditions needed in order to satisfy the Convention's requirements through application of the Consolidated Text. The government encourages and supports the broadest possible extension of the direct effect of the Court's judgments in Italian law.

Beyond the Consolidated Text, another significant measure has been taken to discourage public authorities from having recourse to indirect expropriation: Law No. 296 of 2006 (Article 1, paragraph 1217) provides that damages awarded to individuals in respect of illegal occupation of land are covered by the budget of the public authority responsible. The law also provides the possibility for the public authority concerned to sue the individual official at the origin of the illegal act. The government takes the view that that this measure will not fail to contribute to preventing violations similar to those found in the cases at issue.

Appendix II – List of cases

31524/96	Belvedere Alberghiera S.R.L., judgment of 30/05/00, final on 30/08/00 and of 30/10/03 final on 30/01/04
41040/98	Acciardi and Campagna, judgment of 19/05/2005, final on 12/10/2005
71603/01	Binotti, judgment of 13/10/2005, final on 13/01/2006
63632/00	Binotti, judgment of 17/11/2005, final on 17/02/2006
20236/02	Capone, judgment of 06/12/2005, final on 06/03/2006
62592/00	Capone, judgment of 15/07/2005, final on 30/11/2005
24638/94	Carbonara and Ventura, judgment of 30/05/00 and judgment of 11/12/03
63861/00	Carletta, judgment of 15/07/2005, final on 30/11/2005
63620/00	Chiro' and 3 others No. 1, judgment of 11/10/2005, final on 11/01/2006
65137/01	Chiro' and 3 others No. 2, judgment of 11/10/2005, final on 11/01/2006
67196/01	Chiro' and 3 others No. 4, judgment of 11/10/2005, final on 11/01/2006
67197/01	Chiro' and 3 others No. 5, judgment of 11/10/2005, final on 11/01/2006
65272/01	Chiro' Dora No. 3, judgment of 11/10/2005, final on 11/01/2006
63296/00	Colacrai No. 1, judgment of 13/10/2005, final on 13/01/2006
63868/00	Colacrai No. 2, judgment of 15/07/2005, final on 30/11/2005
63633/00	Colazzo, judgment of 13/10/2005, final on 13/01/2006
71175/01	De Pasquale, judgment of 13/10/2005, final on 13/01/2006
176/04	De Sciscio, judgment of 20/04/2006, final on 20/07/2006
44897/98	Di Cola, judgment of 15/12/2005, final on 15/03/2006
64111/00	Dominici, judgment of 15/11/2005, final on 15/02/2006
63242/00	Donati, judgment of 15/07/2005, final on 30/11/2005
19734/92	F.S. No. 1, Interim Resolution DH(98)209 of 10/07/98
63864/00	Fiore, judgment of 13/10/2005, final on 13/01/2006
9119/03	Genovese, judgment of 02/02/2006, final on 03/07/2006
16041/02	Giacobbe and others, judgment of 15/12/2005, final on 15/03/2006
35941/03	Gianni and others, judgment of 30/03/2006, final on 30/06/2006
60124/00	Gravina, judgment of 15/11/2005, final on 15/02/2006
18791/03	Grossi and others, judgment of 06/07/2006, final on 06/10/2006
58858/00	Guiso-Gallisay, judgment of 08/12/2005, final on 08/03/2006
35638/03	Immobiliare Cerro S.a.s., judgment of 23/02/2006, final on 23/05/2006
62876/00	Istituto Diocesano Per Il Sostentamento Del Clero, judgment of 17/11/2005, final on 17/02/2006
20935/03	Izzo, judgment of 02/03/2006, final on 02/06/2006
63240/00	La Rosa and 3 others No. 6, judgment of 15/07/2005, final on 30/11/2005
58119/00	La Rosa and Alba No. 1, judgment of 11/10/2005, final on 11/01/2006
58386/00	La Rosa and Alba No. 3, judgment of 15/11/2005, final on 15/02/2006
63238/00	La Rosa and Alba No. 4, judgment of 13/10/2005, final on 13/01/2006
63239/00	La Rosa and Alba No. 5, judgment of 11/07/2006, final on 11/10/2006
63241/00	La Rosa and Alba No. 7, judgment of 17/11/2005, final on 17/02/2006
63285/00	La Rosa and Alba No. 8, judgment of 15/07/2005, final on 15/10/2005
56578/00	Lanteri, judgment of 15/11/2005, final on 15/02/2006
12912/04	Lo Bue and others, judgment of 13/07/2006, final on 13/10/2006
61211/00	Maselli No. 2, judgment of 11/07/2006, final on 11/10/2006
63866/00	Maselli, judgment of 13/10/2005, final on 13/01/2006
43663/98	Mason and others, judgment of 17/05/2005, final on 12/10/2005
36818/97	Pasculli, judgment of 17/05/2005, final on 12/10/2005
69907/01	Prenna and others, judgment of 09/02/2006, final on 09/05/2006
14793/02	Sciarotta and others, judgment of 12/01/2006, final on 12/04/2006
43662/98	Scordino No. 3, judgment of 17/05/2005, final on 12/10/2005
67790/01	Scozzari and others, judgment of 15/12/2005, final on 15/03/2006
67198/01	Serrao, judgment of 13/10/2005, final on 13/01/2006
77822/01	Serrilli, judgment of 06/12/2005, final on 06/03/2006
77823/01	Serrilli Pia Gloria and others, judgment of 17/11/2005, final on 17/02/2006
213/04	Ucci, judgment of 22/06/2006, final on 22/09/2006
12894/04	Zaffuto and others, judgment of 13/07/2006, final on 13/10/2006

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)56 concerning the right to an effective remedy against monitoring of prisoners' correspondence and other restrictions imposed on prisoners' rights – general measures in the cases of MESSINA No. 2 (judgment of 28 September 2000, final on 28 December 2000) and 2 other cases against Italy

*(Adopted by the Committee of Ministers on 5 July 2005
at the 933rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No; 11 (hereinafter referred to as “the Convention”);

Having regard to the judgments of the European Court of Human Rights delivered between September 2000 and February 2005 and transmitted to the Committee of Ministers once they had become final under Articles 44 and 46 of the Convention;

Recalling that the case originated in three applications (Nos. 25498/94, 41576/98 and 60915/00 respectively) lodged against Italy with either the European Commission of Human Rights under former Article 25 of the Convention or the European Court of Human Rights under Article 34 between 22 December 1993 and 25 November 1999 by three Italian nationals;

Recalling that these cases concern:

- a violation of Article 8 of the Convention (in the case of Messina No.2) on the grounds that the interference with correspondence was not “in accordance with the law” as the domestic legislation allowed too wide a latitude in imposing monitoring of correspondence and deciding its duration; and
- violations of Articles 13 or 6 due to the lack of effective domestic remedies or access to a court to challenge restrictions imposed, under Article 41bis of Law 354/1975, through derogations from the ordinary prison regime (such as restrictions to family visits, access to media, etc.);

Stressing that the obligation of all states to abide by the judgments of the European Court of Human Rights in accordance with Article 46, paragraph 1, of the Convention involves an obligation to adopt rapidly general measures to prevent the recurrence of violations similar to those found by the Court;

Recalling that the problem at the basis of the violation of the right to respect of correspondence as guaranteed by Article 8 of the Convention was remedied through a change of legislation in April 2004 (see Final Resolution ResDH(2005)55 concerning Calogero Diana against Italy and other cases);

Noting that the finding of violations of Articles 6 and 13 in the present cases have highlighted three main shortcomings of the effectiveness of the judicial review of the decisions imposing a special penitentiary regime or prolonging such regime or, since the aforementioned April 2004 reform, ordering monitoring of correspondence (see Final Resolution mentioned above):

- the systematic failure by domestic courts to comply with the statutory ten-day time-limit for rendering decisions on applications for judicial review;
- the fact that the Minister of Justice was not bound by any previous judicial decisions when prolonging restrictions;
- the case-law of domestic courts according to which applications for judicial review are inadmissible if the impugned restrictions have expired;

Noting the Court of Cassation's recent case-law (judgment 4599/2004) that affirmed prisoners' right to have their applications for judicial review decided upon even where the restrictions have expired;

Noting furthermore that Law 279/2002 provided that the Minister of Justice must give a specific justification for re-imposing the special penitentiary regime if his previous decision to that effect has been totally or partially quashed in judicial review proceedings;

Noting with satisfaction that these developments have gone a long way towards solving the problems identified by the European Court;

Noting nonetheless with concern that the problem of slowness of this judicial review remains and that the statutory ten-day time limit is systematically not respected by domestic courts, which usually take several months to decide on prisoners' complaints;

Considering that this situation impedes the effectiveness of domestic remedies and recalling, in this connection, the Court's finding that this systematic failure to comply with the statutory time-limit has practically nullified the impact of judicial review of the decisions imposing restrictions on prisoners' rights;

Stressing therefore the need to examine further solutions to this problem so as to prevent new violations of the Convention similar to those here at issue;

Bearing in mind the Committee's Declaration of 12 May 2004 on the long-term effectiveness of the European Court of Human Rights, not least by improving the execution of its judgments, the action plan adopted at the Council of Europe's Third Summit (Warsaw, 16-17 May 2005) and Recommendation Rec(2004)6 to member states on the improvement of domestic remedies;

Noting with interest the Italian authorities' ongoing reflection on setting up reasonable time-limits for judicial review of prisoners' complaints in conformity with the Court's judgments and establishing appropriate procedures ensuring their strict respect by domestic courts;

Noting furthermore, with satisfaction, the government's encouragement of the development of the direct effect of the European Court's judgments in Italy with a view to preventing violations of the Convention,

CALLS UPON the Italian authorities rapidly to adopt the legislative and other measures necessary to ensure prompt and effective judicial review of decisions ordering derogations from the ordinary prison regime or ordering restrictions on prisoners' right to correspondence;

ENCOURAGES all Italian authorities, and in particular the courts, to grant direct effect to the European Court's judgments so as to prevent new violations of the Convention, thus contributing to fulfilling Italy's obligations under Article 46 of the Convention;

DECIDES 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.

Appendix to Interim Resolution ResDH(2005)56
concerning the right to an effective remedy against monitoring of prisoners' correspondence and other restrictions imposed on prisoners' rights – general measures in the cases of Messina No.2 (judgment of 28 September 2000, final on 28 December 2000), Ganci (judgment of 30 October 2003, final on 30 January 2004) and Bifulco (judgment of 8 February 2005, final on 8 May 2005) against Italy

Information provided by the Italian Government concerning the appeals against decisions imposing the special penitentiary regime according to Article 41-bis of Law 354/1975 or monitoring of prisoners' correspondence

The government acknowledges the problem of systematic failure to respect of the statutory 10-day time-limit for judicial review of prisoners complaints against imposition of the special prison regime or monitoring of their correspondence.

The main stages of the procedure as it is currently conducted in practice are as follows:

1. The appeal must first be registered at the registry of the detention centre; it may not be lodged directly with the Sentence Execution Court.
2. Upon receipt of the appeal, the Court registry must create a file containing all documents relating to the case.
3. Then a hearing must be scheduled. In practice there must be a certain number of cases to be heard together in order to guarantee the presence of the appellants. As they are appellants in vinculis, either the judges with their assistants must be transported to the detention centre or the detainees must be transported from prison to court. In either case, this implies a burdensome and costly operation: prisoners need to be transported under special escort in secure vehicles. Even a video-conference system, which could replace the physical presence of the detainee, requires specialised equipment and personnel. In conclusion, given the large number of appeals, courts attempt to group hearings so as to satisfy the requirement of justice for all, even though the resources available are not sufficient. Moreover, as there is no time-limit for lodging such appeals, they may always be lodged anew, even if there is nothing new to be challenged.
4. After hearing date has been set, it must be notified to the detainee who must be given a reasonable time (no less than ten days) to prepare his defence.
5. In the course of the hearing, it may be necessary to collect other pieces of evidence, possibly at the initiative of the detainee.
6. Finally, decisions of Sentence Execution Courts must be in writing and reasoned, which naturally requires time.

The discrepancy between the present procedure and the statutory ten-day time-limit provided for by Law 354/1975 for judicial review is evident. This is also confirmed by recent (February 2005) statistics of four Sentence Execution Courts (Ancona, Bologna, Florence and Turin), according to which the duration of this judicial review, in practice, ranges from 45 days to four months.

The government is currently examining (particularly in the context of its general examination of the problem of excessive length of proceedings) different ways in which this problem could be solved. The authorities will seek a reasonable compromise between, on the one hand, the need to respect prisoners' procedural guarantees as described above, and on the other, the requirement of promptness imposed by the Convention. The government has been considering, in particular, setting more reasonable time-limits for judicial review of prisoners' complaints in conformity with the Court's judgments and establishing appropriate procedures to ensure their strict respect by domestic courts.

In the meantime, the Government has noted with great interest the efforts made by a number of courts which increasingly grant direct effect to the Convention and the European Court's judgments (see Final Resolution ResDH(2005)55 in Calogero Diana and other cases) and is confident that all courts will continue this development in accordance with Italy's obligations under the Convention to abide by the judgments (Article 46§1).

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)72 concerning the failure to enforce judicial eviction orders against tenants in Italy (IMMOBILIARE SAFFI, judgment of 28 July 1999 and other cases)

*(Adopted by the Committee of Ministers on 8 December 2004
at the 906th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”),

Having regard to the judgments of the European Court of Human Rights (see Appendix II) transmitted to the Committee of Ministers under Articles 44 and 46 of the Convention, which concern repeated violations by Italy of Article 6 (right to a hearing) of the Convention and Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) given the applicants' inability to recover their properties because of the prolonged failure to enforce domestic judgments ordering the eviction of tenants;

Recalling that the failure to enforce the court orders in these cases was the result either of legislation suspending or staggering enforcement or simply of the applicants' inability to obtain assistance from the police and that no satisfactory remedies were available to enable the applicants to establish the state's liability and obtain compensation for delays in, or lack of, enforcement;

Whereas the large number of violations found by the Convention organs since 1997 (140) and the even larger number of similar cases resolved in friendly settlements before the Court (160) reveal the existence of a serious and persistent structural problem;

Recalling that the obligation of all states to abide by the judgments of the European Court of Human Rights in accordance with Article 46, paragraph 1, of the Convention involves an obligation to adopt individual measures to erase the consequences of the violations of the applicants' rights, as well as general measures to prevent the recurrence of violations similar to those found by the Court;

Underlining that the need to adopt such measures is all the more pressing given the time that has elapsed since the first violations in this respect were found and drawing attention in this connection to the Committee's Resolutions and Declarations aimed at ensuring the long-term effectiveness of the European Court of Human Rights and improving the execution of its judgments (see, in particular, Res(2004)3);

Having considered the information provided by Italy on the measures taken to date (see appendix I to this resolution);

Noting with concern that, in spite of the legislative reforms adopted in 1998, the underlying problems which led to these cases have not been resolved, as demonstrated by the continuing stream of new applications to the Court and the fresh violations it continues to find on a systematic basis;

Noting with interest that a domestic remedy implemented under the “Pinto Law” in principle allows for some degree of compensation for delays in enforcement and may therefore improve, if only temporarily, the situation of the landlords concerned;

Regretting, however, that the absence of a general solution to the underlying problem means that Italy is still obliged to continue passing legislation suspending the enforcement of eviction orders issued in landlords' favour and that such suspension of enforcement has again been extended to 31 October 2004 for certain categories of tenants in major cities (Legislative Decree no. 240/2004 of 13 September 2004);

Underlining, in particular, that this new legislative decree suspending enforcement came three months after the ruling by the Italian Constitutional Court of 28 May 2004 warning against fresh legislation suspending the enforcement of eviction orders, which would be incompatible with the constitutional requirement for proceedings to be of a reasonable length;

Deploring the fact that, even in the cases where the European Court of Human Rights has found violations, a number of applicants have still not been able to recover their properties and that the failure to enforce court orders issued in their favour has persisted for many years;

Recalling, as stated by the Court, that failure by the authorities to execute the judgments of the domestic courts is likely “to lead to situations incompatible with the principle of the rule of law which the

Contracting States undertook to respect when they ratified the Convention”⁵;

Recalling that it therefore falls to the Italian state to find the necessary solutions for safeguarding the interests of vulnerable tenants without persistently violating landlords’ legitimate right under the Convention to have the eviction orders issued in their favour by the Italian courts enforced;

URGES the Italian authorities to put an end without delay to the violations of the Convention found by the European Court in those cases where the applicants continue to be faced with the failure to execute domestic judgments and are therefore unable to recover their properties (see cases indicated in bold type in Appendix II);

WELCOMES the recent ruling by the Italian Constitutional Court dated 28 May 2004 underlining the serious human rights issues likely to be raised by the legislation suspending enforcement and encourages the Italian authorities to step up their efforts to give full effect in Italy to the Convention and the judgments of the European Court;

CALLS ON the Italian Government to give priority to resolving the underlying structural problems which led to the violations found in these cases with a view to meeting its obligations under the Convention without further delay;

Consequently ENCOURAGES the Italian authorities:

- to adopt effective measures to remedy the problems in the housing sector, in particular in densely populated cities, without, however, having recourse to legislation preventing enforcement;
- to make sure that the police are employed in a timely manner to enforce eviction orders;
- to adopt legislative or other measures to make sure that the authorities and officials actually comply with final court judgments;
- to strengthen the system of remedies in respect of failure to enforce court orders so as to enable all injured parties to establish the state’s liability and obtain promptly satisfactory compensation for the losses caused by such failure;

CALLS ON the Government to keep the Committee informed of the progress made on each of the above points and the practical effects of the measures adopted, in particular by supplying statistics on trends in the number of eviction orders not enforced;

ASKS the Government to ensure that this Resolution is widely disseminated in Italian to Parliament, the relevant government departments and the courts so as to draw their attention to their obligations under the Convention and the judgments of the European Court;

DECIDES to continue monitoring the execution of the judgments in question until such time as Italy complies with them and to resume consideration of the progress made in one year at the latest.

⁵ Hornsby v. Greece, judgment of 19 March 1997, paragraph 40.

Appendix I to Interim Resolution ResDH(2004)72

*Information supplied by the Government of Italy
during the consideration of the cases listed below
by the Committee of Ministers*

In order to avoid fresh violations of the Convention because of the prolonged failure to enforce eviction orders:

1) A law was passed in December 1998 (**Law no. 431/98 “Regulation on renting and vacation of dwellings”**), laying down, *inter alia*, the conditions, procedures and enforcement deadlines for eviction orders.

- Under this law, it is now the judicial authority (*Tribunale*) rather than the administrative authority (*Prefetto*) which rules on landlords' right to obtain assistance from the police with the enforcement of eviction orders: the court order setting the date of the eviction authorises the bailiff to seek police assistance in enforcing the eviction.
- Once the court has set a date for enforcement of the eviction order, the tenant can make a single application for an extension of up to six months. The date of the eviction may be deferred by up to a maximum of eighteen months if the tenant is aged 65 years or over, has five or more dependent children, is registered on a “mobility list” (*lista di mobilità*) following redundancy, is receiving unemployment benefit or an allowance in lieu of salary, is the formally recognised tenant of low-cost accommodation or is the owner of a dwelling under construction or of a dwelling occupied by tenants against whom eviction proceedings are in progress. This extension also applies if the tenant or a member of his/her family who has been living with him/her for at least six months has a disability or is terminally ill. Applications for stays of enforcement must be examined by the courts within eight days.
- The law also sets out provisional regulations concerning eviction orders that were already enforceable when it entered into force. In particular, these have enabled eviction proceedings to be terminated in cases where agreement was reached between landlords and tenants on renegotiated leases. As a result, although the number of eviction orders enforced remained relatively stable between 1997 and 2002, with an average of approximately 18 000 a year, the number of applications for enforcement of eviction orders fell by 23.64% from 1998 to 1999, ie from 126 011 to 96 219, and the number of eviction proceedings also fell from 50 226 in 1997 to 37 610 in 2002.
- The law also includes measures to increase the supply of rented accommodation so as to make it easier for evicted tenants to find new dwellings.
- In addition, on 24 September 2001, the Constitutional Court declared unconstitutional a provision in Law no. 431/98 which restricted the right to have eviction orders enforced when landlords were not in compliance with their fiscal obligations (judgment no. 333/01).

2) The question of whether the frequent use of legislative measures suspending the enforcement of eviction orders was constitutional was also referred to the **Constitutional Court**. In judgment No. 155/2004 (28/05/2004), the Constitutional Court ruled that the legislative suspension of tenant evictions could be justified provided that it was only applied for a limited period. It also ruled that, if the Italian parliament passed fresh measures of this kind after 30 June 2004 (the date of the last legislative extension of the suspension of evictions), such measures would be unconstitutional and in breach of the requirement for proceedings to be of a reasonable length.

3) With regard to **measures to compensate landlords in the event of the delayed enforcement of eviction orders**:

- On 22 July 1999 (judgment No. 500/99), the Court of Cassation ruled that compensation could be paid for losses resulting from unlawful decisions by the authorities, for instance in the event of police assistance with the enforcement of eviction orders being refused on unlawful grounds.
- When the enforcement of eviction orders is suspended or deferred by law or by a court ruling, landlords are entitled to the payment of the rent with a 20% surcharge plus any requisite adjustment for inflation (Law no. 61/1989). Under rulings by the Constitutional Court on 25 October 2000 (judgment no. 482/00) and by the Court of Cassation on 7 November 2002

(judgment no. 15621), this compensation may be adjusted upwards by the courts to take account of the loss actually suffered by landlords (who must provide evidence thereof) for any period during which failure to enforce the eviction orders was not based on the law but was the result of the conduct of the tenants. In judgment no. 13628 of 22 July 2004, the Court of Cassation further stipulated that the evidence of the loss actually suffered could be based on presumptions, for instance the possibility of letting the property for a higher rent.

- Further to Court of Cassation judgment No. 11046/02 of 18 June 2002 (confirmed in a Court of Cassation judgment of 22 October 2002), landlords are also entitled to compensation from the state for unreasonable delays in the enforcement of eviction orders, under the "Pinto Law" (No. 89/01). The latter already provides for compensation in the event of unreasonable length of court proceedings in violation of Article 6, paragraph 1 of the European Convention on Human Rights. In judgment No. 11046/02, the Court of Cassation ruled that the "Pinto Law" was also applicable in cases where violations of the right to proceedings of a reasonable length resulted from "legislative choices that could lead to the length of proceedings being less than reasonable", in violation of the European Convention on Human Rights.

4) Since June 2001, the Italian Ministry of the Interior has been in contact with the other relevant departments with a view to identifying more effective supplementary measures at administrative and legislative level, in particular concerning the simplification of procedures.

5) Since November 2003, the Ministry of Infrastructure and Transport has instructed its legislative office to study possible measures for striking a better balance between the protection of the public interest and the rights of landlords.

6) Moreover, the judgment in the Immobiliare Saffi case was published in the legal journal, *Rivista internazionale dei diritti dell'uomo*, No. 1/2000, pp. 252-265.

The Government will naturally keep the Committee of Ministers informed of any developments concerning the above issues, in particular concerning increases in the supply of rented accommodation and the proceedings before the Constitutional Court regarding the constitutionality of the present situation.

Appendix II to the Interim Resolution ResDH(2004)72

List of cases affaires (total number: 140)

The cases for which the authorities have not put an end to the violations found by the European Court appear in bold)(

22774/93	Immobiliare Saffi, judgment of 28/07/99
66441/01	A.G. No. 4, judgment of 09/10/03, final on 09/01/04
22534/93	A.O., judgment of 30/05/00, final on 30/08/00
20177/92	Aldini, Résolution intérimaire DH(97)413 du 17/09/97
30878/96	Alfano, judgment of 11/12/03, final on 11/03/04
38011/97	Aponte, judgment of 17/04/03, final on 17/07/03
35550/97	Auditore, judgment of 19/12/02, final on 19/03/03
66920/01	Battistoni, judgment of 31/07/03, final on 31/10/03
64258/01	Bellini, judgment of 29/01/04, final on 29/04/04
64098/00	Bellini Franco No. 2, judgment of 11/03/2004, final on 11/06/2004
37110/97	Bertuccelli Marco, judgment of 04/12/03, final on 04/03/04
65413/01	Bonamassa, judgment of 02/10/03, final on 02/01/04
62849/00	Brienza, judgment of 16/10/03, final on 16/01/04
34999/97	C. Spa, judgment of 03/04/03, final on 03/07/03
35428/97	C.T. No. 2, judgment of 09/01/03, final on 09/04/03
63947/00	Calosi, judgment of 16/10/03, final on 16/01/04
61665/00	Calvanese and Spitaletta, judgment of 04/12/03, final on 04/03/04
59636/00	Calvo, judgment of 11/03/2004, final on 11/06/2004
28724/95	Capitanio, judgment of 11/07/02, final on 11/10/02H46-801
45006/98	Capurso, judgment of 03/04/03, final on 03/07/03

* In the other cases, the applicants recovered their apartments between 1992 and 2003, i.e. between 4 and 17 years after the eviction decisions had been issued.

48842/99 Carbone Anna, judgment of 22/05/03, final on 22/08/03
 31925/96 Carignani, judgment of 11/12/03, final on 11/03/04
 35777/97 Carloni and Bruni, judgment of 09/01/03, final on 09/04/03
 34819/97 Cau, judgment of 15/11/02, final on 15/02/03
 56717/00 Cavicchi and Ruggeri, judgment of 30/10/03, final on 30/01/04
 34412/97 Ciccariello Franca, judgment of 09/01/03, final on 09/04/03
 30879/96 Ciliberti Raffaele, judgment of 15/11/02, final on 15/02/03
 36268/97 Clucher No. 2, judgment of 17/04/03, final on 24/09/03
 45356/99 Conti Lorenza, judgment of 10/07/03, final on 03/12/03
 63938/00 Cucinotta Rosario and Giovanni, judgment of 30/10/03, final on 30/01/04
 32589/96 D.V. No. 2, judgment of 15/11/02, final on 15/02/03
 61667/00 D'Aloe and others, judgment of 13/11/03, final on 13/02/04
 33113/96 D'Ottavi, judgment of 17/07/03, final on 17/10/03
 37117/97 De Benedittis, judgment of 17/04/03, final on 17/07/03
 59634/00 De Gennaro, judgment of 31/07/03, final on 31/10/03
 41427/98 Del Beato, judgment of 03/04/03, final on 03/07/03
 36254/97 Del Sole, judgment of 17/07/03, final on 17/10/03
 37511/97 Di Matteo, judgment of 11/12/03, final on 11/03/04
 34658/97 E.P. No. 4, judgment of 09/01/03, final on 09/04/03
 30883/96 Esposito Paola, judgment of 19/12/02, final on 19/03/03
 58413/00 Fabbri, judgment of 04/12/03, final on 04/03/04
 48145/99 Fabi, judgment of 17/04/03, final on 17/07/03
 63523/00 Federici C. and L., judgment of 09/10/03, final on 09/01/04
 62764/00 Federici Mario and others, judgment of 04/12/03, final on 04/03/04
 39735/98 Fegatelli, judgment of 03/04/03, final on 03/07/03
 63408/00 Ferroni Rossi, judgment of 31/07/03, final on 31/10/03
 60464/00 Fezia and others, judgment of 31/07/03, final on 31/10/03
 33909/96 Fiorani, judgment of 19/12/02, final on 19/03/03
 34454/97 Fleres, judgment of 19/12/02, final on 19/03/03
 32577/96 Folli Carè, judgment of 15/11/02, final on 15/02/03
 33376/96 Folliero, judgment of 19/12/02, final on 19/03/03
 48171/99 Fossi and Mignolli, judgment of 04/03/04, final on 04/06/04
 31740/96 G. and M., judgment of 27/02/03, final on 27/05/03
 43580/98 G.G. No. 6, judgment of 03/04/03, final on 09/07/03
 22671/93 G.L. No. 4, judgment of 03/08/00, final on 03/11/00
 59635/00 Gamberini Mongenet, judgment of 06/11/03, final on 06/02/04
 59454/00 Gatti and others, judgment of 31/07/03, final on 31/10/03
 63417/00 Gelsomini Sigeri S.r.L., judgment of 18/12/03, final on 18/03/04
 32662/96 Geni Srl, judgment of 19/12/02, final on 19/03/03
 53233/99 Ghelardini and Brunori, judgment of 09/10/03, final on 09/01/04
 28272/95 Ghidotti, judgment of 21/02/02, final on 21/05/02
 31663/96 Giagnoni and Finotello, judgment of 19/12/02, final on 19/03/03
 62842/00 Giuliani, judgment of 04/12/23, final on 04/03/04
 63514/00 Giunta, judgment of 04/12/03, final on 04/03/04
 32006/96 Gnecchi and Barigazzi, judgment of 15/11/02, final on 15/02/03
 32374/96 Guidi I. and F., judgment of 19/12/02, final on 19/03/03
 32766/96 Immobiliare Sole Srl, judgment of 19/12/02, final on 19/03/03
34442/97 Indelicato Antonio, judgment of 06/11/03, final on 06/02/04
 64151/00 Kraszewski, judgment of 31/07/03, final on 31/10/03
 32392/96 L. and P. No.1, judgment of 15/11/02, final on 15/02/03
 33696/96 L. and P. No. 2, judgment of 19/12/02, final on 19/03/03
 32542/96 L.B. No. 3, judgment of 15/11/02, final on 15/02/03
 41610/98 L.M. No. 7, judgment of 03/04/03, final on 03/07/03
 62020/00 La Paglia, judgment of 31/07/03, final on 31/10/03
 63336/00 Lari, judgment of 09/10/03, final on 09/01/04
 52071/99 Leonardi Anselmo, judgment of 04/12/03, final on 04/03/04
 60659/00 Lerario, judgment of 04/12/03, final on 04/03/04
 64254/01 Liguori, judgment of 11/12/03, final on 11/03/04
 36149/97 Losanno and Vanacore, judgment of 17/04/03, final on 17/07/03
 21463/93 Lunari, judgment of 11/01/01, final on 11/04/01

32391/96 M.C. No. 11, judgment of 19/12/02, final on 19/03/03
31923/96 M.P., judgment of 19/12/02, final on 19/03/03
42343/98 Malescia, judgment of 03/04/03, final on 03/07/03
31548/96 Maltoni, judgment of 15/11/02, final on 15/02/03
60388/00 Marigliano, judgment of 31/07/03, final on 31/10/03
35088/97 Marini E., C., A.M., R. and S., judgment of 09/01/03, final on 09/04/03
31129/96 Merico, judgment of 15/11/02, final on 15/02/03
58408/00 Miscioscia, judgment of 31/07/03, final on 31/10/03
61995/00 Montanari, judgment of 11/03/2004, final on 11/06/2004
58191/00 Mottola, judgment of 22/05/03, final on 22/08/03
62848/00 Nicolai, judgment of 27/11/03, final on 27/02/04
35024/97 Nigiotti and Mori, judgment of 17/04/03, final on 17/07/03
24650/94 P.M. No. 1, judgment of 11/01/01, final on 5/09/01
34998/97 P.M. No. 2, judgment of 17/04/03, final on 17/07/03
15919/89 Palumbo, judgment of 30/11/00, final on 01/03/01
37008/97 Pannocchia, judgment of 17/04/03, final on 17/07/03
46161/99 Pepe Giuseppa, judgment of 17/04/03, final on 17/07/03
60431/00 Petitta, judgment of 04/12/03, final on 04/03/04
63543/00 Petrini Fernando, judgment of 27/11/03, final on 27/02/04
59273/00 Picone, judgment of 11/03/2004, final on 11/06/2004
57635/00 Poci, judgment of 04/12/03, final on 04/03/04
60391/00 Pollifrone, judgment of 11/03/2004, final on 11/06/2004
59367/00 Pozzi, judgment of 04/12/03, final on 04/03/04
59539/00 Pulcini, judgment of 17/04/03, final on 17/07/03
67412/01 Ragone, judgment of 02/10/03, final on 02/01/04
67796/01 Recchi, judgment of 04/12/03, final on 04/03/04
32385/96 Ricci Onorato, judgment of 17/07/03, final on 17/10/03
55388/00 Rispoli, judgment of 30/10/03, final on 30/01/04
50293/99 Robba, judgment of 09/10/03, final on 09/01/04
36249/97 Rosa Massimo, judgment of 17/04/03, final on 17/07/03
55725/00 Rosati, judgment of 17/07/03, final on 17/10/03
30530/96 Rossi Luciano, judgment of 15/11/02, final on 15/02/03
59538/00 Sabatini and Di Giovanni, judgment of 02/10/03, final on 02/01/04
32644/96 Sanella, judgment of 19/12/02, final on 19/03/03
59537/00 Savio Delfino, judgment of 16/10/03, final on 16/01/04
31012/96 Savio, judgment of 19/12/02, final on 19/03/03
56924/00 Scalera, judgment of 13/11/03, final on 13/02/04
61282/00 Scamaccia, judgment of 04/12/03, final on 04/03/04
63414/00 Scaravaggi, judgment of 04/12/03, final on 04/03/04
33227/96 Scurci Chimenti, judgment of 19/12/02, final on 19/03/03
58607/00 Serafini, judgment of 16/10/03, final on 16/01/04
47703/99 Serni, judgment of 09/10/03, final on 09/01/04
65120/01 Siena Antonio, judgment of 11/03/2004, final on 11/06/2004
64449/01 Soc. De.ro.sa., judgment of 04/12/03, final on 04/03/04
40465/98 Sorrentino Prota, judgment of 29/01/04, final on 29/04/04
61666/00 Spalletta, judgment of 04/12/03, final on 04/03/04
31223/96 T.C.U., judgment of 15/11/02, final on 15/02/03
23424/94 Tanganelli, judgment of 11/01/01, final on 11/04/01
47758/99 Tassinari, judgment of 16/10/03, final on 16/01/04
62000/00 Tempesti Chiesi and Chiesi, judgment of 31/07/03, final on 31/10/03
62844/00 Todaro, judgment of 04/12/03, final on 04/03/04
35637/97 Tolomei, judgment of 09/01/03, final on 09/04/03
33252/96 Tona, judgment of 15/11/02, final on 15/02/03
33204/96 Tosi, judgment of 15/11/02, final on 15/02/03
33692/96 Traino, judgment of 17/07/03, final on 17/10/03
30972/96 V.T., judgment of 15/11/02, final on 15/02/03
66373/01 Vietri, judgment of 04/12/03, final on 04/03/04
48730/99 Voglino, judgment of 22/05/03, final on 22/08/03
36377/97 Zannetti, judgment of 17/04/03, final on 17/07/03
35006/97 Zazzeri, judgment of 19/12/02, final on 19/03/03

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)71 concerning the judgment of the European Court of Human Rights of 2 August 2001, final on 12 December 2001, in the case of GRANDE ORIENTE D'ITALIA DI PALAZZO GIUSTINIANI against Italy

*(Adopted by the Committee of Ministers on 8 December 2004
at the 906th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of Grande Oriente d'Italia di Palazzo Giustiniani against Italy, handed down on 2 August 2001, which became final on 12 December 2001, in which the Court found a violation of Article 11 of the Convention, on the grounds that Section 5 of Law No. 34 passed by the Marches Region in 1996 required candidates for public office in the Marches Region to declare that they were not members of the freemasons, and that this interference was unnecessary in a democratic society and moreover unjustified in view of the nature of the public posts mentioned in appendices A and B to the law;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the Italian Government to inform it of the measures taken pursuant to the judgment of 2 August 2001, having regard to Italy's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling that the obligation for all member states to abide by the judgments of the Court includes the obligation promptly to adopt general measures effectively to prevent new violations similar to those found in the Court's judgments, as well as individual measures to put an end to the violations found and to erase their consequences as far as possible;

Noting that three years after the Court's judgment, the legal provisions at the origin of the violation of Article 11 of the Convention are still in force and that no appropriate measure has yet been presented to prevent similar violations in the future, for example by revoking the provision concerned or its applicability to the posts referred to in appendices A and B to the law, or replacing it with a more general provision not aimed specifically at freemasons but making it the duty of persons holding public office to refrain from any act incompatible with the exercise of such office;

Noting that as long as the requisite measures are not adopted the applicant association continues to be affected by the violation of Article 11 found by the Court,

Urges the competent Italian authorities to take the necessary measures to guarantee the rights enshrined in Article 11 of the Convention concerning appointment to certain posts in the Marches Region.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(2002)58
concerning the judgment of the European Court of Human Rights
of 23 July 1996 (final on 23 October 1996)
in the case of P.G. II against Italy – Application No. 22716/93

*(Adopted by the Committee of Ministers on 16 April 2002
at the 792nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of former Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”), as applicable to cases decided before the entry into force of Protocol No. 11,

Having regard to its decision of 28 January 1997 in the P.G. II case against Italy (Application No. 22716/93 - Interim Resolution DH (97) 18), finding a violation of the applicant's right to respect for his private life, guaranteed by Article 8 of the Convention;

Considering that this violation resulted from the rigidity of Italian bankruptcy law (Royal Decree No. 267 of 16 March 1942), which does not allow, under any circumstances, to rehabilitate of a person declared bankrupt before a minimum 5-year term has expired and that the applicant in this case was accordingly refused an earlier rehabilitation, in spite of the particular and objectively unfavourable circumstances surrounding his bankruptcy in 1985;

Having regard to the Rules concerning the application of Article 46, paragraph 2, of the Convention, which apply also to cases decided under former Article 32 before the entry into force of Protocol No. 11 to the Convention;

Considering that High Contracting Parties have the legal obligation to take the necessary measures to comply with their obligation to abide by decisions establishing violations of the Convention, notably by preventing new violations of the Convention similar to those found;

Regretting that, since the finding of a violation in this case in January 1997, no measure has been taken yet in order to make the present bankruptcy law more flexible and thus allow for exceptions, subject to judicial supervision, in special cases like the one here at issue;

Noting however that, in January 2002, the Legislative Office of the Italian Ministry of Justice transmitted the decision in the P.G. II case to the President of a Commission responsible for drafting new bankruptcy legislation, pointing out the necessity of incorporating, in the draft, provisions that will allow Italy to comply with the obligations resulting from the Committee of Ministers' decision in this case;

Invites the Italian authorities to adopt without further delay the necessary measures in order to prevent new violations similar to that found in this case,

Decides to resume consideration of this case, as far as general measures are concerned, once the new legislation has been adopted or, at the latest, at its first meeting in 2003.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2001)178 concerning MONITORING OF PRISONERS' CORRESPONDENCE IN ITALY – Measures of a general character

*(Adopted by the Committee of Ministers on 5 December 2001
at the 775th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgments delivered by the European Court of Human Rights in the Diana Calogero and Domenichini cases on 15 November 1996, in the Labita case on 6 April 2000, in the Messina Antonio case on 28 September 2000 (final on 28 December 2000), in the Rinzivillo case on 21 December 2000 (final on 21 March 2001) and in the Natoli case on 9 January 2001;

Recalling that in these cases the Court notably found violations of Article 8 and, in some cases, of Article 13 of the Convention on account of the lack of clarity of the Italian law on monitoring of prisoners' correspondence (law No. 354/75), which leaves the public authorities too much discretion, particularly in respect of the duration of monitoring measures and the reasons justifying such measures, authorises the monitoring of correspondence with the organs of the European Convention on Human Rights and provides for no effective remedy against decisions ordering the monitoring of correspondence;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention, which also apply to cases brought before the Committee of Ministers prior to the entry into force of Protocol No. 11 to the Convention;

Having invited the government of the respondent state to inform it of the measures taken subsequent to the aforesaid judgments, bearing in mind Italy's obligation to abide by them under Article 46, paragraph 1, of the Convention;

Considering that the High Contracting Parties are required rapidly to take measures necessary to this end, in particular by preventing further violations of the Convention similar to those established by the Court in its judgments;

Considering that the Respondent Government have given the Committee of Ministers the information appended to the present resolution with regard to the measures taken so far for this purpose;

Notes with satisfaction the interim measures taken by the Government in order to prevent, as far as possible, new violations of the Convention awaiting the legislative amendments, the judgment of the Constitutional Court of 8-11 February 1999 confirming the necessity to change the legislation and the Presidential Decree of 30 June 2000 prohibiting the censorship of all correspondence addressed by a detainee to international organisations working for the protection of human rights;

Notes, however, that, in spite of the time that has lapsed, the shortcomings with regard to the clarity of the Italian law on the monitoring of prisoners' correspondence, including the absence of effective remedies, have still not been remedied as the draft law prepared to this effect could not be adopted before the change of the legislature in April 2001;

Notes nevertheless with satisfaction that the new Italian Government is preparing a new draft law and has undertaken to submit it rapidly to Parliament,

Urges the Italian authorities rapidly to adopt the legislative reform required to ensure fully that Italian law complies with the Convention on the points raised by the Court;

Decides to resume examination of these cases in the context of measures of a general character once the process of amending law No. 354/75 has been completed or, at the latest, at its first meeting in 2003.

Appendix to Interim Resolution ResDH(2001)178

Information supplied by the Italian Government during the examination by the Committee of Ministers of the measures of a general character to be adopted in cases concerning the monitoring of prisoners' correspondence

Considering that in the light of the nature of the violations found by the Court in the judgments here in question, these violations could not be remedied through a development of the case-law of the Italian courts, the Italian Government engaged in 1997 a legislative reform. This reform aims at bringing law No 354/75 on prison administration in line with the Convention so as to solve the problem of the absence of a legal basis for the control of prisoners' correspondence in Italy and that of the absence of effective remedies against the control carried out.

The absence of remedies has, subsequently, also been held to be a violation of the Constitution of Italy by the Italian Constitutional Court in a judgment of 8-11 February 1999, No. 26, notably because of the inviolable character of human rights.

In 1999 the Government presented to Parliament a Bill (No. 4172/S) amending Articles 18 and 35 of law No. 354/75 in order to circumscribe the power of control of prisoner's correspondence and to introduce effective remedies. These amendments could, however, not be adopted before the change of legislature in April 2001.

In order rapidly to ensure, in this situation, that Italy will respect its obligation under Article 46, paragraph 1, of the Convention, the new Government undertakes to submit a new Bill to Parliament as soon as possible. A draft bill is already prepared and is presently being examined by the Legislative Office of the Ministry of Justice.

In this context, the Government finds it important to point out that, in parallel with these legislative initiatives, interim measures were taken to inform the competent judicial and administrative authorities of the requirements of Article 8 of the Convention, as established in the case-law of the European Court of Human Rights, concerning the monitoring of prisoners' correspondence with a view to remedying at least in part the shortcomings in Italian law.

Thus, on 31 March 1999, the Penal Affairs Department of the Ministry of Justice adopted a circular letter to prison directors stipulating, inter alia, that requests for authorisation to monitor correspondence must be made for six-month periods, subject to renewal on request.

In addition, the Directorate of Criminal Affairs of the Ministry of Justice sent out a circular letter to the courts dated 26 April 1999 (No. 575), drawing attention to the importance of the judicial authorities responsible for the monitoring of prisoners' correspondence taking into account the principles laid down by the European Court of Human Rights in order to avoid further findings of violations against Italy. Particular attention was called to the need to provide adequate reasons when authorising the monitoring of correspondence and to ensure that measures be limited in time, in order to guarantee regular review of the need for monitoring.

Both of the above circulars also banned the censorship of correspondence sent by prisoners to the Convention organs, but this particular problem was subsequently resolved at the legislative level by the new regulations governing prison establishments which came into force on 6 September 2000 (Presidential decree - D.P.R. - No. 230 of 30 June 2000, published in Official Gazette No. 131/L on 22 August 2000). Article 38§11 of the new regulations henceforth prohibits all censorship of correspondence sent by prisoners to international organisations working for the protection of human rights.

In order to facilitate the reforms necessary and the taking into account of the Court's judgments in the practice of the Italian courts and administrative authorities, the "law" part of the Domenichini judgment was translated and published already in 1997 notably in the Italian legal journal *Rivista internazionale dei diritti dell'uomo* (1997, vol. II, p. 119-124) and the Labita and Messina judgments were translated and published respectively in editions 1-2 and 6, 2000, of *Documenti Giustizia*, a legal journal published by the Ministry of Justice (also accessible on the Internet at the following address :

www.ipzs.it/Pubblicazioni_ministeri/Min_giustizia/Documenti_giustizia/).

The Italian Government considers that, in view of these measures and decisions, Italy has partially and provisionally, complied with its obligations under Article 46, paragraph 2, of the Convention, and invites the Committee of Ministers to resume examination of these questions as soon as the process of amending law No. 354/75 has been completed or, at the latest, at the first meeting of the Committee of Ministers in 2003.

➤ Dorigo Paolo against Italy

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)85 DORIGO PAOLO against Italy (violation of the right to a fair trial) (Application No. 33286/96) Interim Resolutions DH(99)258, DH(2002)30 and DH(2004)13

*(Adopted by the Committee of Ministers on 12 October 2005,
at the 940th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of former Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”),

Having regard to its decision of 15 April 1999 (Interim resolution DH(99)258) under former Article 32 of the Convention in the case Dorigo Paolo finding a violation of the right to a fair trial guaranteed by Article 6 of the Convention on account of the applicant's conviction in 1993 on the basis of statements made before the trial by three “repented” co-accused, the applicant not having been allowed to examine these statements or to have them examined, in conformity with the law which was then in force until 1997; and

Recalling that, given the serious doubt that this violation shed on the outcome of those proceedings and the absence of any action on the part of the Italian authorities to erase the serious consequences which have resulted for the applicant, the Committee has adopted the following interim resolutions:

- ResDH(2002)30 noting that the absence of means to reopen the proceedings at issue has made it impossible fully to rectify the serious and ongoing consequences of this violation and encouraging the Italian authorities promptly to adopt new legislation in conformity with the principles set out in its Recommendation Rec(2000)2 on reopening and
- ResDH(2004)13 noting that the legislative process had not yet borne fruit and strongly urging the Italian authorities to ensure that measures making it possible to erase the consequences of the violation for the applicant in this case should be adopted quickly;

Deploring the fact that, more than six years after the finding of the violation in this case, the Italian authorities have taken no measure to erase as far as possible the consequences of the violation (*restitutio in integrum*) and that alternative solutions such as a presidential pardon, have proved fruitless;

Noting accordingly that reopening of the proceedings at issue remains the best means of ensuring the *restitutio in integrum* in this case;

Aware in this connection that, since 2001 and 2005 respectively, bills to this effect have been pending before the Italian Parliament but that at present the first of these bills excludes the Dorigo case from its field of application whilst the second, despite its broader scope, contains no transitional disposition explicitly establishing its applicability to this case,

FIRMLY RECALLS the obligation of all authorities concerned to ensure the adoption of appropriate measures in favour of the applicant and **CALLS** for prompt adoption of legislation authorising the re-examination of the Dorigo case at domestic level under conditions in conformity with the Convention;

DECIDES to continue to examine this case at each of its “Human Rights” meetings until such time as Italy respects its obligations under the Convention.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)13

DORIGO PAOLO against Italy, application No. 33286/96, Interim Resolutions DH(99)258 of 15/04/99 (finding of a violation) and DH(2002)30 of 19/02/02 (Reopening of judicial proceedings in violation of the European Convention of Human Rights)

(Adopted by the Committee of Ministers on 10 February 2004 at the 871st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of former Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to its decision of 15 April 1999 (Interim resolution DH(99)258) under former Article 32 of the Convention in the case Dorigo Paolo finding a violation of the right to a fair trial guaranteed by Article 6 of the Convention on account of the applicant's conviction in 1993 on the basis of statements made before the trial by three "repented" co-accused, the applicant not having been allowed to examine these statements or to have them examined, in conformity with the law which was then in force until 1997; and

Having also regard to its Interim Resolution ResDH(2002)30, taking note of the fact the absence of means to reopen the impugned proceedings has made it impossible fully to rectify the serious and continuing consequences of the violation found;

Stressing the obligation of every state to abide by the decisions adopted under former Article 32 of the Convention, not least by adopting individual measures putting an end to the violations found and removing as far as possible their effects for the victims;

Recalling that, in the Interim Resolution ResDH(2002)30 mentioned above, the Italian authorities were encouraged to ensure the rapid adoption of new legislation in conformity with the principles in its Recommendation of 19 January 2000, No. R(2000)2 to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

Stressing that a legislation in conformity with the principles contained in that Recommendation should allow the re-examination of proceedings notably where:

- "(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and
- (ii) the judgment of the Court leads to the conclusion that
 - (a) the impugned domestic decision is on the merits contrary to the Convention, or
 - (b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of";

Noting that the draft law to introduce the possibility of such reopening in Italy, currently before the Senate, goes to some extent beyond the requirements of Recommendation No. R(2000)2 in that it foresees no distinction between Article 6 violations which affect the fairness of proceedings to such an extent as to cast serious doubt on their outcome and those which do not, and in that it takes no account of the seriousness of the consequences suffered;

Noting nonetheless with concern that the draft law would not apply to violations on the merits or to those which, as in the Dorigo Paolo case, occur before its entry into force and concern convictions for particularly serious offences;

Aware of the fact that the repression of crimes particularly dangerous to security in a democratic society calls for great severity and justifies special caution, but also that these requirements cannot justify either non-compliance with the obligation to rectify violations found by the Convention's organs or any inequality of treatment between convicted persons to the extent that they are deprived of the enjoyment of guaranteed rights such as the right to a fair trial or to the presumption of innocence ;

Persuaded that a fair balance between these different demands can be struck in accordance with Recommendation No. R(2000)2 ;

Strongly urges the Italian authorities, without further delay, to ensure the adoption of measures allowing for the consequences for the applicant in this case to be erased, in accordance with Italy's obligations under former Article 32 of the Convention.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2002)30

Reopening of judicial proceedings in violation of the European Convention of Human Rights in cases of F.C.B. against Italy, judgment of the European Court of Human Rights of 28 August 1991 and DORIGO against Italy, Interim Resolution DH(99)258

*(Adopted by the Committee of Ministers on 19 February 2002
at the 783rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to its decision of 15 April 1999¹ under former Article 32 of the Convention in the Dorigo case and to the judgment of the European Court of Human Rights of 28 August 1991 in the F.C.B. case², both establishing violations of the right to a fair trial guaranteed by Article 6 of the Convention;

Recalling the obligation of every State, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, notably by adopting, where necessary, individual measures putting an end to the violations found and removing as far as possible their effects for the victims;

Having regularly invited the Government of Italy to inform it of the measures taken by the Italian authorities to comply with the abovementioned obligation;

Noting that, so far, the absence of means to reopen the impugned proceedings has made it impossible fully to rectify the serious and continuing consequences of the violations found;

Noting with satisfaction that legislative work is under way in order to secure Italy's ability to abide by the decisions in the above-mentioned cases;

Noting, in this context, the Government's undertaking to ensure that the new provisions will be applicable also to cases decided by the Committee of Ministers itself;

Noting, furthermore, that the Italian authorities could, in the course of the ongoing legislative work, envisage to broaden the possibilities of reopening so that these will also cover other types of violations of the Convention than those established in the two cases here at issue;

Recalling the basic principles contained in its Recommendation No. R(2000)2 to the member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights adopted by the Committee of Ministers on 19 January 2000³;

Encourages the Italian authorities to ensure the rapid adoption of new legislation in conformity with the principles in the above Recommendation No. R (2000) 2,

Decides to resume consideration of the matter once new legislation has been adopted or, at the latest, at its 810th meeting (October 2002).

Note ¹ Interim Resolution DH(99)258.

Note ² Resolution DH(93)6; the case was reopened by the Committee of Ministers at its 721st meeting on 2 October 2000 as a result of a serious risk that the applicant be extradited to Italy to serve the sentence imposed in the impugned proceedings.

Note ³ Available on the internet: <http://cm.coe.int/ta/rec/2000/2000r2.htm>

➤ Excessive length of proceedings

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2007)2 concerning the problem of excessive length of judicial proceedings in Italy - Case of CETERONI and 2182 other cases

*(Adopted by the Committee of Ministers on 14 February 2007,
at the 987th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of former Articles 32 and 54 and present Article 46, paragraph 2, of the Convention for the protection of Human Rights and Fundamental Freedoms ("the Convention"),

Considering the large number of judgments of the European Court of Human Rights ("the Court") and decisions of the Committee of Ministers since the early 1980s finding structural problems underlying the excessive length of civil, criminal and administrative proceedings in Italy;

Recalling the major reforms undertaken in respect of civil and criminal proceedings as well as proceedings before courts of audit which led the Committee to close its examination of these aspect of the problem in the 1990s (see Resolutions DH(1992)26, (1995)82 and (1994)26);

Recalling that given the subsequent, continued influx of new findings of violations the Committee resumed its examination of these proceedings;

Recalling that the Committee decided to keep these cases on its agenda until such time as effective reforms were implemented and the reversal of the national tendency was definitely confirmed (Interim Resolution DH(2000)135);

Taking note of the numerous efforts made by the Italian authorities by the adoption of various general reforms and different specific measures which, nonetheless, have not led to satisfactory results to date.

Recalling that the dysfunction of the working of justice remains and in so doing represents an important danger, not least to the Rule of Law;

Welcoming the establishment in 2001 (Law No. 89) of a domestic remedy to compensate victims and reduce the pressure on the Court, and furthermore acknowledging the efforts of the Court of Cassation to ensure an interpretation in line with the Court's case-law;

Noting also the constant increase in the amounts paid in compensation by the state in this respect;

Recalling that in these circumstances the Committee, in December 2005, demanded in its last Interim Resolution, ResDH(2005)114, the establishment of a new strategy, relying in particular on a reinforcement of political support, at the highest level, for an interdisciplinary approach to which all the main actors of the judicial system would contribute;

Welcoming the various declarations and speeches made during 2006 by the President of the Republic, the Head of the Government and the Minister of Justice indicating the authorities' full awareness of the seriousness of the problem and their determination to give it priority;

Welcoming also Parliament's approval of Law No. 12 of 9 January 2006 assigning competence to the Presidency of the Council of Ministers to co-ordinate the execution of the Court's judgments and to keep Parliament regularly informed of progress achieved;

Noting that in its most recent report to the Committee of Ministers in November 2006 (CM/Inf/DH(2007)9), the Italian government mentioned a number of proposed legislative reforms to judicial proceedings together with an ambitious project for the computerisation of civil proceedings (*processo telematico*);

Considering nonetheless that these new measures only address certain aspects of the complex problem of the length of proceedings in Italy, which still needs a complete, in-depth analysis for an overall strategy to be presented;

Noting that in September 2006 a ministerial commission was set up, mandated to submit proposals to reduce the delays in proceedings;

Stressing the importance of organising effective follow-up and co-ordination, at the highest national level, of the action need to ensure the execution of the judgments and decisions concerned and noting in this context the possibilities offered by Law No. 12 of 9 January 2006;

Welcoming the Italian authorities' expressed intention to co-operate regularly and closely with the Secretariat of the Council of Europe so that the Committee of Ministers may be kept informed of their thinking in relation to the strategy to be implemented and progress achieved;

Recalling in this context the rich comparative experience accumulated, not least in the framework of the supervision of the execution of the Court'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,

URGES the Italian authorities at the highest level to hold to their political commitment to resolving the problem of the excessive length of judicial proceedings;

INVITES 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;

DECIDES to resume consideration of the progress achieved at the latest before 1 November 2008 and asks 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.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)114 concerning the judgments of the European Court of Human Rights and decisions by the Committee of Ministers in the case of CETERONI and 2182 other cases against Italy relating to the excessive length of judicial proceedings

*(Adopted by the Committee of Ministers on 30 November 2005
at the 948th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of former Articles 32 and 54 and of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the numerous judgments of the European Court of Human Rights (hereinafter referred to as "the Court") and decisions of the Committee of Ministers since the early 1980s finding violations by Italy of Article 6, paragraph 1, of the Convention, due to the excessive length of judicial proceedings;

Recalling that the important structural problems at the basis of these violations have been examined by the Committee for almost 20 years with a view to ensuring that the Italian judicial system is brought into conformity with the requirements of the Convention, thus preventing new, similar violations before criminal, civil and administrative courts;

Recalling that, in the 1990s, the efforts already deployed by the Italian authorities to solve these problems had led the Committee to close its supervision on the assumption that the comprehensive measures adopted would achieve satisfactory results (see e.g. as regards civil proceedings, Resolution DH(95)82 in the case of Zanghi);

Recalling, however, that the Committee had to conclude, in particular as a result of continuing influx of new cases to the Court, that the problem of the excessive length of judicial proceedings in Italy persisted and that it was necessary to reopen its supervision of the question of the general and individual measures required to remedy the violations found and to prevent similar violations;

Recalling that, in the context of this renewed supervision, the Italian authorities presented in 2000 various lines of action (Interim Resolution DH(2000)135), providing for:

- the in-depth, structural modernisation of the judicial system to achieve improved long-term efficiency;
- special action (*sezioni stralcio*) to deal with the oldest cases pending before national civil courts or, at least, to produce short-term positive effects;
- the acceleration of compensation procedures through the creation of a domestic remedy in cases of excessive length of proceedings;

Recalling that the Committee supported these lines of action and called upon the Italian authorities, in view of the gravity and persistence of the problem, to maintain the reform of the Italian judicial system as a high priority, to continue to make rapid and visible progress in the implementation of the reforms, and to continue their examination of further measures necessary effectively to prevent new similar violations;

Noting with interest the responses given by Italy to this Interim Resolution, and in particular:

- the numerous legislative initiatives subsequently taken to increase the efficiency of the judicial system and the management efforts undertaken by the courts to improve their case-

handling capacity, while noting the absence of a sufficiently coherent approach and the fact that a number of reforms still remain to be adopted or implemented;

- the rapid setting-up of the *sezioni stralcio* to deal with the oldest cases, while regretting that the implementation of the reform has not been such as to allow the termination of these cases within the time-limits initially set;

- the setting-up of a domestic remedy providing compensation in cases of excessive length of proceedings, adopted in 2001 (the "Pinto" law), as well as the recent development of the case-law of the Court of cassation, increasing the direct effect of the case-law of the European Court in the Italian legal system, while noting that this remedy still does not enable for acceleration of proceedings so as to grant effective redress to all victims;

Stressing that the setting-up of domestic remedies does not dispense states from their general obligation to solve the structural problems underlying violations;

Finding that despite the efforts undertaken, numerous elements still indicate that the solution to the problem will not be found in the near future (as evidenced in particular by the statistical data, the new cases before both domestic courts and the European Court, the information contained in the annual reports submitted by the government to the Committee and in the reports of the Prosecutor General at the Court of cassation);

Welcoming the renewed efforts made by the Italian Government and Parliament and also by the judicial authorities themselves in recent years, in particular the plan of action recently submitted to the Committee of Ministers, concentrating on legislative changes to accelerate civil proceedings;

Taking into account Parliamentary Assembly Recommendation 1684 (2004), on the implementation of decisions of the Court, which urges the Committee of Ministers to ensure, without further delay, that the Italian authorities take the necessary execution measures in respect of all outstanding judgments older than five years and in all cases where individual measures are urgently expected;

Stressing the importance the Convention attaches to the right to fair administration of justice in a democratic society and recalling that the problem of the excessive length of judicial proceedings, by reason of its persistence and extent, constitutes a real danger for the respect of the rule of law in Italy;

Noting that the persistence and development of this situation, since the 1980s, clearly highlights the structural and complex nature of the underlying problems, which affect most Italian courts, including the highest ones, in the civil, criminal and administrative fields;

Stressing that the gravity and complexity of the problem of excessive length of judicial proceedings requires an interdisciplinary approach and commitment at the highest level, involving the key actors;

Noting therefore, with great interest, the ongoing discussion and new initiatives currently pending before the Italian parliament, in particular the draft bill creating a particular competence, at the highest governmental level, to promote the implementation of judgments of the Court,

URGES the Italian authorities to enhance their political commitment and make it their effective priority to meet Italy's obligation under the Convention and the Court's judgments, to secure the right to a fair trial within a reasonable time to all persons under Italy's jurisdiction;

CALLS UPON the competent authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to achieving a comprehensive solution to the problem and to present by the end of 2006 at the latest a new plan of action based on a stocktaking of results achieved so far and embodying an efficient approach to its implementation;

DECIDES to maintain these cases under close supervision and resume consideration of them at its last meeting (DH) in 2006, noting the commitment of the Italian authorities to keep the Council of Europe informed of progress in the preparation of the said action plan.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2000)135 **Excessive length of judicial proceedings in Italy: general measures –** **Group of cases CETERONI**

*(Adopted by the Committee of Ministers on 25 October 2000
at the 727th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46 § 2 (former Article 54) and of former Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”),

Recalling that all the High Contracting Parties to the Convention have undertaken to abide by the Court's judgments and the Committee of Ministers' decisions and are thus required to take the necessary steps to conform herewith, notably by adopting general measures preventing new violations of the Convention similar to those already found;

Recalling that excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law;

Having regard to the great number of decisions by the Committee of Ministers and to the incessant flow of judgments of the European Court of Human Rights (“the Court”) finding Italy in violation of Article 6 of the Convention on account of the excessive length of judicial proceedings before the civil, criminal and administrative courts;

Recalling that the question of Italy's adoption of general measures to prevent new violations of the Convention of this kind has been before the Committee of Ministers since the Court judgments, in the 1990s, highlighted the existence of serious structural problems in the functioning of the Italian judicial system;

Recalling the information provided by the Government of Italy on the general measures already adopted to accelerate judicial proceedings (see Resolutions DH (92) 26, DH (95) 82, DH (97) 336 and Interim Resolutions DH (99) 436 and DH (99) 437);

Recalling that in the two last Interim Resolutions the Committee decided to resume, in one year at the latest, the examination of the question as to whether the measures announced by the Italian Government would effectively prevent new violations of the Convention;

Having resumed this examination, and noting with satisfaction that recently the highest Italian authorities have manifested, both at the national level and before the organs of the Council of Europe, their solemn commitment to finding eventually an effective solution to the present situation and the progress made in the implementation of the major reform of the Italian judicial system, undertaken in order notably to find long-term remedies, to ensure special expediency in the treatment of the oldest and most deserving cases and to alleviate the burden of the Court;

Noting that the reforms include the following three different lines of action, namely:

- the deep structural modernisation of the judicial system for better long-term efficiency (notably through the introduction of Article 6 of the Convention into the Italian Constitution, the streamlining of the jurisdictions of the civil and administrative courts, the increased reliance on the single judge, the creation of the office of justices of the peace and also the subsequent extension of their competence to minor criminal offences, new simplified dispute settlements mechanisms, the modernisation of a number of procedural rules);
- special actions dealing with the oldest cases pending before the national civil courts or aiming at improvements which, while being of a structural nature, may already produce positive effects in the

near future (in particular the creation of the *sezioni stralcio*, provisional court chambers composed of honorary judges, entrusted with the solution of civil cases pending since May 1995, an important increase of the number of judges and administrative personnel and two important resolutions by the *Consiglio superiore della Magistratura*, (the Supreme Council of the Magistrature) laying down a number of monitoring mechanisms and issuing special guidelines for judges in order to prevent further unreasonably long proceedings and to speed up those which have already been incriminated by the European Court of Human Rights);

- the reduction of the flow of applications to the Court and the speeding up of compensation procedures by means of the creation of a domestic remedy in cases of excessive length of procedures (the Private Member's Bill was approved on 28 September 2000 by the Senate, and is expected to be adopted in the near future);

Acknowledging that the measures of the first group, aiming at a structural reform of the whole Italian judicial system, cannot be expected to produce major effects before a reasonable time has elapsed, although it is already possible to see the first signs of a positive trend in the statistics recently provided to the Committee of Ministers by the Italian authorities;

Noting that some other measures, and in particular the creation of the *sezioni stralcio*, which were intended to ensure a special and accelerated procedure for the oldest civil cases, have not been thoroughly implemented, although recently the number of honorary judges recruited has reached 75% of the total originally planned;

Noting with interest the innovative character of the measures of the third group which, furthermore, constitute an acknowledgement at the national level, both symbolic and concrete, of the national authorities' full and direct responsibility for the violations of the Convention on account of the excessive delays in the administration of justice, but emphasising, nevertheless, that the creation of the new domestic remedy does not in any way obviate the obligation to pursue with diligence the adoption of the general measures required to prevent new violations;

Concluding accordingly that Italy, while making undeniable efforts to solve the problem and having adopted measures of various kinds which allow the concrete hope of an improvement within a reasonable time, has not, so far, thoroughly complied with its obligations to abide by the Court's judgments and the Committee of Ministers' decisions finding violations of Article 6 of the Convention on account of the excessive length of judicial proceedings,

- calls upon the Italian authorities, in view of the gravity and persistence of the problem:

- to maintain the high priority now given to the reform of the Italian judicial system and to continue to make rapid and visible progress in the implementation of the reforms,

- to continue their examination of further measures that could help effectively to prevent new violations of the Convention on account of the excessive length of judicial proceedings,

- to inform the Committee of Ministers with the greatest diligence of all steps undertaken to this effect;

- decides to continue the attentive examination of this problem until the reforms of the Italian judicial system become thoroughly effective and a reversal of the trend at domestic level is fully confirmed;

- decides, meanwhile, to resume its consideration of the progress made, at least at yearly intervals, on the basis of a comprehensive report to be presented each year by the Italian authorities.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)437 **Human Rights – Excessive length of proceedings before the civil courts in Italy: supplementary measures of a general character – Group of cases CETERONI**

(adopted by the Committee of Ministers on 15 July 1999, at the 677th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Articles 32 and 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"), and Article 46, paragraph 2, of the Convention as amended by Protocol No. 11, and in accordance with the Rules which it has adopted for the application of these articles;

Stressing the necessity for all the Contracting States to take rapidly all the measures required in order to comply with their obligation to prevent the repetition of violations of the Convention similar to those established in the judgments of the European Court of Human Rights and in the decisions of the Committee of Ministers;

Given the judgments of the European Court of Human Rights and the decisions of the Committee of Ministers in which, since the end of the 1980s, a very high number of violations of Article 6, paragraph 1, of the Convention have been found that are due to the excessive length of proceedings before the civil courts;

Noting the measures taken by Italy since 1990 as a result of the aforementioned breaches, measures which are summarised in the resolution adopted by the Committee of Ministers at the time of supervising the execution of the Court judgment in the Zanghì case (Resolution DH (95) 82), and the new proposed measures which are summarised in the Resolution on Supplementary Measures of a General Character (Resolution DH (97) 336);

Whereas, in this last-mentioned resolution, the Committee of Ministers found that, notwithstanding the adoption of these measures, the number of violations of Article 6, paragraph 1, had not yet decreased and had therefore decided to resume the examination of the reforms required in order to solve the problem posed by the length of civil proceedings in Italy and, consequently, also decided to maintain the cases relating to this problem on its agenda until the implementation of these reforms;

Having invited the Government of the defendant state to continue informing the Committee of Ministers of the impact of the supplementary measures taken and the state of progress of the other reforms designed to solve this problem, given Italy's obligation to comply with the judgments of the Court and with Committee of Ministers' decisions under Articles 53 and 32, paragraph 4, of the Convention and Article 46, paragraph 1, of the Convention as amended by Protocol No. 11;

Considering that the Government of the respondent State provided the Committee of Ministers, at the time of examining this question, with the information summarised in the appendix to this Resolution;

Welcoming the considerable increase in the efficiency of the courts in terms of cases resolved, but calling attention to the major problems which persist,

Urges the Italian authorities to pursue their efforts;

Declares, after taking note of the information supplied by the Government of Italy, that it has provisionally fulfilled its obligations under Articles 54 and 32 of the Convention, and under Article 46, paragraph 2 of the Convention as amended by Protocol No. 11;

Decides to resume, in one year at the latest, the examination of the question whether the announced measures will effectively prevent new violations of the Convention and, consequently, to limit its examination, in the meantime, to questions relating to the award or payment of just satisfaction together with other individual measures which might prove necessary in specific cases.

Appendix to Interim Resolution ResDH(99)437

Information provided by the Government of Italy during the examination by the Committee of Ministers of the supplementary measures to be taken in order to solve the problem of the excessive length of proceedings before the civil courts in Italy

At the time of adopting Resolution DH (97) 336, the Committee of Ministers was informed by the Italian Government of certain legislative initiatives designed, firstly, to absorb the backlog accumulated by the courts over the years and, secondly, to introduce structural reforms in the legislation and the organisation of the courts. This plan for rationalising the judicial system and reforming civil procedure is currently at an advanced stage of application. In addition, the positive effects resulting from the establishment of justices of the peace since 1995 (see Resolution DH (95) 82) are beginning to make themselves fully felt.

Increased efficiency of the courts - determining role of justices of the peace

An examination of the statistics (from 1995 until the end of the first half of 1998) indicates that the ratio of cases settled, compared to the number of new cases brought, actually evolved from 74% to 103%; the number of cases pending - over 3 million at the end of the first half of 1998 - is therefore currently falling by 3% per year. During the first six months of 1998, the number of cases settled in the civil courts as a whole (including labour cases and appeals) totalled 836 110 compared with an input of 810 415 new cases over the same period.

The creation of justices of the peace played a determining role in this increased efficiency of the civil courts, by coping with a major share of the new cases (24.5% according to the statistics for the first six months of 1998). Taking the full figures for 1998, it may be seen that, out of a total of 1 064 535 cases pending, 759 451 were completed, i.e. 71.3% of the total and 91.5% compared with the number of new cases. The backlog of cases pending for these courts is therefore relatively insignificant. The available data also indicates that less than 10% of the cases decided by the justices of the peace give rise to an appeal.

In view of the number of terms of office due to expire, the recruitment of 4 412 justices of the peace is under way (2 986 judges have already been appointed). Moreover, under Act No. 84 of 2 April 1999, these judges will now be able to remain in service until the age of 75 years. Once all the posts for qualified judges have been filled and the full number of justices of the peace have been recruited, the relevant courts will be able to operate in top gear.

Absorbing the backlog of cases

In accordance with Act No. 276 of 22 July 1997, provisional sections (*sezioni stralcio*), specially responsible for dealing with cases pending before the civil courts on 30 April 1995, became operational in November 1998.

These sections are composed of one career judge and at least two honorary judges. By the end of April 1999, only 444 of the one thousand qualified honorary judges provided for had been appointed (of whom 329 have already taken up their duties). In order to enable these sections to begin operating, 390 career magistrates have been provisionally transferred. Under Act No. 399 of 1998, the conditions for access to the post of honorary judge have been made less restrictive, which should make it possible to fill the posts still vacant without having to call on the services of career judges.

The Italian Government is confident that the five-year period estimated for settling the 640,056 cases assigned to these qualified judges will be sufficient. A preliminary report of the operation of these *sezioni stralcio* will be drawn up for July 2000.

Current structural reforms

Legislative Decree No. 51 of 19 February 1998 (whereby the government implemented Act No. 254 of 16 July 1997) came into force on 2 June 1999, giving wider powers to the single first instance judge. This measure was designed to concentrate on a single first instance court - normally sitting with a single judge - the powers formally exercised respectively by the ordinary courts and by the *preture* (magistrate's courts). As a result, 549 legal offices were closed and judicial districts were reorganised. This new concentration of resources should lead to greater efficiency in managing the case-load.

At the same time, Act No. 155, adopted on 5 May 1999 assigned the government the task of adopting measures by December 1999 to relieve the pressure on the five most heavily burdened courts, namely those of Turin, Milan, Rome, Naples and Palermo.

The recruitment of 1 000 new career judges and of additional honorary magistrates will make it possible to improve the service, especially for the courts with the heaviest case-loads. The appointments to these courts will be achieved by means of specific organisational measures backed up by a bonus system.

Lastly, with the steadfast aim of relieving the courts of the surplus work resulting from less important cases, the legislative office of the Ministry of Justice has recently drafted a bill aimed at providing alternative solutions for civil disputes.

In addition, another Bill (No. 3813/S: "Measures for the acceleration of trials and provision for just satisfaction in the event of violation of the "reasonable time" criterion was recently tabled in the Senate. The Bill is intended to provide an effective means of domestic appeal in cases entailing excessive length of proceedings. The domestic body would be authorised to award just satisfaction in cases where the "reasonable" duration of proceedings had not been observed.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)436 concerning the excessive length of proceedings concerning civil rights and obligations before the administrative courts in Italy: measures of a general character – Group of cases CETERONI

*(Adopted by the Committee of Ministers on 15 July 1999
at the 677th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Articles 32 and 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"), and of Article 46, paragraph 2, of the Convention, as amended by Protocol No.11, and in view of the Rules which it has adopted concerning the application of these articles;

Stressing the necessity for all the Contracting States to take rapidly all the measures required in order to comply with their obligations and prevent new violations of the Convention similar to those established in the judgments of the European Court of Human Rights and in the decisions of the Committee of Ministers;

In view of the judgments of the European Court of Human Rights and the decisions by the Committee of Ministers recording since 1995 a large number of breaches of Article 6, paragraph 1, of the Convention due to the excessive length of proceedings concerning civil rights and obligations before administrative courts;

Having invited the Government of Italy to inform it of the measures of a general character envisaged in order to remedy this situation, and in view of Italy's obligation to comply with the judgments of the Court and decisions of the Committee of Ministers in accordance with Articles 53 and 32, paragraph 4, of the Convention and Article 46, paragraph 1, of the Convention as amended by Protocol No. 11;

Considering that, at the time of examining this item, the Government of the defendant state provided the Committee of Ministers with the information summarised in the appendix to this resolution;

Welcoming the efforts made to speed up the administrative court proceedings, invites the Italian authorities to pursue their efforts in this respect;

Declares, after noting the information provided by the Government of Italy, that it has provisionally fulfilled its obligations under Articles 54 and 32 of the Convention and with respect to Article 46, paragraph 2, of the Convention as amended by Protocol No.11,

Decides to resume its examination, in one year at the latest, of the question whether the announced measures will effectively prevent new violations of the Convention and consequently agrees, in the interim, to examine only those questions relating to the award or payment of just satisfaction to the applicants and other individual measures that might prove necessary.

Appendix to Interim Resolution ResDH(99)436

Information provided by the Government of Italy during the examination by the Committee of Ministers of the general measures to be adopted in order to solve the problem of the excessive length of proceedings concerning civil rights and obligations before the administrative courts in Italy

In order to reduce the length of proceedings in administrative cases, the Italian Ministry responsible for the civil service and regional questions has put before the Senate of the Italian Republic, on 10 December 1997, a Bill (No. 2934) with the aim of speeding up procedures before administrative courts.

The measures envisaged in this bill include:

- a reduction of the time devoted to the preparatory stages of the proceedings before the administrative courts, including a rationalisation of the case-file management so as to avoid unnecessary adjournments of hearings (Article 1);
- a special, simplified and faster appeal procedure in case of failure by a public department to give a reply, allowing for the adoption of special enforcement measures where the passivity remains (Article 2);
- new general rules regarding holding measures, extending, in particular, the administrative judge's powers (Article 3);
- the introduction of special rules, including the shortening of the time-limits, for proceedings concerning a number of particularly sensitive issues, such as the carrying out of public works, privatisation (Article 4);
- the possibility for administrative courts, in matters where they have exclusive jurisdiction, to award damages when execution of the judgment allows only imperfect reparation of the consequences of the violation of the applicant's interests (Article 5), which avoids the need for repeat proceedings;
- the possibility, in certain circumstances, of taking decisions in a simplified form and the lapse, unless the applicants object, of proceedings which have been pending for more than ten years (Article 6);
- the empowering of Regional Administrative Courts to execute judgments which have not been stayed by the Council of State (Article 7);
- the abrogation of the possibility for the Council of State to refer cases back when the previous judgment is set aside (Article 8);
- the possibility for the President of a court to notify an appeal by means of any appropriate method, including electronic mail or fax (Article 9);
- the obligation for the presidents of Regional Administrative Courts to remain in the post which they have just been assigned for at least three years and the increase in staff amounting to 60 new posts of auxiliary judges for Regional Administrative Courts (an increase of 18%) and 30 magistrates to the Council of State (an increase of 14%) (Articles 10 and 11);
- the publication of opinions of the Council of State (Article 13);
- the modification of the composition of the Governing Council for administrative justice (*Consiglio di Presidenza della giustizia amministrativa*) by including members others than administrative magistrates (Article 15);
- the budgetary autonomy of the Council of State and of Regional Administrative Courts (Article 16);
- a cost estimate for the implementation of these rules and the indication of the means to cover such costs (Articles 12 and 18).

The bill was approved by the Senate on 22 April 1999 and is currently being examined by the Chamber of Deputies. An urgent procedure has been adopted by the Italian authorities in order to have this text adopted as rapidly as possible.

Among the other measures adopted which also affect administrative proceedings to varying degrees, mention may be made of:

Legislative Decree No. 67 of 25 March 1997 (transformed into Law No. 135 of 23 May 1997), Section 19 of which introduces measures to speed up proceedings relating to public works;

Law No. 249 of 31 July 1997 on proceedings concerning measures taken by the Telecommunications Supervisory Authority (Sections 26-27);

Legislative Decree No. 80 of 31 March 1998, reapportioning jurisdiction between the civil and administrative courts. The Decree gives administrative courts a certain measure of jurisdiction over proceedings relating to public departments, town planning and spatial development (including the construction sector), which were previously within the jurisdiction of the civil courts. It should be noted that in these areas, the administrative courts may also decide the award of damages, which avoids the institution of further proceedings and thus expedites the procedure. Furthermore, the Decree relieves the administrative courts of their jurisdiction in matters of public employment - a great source of litigation in the past - and assigns it to the civil courts, with the exception of proceedings instituted prior to 1 July 1998.

Moreover, as regards individual measures, measures have been taken in order to speed up proceedings which have been found to violate Article 6 of the Convention.

In addition, computerisation of the courts is continuing so as to speed up the processing of cases. Finally, the time required for extraordinary appeals to the President of the Republic, which are an alternative to the judicial procedure, has been reduced to three months.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(97)336 concerning the length of civil proceedings in Italy: supplementary measures of a general character – Group of cases CETERONI

*(Adopted by the Committee of Ministers on 11 July 1997
at the 597th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Articles 32 and 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”),

Stressing the necessity for all Contracting States to take rapidly all the measures required in order to prevent new violations of the Convention similar to those established in the judgments of the European Court of Human Rights and in the decisions of the Committee of Ministers;

Bearing in mind the measures adopted by Italy between 1990 and 1995 in order to conform to the numerous judgments of the Court and decisions of the Committee of Ministers finding violations of Article 6, paragraph 1, of the Convention on account of the excessive length of civil proceedings, which measures were summarised in the resolution adopted by the Committee of Ministers in the context of its supervision of the execution of the Court's judgment in the Zanghì case (Resolution DH (95) 82) and which have subsequently been accepted as adequate execution measures in all cases examined until the 585th meeting of the Ministers' Deputies (held in March 1997);

Finding that, notwithstanding the adoption of these measures, the number of violations of Article 6, paragraph 1, has not yet decreased;

Having invited the Government of Italy to inform the Committee of Ministers of the supplementary measures envisaged in order to remedy this situation;

Noting with satisfaction that the Government of Italy has declared that new measures have been adopted and that others are planned in order effectively to prevent new violations (see notably those mentioned in the appendix to the present Resolution);

Considering that excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law,

Decides to resume the examination of the reforms required in order to solve the problem posed by the length of civil proceedings in Italy and, consequently, to maintain the cases relating to this problem on its agenda until the implementation of these reforms.

Appendix to Interim Resolution ResDH(97)336

*Information provided by the Government of Italy during the examination by the Committee of Ministers
of the supplementary measures to be adopted in order to solve the problem of the length of civil
proceedings in Italy*

In the course of 1996 numerous legislative initiatives have been taken by the Minister of Justice in order to reduce the length of proceedings in civil cases.

The reforms will act on two levels: on the one hand they will ensure the liquidation, in accordance with a fixed plan, of the backlog accumulated over the years, on the other they will introduce structural changes in the legislation and in the organisation of the courts so as to diminish progressively the average length of civil proceedings.

Among the first group of reforms the government would cite a bill (No. 954/S) creating provisional court chambers composed of honorary judges. These judges will act as single judges to decide cases brought before the reform. In order to increase the productivity of these honorary judges,

they will receive an indemnity proportionate to the number of hearings held and judgments rendered. The practical implementation of this reform is to begin in the autumn of 1997.

As regards the structural measures the government brings to the attention of the Committee of Ministers the legislative initiative presently under consideration according to which the competence of the single judge would be further strengthened at first instance and a number of further rationalising measures undertaken. This project is discussed in the context of the Delegation Act to the Government (No. 1245/S). The reform could enter into force in the course of 1998.

The government also stresses that the reforms of the Code of Civil Procedure undertaken between 1990 and 1995, referred to in the Committee of Ministers' Resolution in the Zanghi case (Resolution DH (95) 82), have introduced a certain number of innovations into Italian law in order to render the administration of justice more efficient, the effects of which will only be felt in the long term. Reference is notably made to the possibility of ordering different interim measures before the final judgment and to the possibility of making judgments of first instance enforceable notwithstanding an appeal.

➤ Scozzari against Italy

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2001)151 concerning the judgment of the European Court of Human Rights of 13 July 2000 (Grand Chamber) in the case of SCOZZARI and GIUNTA against Italy

*(Adopted by the Committee of Ministers on 3 October 2001
at the 764th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and having regard to the Rules concerning the application of this Article,

Having regard to the judgment of the European Court of Human Rights of 13 July 2000 in the Scozzari and Giunta case, in which the Court notably found two violations of Article 8 of the Convention on account, first, of the delays in organising contact visits and the limited number of such visits between the first applicant and her children, after they had been taken into public care and, secondly, of the placement, uninterrupted to date, of the children in the community *// Forteto* in the circumstances described in paragraphs 201 to 216 of the judgment, namely :

- the failure of the authorities to provide full and pertinent explanations on the reasons justifying the sending of the children in this community in spite of the elements which made understandable, from an objective standpoint, the first applicant's concerns, namely the fact that certain "*Forteto*" leaders with serious previous convictions for ill-treatment and sexual abuse of handicapped people placed in the community could still play an active role in bringing up the children ;
- the fact that the implementation of the Youth Court's decisions had been deflected from their intended purpose of allowing visits between the mother and the children to take place as a result of the attitude of the social services and of some of the leaders of *// Forteto* - including one of the convicted men - who had delayed or hindered the implementation of such decisions and exercised a mounting influence on the children aimed at distancing them from their mother;
- the doubt about who really has effective care of the children ;
- the failure of the relevant authorities, in particular the judiciary, to increase their level of supervision;
- the absence of any time limit on the care order;

Having furthermore regard to Interim Resolution ResDH(2001)65 adopted by the Committee of Ministers on 29 May 2001, in which the Committee, considering the urgency of the situation, encouraged the Italian and Belgian authorities to implement without delay a proposal submitted by the latter regarding an alternative placement of the children in Belgium where the mother currently lives;

Noting with interest, in this respect, that the Belgian authorities have supplemented their earlier proposal so as to organise, after adequate preparation in Italy, contacts between Ms Scozzari and her children in Belgium under the supervision and with the assistance of the competent Belgian authorities;

Having carefully examined the information so far provided by the Italian authorities on the measures taken, since September 2000, to implement the Court's judgment and noting that, after the three preliminary meetings between the mother and her children which took place in March-April 2001,

the Florence Youth Court in July 2001 notably authorised further contacts, on a monthly basis, in the presence of persons nominated by the social services from among those never previously involved in the procedure, and confirmed the placement of the children into public care in the *Forteto* community for an additional period of three years, which could be shortened under specific conditions;

Regretting that, more than one year after the European Court's judgment, the latter has still not been fully executed; in fact, several problems at the basis of the Court's finding of a violation in respect of the placement in the *Forteto* community have not been remedied;

Noting that the Italian authorities, on account of the above-mentioned shortcomings, have undertaken to give full effect to the Court's judgment without delay;

Invites the Italian authorities rapidly to take concrete and effective measures in order to prevent that the children be irreversibly separated from their mother and to ensure that their placement respect the superior interests of the children and the mother's rights, as defined by the Court in its judgment;

Encourages the Italian authorities in particular to reinforce their contacts with the Belgian authorities with a view to organising meetings very quickly between mother and children at a neutral location, pursuant to the decision of the Florence Youth Court,

Decides to resume consideration of this case, if need be, at each of its meetings.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(2001)65
concerning the judgment of the European Court of Human Rights of
13 July 2000 (Grand Chamber) in the case of SCOZZARI AND GIUNTA against
Italy

*(Adopted by the Committee of Ministers on 29 May 2001
at the 753bis meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention") and having regard to the Rules concerning the application of this Article,

Having regard to the judgment of the European Court of Human Rights in the Scozzari and Giunta case delivered and transmitted to the Committee of Ministers on 13 July 2000, in which the Court notably found two violations of Article 8 of the Convention on account, on the one hand, of the delays in organising contact visits and the limited number of such visits between the first applicant and her children, after they had been taken into public care and, on the other hand, of the placement, uninterrupted to date, of the children in a community ("*Il Forteto*") among whose managers are persons convicted for ill-treatment and sexual abuse of handicapped persons placed in the community;

Having regard to the obligation of every State, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, in particular - as the Court also underlined in the said judgment - by putting an end to the violations found and to redress as far as possible their effects;

Having regularly examined the case since September 2000 and having invited the Government of Italy to inform it of the measures taken in consequence of the judgment, while stressing and underlining the urgency attaching to the matter;

Noting that the question of alternative placements has not been addressed by the Italian authorities and that, consequently, Ms Scozzari's children continue to be placed in the "Forteto" community;

Noting with the greatest interest that, following Ms Scozzari's taking up residence in Belgium, the Belgian Government has approached the Italian authorities in order to examine the possibilities of organising, by judicial means, the placement of the children in Belgium, near the mother's place of residence, under the guardianship of the competent youth court;

Finding that such a proposal could provide the basis for a solution respecting the Court's judgment,

Encourages, considering the urgency of the situation, the Belgian and Italian authorities to implement without delay the proposal so as to put an end to the violations found,

Decides to resume consideration of this case, if need be, at each of its meetings.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)12 concerning the judgment of the European Court of Human Rights of 13 December 2001 (final on 27 March 2002) in the case of METROPOLITAN CHURCH OF BESSARABIA AND OTHERS against Moldova

*(Adopted by the Committee of Ministers on 28 March 2006,
at the 960th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of the Metropolitan Church of Bessarabia and others delivered on 13 December 2001 and transmitted to the Committee of Ministers once it had become final under Article 44 of the Convention;

Recalling that the judgment of the Court became final on 27 March 2002 since, at this date, the Grand Chamber rejected the request to refer the case to it;

Recalling that the case originated in an application (No. 45701/99) against Moldova, lodged with the European Commission of Human Rights on 3 June 1998 under former Article 25 of the Convention by the Metropolitan Church of Bessarabia (Mitropolia Basarabiei și Exarhatul Plaiurilor) and twelve other applicants, all Moldovan nationals, and that the Court, following the entry into force of Protocol No. 11, declared admissible the complaints relating in particular to the authorities' refusal to recognise the Metropolitan Church of Bessarabia in violation of its members' freedom of religion, a refusal which also resulted in the Church's being prevented from obtaining legal personality and consequently from having recourse to the courts for the protection of its legitimate interests;

Whereas in its judgment of 13 December 2001 the Court unanimously held inter alia:

- that there had been violations of the right to freedom of religion of both the applicant church and its members (Article 9) and of their right to an effective domestic remedy in respect of their claims (Article 13);

- that the government of the respondent state was to pay the applicants, within three months from the date at which the judgment became final, 20,000 euros in respect of non-pecuniary damage to be converted into Moldovan lei at the rate applicable at the date of settlement, and 7,025 euros in respect of costs and expenses and that simple interest at an annual rate of 4.26% would be payable on those sums from the expiry of the above-mentioned three months until settlement;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 13 December 2001, having regard to Moldova's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling the obligation of every state under Article 46, paragraph 1, of the Convention rapidly to abide by the judgments of the Court, which includes the adoption of measures to put an end to the violation

as far as possible (*restitutio in integrum*) and to prevent new violations of the Convention similar to those found by the Court;

Having satisfied itself that on 2 July 2002 the government of the respondent state had paid the applicants the sums provided for in the judgment of 13 December 2001 including the default interest due;

Having noted with satisfaction that the executive authorities rapidly re-examined the applicants' request and on 30 July 2002, in response to the European Court's judgment, decided to recognise and register the applicant Church, thus lifting the obstacles to the exercise of the applicants' right to freedom of religion criticised by the Court and ensuring that it is able to protect its interests (see information provided in Appendix);

Deploring however the fact that, 4 years after the judgment, the Moldovan authorities have still not adopted satisfactory general measures, in particular adequate legislation, to comply with the requirements of the Convention as laid down in the judgment;

Recalling in particular that the Court expressly noted in its judgment that the 1992 Religious Denominations Act, in force at the relevant time, provided neither a specific procedure for recognition of religious denominations nor adequate remedies in the event of a dispute;

Recalling furthermore that the Moldovan authorities accordingly agreed from the outset with the views expressed in the Committee that legislative reform was necessary so as to guarantee to all confessions the proper respect of their rights and thus to prevent new, similar violations of the Convention in the future;

Regretting nevertheless that the amendments to the Religious Denominations Act adopted in 2002 as a first response to the Court's judgment did not adequately remedy these problems, as the new provisions still allow the executive wide discretion in granting, suspending or withdrawing registration of religious denominations and do not adequately reflect the requirement of proportionality of possible restrictions;

Noting with concern that despite the enhanced assistance and expertise provided by the Council of Europe to the Moldovan authorities to ensure that the new legislation met the standards of the Convention, five successive draft Bills have not achieved that objective;

Noting in this context that that a sixth draft is presently pending before Parliament and that this draft, despite a number of important improvements, still does not appear to define with sufficient clarity, notably:

- the right of recognition, including legal personality, of all religious communities, including those with less than 100 members,
- the right to an effective remedy, notably in case of disputes regarding the recognition of religious communities,
- the conditions of exercise of the Minister of Justice's power to request the courts to prohibit the activities of certain religious communities;

Underlining furthermore the need to ensure, both in legislation and in practice, an effective judicial supervision of the decisions concerning the registration of religious denominations, which imply, as an essential element, the obligation of the state authorities to comply promptly with court decisions delivered in this respect;

Stressing, in view of the time required for the adoption of general measures in this case, the need for prompt execution of European Court judgments which reveal an underlying systemic problem, as highlighted in the Committee's Declaration of 12 May 2004 "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" and the Recommendations to member states to which it refers,

URGES the Moldovan authorities rapidly to enact the necessary legislation and to adopt the necessary implementing measures so as to comply with the Convention's requirements as set out in the present judgment without further delay;

ENCOURAGES in addition the authorities to take account of the conclusions and recommendations provided by the Council of Europe experts, with a view to concluding the ongoing reform in a satisfactory manner;

DECIDES to resume consideration of this case once the legislation required has been adopted or at the latest before the end of 2006.

Appendix to Interim Resolution ResDH(2006)12

*Information provided by the Government of Moldova
during the examination of the case of Metropolitan Church of Bessarabia
and others by the Committee of Ministers*

Individual Measures

Following the judgment of the European Court, 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 July 2002. The Church has thus acquired legal personality, opening the possibility, among others, for it to claim title to property.

Following this recognition, 86 parishes, 9 monasteries, 2 social missions with at least 73 sub-divisions, one theological seminary, a monks' seminary and a school of ecclesiastical art have been registered. The applicant church also disposes of more than 120 rectories with at least 160 priests.

With regard to the applicant Church's claims made in 2004 that it had encountered obstacles in registering its parishes with the competent authority (State Service for Religious Affairs) mainly because these parishes had the same names as parishes of another religious denomination and due to the alleged refusal of certain local authorities to issue the parishes with the formal certificates required for their registration, the Moldovan authorities state that appropriate measures may be taken in such instances to solve the problem, provided that the parishes concerned bring the matter to the attention of the competent authority.

General Measures

The Moldovan legislation on religious denominations was amended by Law No. 1220-XV which entered into force on 12 July 2002.

Nevertheless, the Moldovan authorities acknowledged that these legal provisions do not adequately reflect the requirement of proportionality and lack clarity as regards the registration procedure to be followed by religious denominations. Thus they have prepared several successive draft laws amending the Law on Religious Denominations and submitted them to the Council of Europe for an assessment of their compatibility with the Convention. A new version of the draft, prepared on the basis of a Council of Europe expert opinion, was adopted by the Moldovan Parliament at the first reading in December 2005. Its compatibility with the Convention's requirements in all respects continues to be closely examined, not least in co-operation with the Committee of Ministers and Council of Europe experts. Once this examination is concluded, the law will proceed to a second reading.

The original version of the judgment of the European Court and its official translation into Moldovan were published on 9 July 2002 in the Official Journal of Moldova.

In July 2002, the government also amended Article 325 of the Code of Civil Proceedings so as to allow the reopening of domestic civil proceedings following violations of the Convention found by the European Court.

THE NETHERLANDS

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2000)25 Human Rights – Application No. 14084/88 R. V. AND OTHERS against the Netherlands

*(Adopted by the Committee of Ministers on 14 February 2000
at the 695th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”),

Having regard to the report drawn up on 3 December 1991 by the European Commission of Human Rights in accordance with Article 31 of the Convention relating to the applications lodged between 25 July 1988 and 26 August 1988 by ten Dutch nationals, Mr R.V., Mr J.L., Mr C. van S., Mr F. van M., Mr J.O., Mr C.K., Mr K.K., Mr S.E., Mr R.P. and Mr B. van V. against the Netherlands;

Whereas on 31 January 1992 the Commission transmitted the said report to the Committee of Ministers and whereas the period of three months provided for in Article 32, paragraph 1, of the Convention has elapsed without the case having been brought before the European Court of Human Rights pursuant to Article 48 of the Convention;

Whereas in their applications, declared admissible by the Commission on 4 March 1991, the applicants complained that the surveillance of their activities by the intelligence and security services, the compilation and retention of personal information concerning them, as well as the refusal of access to this information constituted a violation of their right to respect for private life;

Whereas in its report the Commission expressed, unanimously, the opinion that there had been a violation of Article 8 of the Convention;

Whereas at the 475th meeting of the Ministers' Deputies, held in 15 May 1992, the Committee of Ministers, having voted in accordance with the provisions of Article 32, paragraph 1, of the Convention, and agreed with the opinion expressed by the Commission, held that there had been in this case a violation of Article 8 of the Convention;

Having regard to the decision taken by the Committee of Ministers at its 498th meeting, and adopted on 21 September 1993, to authorise, at the request of the Government of the Netherlands, the publication of the report adopted by the Commission in this case;

Whereas the Committee of Ministers examined the proposals made by the Commission when transmitting its report as regards just satisfaction to be awarded to the applicants, proposals supplemented by a letter of the President of the Commission dated 16 February 1993;

Whereas at the 489th meeting of the Ministers' Deputies, the Committee of Ministers, agreeing with the Commission's proposals, held, by a decision adopted on 9 March 1993, in accordance with Article 32, paragraph 2, of the Convention, that the Government of the respondent State was to pay to each of the ten applicants as just satisfaction, within three months, 1 000 Dutch guilders in respect of non-pecuniary damage, 2 175 Dutch guilders, plus V.A.T., in respect of costs and expenses, namely a total sum of 31 750 Dutch guilders of which 21 750 Dutch guilders are subject to V.A.T.;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 32 of the Convention;

Having invited the Government of the respondent State to inform it of the measures which had been taken in consequence of its decision of 15 May 1992 and 9 March 1993, having regard to the Netherlands' obligation under Article 32, paragraph 4, of the Convention to abide by it;

Considering that High Contracting Parties are required to take the necessary measures to conform herewith, notably by preventing new violations of the Convention similar to those found in the Court's judgments and in the Committee of Ministers' decisions;

Whereas the Government of the respondent State provided the Committee of Ministers with information about the measures taken so far to this effect (this information appears in the appendix to this resolution);

Having satisfied itself that, within the time-limit set, the Government of the respondent State had paid the applicants the sum provided in its decision of 9 March 1993,

Declares, after having taken note of the information supplied by the Government of the Netherlands, that it has provisionally exercised its functions under Article 32 of the Convention in this case;

Decides to resume consideration of this case, as far as general measures are concerned, when a new Bill has been drafted or, at the latest, at its first meeting in 2001.

Appendix to Interim Resolution ResDH(2000)25

Information provided by the Government of the Netherlands during the examination of the R.V. and others case by the Committee of Ministers

Since the facts of the present case, the Intelligence and Security Services have been governed by new regulations established by an Act of 1987 which entered into force on 1 February 1988.

Nevertheless, the Council of State (*Raad van State*), in two judgments of 16 June 1994 relating to the Security Services' refusal to give two persons access to information about them, relied on the Commission's report in the case of R.V. and others to conclude that the new provisions of the Act in force, in particular sections 8 and 16 of the Intelligence and Security Services Act of 1987, were not in conformity with Articles 8 and 13 of the Convention.

First, the Council of State observed that the law was not predictable enough and in particular that it should indicate: the categories of persons about whom information may be collected; the circumstances in which information may be collected and the means which may be used to obtain such information.

Secondly, the Council of State considered that a person who has been refused access to information contained in his or her file should be given reasons for this refusal instead of a general statement referring to national security.

As a consequence, the Minister of the Interior can no longer review applications for access to information on the grounds of the Internal Security Services regulations but has to apply the Government Information (Public Access) Act, which provides that each application must be assessed individually and that reasons must be given for refusal.

In line with these conclusions, the Government decided to proceed to another legislative reform.

This reform, which is still underway, aims at including in the Intelligence and Security Services Act:

- a more detailed description of the methods used by the BVD (Internal Security Services);

- a provision requiring the Permanent Committee on Intelligence and Security Services to be consulted before any new methods are used and regarding the way in which certain existing operational methods are used;
- a regulation governing the BVD's current internal review system relating to the subsidiarity and proportionality of the methods used in any given case;
- a clearer description of the circumstances in which these methods may be used; in this connection, consideration is being given to a statutory provision obliging the BVD to include such details in its annual report.

The Government also seeks additional ways of monitoring the BVD's operations.

Finally, the Government is considering including a specific, new provision on public access to certain information filed by the BVD. The provisions referred to above apply *mutadis mutandis* to the Military Intelligence Services (MID) and to their operation.

POLAND

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

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

*(Adopted by the Committee of Ministers on 6 June 2007,
at the 997th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that the Committee supervises the execution of the judgment of the European Court of Human Right (hereinafter “the Convention” and “the Court”),

Having regard to the great number of judgments of the Court finding Poland in violation of Article 5, paragraph 3, of the Convention on account of the unreasonable length of detention on remand (see Appendix II);

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations found as well as general measures to prevent new, similar violations of the Convention;

Stressing the importance of rapid adoption of such measures in cases where judgments reveal structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited Poland to inform it of the measures adopted or being taken in consequence of the judgments concerning the excessive length of detention on remand and having examined the information provided by the Polish authorities in this respect (as it appears in the Appendix I);

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (*restitutio in integrum*), in particular by bringing an end as far as possible to those detentions on remand still in force after the findings of violations by the Court;

Taking note of the steps taken so far by the authorities to remedy the structural problems related to detention on remand in Poland, and in particular:

the legislative reforms (the Code of Criminal Procedure of 1997 and subsequent amendments);

the judgment of the Polish Constitutional Court of 24 July 2006 finding that a provision of the Code of Criminal Procedure relating to certain aspects of the extension of detention on remand was unconstitutional;

the further measures to make courts and prosecutors aware of the requirements stemming from the Convention and the European Court's case-law as regards the use of detention on remand;

Noting also the statistical data provided by the Polish authorities concerning (a) the number of detentions on remand ordered in a given year and (b) the number and length of detentions on remand not yet ended on 31 December of that year;

Noting further that, according to the statistics provided, the number of cases in which detention on remand lasts for more than 12 months still seems high, especially in cases pending before regional courts; noting, however, that these statistics do not give a full picture of the situation, as they only show the length of detentions that have not yet been terminated as of 31 December, and that they could be usefully supplemented by taking stock of the length of all detentions on remand ordered during a year;

Noting also with interest that following changes to Polish legislation in response to the judgment of the Constitutional Court of 24 July 2006 the general rule according to which detention on remand shall not exceed 2 years in cases pending for trial has been strengthened; noting however that under the amended legislation there might still be situations in which this time-limit may not be observed;

Noting also that, although some courts have begun to refer to the Convention and the European Court's case-law in rendering decisions on the use of detention on remand, this preventive measure still seems often to be ordered without taking into consideration the Convention's requirements;

Underlining that continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty;

Recalling that the persistence of reasonable suspicion that a person arrested has committed an offence, although a condition *sine qua non* for the lawfulness of the continued detention, may no longer suffice after a certain lapse of time and that consequently other relevant and sufficient grounds must be presented in order to extend such detention;

Noting that the number of cases in which the European Court has found similar violations is constantly increasing,

ENCOURAGES the Polish authorities, in view of the extent of the systemic problem concerning the excessive length of detention on remand:

- to continue to examine and adopt further measures to reduce the length of detention on remand, including possible legislative measures and the change of courts' practice in this respect, to be in line with the requirements set out in the Convention and the European Court's case-law; and in particular
- to take appropriate awareness-raising measures with regard to the authorities involved in the use of detention on remand as a preventive measure, including judges of criminal courts and prosecutors;
- 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;

EXPECTS to receive further information on additional measures planned or already taken to comply with the judgments concerning the unreasonable length of detention on remand and,

DECIDES to resume consideration of the outstanding measures in these cases, within one year at the latest.

Appendix I to Interim Resolution CM/ResDH(2007)75

Information provided by the Government of Poland during the examination of the cases concerning the excessive length of detention on remand by the Committee of Ministers

I. Individual measures

In the majority of these cases, the detention on remand impugned by the European Court has been ended.

II. General measures taken to reduce the length of detention on remand

1. Legislative measures as regards the length of detention on remand

A. Grounds for detention on remand (as set out in the Code of Criminal Procedure of 1997)

The grounds for remanding in custody were modified with the entry into force on 01/09/98 of the Code of Criminal Procedure of 6 June 1997.

According to Article 257§1, detention on remand shall not be imposed if another preventive measure is sufficient. The provisions of the Code of Criminal Procedure also set out other preventive measures, such as bail, police supervision, guarantee by a responsible person or a social entity, temporary ban on engaging in a given activity and prohibition to leave the country.

Detention on remand may be ordered if there is a strong probability that the accused has committed an offence and, cumulatively, if there is a risk of his or her absconding, obstructing the proceedings or, in certain cases, re-offending (Article 258§1). According to Article 258§2 of the Code of Criminal Procedure, an accused may be detained remanded if he or she risks a long term of imprisonment (if the charges relate to offences punishable by at least 8 years of imprisonment or if a court of first instance sentenced the accused to a minimum of 3 years of imprisonment).

B. Placement in detention on remand and extension (as set out in Art. 263 of the Criminal Code of Procedure)

Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

“1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

On 20 July 2000, paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested with the court of appeal within whose jurisdiction the offence in question has been committed.

C. Ruling of the Constitutional Court on paragraph 4 of Article 263 of the Criminal Code of Procedure

In its judgment of 24 July 2006 (reference No. SK 58/03), the Polish Constitutional Court, having examined a constitutional complaint on the length of detention on remand, ruled that the provision of Article 263§4 of the Code of Criminal Procedure, according to which such detention may be extended beyond the period of 2 years, if “other important obstacles whose removal has not been possible” exist, is in breach of Article 41, paragraph 1 in connection with Article 31 paragraphs 1 and 3 of the Constitution of the Republic of Poland. It should be noted that the Constitutional Court declared the unconstitutional character of this provision only as it relates to investigation stage.

This judgment was grounded on the fact that this provision curtailed the enjoyment of constitutional rights and freedoms in such an imprecise, arbitrary and broad way that it affected the very essence of constitutional freedoms. The lack of statutory time limitation for the extension of detention on remand only strengthened the finding of unconstitutionality of this provision.

The Constitutional Court also declared that this provision was to expire within 6 months after publication of the judgment in the Journal of Laws – *Dziennik Ustaw*. Therefore it lost its binding force on 8 February 2007.

D. Amendment of the Code of Criminal Procedure following the Constitutional Court’s ruling

Accordingly, Article 263, paragraph 4, of the Code of Criminal Procedure was amended as follows:

“Paragraph 4. The extension of applying detention on remand over the periods specified in paragraphs 2 and 3, may be made only by the court of appeal in whose jurisdiction the proceedings are conducted, on a motion from the court before which the case is pending, and at the investigation stage on a motion from the appellate prosecuting authorities. This can be done if deemed necessary in connection with a suspension of criminal proceedings, in connection with actions aiming at establishing or confirming the identity of the accused, prolonged psychiatric observation of the accused, prolonged preparation of an opinion of an expert, conducting evidentiary action in a particularly intricate case or conducting them abroad, or intentional protraction of proceedings by the accused.”

Moreover, a new provision was added in paragraph 4a of Article 263:

“paragraph 4a. The court of appeal, in whose jurisdiction the proceedings are being conducted may also, on a motion from the court before which the case is pending, order the extension of the detention on remand for a fixed period, exceeding that specified in paragraph 3, because of other important obstacles whose removal has not been possible”.

This amendment was adopted on 12 January 2007 and entered into force on 16 February 2007.

According to the explanatory report on this amendment:

- the changes introduced in paragraph 4 of Article 263 of the Code of Criminal Procedure eliminated the clause of “other important obstacles whose removal has not been possible” as a legal ground for extending detention on remand;
- furthermore, extension of detention on remand was also allowed in cases in which proceedings could not have been completed because of measures under way to establish or confirm the identity of the accused.
- however, the new paragraph 4a will enable courts conducting criminal proceedings to extend detention on remand beyond the period of 2 years because of ‘other obstacles whose removal has not been possible’, which would allow a more flexible use of this provision. This new regulation is not contrary to the Constitutional Court’s judgment, which declared the clause of the said obstacles unconstitutional only in reference to the investigational stage of the proceedings.

2. Practice of criminal courts and statistical data

A. Recent practice of criminal courts

In March 2006 the Polish authorities provided information on the recent practice of criminal courts concerning the imposition and extension of detention on remand. In 26 cases the courts (in the jurisdiction of 6 out of the 11 appeal courts in the country) made express reference in their decisions to the case-law of the European Court and in some cases to the circular sent out by the Ministry of Justice. In most of these cases the courts decided to bring an end to the detention on remand and replace it by some alternative measure of constraint, such as the obligation to report to the police or prohibition on leaving the country. In two other appeal court districts, similar decisions have been handed down in three cases, but without reference to the case-law of the European Court.

B. Latest figures on the length of detention on remand in 2006:

According to the figures provided by the Polish Ministry of Justice the courts delivered 33 181 decisions on detentions on remand in the year 2006 compared with 34 830 in the year 2005.

The three tables and charts below (I, II and III) show the number of detentions on remand and their length as recorded on the last day of the reporting period, i.e. respectively on 31 December 2005 and 31 December 2006. The relevant data are presented separately for each category of courts.

Table and Chart I. - **District courts**

	2005	2006
Up to 3 months	2 528	2 358
3 – 6 months	2 035	2 263
6 – 12 months	1 963	1 899
12 months – 2 years	918	911
Over 2 years	191	190
In total	7 635	7 632

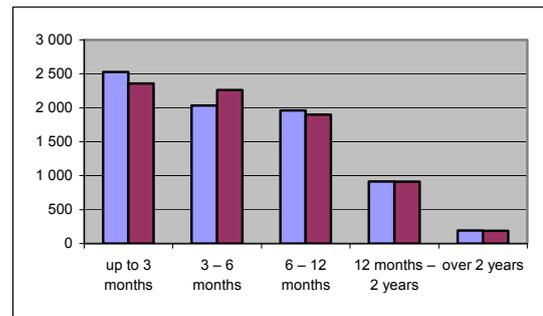


Table and Chart II. - **Regional courts**

	2005	2006
Up to 3 months	207	160
3 – 6 months	432	391
6 – 12 months	1 166	1 237
12 months – 2 years	1 165	1 326
Over 2 years	863	850
In total	3 833	4 000

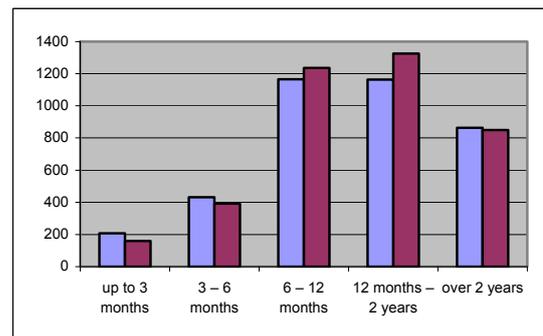
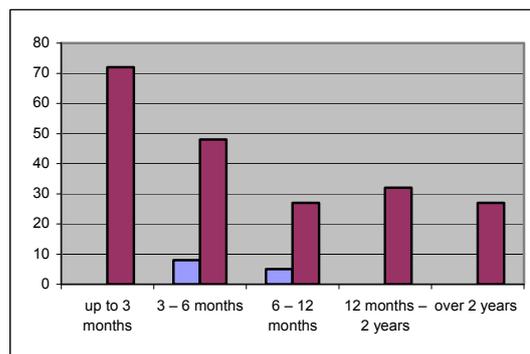


Table and Chart III - Courts of appeal

	2005	2006
Up to 3 months	0	72
3 – 6 months	8	48
6 – 12 months	5	27
12 months – 2 years	0	32
Over 2 years	0	27
In total	13	206



As it transpires from the above tables, that, for obvious reasons, district courts were those which have ordered detention on remand in the highest number of cases.

Nonetheless detention on remand imposed by regional courts lasted longer: as recorded on the last day of the reporting period, these courts ordered the highest number of detentions on remand which lasted between 12 months and 2 years or more than 2 years. In 2006, such detentions accounted respectively for 33.15 per cent and 21.25 per cent of the total number of detentions on remand ordered by these courts (respectively 30 per cent and 23 per cent in 2005). It should be noted in this respect that these courts deal with very serious cases, including those of organised crime, in which detention on remand as the most severe measure appears to be indispensable.

According to the Polish authorities, the problem of excessively lengthy detentions on remand concerns mainly the detentions ordered by the regional courts. However, the number of detentions on remand lasting between 12 months and 2 years and more than 2 years, ordered by such courts does not indicate a general upward trend.

3. Publication and dissemination

The European Court's judgments delivered in the cases of Chodecki and Olstowski have been translated into Polish and published on the Internet site of the Ministry of Justice www.ms.gov.pl.

On 4 June 2004 the Ministry of Justice wrote to all the Presidents of Courts of Appeal with an analysis of the case-law of the European Court concerning the requirements relating to the reasons for placing and keeping a person in detention pending trial. It was underlined in particular that the reason evoked in paragraph 2 of Article 258 of the Code of Criminal Procedure cannot justify keeping someone in detention for a long period of time.

Moreover, the Ministry of Justice has sent out circulars, drawing the attention of courts and public prosecutors to the reasoning required for decisions prolonging detention on remand.

III. Conclusions of the respondent state

The government believes that the measures set out above demonstrate its determination and the sustained efforts that it has already made to reduce the length of detention on remand. The government will continue to take all necessary measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.

* * *

Appendix II to Interim Resolution CM/ResDH(2007)75

List of cases

- 44 cases of length of detention on remand

25792/94	Trzaska, judgment of 11/07/00
23042/02	Cabała, judgment of 08/08/2006, final on 08/11/2006
3489/03	Cegłowski, judgment of 08/08/2006, final on 08/11/2006
17584/04	Celejewski, judgment of 04/05/2006, final on 04/08/2006
49929/99	Chodecki, judgment of 26/04/2005, final on 26/07/2005
75112/01	Czarnecki, judgment of 28/07/2005, final on 28/10/2005
5270/04	Drabek, judgment of 20/06/2006, final on 20/09/2006
77832/01	Dzyruk, judgment of 04/07/2006, final on 04/10/2006
7677/02	Gąsiorowski, judgment of 17/10/2006, final on 17/01/2007
31330/02	Golek, judgment of 25/04/2006, final on 25/07/2006
38654/97	Goral, judgment of 30/10/03, final on 30/01/04
28904/02	Górski, judgment of 04/10/2005, final on 15/02/2006
38227/02	Harazin, judgment of 10/01/2006, final on 10/04/2006
27504/95	Łłowiecki, judgment of 04/10/01, final on 04/01/02
36258/97	J.G., judgment of 06/04/2004, final on 06/07/2004
33492/96	Jabłoński, judgment of 21/12/00
15479/02	Jarzyński, judgment of 04/10/2005, final on 04/01/2006
25715/02	Jaworski, judgment of 28/03/2006, final on 28/06/2006
10268/03	Kankowski, judgment of 04/10/2005, final on 04/01/2006
25501/02	Kozik, judgment of 18/07/2006, final on 18/10/2006
31575/03	Kozłowski, judgment of 13/12/2005, final on 13/03/2006
17732/03	Krawczak, judgment of 04/10/2005, final on 04/01/2006
34097/96	Kreps, judgment of 26/07/01, final on 26/10/01
16535/02	Kubicz, judgment of 28/03/2006, final on 28/06/2006
44722/98	Łatasiewicz, judgment of 23/06/2005, final on 23/09/2005
36576/03	Leszczak, judgment of 07/03/2006, final on 07/06/2006
57477/00	Malik, judgment of 04/04/2006, final on 04/07/2006
13425/02	Micha, judgment of 04/05/2006, final on 04/08/2006
39437/03	Miszkurka, judgment of 04/05/2006, final on 04/08/2006
34052/96	Olstowski, judgment of 15/11/01, final on 15/02/02
6356/04	Pasiński, judgment of 20/06/2006, final on 23/10/2006
42643/98	Paszkowski, judgment of 28/10/2004, final on 28/01/2005
44165/98	Skrobal, judgment of 13/09/2005, final on 13/12/2005
29386/03	Stankiewicz, judgment of 17/10/2006, final on 17/01/2007
30019/03	Stemplewski, judgment of 24/10/2006, final on 24/01/2007
3675/03	Stenka, judgment of 31/10/2006, final on 31/01/2007
9013/02	Świerzko, judgment of 10/01/2006, final on 10/04/2006
33079/96	Szeloch, judgment of 22/02/01, final on 22/05/01
56552/00	Telecki, judgment of 06/07/2006, final on 06/10/2006
29687/96	Wesołowski, judgment of 22/06/2004, final on 22/09/2004
31999/03	Żak, judgment of 24/10/2006, final on 24/01/2007
25301/02	Zasłona, judgment of 10/10/2006, final on 10/01/2007
13532/03	Zborowski, judgment of 31/10/2006, final on 31/01/2007
28730/02	Zych, judgment of 24/10/2006, final on 24/01/2007

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

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

*(Adopted by the Committee of Ministers on 4 April 2007
at the 992nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the great number of judgments of the European Court of Human Rights ("the Court") finding Poland in violation of Article 6, paragraph 1, of the Convention on account of the excessive length of judicial proceedings before the civil and criminal courts (see Appendix II to this resolution);

Having regard to the fact that in several cases the Court also found that there had been a violation of Article 13 of the Convention in that the applicants had no domestic remedy whereby they might enforce their right to a "hearing within a reasonable time" as guaranteed by Article 6, paragraph 1 of the Convention (e.g. Kudła against Poland, judgment of 26 October 2000 and D.M. against Poland, judgment of 14 October 2003);

Recalling that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law;

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations as well as to adopt general measures preventing new violations of the Convention similar to those found including provision of effective domestic remedies pending the entry into effect of the necessary changes;

Recalling in this respect the Committee of Ministers' Recommendation to member states Rec(2004)6 regarding the need to improve the efficiency of domestic remedies;

Stressing the importance of rapid adoption of such measures in cases where judgments reveal structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited Poland to inform it of the measures adopted or being taken in consequence of the judgments concerning the excessive length of judicial proceedings and having examined the information provided by the Polish authorities in this respect (as it appears in the Appendix I to this interim resolution);

Measures to remedy the excessive length of proceedings

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (*restitutio in integrum*), in particular by accelerating as far as possible the proceedings which were still pending after the findings of violations by the Court (see details in Appendix I);

Welcoming the reforms adopted so far by the authorities in order to remedy the structural problems related to the excessive length of judicial proceedings in Poland, and in particular:

- the legislative reforms (new Code of Criminal Procedure and 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 personnel, increasing courts' budgets and establishing of monitoring mechanisms); and
- 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;

Noting the statistical data provided by the Polish authorities and in particular the positive trend concerning the decrease in the number of "old" cases pending before civil courts (those pending for more than five years) and the increasing efficiency of criminal courts;

Noting, however, that the existing mechanism for evaluating the average length of judicial proceedings at national level is unclear and hinders supervision of the evolution of the duration of proceedings;

Measures to put right the lack of effective remedy

Welcoming the creation of a domestic remedy in cases of excessive length of judicial proceedings and noting that the Court has already found, on the basis of the provisions of the legislation of 2004, that it satisfies the "effectiveness" test established in the *Kudła* judgment (see Appendix I, Section II B);

Noting nevertheless that the new remedy seems to exclude the possibility of complaining against the excessive length of the pre-trial stage of criminal proceedings;

Underlying that the creation of the new domestic remedy does not obviate the obligation to pursue with diligence the adoption of general measures required to prevent new violations of the Convention;

ENCOURAGES the Polish authorities, in view of the gravity of the systemic problem concerning the excessive length of judicial proceedings:

- to continue the examination and adoption of further measures to accelerate judicial proceedings and reduce the backlog of cases;
- to establish a clear and efficient mechanism for evaluating the trend concerning the length of judicial proceedings; and
- to ensure that the new domestic remedy is implemented in accordance with the requirements of the Convention and the case-law of the Court and to consider introducing such a remedy as regards the pre-trial stage of criminal proceedings;

EXPECTS to receive further information soon on additional measures planned or already taken to comply with the judgments concerning the excessive length of judicial proceedings and on the implementation in practice of the new remedy introduced in June 2004 and,

DECIDES to resume consideration of the outstanding individual measures and the general measures in these cases, in one year at the latest.

Appendix I to Interim Resolution CM/ResDH(2007)28

Information provided by the Government of Poland during the examination of the cases concerning the excessive length of criminal and civil proceedings and the right to an effective remedy by the Committee of Ministers

I. Individual measures

In the majority of these cases, the domestic proceedings impugned by the European Court in its judgments have ended. Concerning the rest of the cases, the competent authorities have taken measures to accelerate the proceedings still pending (i.e. the cases were placed under the administrative supervision of the president of the court and of the Ministry of Justice; the president of the competent court was urged by the Ministry of Justice to give priority to the applicants' cases, etc.).

II. General measures

A) Measures taken to reduce the length of criminal and civil proceedings

1. Legislative measures as regards the length of criminal proceedings

Measures introduced by the Code of Criminal Procedure of 1997

The Code of Criminal Procedure of 6 June 1997, which entered into force on 1 September 1998, has introduced the possibility under some conditions of conducting a hearing without the presence of a defendant if she or he refuses to participate in the trial or does not provide justification for her or his absence (Art.376 and 377). The opportunity to conduct a hearing without the presence of a defendant will considerably accelerate criminal proceedings, especially in cases brought against several co-defendants.

Measures introduced by the amendments to the 1997 Code of Criminal Procedure

The main purpose of the amendments to the Code which came into effect on 1 July 2003 was to introduce procedural mechanisms to speed up proceedings in criminal cases. The most important provide the following:

- preparatory proceedings and those concerning several co-defendants have been simplified by extending the range of offences liable to inquiry and not to investigation, which is more formal, and assigning the majority of investigations to the police instead of prosecutors (Art.325 b and 311§1);
- the possibilities of closing criminal proceedings by way of settlement have been extended (Art. 335, 343 and 387);
- first-instance courts may use at the trial stage evidence, such as testimonies, defendants' explanations or expert opinions collected during the preliminary investigation without the further hearing a witness, a defendant, an expert or other person, by reading aloud the relevant protocols, reports or other documents (Art. 377§4 and Art. 389, 391-394);
- the possibility of the remote hearing of witnesses by means of video conferences with the use of appropriate technical equipment (Art. 177§1 a);
- the court shall dismiss motions on evidence aimed at "obvious prolongation of the trial" (Art. 170§1 point 5);
- summonses may be served by fax or electronic mail (Art. 132§3);
- it is no longer necessary to re-hear a particular trial from the very beginning because the term of 35 days between subsequent hearings has been exceeded, if the parties so agree (Art. 404§2);

- when essential deficiencies in the pre-trial proceedings become apparent only at the hearing, courts may no longer refer the case back to the pre-trial proceedings stage for further inquiry to be carried out (Art. 397);

- special proceedings allowing prompt examination of a criminal case – the so-called “summary proceedings” and proceedings under writ of payment (decree proceedings) - were excluded from unnecessarily strict rules – see Art. 500 §§ 2 and 4 (e.g. concerning the summary proceedings the catalogue of cases considered under a simplified procedure now covers all cases in which an inquiry was carried out – see Art. 469);

- delays in criminal proceedings concerning several co-defendants due to the time taken to draft the reasons for the first-instance judgment will be reduced, as at present it is possible to draw up and to serve the reasons of the judgment only in respect of those of the co-defendants who requested it (Art. 423 §1a).

2. Legislative measures as regards the length of civil proceedings

Measures introduced by the amendments to the Code of Civil Procedure

The most important provisions of the recent amendments to the Code (of 21 August 1997, 22 December 2004 and 28 July 2005) provide the following:

- law clerks (*referendarze sądowi*) are now allowed to perform certain acts in proceedings such as: making entries in the land and mortgage registers, establishing of a land register, registration of proceedings, issuing payment writs (*nakazy zapłaty*) in accelerated proceedings (*postępowanie upominawcze*) and examining applications for exemption from court fees;

- the institution of mediation has been established. Any civil case which can be examined in civil proceedings may be subject to mediation, which may end in a friendly settlement. Such a friendly settlement, if confirmed by a court, is tantamount to a friendly settlement concluded before the court. The costs of mediation are relatively low in comparison with the costs of court proceedings, which should be an additional incentive to use mediation;

- new regulations concerning arbitration (*sądownictwo polubowne*) have been introduced.

Measures introduced by the Act of 28 July 2005 on Court Fees:

Following the entry into force of this Act, other mechanisms to accelerate civil proceedings have been introduced: for instance, certain decisions concerning court fees may no longer be subject to appeal.

3. Administrative and structural measures concerning civil and criminal proceedings

Increase of the capacity of the judiciary (judges and staff)

Having been faced since 1989 with an increase of about 275 % in cases lodged with Polish courts, the government is aware of the need to increase the number of posts for judges and court administrative staff. The scale of this effort is illustrated by the increase of the number of judges from 7000 in 1989 to nearly 8000 in 2000. In 2002 courts were granted additional full-time posts for 230 judges, 50 assessors and 350 assistants.

Moreover, the post of judges' associate and that of law clerk were introduced in Poland in 2001 by the Law on the organisation of common courts, with the aim of reducing the work of judges with respect to various administrative tasks which did not require their examination.

The table below shows the levels of employment in the courts in 2003-2006:

Reporting period	judges	assessors	judges' associates	law clerks	assistants
2003	8 268	1 276	198	785	21 329

2004	8 232	1 595	498	985	22 255
2005	8 227	1 688	850	1 185	23 412
2006 (as foreseen in the budget for 2006)	+ 80 new posts		+ 800 new posts	+ 250 new posts	+ 1020 new posts

Organisation and management

As of 1 May 2005 the Warsaw courts were divided into two regional courts. Each regional court was divided into district courts. Consequently, in 2005 there was an improvement in the efficiency of the Warsaw courts in proceedings concerning social insurance cases.

Moreover, the Minister of Justice set up a special unit within his ministry. This unit has been entrusted with the task of assessing the work-load of judges and other court staff as well as with human resources management in common jurisdictions (and in particular their allocation and efficient use in courts). It has drawn up a method, based on objective criteria, of assigning posts for assistants and court clerks, and is currently working on an instrument allowing the assessment of the efficiency of judges' work, on the basis of the so-called *pensum*, that is the average number of cases concluded by judges in Poland. This method will be used to ensure a better allocation of posts, in particular by reshuffling posts from one court to another one.

Supervisory activities

The Ministry of Justice is also involved in analysing the causes of delays in judicial proceedings within the framework of its competence in the administrative supervision of courts' work. The Department of Common Courts within the Ministry of Justice is coordinating other initiatives in this field, such as inspecting courts where the average length of proceedings gives rise to concerns. The question of supervision has been included in the supervisory work of presidents of courts as a permanent task. In particular, presidents have been invited to:

- ask judges heading divisions to perform direct supervision, mainly for the purpose of fixing hearings as a priority in the so-called "old cases";
- organise meetings to sum up their results and identify any reasons for delays; and
- undertake measures to request court experts to submit reports on time and to discipline the parties in the proceedings.

In 2003 the presidents of the Regional Courts were invited by the Ministry of Justice to examine the reasons for delays in all cases waiting for adjudication longer than 3 years. In addition, permanent monitoring of all proceedings lasting over five years is being carried out.

Moreover, the Minister of Justice recommended that the presidents of courts intensify their supervision of the assignment of court experts and discipline or discharge them if they do not perform their duties properly. The Minister of Justice further advised the presidents of courts to examine the legitimacy of decisions to stay proceedings and to assess the actions of heads of court sections in relation to stayed proceedings. In particular the presidents of courts have been called upon to supervise these proceedings, in which the European Court of Human Rights found a violation of Article 6, paragraph 1 of the Convention or the domestic court allowed a complaint based upon the 2004 Act (see below).

Budget

The budgetary Act for 2002 allocated the amount of PLN 2 560 317 000 to expenditure of the common courts, which was 15.41% more than the budget for the judiciary in 2001. Between 2003 and 2006 a constant yearly growth of the courts' budget was registered: by 24.89% in 2003, by 10% in 2004, by 12% in 2005. In 2006 this budget amounted to PLN 4 638 462 000, an increase by 8 % in comparison with the expenses for common courts incurred in 2005 and by 45% in comparison with such expenses in 2002.

It should be noted that the budget of common courts was set up in accordance with the principles contained in the revised Act on Public Finance which entered into effect on 1 January 2002. Budgets became autonomous in such a way that the Minister of Finance does not have the authority to

introduce any changes to the proposal submitted by the Minister of Justice – he simply includes the budget of common courts in the Government's draft of the budgetary act which is submitted to Parliament.

Court premises

The Ministry of Justice carries out numerous activities to improve office conditions, especially as regards courts in Warsaw, which operate in exceptionally difficult conditions. A new building was acquired, which will house the Warsaw-Praga District Court. Premises for another district court in Warsaw are also being sought.

Computerisation

Finally, IT projects, aimed at providing computerised support to courts and Public Prosecutor's Offices to ensure access to different data bases have been developed in order to:

- lodge e-pleadings;
- have remote access to information on proceedings, without having to appear in court *in persona*;
- replace traditional methods of recording with new digital techniques;
- show the evidence by using multimedia;
- use video conferences to enable a witness or an expert to be heard at a distance;
- provide an electronic exchange of documents between the internal units of the justice system and persons outside;
- keep evidence on electronic file; and
- archive documents on proceedings in electronic files.

The main objectives of the IT programme are the following:

- computerising sections' secretariats (case-flow register, correspondence with participants in proceedings, access to public information etc.) and assisting the judges, law clerks and judges' associates in dispensing justice;
- computerising courtrooms (recording of the hearings by using new digital techniques, e-docket);
- introducing management and logistics resources (efficient use of resources and working time, scheduling of hearings for a whole court building; improving the organisation of court ushers);
- electronic exchange of documents, e-claim, electronic access to information gathered and kept by court units (on-line access to courts' case-files and courts' registers).

4. Statistical data

Cases pending before all courts

The table below shows a steady increase of both new and completed cases brought before Polish civil and criminal courts between 2002 and 2006.

reporting period	backlog	new cases	completed cases	backlog (cases pending at the end of the reporting period)
2002	2 245 000	8 696 913	8 704 897	2 278 665
2003	2 278 665	9 521 329	9 679 823	2 122 222
2004	2 122 222	9 728 822	10 116 016	1 747 897
2005	1 747 897	9 581 613	9 834 086	1 496 229
2006	nearly 1 500 000	10 114 122	9 918 101	nearly 1 700 000

The table shows all cases brought in the Polish courts in the period from 2002 to 2006. In each reporting period the number of new cases was higher than that in the previous period (except in 2005). It should be noted that for the last 10 years there has been a considerable increase of new cases and this upward trend still continues. Nearly 4.9 million cases were brought to courts in 1995; in 2005 the new cases amounted to 9,5 million and in 2006 to 10,1 million. However, in each reporting period (except in 2006) the number of completed cases exceeded the number of new ones, which contributed to the reduction of the remaining backlog. Consequently, the total number of proceedings is declining and court efficiency is improving.

Cases pending before civil and labour courts

The table below shows the number of new and completed cases in a given branch of law between 2002 and 2006.

Type of cases	2002 new cases/ completed cases	2003 new cases/ completed cases	2004 new cases/ completed cases	2005 new cases/ completed cases	2006 new cases/ completed cases
civil cases	2 162 594	2 476 251	2 478 745	2 432 639	2 337 382
	2 079 218	2 452 344	2 620 476	2 465 799	2 264 092
commercial cases	1 057 938	1 048 681	1 016 690	944 329	952 359
	1 063 636	1 078 828	1 099 957	980 653	931 877
labour law cases	332 908	401 122	326 056	255 767	222 981
	325 338	374 001	339 000	296 000	227 847
social insurance cases	302 008	285 501	296 810	212 151	269 158
	337 059	303 059	308 000	268 000	241 491
family law cases	944 500	981 440	988 649	1 077 219	1 123 860
	994 000	981 998	1 009 000	1 062 000	1 115 313
land register cases	2 035 000	2 301 000	2 494 000	2 439 000	2 637 036
	2 167 000	2 417 000	2 545 000	2 473 000	2 603 568

The above data show a decrease in the number of cases relating to labour law and social insurance as well as in commercial cases and land register cases. There has been a steady increase in the number of family law cases, criminal and civil cases.

As regards labour law cases, the average length of proceedings before first-instance courts was 3.4 months in the first half of 2005 and 2.7 months in the first half of 2006 before district courts. When such cases were examined by regional courts as first-instance courts, their average length amounted to 6.4 months in the first half of 2005 and 8.7 months in the second half of 2006. Thus there has been an increase in the length of proceedings. As regards the proceedings before regional courts as second-instance jurisdictions, the average length amounted respectively to 3.8 and 2.6 months, which shows an improvement.

Moreover, it should be noted that 2005 was the year in which the greatest number of such cases was brought before the Warsaw district courts: 20 384 new cases, which constituted an increase of more than 40%. Simultaneously, these courts concluded the greatest number of such cases: 26 309 cases were closed and thus a backlog amounting to 6 375 cases was reduced. The number of labour law cases examined in the second instance by the Warsaw Regional Court declined by more than 56%.

Cases pending before criminal courts:

The table below shows the number of cases which were brought to courts in a given reporting period and the number of completed cases.

Reporting period	2002	2003	2004	2005	2006
criminal cases:					
new cases/completed cases	1 861 966	2 027 000	2 126 327	2 218 272	2 571 347
	1 788 189	2 071 237	2 185 995	2 279 961	2 533 913

The improvement of criminal courts' efficiency was triggered by the overhaul of the Polish criminal procedure (see above).

5. Publication and dissemination

The European Court's judgments in the majority of these cases have been translated into Polish and published on the Internet site of the Ministry of Justice www.ms.gov.pl. They have been sent out to the courts directly concerned. The competent authorities' attention has been drawn in particular to the Convention's requirement of special diligence in handling some cases (e.g. cases relating to civil status, employment law, cases concerning compensation for medical malpractice, wrongful conviction etc), having regard to the particular importance of the proceedings for the applicants concerned.

B) Legislative measures to introduce an effective domestic remedy in cases of excessive length of judicial proceedings

New Polish legislation was introduced in June 2004 in response to the European Court of Human Rights Grand Chamber judgment in the case *Kudła* against Poland (judgment of 26/10/2000), in which the Court notably held that the lack of an effective remedy for a breach of the right to a hearing within a reasonable time was in violation of Article 13.

On 17 June 2004, the Polish Parliament adopted a Law on complaints about a breach of the right to a trial within a reasonable time (the 2004 Act) and a Law on Amendments to the Civil Code Concerning the Civil Liability of the State Treasury for Actions or Omissions of Public Authorities. They have been published in the Official journal, No. 179 and No. 162 of 2004 and entered into force respectively on 17 September 2004 and 1 September 2004.

1. A remedy aimed at accelerating proceedings and awarding compensation to the applicants

The 2004 Act allows parties to court proceedings to file a complaint concerning the length of their proceedings while those proceedings are still pending. The competent appellate court may find that there have been undue delays in the proceedings and recommend to the lower court to take **measures to accelerate the proceedings**. The appellate court can also award the complainant **compensation** of up to PLN 10,000 (approximately 2,550 euros). Additional compensation for damages can be sought in separate proceedings before the civil courts according to the general regime regulating the liability of the state for damages caused by an unlawful action or omission of public authorities (Article 417 *et seq.* of the Civil Code). The remedy introduced by the amendments to the Civil Code is also open to persons involved in proceedings which have been terminated.

2. Retroactivity of the new remedy

The new remedy introduced by the new legislation of June 2004 is also available to individuals who lodged applications with the European Court of Human Rights while their domestic proceedings were still pending even if the proceedings have subsequently been terminated, provided their applications have not yet been declared admissible by the Court (Article 18 of the 2004 Act). They had until 17 March 2005 to apply to the Polish courts.

3. First implementation results of the new remedy

Since the entry into force of the 2004 Act and until 31 December 2004, 2 528 complaints concerning excessive length of judicial proceedings have been filed before domestic courts. More than 80% of the complaints concerned civil cases. In 290 cases the competent courts found that there have been undue delays in the impugned proceedings. Compensation has been awarded in 165 of these cases amounting to PLN 2 406 on average.

In 2005, the courts examined 4 921 complaints of that kind: 1 607 were dismissed (33%); 2 313 (47%) were declared inadmissible and 1001 (20 %) were allowed. In the first half of 2006 these figures stood at respectively: 1 879 579 (37 %); 835 (44%) and 361 (19%), in half of these cases just satisfaction was awarded).

Proceedings in which the court allowed the complaint are subject to supervision by the president of that court. In particular, the president of the court supervises whether the recommendations given by the court examining the complaint have been implemented. Should the court find that the judge

caused the excessive length of proceedings, disciplinary proceedings may be instituted against him/her.

4. Positive assessment of the new remedy by the European Court

Finally, it should be noted that in March 2005 the European Court examined this remedy for the purposes of Article 35, paragraph 1, of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time, and of providing adequate redress for any violation that has already occurred (see decisions in Michalak against Poland, Application No. 24549/03, §§ 37-43 and Charzyński against Poland, Application No. 15212/03, §§ 36-42). The European Court also considered that from 17 September 2004, the date on which the 2004 Act entered into force, action for damages under Article 417 of the Civil Code had attained a sufficient level of certainty to become an “effective remedy” within the meaning of Article 13 of the Convention (see decision in Krasuski against Poland, Application No. 61444/00, §74).

5. Other measures

The Polish government noted with interest the European Court’s judgment delivered in the case of Scordino against Italy (29 March 2006), and in particular the rules for the assessment of non-pecuniary damage as a consequence of the length of proceedings (§§ 267-271 of the Scordino judgment). Bearing in mind that the problems indicated in the Scordino judgment might also become relevant in the near future with respect to the 2004 Act, the Polish gdecided to take the following steps in order to improve the domestic practice and consider possible amendments to the national legislation:

- the judgment was translated into Polish and sent out, together with an evaluation of the 2004 Act, to all institutions responsible for the administration of justice as well as to domestic courts. The translation of the judgment is also available on the website of the Ministry of Justice (http://www.ms.gov.pl/re/re_wyroki.shtml);
- considerable attention was paid to the issue of implementing the 2004 Act in the course of drafting the governmental “Plan of Action with regard to execution of the ECHR judgments”. This document is being prepared by the representatives of the ministries involved in the execution of the European Court’s judgments in Polish cases;
- the implementation of the 2004 Act by courts has been continuously discussed in the course of training organised for judges and prosecutors. On 4 September 2006 the National Training Centre for Judges and Prosecutors was inaugurated (cf. <http://www.kcskspip.gov.pl>). Issues concerning the implementation of the 2004 Act will be included in the curriculum of the training organised by the Centre.

III. Conclusion

The Polish government believes that the measures set out above demonstrate its determination and the sustained efforts that it has already made with a view to improving the efficiency of the judicial system and to set up an effective domestic remedy against the excessive length of judicial proceedings. The Polish authorities will continue to take all necessary measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.

* * *

Appendix II to Interim Resolution CM/ResDH(2007)28

- 132 cases before civil courts

Cases	
<i>Adamscy, judgment of 27/07/04</i>	<i>Majewski and others, judgment of 08/11/05</i>
<i>Badowski, judgment of 08/11/05</i>	<i>Majewski, judgment of 11/10/05</i>
<i>Barszcz, judgment of 30/05/06</i>	<i>Majkrzyk, judgment of 06/05/03</i>
<i>Bednarska, judgment of 15/07/04</i>	<i>Małasiewicz, judgment of 14/10/03</i>
<i>Bejer, judgment of 04/10/01</i>	<i>Majewski, judgment of 11/10/05</i>
<i>Biały, judgment of 27/07/04</i>	<i>Majkrzyk, judgment of 06/05/03</i>
<i>Biskupska, judgment of 22/07/03</i>	<i>Malinowska Henryka, judgment of 14/10/03</i>
<i>Bukowski, judgment of 11/02/03</i>	<i>Malinowska, judgment of 14/12/00</i>
<i>C., judgment of 03/05/01</i>	<i>Malinowska-Biedrzycka, judgment of 05/10/04</i>
<i>Cegielski, judgment of 21/10/03</i>	<i>Maliszewski, judgment of 06/05/03</i>
<i>Chyb, judgment of 12/07/06</i>	<i>Małasiewicz, judgment of 14/10/03</i>
<i>Ciborek, judgment of 04/11/03</i>	<i>Marszał, judgment of 14/09/04</i>
<i>Czech, judgment of 15/11/05</i>	<i>Mączyński, judgment of 15/01/02</i>
<i>D.M., judgment of 14/10/03</i>	<i>Mejer and Jałoszyńska, judgment of 19/10/04</i>
<i>Dańczak, judgment of 21/12/04</i>	<i>Młynarczyk, judgment of 14/12/04</i>
<i>Dojs, judgment of 02/11/04</i>	<i>Nierojewska, judgment of 22/08/06</i>
<i>Domańska, judgment of 25/05/04</i>	<i>Nowak, judgment of 05/10/04</i>
<i>Dudek, judgment of 05/10/04</i>	<i>Orzeł, judgment of 25/03/03</i>
<i>Durasik, judgment of 28/09/04</i>	<i>Pachnik, judgment of 30/03/04</i>
<i>Dybo, judgment of 14/10/03</i>	<i>Palka, judgment of 11/10/05</i>
<i>Falecka, judgment of 05/10/04</i>	<i>Parciński, judgment of 18/03/01</i>
<i>Fojcik, judgment of 21/09/04</i>	<i>Paśnicki, judgment of 06/05/03</i>
<i>Gęsiarz, judgment of 18/05/04</i>	<i>Peryt, judgment of 02/12/03</i>
<i>Gibas, Interim Resolution DH(97)242</i>	<i>Piechota, judgment of 05/11/02</i>
<i>Gidel, judgment of 14/10/03</i>	<i>Pieniążek Irena, judgment of 28/09/04</i>
<i>Goc, judgment of 16/04/02</i>	<i>Piłka Andrzej and Barbara, judgment of 06/05/03</i>
<i>Góra, judgment of 27/04/04</i>	<i>Podbielski, judgment of 30/10/98</i>
<i>Górska, judgment of 03/06/03</i>	<i>Pogorzelec, judgment of 17/07/01</i>
<i>Grela, judgment of 13/01/04</i>	<i>Politikin, judgment of 27/04/04</i>
<i>Gronuś, judgment of 28/05/02</i>	<i>Porembaska, judgment of 14/10/03</i>
<i>Gryziecka and Gryziecki, judgment of 06/05/03</i>	<i>Przygodzki, judgment of 05/10/04</i>
<i>Guzicka, judgment of 13/07/04</i>	<i>R.O., judgment of 25/03/03</i>
<i>Hajnrich, judgment of 25/05/04</i>	<i>R.P.D., judgment of 19/10/04</i>
<i>Hulewicz, judgment of 30/03/04</i>	<i>R.W., judgment of 15/07/03</i>
<i>I.P., judgment of 14/10/03</i>	<i>Ratajczyk, judgment of 18/07/06</i>
<i>Iżykowska, judgment of 28/09/04</i>	<i>Rawa, judgment of 14/01/03</i>
<i>Jablonska, judgment of 09/03/04</i>	<i>Romanow, judgment of 21/09/04</i>
<i>Janas, judgment of 21/09/04</i>	<i>Rychliccy, judgment of 18/05/04</i>
<i>Janik, judgment of 27/04/04</i>	<i>Sawicka, judgment of 01/10/02</i>
<i>Jastrzębska, judgment of 28/09/04</i>	<i>Sibiński, judgment of 04/10/05</i>
<i>Jedamski, judgment of 26/07/01</i>	<i>Sienkiewicz, judgment of 30/09/03</i>
<i>Kaczmarczyk, judgment of 24/01/06</i>	<i>Sikora, judgment of 05/10/04</i>
<i>Kaszubski, judgment of 24/02/04</i>	<i>Sikorski, judgment of 09/11/04</i>
<i>Koblański, judgment of 28/09/04</i>	<i>Sitarek, judgment of 15/07/03</i>
<i>Kolasiński, judgment of 01/02/05</i>	<i>Sitarski, judgment of 08/08/06</i>
<i>Koral, judgment of 05/11/02</i>	<i>Sobański, judgment of 21/01/03</i>
<i>Korbel, judgment of 21/09/04</i>	<i>Sobczyk, judgment of 26/10/00</i>
<i>Kranc, judgment of 31/01/06</i>	<i>Sobierajska-Nierzwicka, judgment of 27/05/03</i>
<i>Kranz, judgment of 17/02/04</i>	<i>Styranowski, judgment of 30/10/98</i>
<i>Kreuz No. 2, judgment of 20/07/04</i>	<i>Surman-Januszewska, judgment of 27/04/04</i>
<i>Kreuz No 3, judgment of 24/01/06</i>	<i>Szarapo, judgment of 23/05/02</i>
<i>Kroenitz, judgment of 25/02/03</i>	<i>Szczeciński, judgment of 11/10/05</i>

Cases	
<i>Król, judgment of 28/09/04</i>	<i>Uthke, judgment of 18/06/02</i>
<i>Kruk, judgment of 05/10/04</i>	<i>W.M., judgment of 14/01/03</i>
<i>Krzak, judgment of 06/04/04</i>	<i>W.Z., judgment of 24/10/02</i>
<i>Krzewicki, judgment of 27/04/04</i>	<i>Wasilewski, judgment of 21/12/00</i>
<i>Kubiszyn, judgment of 30/01/03</i>	<i>Wiatrzyk, judgment of 26/10/04</i>
<i>Kusiak, judgment of 21/09/04</i>	<i>Wierciszewska, judgment of 25/11/03</i>
<i>Kuśmerek, judgment of 21/09/04</i>	<i>Wojnowicz, judgment of 21/09/00</i>
<i>Kuśmierkowski, judgment of 05/10/04</i>	<i>Wojtkiewicz, judgment of 21/12/04</i>
<i>Ł., judgment of 27/07/04</i>	<i>Wylęgły J. and J., judgment of 03/06/03</i>
<i>Leszczyńska, judgment of 22/06/04</i>	<i>Wyszczelski, judgment of 29/11/05</i>
<i>Lipowicz, judgment of 19/10/04</i>	<i>Zarjewska, judgment of 21/12/04</i>
<i>Liśawska, judgment of 13/07/04</i>	<i>Zaśkiewicz, judgment of 30/11/04</i>
<i>Lizut-Skwarek, judgment of 05/10/04</i>	<i>Zawadzki, judgment of 20/12/01</i>
<i>Łobarzewski, judgment of 25/11/03</i>	<i>Zmaliński, judgment of 22/03/05</i>
<i>Majchrzak, judgment of 22/08/06</i>	<i>Zynger, judgment of 13/07/04</i>
<i>Majewski and others, judgment of 08/11/05</i>	<i>Zys-Kowalski, judgment of 28/09/04</i>

- 11 before criminal courts

Cases	
<i>Kudła, judgment of 26/10/00 - Grand Chamber</i>	<i>Lisiak, judgment of 05/11/02</i>
<i>A.W., judgment of 24/06/2004</i>	<i>Panek, judgment of 08/01/04</i>
<i>B.R., judgment of 16/09/03</i>	<i>Skawińska, judgment of 16/09/03</i>
<i>Bogacz, judgment of 09/05/2006</i>	<i>Wojda, judgment of 08/11/2005</i>
<i>Bzdyra, judgment of 15/11/2005</i>	<i>Wróbel, judgment of 20/07/2004</i>
<i>Dzierżanowski, judgment of 27/06/2006</i>	

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)58 concerning the judgment of the European Court of Human Rights of 22 June 2004 (Grand Chamber) in the case of BRONIOWSKI against Poland

*(Adopted by the Committee of Ministers on 5 July 2005
at the 933rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights ("the Court") of 22 June 2004 in the case of Broniowski against Poland transmitted on the same date to the Committee of Ministers in accordance with Article 46 of the Convention;

Recalling that the case originated in an application (No. 31443/96) against Poland, lodged with the European Commission of Human Rights on 12 March 1996 under former Article 25 of the Convention by Mr Jerzy Broniowski, a Polish national, and that the Court, seised of the case under Article 5, paragraph 2, of Protocol No. 11, declared admissible the complaint concerning the authorities' failure to implement the applicant's entitlement to compensation for property abandoned in the territories beyond the Bug River as a result of boundary changes following the Second World War;

Noting that the Court, referring to the Committee of Ministers' Resolution of 12 May 2004 on judgments revealing an underlying systemic problem (Res(2004)3) and to the Recommendation of the same date on the improvement of domestic remedies (Rec(2004)6), decided to indicate the measures that the Polish State should take, under the supervision of the Committee of Ministers and in accordance with the subsidiary character of the Convention, so as to avoid being seised of a large number of similar cases;

Whereas in its judgment of 22 June 2004 the Court held unanimously, *inter alia*:

- that there had been a violation of Article 1 of Protocol No. 1 to the Convention;
- that this violation had originated in a systemic problem connected with the dysfunction of domestic legislation and practice caused by the absence of an effective mechanism to implement the "right to credit" of Bug River claimants;
- that the respondent state must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights provided by Article 1 of Protocol No. 1;
- that, as regards the financial award to the applicant for any pecuniary or non-pecuniary damage resulting from the violation found in the present case, the question of the application of Article 41 was not ready for decision and accordingly reserved and postponed for a later stage;
- that the respondent state was to pay the applicant, within three months, 12,000 euros in respect of costs and expenses incurred up to the present stage of the proceedings before the Court, less 2,409 euros received by way of legal aid from the Council of Europe to be converted into the currency of the respondent state at the rate applicable on the date of payment, and that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points would be payable on the above amount from the expiry of the above-mentioned three months until settlement;

Recalling that on 6 July 2004 the Court decided that all similar applications (216 at present) – including future applications - should be adjourned pending the outcome of the leading case and the adoption of the measures to be taken at national level;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Recalling that High Contracting Parties are required rapidly to take the necessary measures to this end, *inter alia* by preventing new violations of the Convention similar to those found in the Court's judgments;

Recalling that the adoption of such measures is particularly pressing in cases where a judgment which points to structural or general deficiencies in national law or practice has been delivered, and a large number of applications to the Court concerning the same problem are pending or likely to be lodged;

Drawing attention in this connection to the Committee's Recommendations and Declaration of 12 May 2004 aimed at ensuring the long-term effectiveness of the European Court of Human Rights and improving the execution of its judgments (see, in particular, Res(2004)3 and Rec(2004)6, cited above);

Stressing that the need to adopt the necessary measures rapidly in the present case is of particular concern in view of the fact that persons concerned by the situation impugned by the Court are unable to obtain redress either through domestic remedies or from the Court itself, as the latter has decided to adjourn the examination of similar complaints pending the solution of the underlying problem in Poland;

Having invited Poland to inform it of the measures adopted or being taken in consequence of the judgment in this case;

Having examined the information provided so far by the Polish authorities concerning the measures adopted or planned to abide by the judgment (as it appears in the Appendix to this resolution);

Having satisfied itself that on 9 September 2004, within the time-limit set, the government of the respondent state paid the applicant the sum provided for in the judgment of 22 June 2004 in respect of costs and expenses;

Welcoming the fact that on 15 December 2004 the Polish Constitutional Court, basing itself in particular on the Court's judgment, declared several provisions of the law of December 2003 contrary to the Polish Constitution with the result that claimants in the applicant's situation (those who had been awarded partial compensation) will no longer meet any legal obstacles to obtain at least a proportion of their entitlement on an equal footing with the remaining Bug River claimants;

Noting that a new draft law has been submitted to the Polish Parliament aiming at improving the conditions for compensation of all Bug River claimants so as to ensure full compliance with the Convention and the Court's judgment;

Noting with concern that, pending the entry into force of this new law, the implementation of Bug River claimants' rights is to a large extent suspended,

CALLS UPON the Polish authorities to intensify their efforts rapidly to finalise the legislative reform and create the conditions necessary for its effective implementation;

EXPECTS to receive from the Polish authorities a comprehensive plan of action including time-table, on how they plan to ensure this implementation so as to guarantee that the claimants' right to compensatory property does not remain illusory but becomes enforceable;

DECIDES to continue to give priority to the examination of this case until the judgment has been fully executed.

Appendix to Interim Resolution ResDH(2005)58

Information provided by the Government of Poland during the examination of the Broniowski case by the Committee of Ministers

I. The Constitutional Court's decision of 15 December 2004

On 15 December 2004 the Constitutional Court declared contrary to the Polish Constitution several provisions of the law of December 2003 (Law on offsetting the value of property abandoned beyond the present borders of the Polish State against the price of State property or the fee for the right of perpetual use), challenged in the judgment of the Grand Chamber.

This decision concerns in particular Article 2, paragraph 4 of this Law, according to which claimants in the applicant's position who had been awarded partial compensation, lost their entitlement to further compensation. The provision limiting the right to compensation to 50,000 Zlotys has also been declared contrary to the Constitution (Article 3, paragraph 2).

In accordance with national law, the provisions invalidated in the Constitutional Court's judgment lost their binding force on 27 December 2004 (the date of the publication of this judgment), except for Article 3, paragraph 2, which remained applicable until 30 April 2005.

Consequently, claimants in the applicant's situation will no longer meet any legal obstacles to fulfilling their entitlement to compensation equal to that planned for claimants who had received no compensation before, i.e. 15% of the value of their property.

II. Activities of the Agricultural Property Agency in application of the law of December 2003

Between 30 January 2004 and 31 October 2004 the Agency organised 30,000 auctions and offered for sale 60,000 hectares of land. In the relevant period persons entitled to receive compensatory property under the law of December 2003 participated in 60 auctions and concluded 33 purchase contracts with the Agency.

III. Legislative reform

In response to the judgment of the European Court in this case, the Polish authorities initiated a reflection process concerning the necessity of legislative reform. This process subsequently also extended to the judgment of the Constitutional Court of 15 December 2004. The conclusion was that new legislation regulating the implementation of the property right in question should be adopted.

A draft law was drawn up by the competent ministries in consultation with the associations representing Bug River claimants. The text was submitted to Parliament on 3 March 2005 and is expected to be adopted by the end of July 2005.

The provisions of the draft law take into account the considerations of both the European Court and the Polish Constitutional Court. The main aim of this new legislation is to ensure a comprehensive legal framework for the implementation of the entitlement for compensatory property in conformity with the Polish Constitution and the Convention requirements.

It should be noted in particular, that the new draft law provides further possibilities to assert claims concerning property beyond the Bug River in comparison with the December 2003 Act. According to Article 13, paragraph 1-1, claimants' entitlement to property abandoned beyond the present borders of the Polish state may be offset not only against the price of state property acquired at public auctions or against the fee for perpetual use of such property, but also against the price to be paid for the transformation of the right for perpetual use into a right of property. Furthermore, the claimants may have their entitlement paid from the Privatisation Fund established under the 1996 Act on Privatisation and Commercialisation (Article 13, paragraph 1-2).

As regards the amount of the compensation for Bug River claims, the draft law, like the December 2003 Act, also provides that it is limited to up to 15% of the value of the abandoned property. The Polish authorities consider that this specific limitation should remain in the new law as it is based on a

thorough analysis of the registered claims and the financial capacity of the Polish state and has been challenged neither by the Polish Constitutional Court nor by the European Court.

IV. Publication

The European Court's judgment has been published on the Internet site of the Ministry of Justice www.ms.gov.pl. The present resolution will also be published on the same Internet site.

V. Conclusion

The Polish government believes that the above measures demonstrate its determination to bring domestic law fully into line with the Convention requirements, as set out in the Court's judgment, and to ensure the effective implementation of the Bug River claimants' right to compensation. The Polish authorities will continue to take all necessary measures to that effect and will keep the Committee of Ministers informed of all new developments, and in particular of the practical implications of the measures adopted.

PORTUGAL

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

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

*(Adopted by the Committee of Ministers on 17 October 2007,
at the 1007th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"),

Having regard to the number of judgments of the European Court of Human Rights ("the Court") finding Portugal in violation of Article 6, paragraph 1, of the Convention on account of the excessive length of judicial proceedings (see Appendix II to this resolution);

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations as well as to adopt general measures preventing new violations of the Convention similar to those found including provision of effective domestic remedies pending the entry into effect of the necessary changes;

Recalling in this respect the Committee of Ministers' Recommendation to member states Rec(2004)6 regarding the need to improve the efficiency of domestic remedies;

Recalling furthermore that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law;

Having invited Portugal to inform it of the measures adopted or being taken in response to these judgments and having examined the information provided by the Portuguese authorities in this respect (as it appears in the Appendix I to this interim resolution);

Individual measures

Having noted the individual measures taken by the authorities to provide the applicants redress for the violations found (*restitutio in integrum*), in particular the payment of the just satisfaction awarded by the Court in all cases and the acceleration, as far as possible, of the proceedings which were still pending after the findings of violations by the Court;

Noting with satisfaction that the domestic proceedings at issue have been brought to an end in 22 of the 25 cases concerned;

Noting however 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 Agrícola do Peral and other) respectively;

Noting with satisfaction that the Portuguese authorities are providing the Committee with frequent and detailed updates on the progress in these proceedings;

General measures

Measures to remedy the excessive length of proceedings

Recalling that numerous violations found by the Court were due to excessive delays in various kinds of judicial proceedings in Portugal, thus revealing certain structural problems in the administration of justice;

Welcoming the numerous reforms adopted by the authorities in order to remedy these structural problems (see details in Appendix I), and in particular:

- the increase in the number of judges
- the reduction of the 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,
- the increase of the number of justices of the peace and “mediation services”, which facilitate settlement of disputes by means of conciliation between the parties and the increase of their fields of competence

Considering however that the impact of the reforms adopted on the length of proceedings in Portugal and their actual capacity to prevent new similar violations can only be assessed on the basis of comparative, statistical data;

Noting that the first evaluations of the measures adopted seem to show a positive trend, indicating that in 2006, for the first time in more than 10 years, the number of concluded proceedings was greater than the number of initiated ones;

Considering that more statistical data, over a longer period of time, are necessary for a full assessment of the effectiveness of the measures adopted;

Measures regarding effective remedies

Noting that articles 108 and 109 of the Portuguese Code of Criminal Procedure enable a person to complain of the excessive length of criminal proceedings in Portugal and to request their acceleration, thus providing a true legal remedy, as recognised by the Court in its decision on admissibility in the case of Tomé Mota of 2 December 1999;

Noting further that, as noted by the Court in its decision on admissibility in the case of Gouveia da Silva Torrado of 22 May 2003, the case-law of the Portuguese Supreme Administrative Court has developed so as to ensure that the decree of 1967 on the extra-contractual civil responsibility of the state provides an effective remedy against the excessive length of civil proceedings, but noting that confirmation is awaited of the general application of this case-law;

Welcoming the ongoing legislative process to replace the decree of 1967 by a Law on the regime of extra-contractual civil responsibility of the state and other public entities 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;

Recalling the consistent position of the Convention organs 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 of the Convention;

INVITES the Portuguese authorities to provide for acceleration as much as possible of the proceedings in the three cases still pending before the Portuguese courts, to bring them to an end as soon as possible, and to keep the Committee informed of the progress in this respect;

ENCOURAGES the Portuguese 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, and keep the Committee informed thereof;

INVITES the authorities to provide the Committee 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;

INVITES the authorities further to continue the legislative process with a view to the adoption of 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;

DECIDES to resume consideration of the outstanding individual measures and the general measures in these cases at its third meeting in 2008 at the latest.

Appendix I to Interim Resolution CM/ResDH(2007)108

Information provided by the Government of Portugal during the examination of the cases concerning the excessive length of proceedings by the Committee of Ministers

I. Individual measures

The Portuguese authorities have recently provided a comprehensive summary on the progress in the proceedings still pending. Only the cases of Oliveira Modesto and others, Sociedade Agrícola do Peral and Other and Garcia da Silva are currently still pending before the domestic courts. In the case of Oliveira Modesto, the proceedings are expected to be concluded by September 2008. The payments to the creditors would then be made by the end of 2008. In the case of Garcia da Silva, the proceedings are still pending for various reasons, including the lack of cooperation from the parties involved. Finally, in the case of Sociedade Agrícola do Peral a judgment has recently been delivered, which is now the subject of an appeal to the Supreme Administrative Court.

II. General measures

A) Measures taken to reduce the length of criminal and civil proceedings

1) Civil proceedings:

- The possibilities of applying the judicial regime of injunction has been increased and extended to the recovery of debts arising from contracts of a value not higher than almost 15 000 euros. This will ensure the transfer of this type of cases from the courts to their registries.
- Several new laws have been introduced to simplify legal procedures and make them more flexible, for example by regulating the use of electronic documents and signatures and by enabling the judiciary to treat cases jointly.
- The rules as regards the territorial jurisdiction of courts have changed, with the consequence that the number of proceedings is more geographically spread instead of being concentrated in the two biggest cities.
- Bankruptcy procedures have been reformed so that insolvency and bankruptcy cases are begun within reasonable time (Law 39/2003).
- The legal regime concerning the payment of insurance premiums has been changed, with a view to avoiding a great number of declaratory actions before the courts.
- A Law and, subsequently, a decree have been adopted in 2007 amending the rules regarding appeal proceedings in civil cases, aimed at, among other things, reducing the number of appeals brought in general and to the Supreme Court in particular. The new legislation eliminates the difference between two forms of appeal, thus unifying the regime on appeals in civil cases. One of its aims is to prevent

that the High Court of Justice often needs to decide on questions that have been previously decided on, thus enhancing its role as “case law guider” of the judicial system. This draft law also allows for a reopening of proceedings when the judgment in question is not in accordance with a decision of an international body.

- A temporary law, applicable only in the year 2006, was adopted, providing tax incentives in compensation for withdrawal of pending proceedings.

- Enforcement proceedings have been reformed by assigning certain functions (e.g. summonses, publications, sale of seized goods) to specialised enforcement officers. The new legislation (Legislative Decree 38/2003) in particular sets out stricter rules and time-limits for enforcement proceedings. Such proceedings represented 52.3% of all civil proceedings in Portugal in 2003. The reform is expected to ensure a more reasonable length of enforcement proceedings, as under the new regime 80% of applications are no longer dealt with before a court, but passed directly to enforcement officers. The processing of claims is further accelerated with the entry into operation of an online application system via internet.

2) Administrative and fiscal proceedings:

- Laws have been passed to simplify and accelerate administrative proceedings in specific fields (Law 13/2002 approving the new Statute of the administrative and fiscal tribunals and Law 15/2002 approving the Code of procedure applicable in the administrative and fiscal tribunals). In particular, these laws provide the creation and establishment of new district administrative tribunals with competencies previously vested in the Supreme Administrative Court and the Central Administrative Tribunal. The Central Administrative Court has been turned into a Court of Appeal. This reform entered fully into force on 01/01/2004, when 14 new tribunals, in which 83 new magistrates sit, became operational. During the first semester of 2004, 3,686 sets of administrative and 5,595 sets of fiscal proceedings were initiated. At the end of the first trimester, 669 administrative and 547 fiscal proceedings had been closed. The Portuguese authorities state that these reforms have significantly increased both the speed of proceedings and the number of cases closed.

- Several aspects of the fiscal regime applicable to bad debt have been modified so as to decrease the amount of proceedings brought in this field.

- An Action Programme to Modernise Tax Justice was approved by Decree Law 182/2007 and is being implemented since January 2007. This Programme allocated magistrates to pending proceedings and reinforced the technical support to the courts. The recruitment of new magistrates and judicial clerks in this field will continue. The Programme also provides for the creation of a new Administrative and Tax Court and 6 new Liquidation Sections.

3) Criminal proceedings:

- Numerous amendments of the Criminal Code and the Code of Criminal Procedure were adopted and have entered into force on 15 September 2007. One of the main aims of these reforms was to allow criminal proceedings to be conducted simpler and more speedily, without prejudice to the fundamental rights of the suspect in question. Therefore, amendments were made regarding certain time-limits: whenever a time-limit is not met, action is immediately taken within the court system, possibly leading to procedural acceleration by the Public Prosecutors Office. The maximum period of detention on remand has been reduced. In addition, the number of cases in which special, shorter kinds of proceedings, often on basis of consensus, are applicable, has been increased. Several acts may now be performed on non-working days and the time-limits for these actions continue to run during judicial holidays. Procedures regarding a conflict of competence between courts have been simplified. Also, the transcription of recordings of trial proceedings on appeals is no longer mandatory, removing one of the main causes of delays in appeals in criminal cases. Finally, the possibility of mediation has been introduced in criminal proceedings, allowing cases to be settled without the need for a trial.

The reopening of criminal proceedings after a decision of an international Court has also been made possible in the new legislation.

- Several infractions and contraventions have been removed from the criminal jurisdictions and transferred to administrative ones.
- The amount as from which cheques without provision are criminalised has been increased, a previous increase having proved effective in reducing the number of such criminal cases.

4) *The length of proceedings in general:*

- New judges are being recruited and trained and computer systems for the judiciary are being developed.
In 2004, 118 new judges and 69 prosecutors, trained at the School of Magistrates, were appointed. In addition, the amount of vacation judges can take per year has been significantly reduced.
- A law has been passed to regulate the jurisdiction of justices of the peace and “mediation services”, to promote settlement of disputes by means of conciliation between the parties (Law 78/2001). After several increases, there are currently twelve justices of the peace operating in Portugal. Increasing the number of justices of the peace and their fields of competence has meant that they handle many more cases, thus relieving the burden on the courts. In 2004, the number of cases brought before justices of the peace was 2,535, where in 2002 it was 336. This number continues to rise. The average length of proceedings before justices of the peace is two months.
- Currently 32 authorised arbitration centres are operational, with competences in both civil and administrative disputes. 8 of these are technically and financially supported by the State. For example, in 2006 an arbitration centre competent in matters concerning hospital debts was created. Two other centres will be created shortly, competent in matters relating to industrial property and in administrative disputes concerning public contracts.
- Laws have also been adopted to increase the number of judges. In particular, these laws provide: exceptional shortening of magistrates’ traineeships, the temporary assignment of lawyers with recognised professional experience as judges in courts of first instance, the recruitment of judges’ assistants and the establishment in courts of special sections of retired judges to deal with pending or delayed cases (Legislative Decree 179/2000, Legislative Decree 330/2001, Law 7-A/2003 and Law 3/2000). Between September 2000 and December 2003, 5,438 cases were transferred to these special sections. All in all this reform has had positive effects, although these have been limited due to the total number of cases pending before the courts. The establishment of these sections was a temporary reform, only valid until 2003.
- The Bureau of Legislative Policy and Planning of the Ministry of Justice has, in cooperation with an association belonging to the law faculty of the *Universidade Nova* in Lisbon, prepared a report, evaluating the system of appeal in civil and criminal proceedings. A public debate on this report has been held, which inspired several legislative amendments.
- Several so called e-Justice mechanisms have been introduced, aiming to facilitate the access to justice on the one hand and accelerating judicial proceedings on the other.
- Pending a modernisation of the judicial system in general, which will enter into force in 2008, several urgent reorganisational measures have been adopted, creating for example 22 new specialised Sections of the courts. The above-mentioned more elaborate reform will, among other things, focus on the geographical distribution of courts, with a view to improving rationality, effectiveness and access to justice.

5) *The effectiveness of the measures adopted*

- The first evaluations of the measures adopted seem to show a positive trend, indicating that in 2006, for the first time in more than 10 years, the number of concluded proceedings was greater than the number of initiated ones. The number of concluded proceedings increased with 14,3% and the number of initiated proceedings decreased with 4,4% as compared to 2005.

B) Legislative measures to introduce an effective domestic remedy in cases of excessive length of judicial proceedings

Articles 108 and 109 of the Portuguese Code of Criminal Procedure enable a person to complain of the excessive length of criminal proceedings in Portugal and to request their acceleration. These articles thus provide a true legal remedy.

In addition, the case-law of the Portuguese Supreme Administrative Court has developed so as to ensure that the decree of 1967 on the extra-contractual civil responsibility of the State provides an effective remedy against the excessive length of civil proceedings.

A legislative process is ongoing to replace this decree with the Law on the regime of extra-contractual civil responsibility of the State and other public entities which explicitly regulates the extra-contractual responsibility of the State for the violation of the right to a judicial decision within a reasonable time. This process is in its final phase.

* * *

Appendix II to Interim Resolution CM/ResDH(2007)108

a. Cases before civil courts

- 34422/97 Oliveira Modesto and others, judgment of 08/06/00, final on 08/09/00
- 54926/00 Costa Ribeiro, judgment of 30/04/03, final on 30/07/03
- 53997/00 Dias Da Silva and Gomes Ribeiro Martins, judgment of 27/03/03, final on 27/06/03
- 53534/99 Esteves, judgment of 03/04/03, final on 03/07/03
- 56345/00 Ferreira Alves No. 2, judgment of 04/12/03, final on 04/03/04
- 53937/00 Ferreira Alves, Limited, judgment of 27/02/03, final on 27/05/03
- 49671/99 Ferreira da Nave, judgment of 07/11/02, final on 07/02/03
- 56110/00 Frotal-Aluguer de Equipamentos S.A., judgment of 04/12/03, final on 04/03/04
- 58617/00 Garcia da Silva, judgment of 29/04/2004, final on 29/07/2004
- 49279/99 Koncept-Conselho em Comunicação e Sensibilização de Públicos, Lda, judgment of 31/10/02, final on 31/01/03
- 52412/99 Marques Nunes, judgment of 20/02/03, final on 20/05/03
- 54566/00 Moreira and Ferreirinha, Lda and others, judgment of 26/06/03, final on 26/09/03
- 55081/00 Neves Ferreira Sande e Castro and others, judgment of 16/10/03, final on 16/01/04
- 57323/00 Pena, judgment of 18/12/03, final on 18/03/04
- 48187/99 Rosa Marques and others, judgment of 25/07/02, final on 25/10/02
- 59017/00 Soares Fernandes, judgment of 08/04/2004, final on 08/07/2004
- 44298/98 Tourtier, judgment of 14/02/02, final on 14/05/02

b. Cases before administrative courts

- 52662/99 Jorge Nina Jorge and others, judgment of 19/02/04, final on 19/05/04
- 55340/00 Sociedade Agrícola do Peral and autre, judgment of 31/07/03, final on 31/10/03

c. Cases before criminal courts

- 48956/99 Gil Leal Pereira, judgment of 31/10/02, final on 31/01/03
- 14886/03 Monteiro da Cruz, judgment of 17/01/2006, final on 17/04/2006
- 50775/99 Sousa Marinho and Marinho Meireles Pinto, judgment of 03/04/03, final on 03/07/03
- 52657/99 Textile Traders, Limited, judgment of 27/02/03, final on 27/05/03

d. Case before family courts

- 51806/99 Figueiredo Simoes, judgment of 30/01/03, final on 30/04/03

e. Case before labour courts

- 53795/00 Farinha Martins, judgment of 10/07/03, final on 10/10/03

ROMANIA

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)57 concerning the judgment of the European Court of Human Rights of 4 May 2000 in the case of ROTARU against Romania

*(Adopted by the Committee of Ministers on 5 July 2005
at the 933rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”),

Having regard to the final judgment of the European Court of Human Rights in the Rotaru case delivered on 4 May 2000 and transmitted the same day to the Committee of Ministers under Article 46 of the Convention;

Recalling that the case originated in an application (No. 28341/95) against Romania, lodged with the European Commission of Human Rights on 22 February 1995 under former Article 25 of the Convention by Mr Aurel Rotaru, a Romanian national, and that the Commission declared admissible the complaint concerning the breach of the applicant's right to respect for his private life on account of the holding and use by the Romanian Intelligence Service (“RIS”) of a file containing personal information concerning, in particular, his alleged belonging in 1937 to the Romanian “legionary” movement, as well as the complaint concerning the breach of the right of access to a court and of the right to an effective remedy before a national authority that could rule on an application to have the file amended or destroyed;

Recalling that the case was brought before the Court by the Commission on 3 June 1999 and by the applicant on 29 June 1999;

Whereas in its judgment of 4 May 2000 the Court held *inter alia*:

- by sixteen votes to one, that there had been a violation of Article 8 of the Convention;
- unanimously, that there had been a violation of Article 13 of the Convention;
- unanimously, that there had been a violation of Article 6, paragraph 1, of the Convention;
- unanimously, that the government of the respondent state was to pay the applicant, within three months, 50,000 French francs in respect of non-pecuniary damage and 3,690.28 French francs in respect of costs and expenses, to be converted into Romanian lei at the rate applicable on the date of settlement, and that simple interest at an annual rate of 2.74% would be payable on those sums from the expiry of the above-mentioned three months until settlement;
- dismissed, unanimously, the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 4 May 2000, having regard to Romania's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling that High Contracting Parties are required rapidly to take the necessary measures to this end herewith, in particular by preventing new violations of the Convention similar to those found in the Court's judgments ;

Recalling the Declaration of the Committee of Minister of 12 May 2004 on ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels, as well as the recommendations mentioned therein aiming at reinforcing the implementation of the European Convention on Human Rights at domestic level;

Having satisfied itself that on 2 August 2000, within the time-limit set, the government of the respondent state paid the applicant the sums provided in the judgment of 4 May 2000;

Noting the information provided by the Romanian authorities concerning the individual measures, as well as the measures taken so far to prevent new, similar violations (this information is summarised in the appendix to this resolution);

Recalling that the Court noted, under Article 8 of the Convention, that the domestic law did not lay down with sufficient precision the limits to be respected in the exercise of the power to gather, record and archive information concerning national security (paragraph 57 of the judgment), as well as the absence of a procedure to supervise the activity of the secret services to ensure respect of the values of a democratic society; supervision which should be carried out, at least in the last resort, by the judiciary (paragraph 59 of the judgment);

Also recalling that the Court concluded, under Article 13 of the Convention, that no provision of Romanian law allowed the applicant to challenge the holding by the intelligence services of information on his private life or to refute the truth of such information (paragraph 72 of the judgment);

Recalling that the case also concerned a violation of Article 6, paragraph 1, of the Convention on account of the failure of the Bucharest court of appeal, in November 1997, to rule on the applicant's request for compensation for the non-pecuniary damage caused by the use of erroneous information, as well as on his request for reimbursement of the costs incurred in order to obtain the rectification of the information concerning him (paragraph 77 of the judgment);

Noting with interest the new Law No. 535/2004 on the prevention and repression of terrorism which now provides for a procedure of judicial supervision of all secret surveillance measures, also in the cases involving threats to the national security;

Noting also with interest the information submitted by the Romanian authorities concerning the legislative procedure currently under way with a view to reforming Law No. 51/1991 on national security;

Noting in addition the procedure provided by Law No. 187/1999 which, in spite of the shortcomings identified by the European Court (see paragraph 71 of the judgment), nevertheless allows interested persons to inspect the files created in their respect (between 1945 and 1989) by the organs of the former *Securitate*, to obtain certificates concerning their possible collaboration with the former *Securitate* and to contest before a court the content of such certificates;

Noting nevertheless with regret that, more than five years after the date of the judgment, several shortcomings identified by the European Court still do not seem to have been remedied, in particular concerning the procedure to be followed in order to have access to the archives taken over by the RIS from former secret services (others than the *Securitate*), the absence of specific regulation concerning the age of the information which could be stored by the authorities, or the lack of a possibility to contest the holding of this information and, save for the cases provided for by Law No. 187/1999, their truthfulness,

CALLS UPON the Romanian authorities rapidly to adopt the legislative reforms necessary to respond to the criticism made by the Court in its judgment concerning the Romanian system of gathering and storing of information by the secret services,

DECLARES, after having examined the information supplied by the Government of Romania, that it has provisionally exercised its functions under Article 46, paragraph 2, of the Convention in this case,

DECIDES to resume consideration of this case, as far as general measures are concerned, when the legislative reforms have been accomplished or, at the latest, at one of its first meetings in 2006.

Appendix to Interim Resolution ResDH(2005)57

Information provided by the Government of Romania during the examination of the Rotaru case by the Committee of Ministers

Individual Measures

The Romanian authorities recall that the case dealt with the use made by the Romanian Intelligence Service, within the context of court proceedings, of information concerning the applicant, information obtained by consulting the archives taken over from the former secret services. Because of a similarity of names, some of this information, dealing with the applicant's political activity in the 1930s, was erroneous.

To avoid any future confusion of this kind which could be harmful to the applicant, the judgment of the European Court has been appended by the Romanian Intelligence Service to the file from which the information at issue was obtained, an annotation having been made in this respect.

General Measures

The Romanian authorities underline that the secret services' activities concerning the gathering of information on national security are regulated by the framework law on national security (Law No. 51/1991). This law defines (Article 3) the cases which may be considered as threats to national security and which justify the adoption of specific measures of secret surveillance of the persons suspected of having committed such acts. The law also regulates (Article 13) the procedure to be followed when having recourse to surveillance measures which interfere with the individual's right to respect for private life, such as telephone tapping, and provides the possibility for all persons claiming that their rights and freedoms have been infringed to seize the parliamentary commissions dealing with defence and public order (Article 16).

Since the delivery of the European Court's judgment in the Rotaru case, several bills concerning the reform of Law No. 51/1991 have been submitted to the Parliament. They aim at the modernisation of the law, with a view to adapting it to the new forms of threats to national security (in particular within the context of the fight against international terrorism), as well with a view to reinforcing the guarantees given to individuals' fundamental rights. In this respect, the Romanian authorities are taking into account the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002.

This legislative process has nevertheless not yet led to the reform of Law No. 51/1991, particularly in view of the complexity and of the sensitive nature of the subject matter. The procedure concerning the authorisation of surveillance measures provided for by Law No. 51/1991 has nevertheless been modified by Law No. 281/2003 on the amendment of the Code of Criminal Procedure, which instituted a judicial control of secret surveillance measures. Subsequently, Law No. 535/2004 on the prevention and repression of terrorism has brought further changes, so that the authorisation of secret surveillance measures, in all the cases of presumed threats to national security provided for by Law no. 51/1991, comes today within the competence of judges of the High Court of Justice and Cassation.

Concerning the other aspects criticised by the European Court in the Rotaru judgment, they will be taken into account in the context of the legislative reform which is currently under way. New provisions will be enacted regulating issues such as the control of the activity of secret services, the age of

information which may be held, as well as establishing a procedure allowing interested persons to challenge the information which might be held by the secret services. In this respect, the publication of the Rotaru judgment in the Official Journal in January 2001 has already allowed the Romanian courts to take account of the European Court's findings, in particular of those concerning the right, guaranteed by Article 13 of the Convention, to have the possibility to challenge the holding by the intelligence services of personal data, to refute their truthfulness and to request that the inexact data be modified.

Moreover, it is envisaged to regulate in a detailed way the procedure to be followed to have access to information contained in the archives taken over by the RIS from the former secret services, as well as to indicate the use that may be made of the information thus obtained. In this respect, the competent authorities envisage the possibility to amend Law No. 14/1992, which regulates the activity of the RIS, after the amendment of the framework law on the protection of national security.

In addition, the Romanian authorities recall the provisions of Law No. 187/1999 on citizens' access to the personal files held on them by the *Securitate* and aimed at unmasking that organisation's nature as a political police force. Even if this law is not applicable to the situation of the applicant in the Rotaru case, it nevertheless allows interested persons to inspect the files created in respect of them by the organs of the former *Securitate* (between 1945 and 1989), to obtain certificates indicating whether they had collaborated or not with the former *Securitate* and to contest before a court the content of such certificates.

Finally, the Romanian authorities believe that the domestic courts will afford direct effect to the Rotaru judgment so as to avoid new violations of Article 6, paragraph 1, of the Convention similar to that found by the European Court in the present case, where the Bucharest Court of Appeal failed to consider the applicant's claim for compensation and for the reimbursement of the costs incurred in order to obtain the rectification of the data at issue.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)2 concerning the judgment of the European Court of Human Rights of 28 September 1999 in the case of DALBAN against Romania

*(Adopted by the Committee of Ministers on 8 February 2005
at the 914th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the final judgment of the European Court of Human Rights in the Dalban case delivered on 28 September 1999 and transmitted the same day to the Committee of Ministers under Article 46 of the Convention;

Recalling that the case originated in an application (No. 28114/95) against Romania, lodged with the European Commission of Human Rights on 20 April 1995 under former Article 25 of the Convention by Mr Ionel Dalban, a Romanian national, and that the Commission declared admissible the complaints relating to the unfairness of criminal proceedings conducted against the applicant, the trial court not having examined documents submitted in his defence and to the unjustified interference with his freedom of expression due to the applicant's conviction for libel;

Recalling that the case was brought before the Court by the Commission on 27 April 1998 and by the applicant's widow on 5 May 1998;

Whereas in its judgment of 28 September 1999 the Court unanimously:

- held that there had been a violation of Article 10 of the Convention;
- held that it was not necessary to examine the case under Article 6, paragraph 1;
- held that the government of the respondent state was to pay the applicant's widow, within three months, 20 000 French francs in respect of non-pecuniary damage and that simple interest at an annual rate of 3.47% would be payable on this sum from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 28 September 1999, having regard to Romania's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Considering that High Contracting Parties are required rapidly to take the necessary measures to this end, *inter alia* by preventing new violations of the Convention similar to those found in the Court's judgments ;

Having satisfied itself that on 15 December 1999, within the time-limit set, the government of the respondent state paid the applicant's widow the sum provided for in the judgment of 28 September 1999;

Noting the information provided by the Romanian authorities concerning individual measures as well as the measures which have been taken so far to prevent new, similar violations (this information appears in the Appendix to this resolution);

Noting the explanations given by the Romanian authorities for the time taken to reform the law, the efforts they have undertaken to enhance the direct effect of Strasbourg judgments and the ongoing reflection on ways to improve legislative procedures in the light of Committee of Ministers'

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;

Noting in this context that the European Court's judgment was promptly published in the Official Journal, to ensure that Romanian courts and authorities give it direct effect in applying existing law so as to avoid, as far as possible, new, similar violations;

Noting also that the Romanian authorities have provided examples of domestic court decisions on criminal libel charges in which the courts, often referring to the European Court's case-law, subsequently acquitted the defendants not least in view of their intention to transmit information and ideas on issues of public interest;

Noting that this development has been strengthened by the adoption, in June 2004, of the new Criminal Code, the relevant provisions of which allow those accused of criminal libel to invoke good-faith as a defence, to make more extensive use of the defence of truth and remove imprisonment as a punishment for this offence; these reforms being due to enter into force on 29 June 2005;

Recalling the Declaration on ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels, adopted by the Committee of Ministers on 12 May 2004, at its 114th Session, and the recommendations to the member states referred to therein,

INVITES the Romanian authorities to pursue their efforts further to develop the direct effect of the European Court's case-law in domestic law, *inter alia* in the area of freedom of expression, and to improve legislative procedures and to keep the Committee of Ministers informed of the progress;

DECLARES, after having examined the information supplied by the government of Romania, that it has provisionally exercised its functions under Article 46, paragraph 2, of the Convention in this case;

DECIDES to resume consideration of this case at the end of 2005.

Appendix to Interim Resolution ResDH(2005)2

*Information provided by the government of Romania
during the examination of the Dalban case
by the Committee of Ministers*

The Romanian government recalls that the violation found by the European Court in the present case concerned the applicant's criminal conviction for libel for articles which he had published in the press, without being given by the competent court a proper opportunity to adduce evidence in support of his statements.

As regards *individual measures*, the government recalls that the applicant died on 13 March 1998. It also points out that Romanian law offers the possibility to request reopening of criminal proceedings on the basis of judgments of the European Court of Human Rights, to obtain the annulment of a conviction contrary to Article 10 as in the present case. In any event, as regards some of the statements published by the applicant and resulted in his conviction, he was acquitted by the Supreme Court of Justice in March 1999, in extraordinary proceedings instituted by the Prosecutor-General.

In response to the Dalban judgment, the Romanian authorities initiated a reflection process concerning the necessary *general measures* and concluded that criminal law needed to be amended to stress the possibility for those accused of criminal libel to invoke good faith in their defence.

However, recognising that the legislative element in the changes to Romanian law required by the Court's judgment would take more time, the amendments to the Criminal Code being incorporated in the overall criminal law reform conducted in the last years, the government in the meantime issued Order No. 58/2002 reducing the penalties for criminal libel.

The government stresses that efforts have been made throughout the legislative process to ensure that judges interpret the relevant legal provisions in line with the Strasbourg standards. In this respect, the government recalls that criminal libel is an offence requiring the defamed party to lodge a criminal complaint directly with the court, thus excluding the public prosecutors' competence in this field.

Following the publication of the European Court's judgment in the Official Journal in June 2000, several conferences, training courses and seminars for judges and public prosecutors have been organised, specifically dealing with issues related to the freedom of expression as guaranteed by Article 10 of the Convention.

Moreover, a course on the "Court's case-law" was introduced as early as 2000 into the initial training of new judges and prosecutors conducted by the National Institute of Magistrates. Possible further development of these courses is being considered in the light of the Committee of Ministers' Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training.

As a result of these efforts, Romanian courts are increasingly taking into account the Strasbourg case-law concerning the freedom of expression when applying domestic law, as reflected in several recent judgments which have been provided to the Committee of Ministers.

In addition, the new Criminal Code was adopted on 28 June 2004, and included provisions stressing that journalists may publish statements of public interest in accordance with the principles enshrined in the European Court's case-law. According to the new Code, insult is no longer a criminal offence. As for defamation, imprisonment has been removed as a punishment and the possible use of the defence of truth has been widened, particularly by introducing the defence of good faith.

The new relevant provisions are:

Article 225 - Libel

The statement or allegation made in public, by any means, of facts concerning a particular person which, if true, would render that person liable to a criminal, administrative or disciplinary penalty or expose that person to public opprobrium (contempt), shall be punished by 10 to 120 days/fine.

The criminal proceedings can be set in motion at the request of the injured person. The conciliation of the parties excludes the criminal liability.

Article 226 – The proof of truth or of good faith

The statement or allegation of facts in relation to which the proof of truth was made or in relation to which the defendant had reasonable grounds to believe they were true, do not constitute libel.

In case of statements or allegations of facts referring to the private life of a person, the proof of truth or the proof that the defendant had reasonable grounds to believe that they were true are admissible for the defense of a legitimate interest.

In case of statements or allegations of facts referring to the private life of a person that affect that person's ability to exercise a public office, the proof of truth or the proof that the defendant had reasonable grounds to believe that the facts are true are admissible without being necessary to prove the existence of a legitimate interest.

In the Romanian government's view, the new provisions of the Criminal Code confirm the developing practice of the domestic courts to refrain from applying criminal sanctions to journalists who exercise their freedom of expression in good faith in order to transmit information and ideas of public interest, in accordance with the principles enshrined in Article 10 of the Convention. Therefore, new similar violations of Article 10 of the Convention will be prevented in the future.

Moreover, further measures are being considered, in the light of the Committee of Ministers' 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, in order to improve legislative procedures so that laws necessary to ensure Romania's compliance with the European Convention on Human Rights are rapidly adopted, particularly if this is necessary to prevent new violations similar to those already found.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)676 concerning the judgment of the European Court of Human Rights of 22 May 1998 in the case of VASILESCU against Romania

*(Adopted by the Committee of Ministers on 8 October 1999
at the 680th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Vasilescu case delivered on 22 May 1998 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 27053/95) against Romania, lodged with the European Commission of Human Rights on 10 February 1995 under Article 25 of the Convention by Ms Elisabeta Vasilescu, a Romanian national, and that the Commission declared admissible the complaints relating to first, the unlawful seizure and the continued retention of valuables to which the domestic courts had accepted the applicant's property rights and, secondly, to the lack of access to an independent tribunal that could order their return;

Recalling that the case was brought before the Court by the applicant on 22 May 1997 under Protocol No. 9 and by the Commission on 28 May 1997;

Whereas in its judgment of 22 May 1998 the Court unanimously:

- dismissed the government's preliminary objection;
- held that there had been a violation of Article 6, paragraph 1, of the Convention;
- held, that there had been a violation of Article 1 of Protocol No. 1;
- held that it was unnecessary to examine the complaints under Articles 8 and 13 of the Convention;
- held, that the Government of the respondent State was to pay the applicant, within three months, the following sums, to be converted into Romanian lei at the rate applicable at the date of settlement: 60 000 French francs in respect of pecuniary damage; 30 000 French francs in respect of non-pecuniary damage; 5 185 French francs in respect of costs and expenses and that simple interest at an annual rate of 3.36% should be payable on these sums from the expiry of the above-mentioned three months until settlement;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the Government of the respondent State to inform it of the measures taken in consequence of the judgment of 22 May 1998, having regard to Romania's obligation under Article 53 of the Convention to abide by it;

Considering that High Contracting Parties are required to take the necessary measures to conform herewith, notably by preventing new violations of the Convention similar to those found in the Court's judgments ;

Whereas the Government of the respondent State provided the Committee of Ministers with information about the measures taken so far to this effect (this information appears in the appendix to this resolution);

Having satisfied itself that on 27 July 1998, within the time-limit set, the Government of the respondent State paid to the applicant's successor the sums provided for in the judgment of 22 May 1998,

Declares, after having taken note of the information supplied by the Government of Romania, that it has provisionally exercised its functions under Article 54 of the Convention in this case,

Decides to resume consideration of this case as far as general measures are concerned when the legislative reforms have been carried out or, at the latest, at one of its meetings at the beginning of the year 2001.

Appendix to Interim Resolution ResDH(99)676

*Information provided by the Government of Romania
during the examination of the Vasilescu case
by the Committee of Ministers*

The Government of Romania recalls that according to Article 20, paragraph 2, taken together with Article 11, paragraph 2, of the Romanian Constitution, human rights which are guaranteed by international treaties are pre-eminent over internal law. The European Convention on Human Rights and the judgments of the European Court of Human Rights in Romanian cases have accordingly a direct effect in Romanian law.

The Government of Romania wishes to point out that a positive development has taken place within the Romanian courts as regards the problem of lack of access to an independent tribunal (violation of Article 6, paragraph 1, of the Convention). On 2 December 1997, the Constitutional Court of Romania rendered a decision (No. 486) declaring that in order to comply with the Constitution, Article 278 of the Code of Criminal Procedure - concerning the right to appeal decisions of the public prosecutor - shall only be interpreted to the effect that a person who has an interest can challenge before a court any measure decided by the prosecutor. This decision became final and binding under Romanian law (Article 25, paragraphs 2 and 3, of Law No. 47 of 1992) with its publication in the Official Journal of Romania (No. 105 of 6 March 1998) and accordingly enforceable erga omnes.

The government considers that similar cases - where the valuables in question have been confiscated without any order from a competent judicial authority - are not likely to recur: under Romanian law, investigation measures such as the seizure and retention of valuables can only be taken following an order by the prosecutor and, accordingly, those who are subject to these measures can challenge their lawfulness before an independent tribunal.

In order to settle certain questions on institutional arrangements and legal procedures which arise from the judgments of the European Court and the Constitutional court, a reflection group set up within the Ministry of Justice has included these and other relevant decisions of the Constitutional Court, in a bill amending the Code of Criminal Procedure. The bill not only aims at codifying access to an independent tribunal but also at introducing further improvements, for example, the setting up of an examining judge who would be competent to initiate prosecutions in cases related to individual fundamental liberties.

In order to ensure that other aspects of the case are taken into account, in particular the European Court's decision in respect of Article 1 of Protocol No. 1, a translation of the judgment into Romanian was handed by the government's agent to the Presidents of the fifteen Courts of Appeal of Romania during an informal meeting on 3 June 1998. Furthermore, the judgment was sent to the Office of the President of Romania, the President of the Constitutional Court, the President of the Supreme Court of Justice and the General Prosecutor to the Supreme Court, the President of the Gaesti Court of first Instance and of the Dambovita Tribunal, as well as to the University of Bucharest Faculty of Law. Finally, the judgment was published in December 1998 in the monthly law review Dreptul (ANUL IX; Seria a III-a: No. 12/1998) and, according to the provisions of the governmental decree No. 94/1999, it will also be published in the Official Gazette.

In the light of the above, the Government of Romania considers that there is no serious risk that the violations will recur. It proposes that the Committee of Ministers resumes consideration of the implementation of the judgment when the legislative reforms have been carried out or, at the latest, at one of its meetings at the beginning of the year 2001.

THE RUSSIAN FEDERATION

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)1 concerning the violations of the principle of legal certainty through the supervisory review procedure (“*nadzor*”) in civil proceedings in the Russian Federation - general measures adopted and outstanding issues Judgments of the European Court in the cases of RYABYKH (24 July 2003) and VOLKOVA (5 April 2005)

*(Adopted by the Committee of Ministers on 8 February 2006,
at the 955th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”);

Having regard to the judgments of the European Court of Human Rights of 24 July 2003 in the Ryabykh case (application No. 52854/99) and of 5 April 2005 in the Volkova case (application No. 48758/99), both concerning the quashing by the Presidia of two Regional Courts of final judicial decisions in the applicants' favour, following applications for supervisory review (*nadzor*) lodged by the Presidents of the same Courts under Articles 319 and 320 of the Code of Civil Procedure then in force;

Whereas, in its judgments of 24 July 2003 and of 5 April 2005, the Court unanimously found that there had been violation of Article 6, paragraph 1, of the Convention in that the use of supervisory review of final and binding judgments infringed the principle of legal certainty and thus the applicants' right of access to a court;

Recalling the obligation of every state under Article 46, paragraph 1, of the Convention to abide by the judgments of the Court, which includes the adoption of general measures preventing new violations of the Convention similar to those found by the Court;

Stressing the need to adopt such measures rapidly in cases such as these, as they reveal a structural problem which may give rise to many more similar violations of the Convention;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the Russian Federation to inform it of the measures adopted or being taken in consequence of the present judgment;

Information provided by the Russian authorities:

Having examined the information provided by the Russian authorities concerning the measures adopted to prevent new, similar violations; this information appears in the appendix to this resolution;

Assessment by the Committee of Ministers:

Welcoming the reforms of the supervisory review (“*nadzor*”) procedure introduced by the new Code of Civil Procedure entered into force on 1 February 2003;

Noting with satisfaction, in particular, that some of the problems at the basis of the violations found in these cases have thus been remedied, in particular through:

- conferring the right to initiate the supervisory review only upon parties to the proceedings and persons whose legal interests are affected by the judgments concerned (Article 376§1);
- limiting to one year the time-limit for lodging an application for supervisory review (Article 376§2);

Considering however that doubts still remain as to whether the present “*nadzor*” procedure effectively prevents new violations of the requirement of legal certainty enshrined in the Convention;

Stressing in this connection that despite the positive developments mentioned above, the current procedure still allows parties’ legitimate reliance on judicial decisions that have become binding and enforceable to be frustrated and that the ensuing uncertainty may continue for an indefinite period after the application for supervisory review has been lodged;

Noting with a certain understanding that the Russian authorities and a significant part of the Russian legal community consider it necessary for the time being to maintain this procedure inasmuch as it is meant to be the only realistically available tool to remedy numerous significant errors and shortcomings in judicial decisions given at the local and regional levels;

Expressing, however, particular concern at the fact that at the regional level it is often the same court which acts consecutively as a cassation and “*nadzor*” instance in the same case and stressing that the court should be enabled to rectify all shortcomings of lower courts’ judgments in a single set of proceedings so that subsequent recourse to “*nadzor*” becomes truly exceptional, if necessary at all;

Stressing that a binding and enforceable judgment should be only altered in exceptional circumstances, while under the current “*nadzor*” procedure such a judgment may be quashed for any material or procedural violation;

Emphasising that in an efficient judicial system, errors and shortcomings in court decisions should primarily be addressed through ordinary appeal and/or cassation proceedings before the judgment becomes binding and enforceable, thus avoiding the subsequent risk of frustrating parties’ right to rely on binding judicial decisions;

Considering therefore that restricting the supervisory review of binding and enforceable judgments to exceptional circumstances must go hand-in-hand with improvement of the court structure and of the quality of justice, so as to limit the need for correcting judicial errors currently achieved through the “*nadzor*” procedure;

Welcoming the growing understanding of these two aspects of the problem in Russian legal circles and noting with interest the ongoing reflection in the Russian Federation on further judicial reforms including the “*nadzor*” procedure which may be conducted in cooperation with the relevant Council of Europe bodies,

CALLS UPON the Russian authorities to give priority to the reform of civil procedure with a view to ensuring full respect for the principle of legal certainty established in the Convention, as interpreted by the Court’s judgments;

ENCOURAGES the authorities to ensure through this reform that judicial errors are 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;

ENCOURAGES the authorities, pending the adoption of this comprehensive reform, to consider adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:

- continue to restrict progressively the use of the “*nadzor*” procedure, in particular through stricter time-limits for *nadzor* applications and limitation of permissible grounds for this procedure so as to encompass only the most serious violations of the law;
- to ensure that the “*nadzor*” procedure respects the requirements of a fair trial, including the adversarial principle, the equality of arms, etc;
- to simplify the current “*nadzor*” 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 for supervisory review 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 presently available cassation appeal to ensure rectification of judicial errors before judgments become final and enforceable;

INVITES the competent Russian authorities:

- to ensure a wide dissemination of this Interim Resolution to government, parliament and judiciary;
- to present, within one year, a plan of action for the adoption and implementation of the general measures required to prevent new violations of the requirement of legal certainty;

DECIDES to resume consideration of the present issue in the context of the Court’s judgments concerned during the first six months of 2007.

Appendix to Interim Resolution ResDH(2006)1

*Information provided by the Government of the Russian Federation
during the examination of the Ryabykh case
by the Committee of Ministers*

Measures already taken

The government has been fully aware of the structural problem highlighted by the Ryabykh judgment since the first applications of the same kind were communicated by the Court to the Russian authorities. Hence, the procedure for supervisory review (*nadzor*) was radically changed by the new Code of Civil Procedure adopted on 14 November 2002, six months before the Ryabykh judgment.

The new Code (which entered into force on 1 February 2003) brought two major modifications:

- the number of persons entitled to lodge an application for supervisory review has been limited to the parties to the proceedings and to the persons whose legal interests are affected by the judgments concerned (Article 376§1);
- the time period for lodging an application for supervisory review has been limited to one year (Article 376§2);

The authorities have furthermore ensured the publication of the Ryabykh judgment (in Russian translation) in the *Russian Law Review* (No. 5(89), 2004), which is regularly sent out to the Russian courts and all other relevant authorities. The judgment has also been published in a number of Russian legal journals and internet databases, and is thus easily available to the authorities and to the public.

The Russian Constitutional Court took the Ryabykh judgment into account in its decision criticising the inequality of arms in *nadzor* proceedings conducted under the Code of Administrative Offences inasmuch as the prosecutors’ application for supervisory review was not communicated to the other party for comments (decision of 12/04/2005, N 113-O, §§3.3-3.4). Although this decision does not

concern the civil proceedings at issue in the Ryabykh case, it is indicative of the Constitutional Court's continued willingness to prevent new, similar violations of the Convention in other areas.

Further reforms to be envisaged

The Russian authorities consider that the new Code brings the supervisory review (*nadzor*) procedure much closer to the Convention's requirement of legal certainty. They acknowledge however that the Code may not have resolved all problems and that doubts still exist as to whether the measures taken are sufficient to prevent new, similar violations of this requirement. The Russian authorities have thus seriously examined the Committee's invitation to continue the reform of the supervisory review procedure and have engaged in reflection on further reforms that may be necessary.

In the context of this reflection, the Council of Europe and the Russian authorities jointly organised on 21-22 February 2005, in Strasbourg, a high-level seminar involving representatives of the Russian supreme courts, executive, *Prokuratura* and advocates. The seminar allowed a unique and constructive exchange between the main representatives of the Russian legal community and of the Council of Europe, and the assessment of the existing *nadzor* practice in criminal, civil and commercial (arbitration) proceedings in the light of the Convention's requirements. The progress achieved so far in reforming the *nadzor* procedure was acknowledged and the outstanding questions calling for further measures identified, most importantly in the domain of civil procedure. The conclusions of the seminar together with other selected materials are published on the web site of the Committee of Ministers (CM/Inf/DH(2005)20).

The Russian authorities emphasise that the success of the reform of the *nadzor* procedure in civil matters is contingent on parallel measures improving the quality of judicial decisions taken by first- and second-instance courts. They agree that in an efficient judicial system, errors and shortcomings should primarily be addressed through ordinary appeal and/or cassation proceedings before a judgment becomes binding and enforceable. One of the main objectives of the reform would therefore be to give courts sufficient powers and means better to perform their duties so as to limit the need for correcting judicial errors through supervisory review after decisions have become binding and enforceable.

Plan of action to be prepared

The Russian authorities undertake to keep the Committee of Ministers informed of the results of the ongoing reflection and to provide, within one year, a plan of action for further reform of the supervisory review procedure in the Russian Federation with a view to fully meeting the requirements of the Convention and the Court's judgments.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2003)123 concerning the judgment of the European Court of Human Rights of 15 July 2002, final on 15 October 2002 in the case of KALASHNIKOV against the Russian Federation

*(Adopted by the Committee of Ministers on 4 June 2003
at the 841st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights ("the Court") of 15 July 2002 in the Kalashnikov case transmitted to the Committee of Ministers once it had become final under Article 44 of the Convention;

Recalling that the case originated in an application (No. 47095/99) against the Russian Federation, lodged with the Court on 1 December 1998 under Article 34 of the Convention by Mr Valery Yermilovitch Kalashnikov, a Russian national, and that the Court declared admissible the complaints relating to the poor conditions in which the applicant was held in detention before trial between 1995 and 2000, due in particular to severe prison overcrowding and to an insanitary environment; and the complaints concerning the excessive length of both this detention and the criminal proceedings brought against him;

Whereas in its judgment of 15 July 2002 the Court unanimously:

- held that there had been a violation of Article 3 of the Convention in respect of conditions of the applicant's pre-trial detention, which amounted to degrading treatment;
- held that there had been violations of Article 5, paragraph 3, due to the excessive length of the applicant's pre-trial detention;
- held that there had been a violation of Article 6, paragraph 1, due to the excessive length of criminal proceedings;
- held that the government of the respondent state was to pay the applicant, within three months from date on which the judgment became final, the following amounts to be converted into Russian roubles at the rate applicable at the date of the payment: - 5 000 euros in respect of non-pecuniary damage; - 3 000 euros in respect of costs and expenses, and that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points should be payable from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the claim for just satisfaction;

Recalling the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, which includes the adoption of general measures preventing new violations of the Convention similar to those found in the Court's judgments;

Stressing that the necessity of adopting such measures is all the more pressing if a judgment reveals structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited the Russian Federation to inform it of the measures adopted or being taken in consequence of the present judgment;

Having satisfied itself that on 17 December 2002, within the time-limit set, the respondent government paid the applicant the sums provided for in the judgment;

Having examined the information provided by the Russian authorities concerning the measures which have been taken so far, are being adopted or are planned in order to prevent new, similar violations to those found (this information appears in the Appendix to this resolution);

Noting that the general measures required by the present judgment are closely connected to the ongoing reform of the Russian Federation's criminal policy and the penitentiary system and welcoming progress achieved so far in this respect;

Noting in particular with satisfaction the significant decrease of the overcrowding in pre-trial detention facilities (SIZOs) and the ensuing improvement of sanitary conditions, as demonstrated by the recent statistics submitted to the Committee by the Russian authorities (see Appendix);

Considering however that further measures are required in this field to remedy the structural problems highlighted by the present judgment;

Stressing in particular the importance of prompt action by the authorities to remedy the overcrowding in those SIZOs where this problem still remains (57 out of the 89 Russian regions) and to align the sanitary conditions of detention on the requirements of the Convention,

CALLS UPON the Russian authorities to continue and enhance the ongoing reforms with a view to aligning the conditions of all pre-trial detention on the requirements of the Convention, particularly as set out in the Kalashnikov judgment, so as effectively to prevent new, similar violations;

INVITES the authorities to continue to keep the Committee of Ministers informed of the concrete improvement of the situation, in particular by providing relevant statistics relating to the overcrowding and sanitary and health conditions in pre-trial detention facilities;

DECIDES to examine at one of its meetings not later than October 2004, further progress achieved in the adoption of the general measures necessary to effectively prevent this kind of violations of the Convention.

Appendix to Interim Resolution ResDH(2003)123

*Information provided by the Government of the Russian Federation
during the examination of the Kalashnikov case
by the Committee of Ministers*

As regards the conditions of pre-trial detention, the Government is fully aware of the existence of structural problems highlighted by the Kalashnikov judgment and resolved to remedy them in accordance with Russia's obligations under the European Convention, as set out in the Court's judgments. This determination has been demonstrated, *inter alia*, by a number of concrete measures which have been adopted both before and since the delivery of the Kalashnikov judgment on 15 July 2002.

The Government refers in particular to two major reforms which have already resulted in significant improvement of the conditions of pre-trial detention and their progressive alignment on the Convention's requirements:

- The new Code of Criminal Procedure, which entered into force on 1 July 2002, has resulted in a large decrease of the number of accused persons detained pending trial, due in particular to the transfer of the power to order detention to the courts and the introduction of stricter criteria for allowing pre-trial detention. Thus, the average number of persons committed to detention on remand per month decreased from 10 000 in 2001 to 3 700 in September-October 2002. As a result, the overall number of pre-trial detainees has decreased from 199 000 in October 2001 to 137 000 in October 2002, thus reducing significantly the overcrowding of pre-trial detention facilities (SIZOs);

- The Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006, which was adopted by a decision of the Russian Government of 29 August 2001, provides for the building of new pre-trial detention facilities (SIZOs) for 10 130 places and the renovation of a great number of the existing ones with a view to improving, *inter alia*, the sanitary conditions of detention. In 2002, some 838 new places have already been created in Russian SIZOs.

As a result of the above measures, the living space per detainee was increased to 3,46 m² by 1 January 2003. Further improvements are planned. In 32 of 89 Russian regions the number of persons held in pre-trial detention no longer exceeds the limits set for detention facilities.

In November 2002, the Ministry of Justice published in its professional review (*Vedomosti UIS*, n° 8/2002) those reports of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) which concern its visits to detention facilities placed under the responsibility of this Ministry (i.e. pre-trial detention facilities and prisons). The Government considers that this publication will be most useful for aligning, in close co-operation with the CPT, of the conditions of pre-trial detention on the Convention requirements.

As regards the excessive length of pre-trial detention and of criminal proceedings, the Russian authorities have indicated that the new Code of Criminal Procedure is highly instrumental in preventing new, similar violations as it vests in courts sole competence to order and prolong pre-trial detention and imposes stricter time-limits on investigation and trial (see Articles 109, 162, 255).

Following the Kalashnikov judgment, the Vice-Chairman of the Supreme Court also sent on 5 September 2002 a circular letter to all Russian regional and republican courts pointing out the undue procedural delays at the basis of the violations found by the Court in the Kalashnikov case. The circular stresses that the Kalashnikov judgment has a precedent value and entails very serious consequences inasmuch as it reflects the Court's position on important questions relating to fundamental rights of individuals subject to criminal prosecution, including the right to a reasonable length of judicial proceedings. In conclusion, the circular requests all courts to ensure strict compliance with the time-limits set by the Code of Criminal Procedure for investigation and trial and to prevent unjustified delays in proceedings.

The Government has furthermore ensured the publication of the Kalashnikov judgment (in Russian translation) in the official Russian daily *Rossijskaia Gazeta* (17 and 19 October 2002), which publishes all laws and regulations of the Russian Federation. The judgment has also been published in a number of Russian legal journals and internet data bases, and is thus easily available to the authorities and the public.

Given this wide dissemination of the Kalashnikov judgment and its binding force in Russian law, the Government trusts that domestic courts will not fail to take it directly into account in order to ensure that pre-trial detention is based on valid and sufficient reasons as required by Article 5, paragraph 3, and that criminal proceedings are concluded within a reasonable time as required by Article 6, paragraph 1 of the Convention.

THE RUSSIAN FEDERATION AND MOLDOVA

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2007)106 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of ILAȘCU AND OTHERS against Moldova and the Russian Federation

*(Adopted by the Committee of Ministers on 12 July 2007
at the 1002nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”),

Having regard to the judgment of the European Court of Human Rights of 8 July 2004 in the case of Ilașcu and others against Moldova and the Russian Federation, in which the Court held that the two respondent states were to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and to secure their immediate release;

Noting with relief that the applicants Ivanțoc and Popa⁶ have finally regained their freedom, but deeply regretting that, despite the injunction of the Court, they were only released on 2 and 4 June 2007 respectively;

Noting that the authorities of the Republic of Moldova have regularly informed the Committee of the efforts they have made to secure the applicants' release;

Recalling the various interim resolutions adopted by the Committee of Ministers⁷ and most particularly the call made upon the authorities of the member states of the Council of Europe to take such action as they deem appropriate to ensure the compliance by the Russian Federation with its obligations under this judgment; noting the various steps taken by the states following this call; also noting, in this context, the support of the European Union and of numerous other states⁸ with a view to achieving the execution of this judgment;

Renewing its profound regret that despite these steps, the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment;

Reaffirming most firmly that the obligation to abide by the judgments of the Court is unconditional and is a requirement for membership of the Council of Europe;

Recalling that the Court 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 Convention to abide by the Court's judgment”;

Deeply deploring the prolongation of the applicants' unlawful and arbitrary detention after the judgment of the Court and underlining, in the light of this situation, the obligation incumbent on respondent

⁶ Formerly Petrov-Popa.

⁷ Interim Resolutions ResDH(2005)42 of 22 April 2005, ResDH(2005)84 of 13 July 2005, ResDH(2006)11 of 1 March 2006 and ResDH(2006)26 of 10 May 2006.

⁸ Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, Liechtenstein, Monaco, Norway, San Marino, Serbia, Switzerland, the “former Yugoslav Republic of Macedonia, Turkey and Ukraine.

states under Article 46, paragraph 1, of the Convention to erase, as far as possible, the consequences of the violations at issue in this case;

Noting, in this respect, that Mr Ivanțoc and Mr Popa have lodged a new application with the Court, against Moldova and the Russian Federation (No. 23687/05), on the ground of the prolongation of their arbitrary detention beyond 8 July 2004;

DECIDES 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.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)26 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of ILAȘCU AND OTHERS against Moldova and the Russian Federation

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

The Committee of Ministers,

Having regard to the judgment of the European Court of Human Rights of 8 July 2004 in the case of Ilașcu and others against Moldova and the Russian Federation, in which the Court held that the two respondent states are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and to secure their immediate release;

Stressing that, in this judgment, the Court 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 Convention to abide by the Court’s judgment”;

Reiterating that the obligation to abide by the judgments of the Court is unconditional and is a requirement for membership of the Council of Europe;

Deeply deploring the fact that two applicants, Mr Ivanțoc and Mr Petrov-Popa, are still imprisoned, and stressing that the excessive prolongation of their unlawful and arbitrary detention fails entirely to satisfy the requirements of the Court’s judgment and the obligation under Article 46, paragraph 1, of the Convention;

Noting that the authorities of the Republic of Moldova have regularly informed the Committee of the steps they have taken to secure the applicants’ release;

Regretting profoundly that the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court’s judgment, despite the Committee’s successive demands⁹ to this effect,

Encourages the authorities of the Republic of Moldova to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release;

Declares the Committee’s resolve to ensure, with all means available to the Organisation, the compliance by the Russian Federation with its obligations under this judgment;

Calls upon the authorities of the member states to take such action as they deem appropriate to this end.

⁹ Interim Resolutions ResDH(2005)42 of 22 April 2005, ResDH(2005)84 of 13 July 2005 and ResDH(2006)11 of 1 March 2006.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(2006)11
concerning the judgment of the European Court of Human Rights of
8 July 2004 (Grand Chamber) in the case of ILAȘCU AND OTHERS against
Moldova and the Russian Federation

*(Adopted by the Committee of Ministers on 1 March 2006,
at the 957th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Having regard to the judgment of the European Court of Human Rights of 8 July 2004 in the case of Ilașcu and others against Moldova and the Russian Federation, in which the Court held that the two respondent states are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and to secure their immediate release;

Stressing that, in this judgment, the Court 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 Convention to abide by the Court’s judgment”;

Stressing anew that the obligation to abide by the judgments of the Court is unconditional;

Recalling its Interim Resolutions ResDH(2005)42 of 22 April 2005 and ResDH(2005)84 of 13 July 2005;

Deeply deploring the fact that, more than one and a half years after the Court’s judgment was delivered, two applicants are still imprisoned and stressing that the excessive prolongation of the unlawful and arbitrary detention of Mr Ivanțoc and Mr Petrov-Popa fails entirely to satisfy the requirements of the Court’s judgment and the obligation under Article 46, paragraph 1, of the Convention;

Noting however that the Moldovan authorities have regularly informed the Committee of the steps they have taken to secure the applicants’ release;

Noting that the Russian authorities have recently declared themselves in favour of the search for a solution in the present case,

ENCOURAGES the Moldovan authorities to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release;

STRONGLY URGES the Russian authorities to pursue actively all effective avenues capable of putting an end to the arbitrary detention of the applicants still imprisoned and of securing their immediate release;

INSISTS that the results required by the Court’s judgment be attained without any further delay.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)84 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of ILAȘCU AND OTHERS against Moldova and the Russian Federation

*(Adopted by the Committee of Ministers on 13 July 2005
at the 935th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Having regard to the judgment of the European Court of Human Rights of 8 July 2004 in the case of Ilașcu and others against Moldova and the Russia Federation, in which the Court held that the two respondent states are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release;

Recalling that the Court stated, *inter alia*, that “any continuation of the unlawful and arbitrary detention of the...applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent states' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment”;

Recalling further Interim Resolution ResDH(2005)42, adopted on 22 April 2005, by which the Committee invited the Moldovan authorities to continue their efforts towards securing the release of the two applicants who are still imprisoned and urgently invited the Russian authorities to comply fully with the judgment;

Having examined the case at each of its meetings since this Resolution was adopted;

Noting with interest that, since then, the Moldovan authorities have regularly provided information regarding the steps they have taken to secure the release of the applicants who are still imprisoned;

Deploring that, since the adoption of this Resolution, the Russian authorities have again called into question the validity of the judgment and have insisted that, by paying the just satisfaction awarded, they consider that they have fully executed the judgment; deploring further that they have provided no new information regarding any efforts they may have initiated to secure the release of the applicants who are still imprisoned;

Recalling that the obligation to abide by the judgments of the Court is unconditional;

Noting that, more than one year after the Court's judgment was delivered, two of the applicants, Mr Ivanțoc and Mr Petrov-Popa, are still imprisoned and that their state of health has considerably worsened;

Stressing that it is evident that such an excessive prolongation of their unlawful and arbitrary detention fails entirely to satisfy the requirements of the Court's judgment;

Encourages the Moldovan authorities to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release;

Insists that the Russian authorities take all the necessary steps to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release;

Decides to resume its examination of this case at each of its meetings until the applicants have been released.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)42 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of ILAȘCU AND OTHERS against Moldova and the Russian Federation

*(Adopted by the Committee of Ministers on 22 April 2005
at the 924th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights ("the Court") of 8 July 2004 in the Ilașcu and others against Moldova and Russia case transmitted to the Committee for supervision of execution in accordance with Article 46 § 2 of the European Convention on Human Rights ("the Convention");

Recalling that the case originated in an application (No. 48787/99) against Moldova and Russia, lodged by Mr Ilie Ilașcu, Mr Alexandru Lesco, Mr Andrei Ivanțoc and Mr Tudor Petrov-Popa, and that the Court declared admissible the complaints relating to the facts arising out of their arrest, conviction and detention in the territory of the "Moldavian Republic of Transdnistria" (the "MRT");

Whereas in its judgment the Court held, inter alia:

- that the applicants come within the jurisdiction of the Republic of Moldova within the meaning of Article 1 of the Convention as regards its positive obligations;
- that the applicants come within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention;
- that the respondent States are to pay the applicants, within three months, the sums specified in the judgment by way of just satisfaction;
- that the respondent States are to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release;

Welcoming the fact that the governments of both of the respondent States have paid the applicants, within the time-limit specified, the sums provided for in the judgment;

Noting with satisfaction the publication of the judgment in the Official Gazette (Monitorul Oficial) of Moldova on 21 September 2004 and the publication of a summary of the judgment in the Bulletin of the European Court of Human Rights (Russian edition) in December 2004;

Emphasising the Court's finding that "any continuation of the unlawful and arbitrary detention of the...applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent States' obligation under Article 46 § 1 of the Convention to abide by the Court's judgment";

Recalling that the obligation of respondent States to abide by the Court's judgments is unconditional;

Noting the fact that two of the applicants, Mr Ivanțoc and Mr Petrov-Popa, are still imprisoned in the territory of the "MRT", which is an integral part of the territory of the Republic of Moldova;

Stressing that it is evident that the continuation of the unlawful and arbitrary detention of the applicants for more than 9 months after the Court's judgment fails to satisfy the Court's demand for their immediate release;

Having examined the case at most of its meetings since 9 September 2004;

Noting that the steps taken to date have not been sufficient to secure the release of Mr Ivanțoc and Mr Petrov-Popa;

URGENTLY INVITES the Russian authorities to comply fully with the judgment;

INVITES the Moldovan authorities to continue their efforts towards securing the release of the two applicants who are still imprisoned;

DECIDES to resume its examination of this case at each of its meetings until the applicants' release.

SWITZERLAND

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)678 concerning the judgment of the European Court of Human Rights of 26 September 1997 in the case of R.M.D. against Switzerland

*(Adopted by the Committee of Ministers on 8 October 1999
at the 680th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Recalling that the case originated in an application (No. 19800/92) against Switzerland, lodged with the European Commission of Human Rights on 26 March 1992 under Article 25 of the Convention by Mr R.M.D., a Swiss national, and that the Commission declared admissible the complaint that the applicant could not have a review of the lawfulness of his detention pending trial because he was successively transferred from one canton to another, so that the courts of the transferring canton no longer had jurisdiction to decide the lawfulness of his detention;

Recalling that the case was brought before the Court by the Commission and the applicant, under Protocol No. 9, on 4 July and 29 July 1996 respectively;

Whereas in its judgment of 26 September 1997 the Court unanimously:

- joined to the merits the government's preliminary objection, and dismissed it after considering the merits;
- held, that there had been a violation of Article 5, paragraph 4, of the Convention;
- held, that the Government of the respondent State was to pay the applicant, within three months, 5 000 Swiss francs for non-pecuniary damage and 15 000 Swiss francs for costs and expenses; that simple interest at an annual rate of 5% should be payable from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the Government of the respondent State to inform it of the measures which had been taken in consequence of the judgment of 26 September 1997, having regard to Switzerland's obligation under Article 53 of the Convention to abide by it;

Considering that High Contracting Parties are required to take the necessary measures to conform herewith, notably by preventing new violations of the Convention similar to those found in the Court's judgments ;

Whereas the Government of the respondent State provided the Committee of Ministers with information about the measures taken so far to this effect (this information appears in the appendix to this resolution);

Having satisfied itself that on 2 December 1997, within the time-limit set, the Government of the respondent State paid the applicant the sums provided for in the judgment of 26 September 1997;

Declares, after having taken note of the information supplied by the Government of Switzerland, that it has provisionally exercised its functions under Article 54 of the Convention in this case,

Decides to resume consideration of this case as far as general measures are concerned when the legislative reforms have been carried out or, at the latest, at one of its meetings in the autumn of 2001.

Appendix to Interim Resolution ResDH(99)678

*Information provided by the Government of Switzerland
during the examination of the R.M.D. case
by the Committee of Ministers*

The Government of Switzerland recalls that the European Convention on Human Rights and the judgments of the European Court of Human Rights have direct effect on Swiss law (see notably Resolution DH (94) 77 in the case of F. against Switzerland). The Swiss courts will therefore, by basing themselves directly on the judgment in question, entitle detainees who are transferred from one canton to another pending trial to take proceedings by which the lawfulness of their detention is reviewed in accordance with Article 5, paragraph 4, of the Convention.

In order to ensure direct application of the present judgment, it has been published in the journal "*Jurisprudence des autorités administratives de la Confédération*" (JAAC, 1997, No. 102) and sent to the Federal Court, the cantonal departments of justice and the cantonal courts. In addition, the report of the *Conseil fédéral* on the activities of Switzerland within the Council of Europe mentions the judgment (the report is submitted to Parliament).

Furthermore, changes are being made to the relevant legal texts in the context of a global reform of criminal procedure. The Federal Parliament has notably agreed to revise the provisions of the Federal Constitution concerning the organisation of the judiciary, court procedure and the administration of justice. The aim of these reforms is to unify the rules of criminal procedure within the Confederation and notably to ensure that the legislation clearly provides for a possibility for all detainees, including those who are transferred from one canton to another, to have access to a court to review the lawfulness of their detention. The group of experts working on the unification of the Code of Criminal Procedure has received a copy of the judgment to ensure that it is duly taken into account.

In the light of the above, the Government of Switzerland considers that there is no serious risk that the violation will recur. It proposes that the Committee of Ministers resumes consideration of the implementation of the judgment when the legislative reforms have been carried out or, at the latest, at one of its meeting in autumn of 2001.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)677 concerning the judgment of the European Court of Human Rights of 25 March 1998 in the case of KOPP against Switzerland

*(Adopted by the Committee of Ministers on 8 October 1999
at the 680th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Kopp case delivered on 25 March 1998 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 23224/94) against Switzerland, lodged with the European Commission of Human Rights on 15 December 1993 under Article 25 of the Convention by Mr Hans W. Kopp, a Swiss national, and that the Commission declared admissible the complaints relating, first, to the lack of protection the applicant should have enjoyed while his law firm's telephone lines were monitored, in particular since he enjoyed a professional privilege in this respect and was monitored as a "third party" and not as a suspect, and secondly, to the lack of any effective remedy in this respect;

Recalling that the case was brought before the Court by the applicant on 20 January 1997, by the Commission on 22 January 1997 and by the Government on 27 February 1997;

Whereas in its judgment of 25 March 1998 the Court unanimously:

- dismissed the government's preliminary objection;
- held that there had been a violation of Article 8 of the Convention;
- held that it was not necessary for the Court to consider of its own motion the complaint relating to Article 13 of the Convention;
- held that the present judgment in itself constituted sufficient just satisfaction for non-pecuniary damage;
- held that the Government of the respondent State was to pay to the applicant, within three months, 15 000 Swiss francs for costs and expenses and that simple interest at an annual rate of 5% should be payable on this sum from the expiry of the above-mentioned three months until settlement;
- dismissed the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the Government of the respondent State to inform it of the measures which had been taken in consequence of the judgment of 25 March 1998, having regard to Switzerland's obligation under Article 53 of the Convention to abide by it;

Considering that High Contracting Parties are required to take the necessary measures to conform herewith, notably by preventing new violations of the Convention similar to those found in the Court's judgments

Whereas the Government of the respondent State provided the Committee of Ministers with information about the measures taken so far to this effect (this information appears in the appendix to this resolution);

Having satisfied itself that on 8 June 1998, within the time-limit set, the Government of the respondent State paid the applicant the sum provided for in the judgment of 25 March 1998,

Declares, after having taken note of the information supplied by the Government of Switzerland, that it has provisionally exercised its functions under Article 54 of the Convention in this case,

Decides to resume consideration of this case as far as general measures are concerned when the legislative reforms have been carried out or, at the latest, at one of its meetings at the end of 2001.

Appendix to Interim Resolution ResDH(99)677

*Information provided by the Government of Switzerland
during the examination of the Kopp case
by the Committee of Ministers*

The Government of Switzerland recalls that the European Convention on Human Rights and the judgments of the European Court of Human Rights have direct effect in Swiss law (see notably Resolution DH (94) 77 in the case of *F. against Switzerland*). The competent authorities (notably examining judges and the President of the Indictment Division of the Federal Court) will therefore, by basing themselves directly on the present judgment, ensure that the monitoring telephone lines of the person who enjoys professional privilege is surrounded by sufficient guarantees.

In order to ensure the direct application of the present judgment, it has been sent to the Federal Court, the cantonal departments of justice and the cantonal courts, as well as to the Federal Prosecutor's Office and the *Etat-Major BASIS* of the Federal department of justice and the police (responsible for the revision of the legal provisions on telephone tapping). The judgment has also been published in the review *Jurisprudence des autorités administratives de la Confédération* (JAAC, 1998, No. 114). In addition, the report of the Federal Council to Parliament on the activities of Switzerland within the Council of Europe (*Feuille Fédérale* 1998, p. 8) mentions the judgment.

Furthermore, the Federal Council has taken the Court's judgment into account in the context of the preparation of a draft Federal Law on the monitoring of postal correspondence and telecommunications and a draft Federal Law on secret investigation. In respect of persons enjoying professional privilege, the Federal Council's opinion (*message*), published on 1 July 1998, makes direct reference to the Court's judgment and states that the Bill on the monitoring of postal correspondence and telecommunications meets the requirements of the Court's judgment. According to the bill, the monitoring of a person enjoying professional privilege can only be ordered if there are exceptionally strong reasons to suspect the person or if the facts found lead to the conclusion that the suspect uses the postal address or the telephone connection of this person. Furthermore, this bill foresees that if telephone tapping relates to professional privilege, a distinction should be drawn between records which are pertinent for the investigation and those which are not. This distinction should be drawn, if possible, by a law officer or, if need be, by someone who is responsible to a judicial authority and not subject to the authority of the person conducting investigation.

In the light of the above, the Government of Switzerland considers that there is no risk that the violation will recur. It proposes that the Committee of Ministers resume consideration of the implementation of the judgment when the legislative reforms have been carried out or, at the latest, at one of its meetings at the end of 2001.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)110 concerning the judgment of the European Court of Human Rights of 29 August 1997 in the case of A.P., M.P. and T.P. against Switzerland

*(Adopted by the Committee of Ministers on 18 January 1999
at the 654th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the A.P., M.P. and T.P. case delivered on 29 August 1997 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 19958/92) against Switzerland, lodged with the European Commission of Human Rights on 13 March 1992 under Article 25 of the Convention by Mrs A.P., Mr M.P. and Mr T.P., Swiss nationals, and that the Commission declared admissible the complaints under Article 6, paragraphs 1, 2 and 3, that irrespective of any personal guilt, they had been convicted, as heirs, of an offence allegedly committed by a deceased person, and that they had not had a fair and public hearing by an independent and impartial tribunal established by law;

Recalling that the case was brought before the Court by the Commission on 28 May 1996;

Whereas in its judgment of 29 August 1997 the Court:

- held, by seven votes to two, that Article 6, paragraph 2, was applicable in the present case and had been violated;

- held, unanimously, that it was not necessary to consider the applicants' allegations of violations of Article 6, paragraphs 1 and 3, of the Convention;

- held, unanimously, that the respondent State was to pay the applicants, within three months, 7 000 Swiss francs in respect of costs and expenses incurred in the proceedings before the bodies of the Convention; that simple interest at an annual rate of 5% should be payable on that sum from the expiry of the above-mentioned three months until settlement;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the government of the respondent State to inform it of the measures which had been taken in consequence of the judgment of 29 August 1997, having regard to Switzerland's obligation under Article 53 of the Convention to abide by it;

Whereas, during the examination of the case by the Committee of Ministers, the government of the respondent State gave the Committee information about the measures taken and measures envisaged to prevent new violations of the same kind as that found in the present judgment; this information appears in the appendix to this resolution;

Having satisfied itself that on 31 October 1997, within the time-limit set, the government of the respondent State paid the applicants the sum provided for in the judgment of 29 August 1997,

Declares, after having taken note of the information supplied by the Government of Switzerland, that it has provisionally exercised its functions under Article 54 of the Convention in this case;

Decides to resume consideration of this case as far as general measures are concerned when the legislative reforms have been carried out, or at the latest, at its first meeting in 2001.

Appendix to Interim Resolution ResDH(99)110

*Information provided by the Government of Switzerland
during the examination of the A.P., M.P. and T.P. case
by the Committee of Ministers*

The judgment of the European Court of Human Rights in the case of A.P., M.P. and T.P. against Switzerland has been published and circulated to the cantonal authorities competent for tax matters.

By a judgment of 24 August 1998, the Federal Court, pursuant to Article 139a of the Federal Act on the Judiciary, revised the judgment that had been censured by the European Court of Human Rights. Following this revision the cantonal tax authorities were obliged to reimburse the fine imposed on the applicants, with interests accruing to the sum.

Generally speaking, the Government of Switzerland recalls that the judgments of the European Court of Human Rights have direct effect in Swiss law (see Resolution DH (94) 77 in the case of F. against Switzerland and the cases cited therein). The domestic courts will therefore apply immediately the Court's judgment so that heirs will not be sanctioned for tax offences committed by a deceased person.

Furthermore, general measures are being undertaken at cantonal and federal level in order to bring about the necessary modifications in the relevant texts. The Federal Direct Tax Administration has issued a circular to the cantonal authorities inviting them to revise the provisions falling within their competence. At federal level, a sub-committee of the *Conseil des Etats* has proposed the abrogation of Article 179, paragraph 2, of the Federal Taxation Act of 14 December 1990. This amendment is, however, part of a global reform that may take two or three years to carry out.

In the light of the above, the Government of Switzerland considers that the necessary measures have been taken so that the violation found in the Court's judgment will not recur. It proposes that the Committee of Ministers resumes consideration of the question of implementation when the legislative reforms have been carried out or, at the latest, at its first meeting in 2001.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(89)9 concerning the judgment of the European Court of Human Rights of 18 December 1987 in the case of F. against Switzerland

*(Adopted by the Committee of Ministers on 2 March 1989
at the 424th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 (art. 54) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the convention"),

Having regard to the judgment of the European Court of Human Rights in the case of F. against Switzerland, delivered on 18 December 1987 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application against Switzerland lodged with the European Commission of Human Rights on 12 December 1984 under Article 25 (art. 25) of the convention by a Swiss national, Mr F., who alleged inter alia that a three-year prohibition on remarriage imposed on him by a Swiss court in application of Article 150 of the Swiss Civil Code was incompatible with his right to marry as guaranteed by Article 12 (art. 12) of the convention;

Recalling that the case was brought before the Court by the Government of Switzerland on 22 September 1986 and by the Commission on 17 October 1986;

Whereas in its judgment of 18 December 1987 the Court held:

- by nine votes to eight, that there had been a breach of Article 12 (art. 12);

- unanimously, that the respondent state was to pay the applicant 14 327 Swiss francs in respect of costs and expenses;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 (art. 54) of the convention;

Having invited the Government of Switzerland to inform it of the measures which had been taken in consequence of the judgment, having regard to its obligation under Article 53 (art. 53) of the convention to abide by it;

Whereas, during the examination of the case by the Committee of Ministers, the Government of Switzerland gave the Committee information about the measures taken in consequence of the judgment, which information appears in the appendix to this resolution;

Having satisfied itself that the Government of Switzerland has paid the applicant the sum provided for in the judgment,

Declares, after having taken note of the information supplied by the Government of Switzerland, that it has provisionally exercised its functions under Article 54 (art. 54) of the convention in this case;

Decides to resume consideration of this case at its first meeting in 1994, or earlier if appropriate.

Appendix to Interim Resolution ResDH(89)9

Information provided by the Government of Switzerland during the examination of the case of F. against Switzerland before the Committee of Ministers

The Court's judgment in the case of F. against Switzerland has been officially brought to the attention of the cantonal courts, the Federal Court and the Federal Insurance Court by the Swiss Minister of Justice.

Further, by letter of 20 January 1988, the Minister requested the Swiss Divorce Law Review Commission to consider the legislative consequences to be drawn from the judgment. In a letter of 2 February 1988, the commission Chairman replied that the commission intended to propose to the Government that Article 150 of the Swiss Civil Code be repealed in the context of the revision of Swiss divorce law due to take effect in 1995. The Swiss Government undertakes to notify the Committee of Ministers in due course of the repeal of Article 150.

The sum of 14 327 Swiss francs awarded by the Court to the applicant in respect of costs and expenses was paid to the applicant's lawyer on 25 January 1988.

In the light of the above, the Swiss Government considers that it has for the time being complied with its obligations under Article 53 (art. 53) of the European Convention on Human Rights.

TURKEY

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Resolution CM/ResDH(2007)109¹⁰ **Execution of the judgment of the European Court of Human Rights** **ÜLKE against Turkey**

(Application No. 39437/98, judgment of 24 January 2006, final on 24 April 2006)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”);

Having regard to the judgment in the case of Ülke transmitted by the Court to the Committee for supervision of its execution once it became final on 24 April 2006;

Considering that, in its judgment, the Court found that the applicant's repeated convictions and imprisonment for having refused to perform compulsory military service on account of his beliefs as a pacifist and conscientious objector amounted to degrading treatment within the meaning of Article 3 of the Convention;

Considering further that the Court found that the existing legislative framework was insufficient, as there was no specific provision in Turkish law governing the sanctions for those who refused to perform military service on conscientious or religious grounds and that the only relevant applicable rules appeared to be the provisions of the Military Criminal Code, which made any refusal to obey the orders of a superior an offence;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including through the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant, as well as general measures not least to prevent similar violations;

Noting that, at the 997th meeting of the Committee of Ministers (June 2007), the Turkish authorities declared that a draft law had been prepared aiming to prevent new violations of Article 3 similar to that found in the present case, and that this draft would be transmitted to the Prime Minister's Office for submission to Parliament following the opinions received from the relevant ministers;

Noting further the Turkish authorities' declaration that this law, once adopted, would prevent repetitive prosecutions and convictions of those who refuse to perform military service for conscientious or religious reasons, on grounds of “persistent disobedience” of military orders and that it was also intended to cover the necessary individual measures to be taken in this case.

Noting with concern that, following the government's declaration, the applicant was summonsed on 09/07/2007 to present himself in order to serve his outstanding sentence resulting from a previous conviction and that his request for a stay of execution of his sentence was rejected by the Eskişehir Military Court on the ground that the said declaration before the Committee of Ministers could not lead to a stay of execution of the applicant's sentence because the content of the law under preparation –

¹⁰ Adopted by the Committee of Ministers on 17 October 2007 at the 1007th meeting of the Ministers' Deputies.

including whether or not it contained provisions that would apply for or against the applicant's case – was unknown;

Emphasising in this regard that the Convention and the judgments of the Court have direct applicability in Turkish legal order by virtue of Article 90 of the Turkish Constitution;

Regretting that, despite Article 90 of the Turkish Constitution, the applicant is now facing a real risk of being imprisoned on the basis of a previous conviction;

Stressing the necessity to take urgent individual measures in this case;

URGES therefore 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 Convention and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention;

INVITES in particular the Turkish authorities rapidly to provide the Committee with information concerning the adoption of the measures required by the judgment;

DECIDES to examine the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(2007)4¹¹
Execution of the judgment of the European Court of Human Rights
in the case of AHMET OKYAY and others against Turkey

(Application No. 36220/97, judgment of 12 July 2005, final on 12 October 2005)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter referred to as “the Convention” and “the Court”);

Having regard to the final judgment of the Court in this case transmitted to the Committee on 12 October 2005;

Recalling that the violation of the right of access to a court guaranteed by Article 6 of the Convention established by the Court in this case concerns the national authorities’ failure to enforce domestic courts’ orders given in 1996 and upheld on appeal in 1998 to shut down three thermal-power plants (namely, Gökova (Kemerköy), Yeniköy and Yatağan), operated jointly by the Ministry of Energy and National Resources and a public utility company, as they polluted the environment in south-west Turkey in contravention of relevant Turkish environmental protection legislation (the operation of the plants was notably found to cause environmental harm and was carried out without the permits required by law);

Recalling in particular that the domestic courts’ orders were motivated by the lack of equipment for filtering sulphur dioxide and nitrogen oxide gases discharged from the plant’s chimneys and ordered that desulphurisation units be installed in order to filter 95% of the sulphur dioxide;

Recalling that a finding of the violations by the Court requires, over and above the payment of just satisfaction awarded in the judgment, the adoption by the respondent State, where appropriate, of

- individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- general measures preventing similar violations;

Recalling that since the Committee’s first examination of the case, the authorities have been repeatedly invited to comply with the domestic court orders in accordance with their obligation under Article 6 of the Convention, as set out in the Court’s judgment;

Noting that the Ministry of Energy and National Resources indicated already in the national proceedings in 1996 that contracts for the necessary improvements had been signed;

Noting that the necessary equipment has still not been installed and that, according to the information provided by the authorities, the power plants are in consequence thereof being operated at minimum capacity in order to maintain the lowest level gas emission and that administrative and judicial fines have been imposed for excessive pollution, in particular on the Yatağan power plant;

Deploring the fact that the domestic court orders to close the power plants remain unexecuted more than 6 years after they became final and one year after the Court’s judgment, and that the plants still continue to operate without proper filtering equipment;

¹¹ Adopted by the Committee of Ministers on 14 February 2007 at the 987th meeting of the Ministers’ Deputies

Stressing that prolonged non-compliance with a judicial decision or injunction renders the right of access to a court illusory and the underlying legislation inoperative, thus leading to situations incompatible with the principle of the rule of law;

Stressing that the importance of speedy compliance with the judicial order is all the greater in the present case since the outcome of the proceedings is decisive for the applicants' civil right to a healthy environment as guaranteed by the Turkish Constitution and relevant legislation;

Stressing also the importance of ensuring strict respect for domestic court judgments in the field of environmental protection;

Noting with concern the risk for a large group of people to be affected by the violation at issue;

Insisting, accordingly, on Turkey's obligation to take without further delay all necessary individual and general measures required by the Court's judgment;

URGES the Turkish authorities to enforce the domestic court order imposing either closure of the power plants or installation of the necessary filtering equipment without further delay;

INVITES the Turkish authorities to furnish information on the general measures envisaged to prevent violations similar to that at issue in the present judgment.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2003)173 concerning the judgment of the European Court of Human Rights of 14 December 2000 (Friendly settlement) in the case of INSTITUT DE PRÊTRES FRANCAIS against Turkey

*(Adopted by the Committee of Ministers on 8 October 2003
at the 854th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the final judgment of the European Court of Human Rights in the Institut de prêtres français case delivered on 14 December 2000 and transmitted the same day to the Committee of Ministers under Article 46 of the Convention (see Rule 44, paragraph 2, of the Rules of the Court);

Considering that in this judgment the Court took formal note of a friendly settlement concluded between the Government of the respondent state and the applicant, and decided unanimously, having satisfied itself that the settlement was based on respect for human rights as defined in the Convention or its Protocols, to strike the case out of its list;

Having invited the Government of the respondent state to inform it of the measures taken in consequence of the judgment of 14 December 2000, having regard to Turkey's obligation under Article 46, paragraph 1, of the Convention to abide by it;

Recalling that, in the absence of implementation of the commitments made, the Chairman of the Committee of Ministers addressed a letter dated 6 November 2002 to the Turkish Minister of Foreign Affairs, who conveyed the Committee of Ministers' concerns to the Prime Minister of Turkey asking him to instruct the competent authorities urgently to implement the friendly settlement;

Recalling that, on 17 June 2003, the Chairman of the Committee of Ministers addressed a second letter to the Turkish Minister of Foreign Affairs, who indicated in his reply of 1 August 2003 that the search for a solution was being pursued, despite the difficulties encountered, and that the implementation of the friendly settlement was imminent;

Welcomes the determination expressed by the Turkish authorities to satisfy the commitments made in the present friendly settlement;

Notes nevertheless with concern that nearly three years after the adoption of the Court's judgment, the commitments made have not yet been honoured;

Urges the Turkish authorities to intensify their efforts in order to comply without delay with the Court's judgment in this case;

Decides to pursue the supervision of the execution of the present judgment, if need be, at each of its forthcoming meetings, until all necessary measures have been adopted.

➤ Cyprus against Turkey

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

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

*(Adopted by the Committee of Ministers on 4 April 2007,
at the 992nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights ("the Court") in the case of Cyprus against Turkey (application No. 25781/94) delivered on 10 May 2001 and transmitted the same day to the Committee of Ministers under Article 46 of the Convention;

Recalling that the Court, in this judgment, found fourteen violations of the Convention relating to a number of issues regarding the situation in northern Cyprus since the military intervention by Turkey in July and August 1974;

Recalling that the obligation incumbent on all states to comply with the judgments of the European Court of Human Rights under Article 46, paragraph 1, of the Convention entails an obligation to adopt measures to put an end to the violations found, to erase as far as possible their consequences and to prevent new violations similar to those found by the Court;

Emphasising that the need to adopt such measures in this case is all the more pressing given the violations at issue, as well as the time that has elapsed since they were found;

Recalling that the execution of the judgment by Turkey has been regularly examined by the Committee since June 2001;

Recalling that, on 7 June 2005, a first Interim Resolution in this case was adopted, which concerned in particular the issue of missing persons, certain aspects of the issue of living conditions of Greek Cypriots living in the north, in particular regarding education and the freedom of religion, and the issue relating to the rights of military courts to judge civilians;

Recalling that in view of the abrogation of the right of military courts to judge civilians, the examination of the last mentioned issue was closed by that same Interim Resolution;

Having focused its examination, since the adoption of the above-mentioned Interim Resolution, more particularly on the issue of missing persons, on specific aspects of the living conditions of Greek Cypriots in northern Cyprus, in particular education and freedom of religion, and, since February 2006, on the issue of the home and property of displaced persons; having taken note of developments regarding these issues and the information furnished by Turkey on additional measures taken or envisaged following the judgment (see appendix);

Issue of missing persons

Stressing that the Court noted in particular the continuing absence of effective investigations into the fate of missing Greek Cypriots, as well as the silence of the Turkish authorities in the face of the real concerns of the relatives of missing persons (continuing violation of Articles 2,3 and 5 of the Convention);

Recalling in this respect that, after a long period of inactivity, the Committee on Missing Persons in Cyprus (CMP), set up in 1981 under the aegis of the United Nations, was reactivated at the end of August of 2004 and that a special information unit has been set up for families within the Office of the Turkish Cypriot member of the CMP;

Noting with satisfaction in this context that, in the framework of the Exhumation and Identification Programme, launched in August 2006 under the auspices of the CMP, exhumations have been performed all over Cyprus and anthropological analysis of remains found is being conducted in an anthropological laboratory established in the buffer zone, for purposes of identification of those remains;

Recalling however once again, that the Court found that “although the CMP’s procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention, especially in view of the narrow scope of that body’s investigations” (§135 of the judgment) and its territorial jurisdiction, which is limited to the island of Cyprus (§27 of the judgment);

Noting that the CMP has the mandate to draw up an exhaustive list of missing persons of both communities, to determine whether they are alive or dead, and, in the latter case, determine the approximate date of their deaths;

Welcoming the concrete measures taken in the framework of this mandate, and in particular through the aforementioned Exhumation and Identification Programme, which clearly evidence a positive development in the execution of the present judgment;

Recalling however that additional measures are required in order to ensure full compliance with the Court’s judgment as regards the requirements of effective investigations, aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances or of whom there is an arguable claim that they were in custody when they disappeared, and regretting that, since the adoption of the first Interim Resolution in this case, Turkey has furnished no information in this respect;

Emphasising again the urgency of this issue,

WELCOMES the progress achieved in the work of the CMP, and in particular through the Exhumation and Identification Programme, and encourages the continuation of the efforts so far deployed;

CALLS UPON Turkey, however, to rapidly provide information on additional measures required to ensure the effective investigations called for by the Court’s judgment;

Issues relating to education

Recalling that the Court found that the schoolbooks destined for use in the primary school of Greek Cypriots living in northern Cyprus were subject to excessive measures of censorship (violation of Article 10) and that the absence of appropriate secondary education facilities constituted a violation of the right to education of Greek Cypriots living in northern Cyprus (violation of Article 2 of Protocol No. 1);

Welcoming the continued functioning of the secondary school in Rizokarpaso since 2004 and in particular the fact that since September 2005 full secondary education to Greek Cypriot children is ensured; noting also the improvement of the regulatory framework aimed at securing the basis for the secondary education offered;

Noting with satisfaction the undertaking of the Turkish authorities to continue to provide for full secondary education for Greek Cypriot children in the future;

Welcoming in this context that censorship of schoolbooks no longer takes place, the censorship procedure having been replaced by a simple and swift screening procedure which takes into account

notably the criteria of the European Convention and only results in a report containing recommendations;

DECIDES to close the examination of the issues relating to the violations found under Article 2 Protocol 1 and Article 10 of the Convention;

Issues relating to the freedom of religion

Recalling that the Court considered that restrictions on the freedom of movement of the Greek Cypriot population living in northern Cyprus, as well as the refusal to appoint a second priest in the region of Karpas, had infringed their freedom of religion (violation of Article 9);

Welcoming that such restrictions have been lifted in a satisfactory manner and noting in particular that numerous examples demonstrate that a normal and regular religious life in conformity with the requirements of the Convention is today possible;

Recalling that a request for the appointment of a second priest formulated by the Cypriot authorities through UNFICYP was approved in March 2005 but that the priest in question did not take up his duties due to personal reasons; recalling also that two further requests have been dealt with speedily, the appointment having however been rejected for reasons of security;

Noting that on 29 December 2006, the authorities of the applicant State made a new request for the appointment of a second priest to officiate in the Karpas region through UNFICYP, which has been confirmed by the competent authorities;

DECIDES to close the examination of the issues relating to the violations found under Article 9 of the Convention;

Issues relating to home and property of displaced persons

Recalling that the Court found violations by reason of the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus (continuing violation of Article 8), by the fact they were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (continuing violation of Article 1 of Protocol No. 1) and by reason of the absence of a remedy to contest interferences with their rights under Article 8 of the Convention and Article 1 of Protocol No. 1 (violation of Article 13);

Taking note of the information submitted by the Turkish authorities on the adoption of the "Law for the Compensation, Exchange and Restitution of Immovable Properties" ("Law no. 67/2005"), which entered into force on 22 December 2005, and on the establishment and functioning of the "Immovable Property Commission";

Noting the assessment of this mechanism made by the Third Chamber of Court in its judgment regarding just satisfaction in the case of Xenides-Arestis of 7 December 2006, but underlining the fact that the judgment in question has not become final yet since the applicant party and the Government of the respondent state made requests for the referral of the case to the Grand Chamber;

Reiterating the necessity not to interfere with the current ongoing judicial process before the Court in the Xenides-Arestis case and not to pre-empt or influence in any way the assessment the Court will be called on to make in that context;

Recalling further that detailed and concrete information on changes and transfers of property at issue in the judgment and on the measures taken or envisaged regarding this situation has been regularly requested since June 2006 (966th meeting), in particular in the light of the ongoing property developments in northern Cyprus, and noting in this respect that the information provided in response does not yet clarify this issue;

URGES the Turkish authorities to provide without delay such information, as well as information on measures taken to safeguard the property rights of the displaced persons as these have been

recognised in the judgment of the European Court, without prejudging the redress required by the Convention, be it restitution, compensation, exchange or otherwise.

Other outstanding issues

Recalling that additional issues remain outstanding regarding further aspects of the living conditions of Greek Cypriots in northern Cyprus, notably those related to their property rights and their right to effective remedies;

Taking note of the fact that the Turkish authorities have recently submitted further information regarding these issues which remains to be assessed;

* * * * *

Welcomes the progress achieved in the execution of this judgment since the first interim resolution, which now allows the Committee to also close its examination of the violations established in relation to the issues of education and freedom of religion,

Requests Turkey to rapidly take all the additional measures required to ensure the full and complete execution of the judgment;

Decides to resume the consideration of the outstanding issues at their 997th meeting (5-6 June 2007), and

Decides to continue the supervision of progress accomplished until all necessary measures have been taken.

* * *

Appendix to Interim Resolution CM/ResDH(2007)25

*Information provided by the Government of Turkey
during the examination of the case Cyprus against Turkey
by the Committee of Ministers*

With regard to the issue of **missing persons**, the reactivated CMP continues to function. In August 2005 an Exhumation and Identification Programme was launched, which has been supported by financial donations from several countries. This Programme entails exhumations on both sides and DNA analysis in an anthropological laboratory established in the buffer zone of remains found, for purposes of identification of those remains.

The Turkish authorities invite the Deputies to follow ongoing developments in this context.

Concerning the **ensorship of schoolbooks** for use in the Greek Cypriot primary schools in the north of the island, found excessive by the Court with regard to Article 10 of the Convention, the Turkish authorities have declared earlier that the screening of *all* schoolbooks used in northern Cyprus is presently conducted in conformity with the Council of Europe standards and that it has been relaxed and accelerated. The current simple and swift screening procedure is regulated by a decree adopted by the "TRNC Council of Ministers" on 8 November 2005.

With regard to **secondary education**, the Turkish authorities have announced earlier the opening, on 13 September 2004, of a school in Rizokarpaso providing initially for the first three years of secondary schooling. Since September 2005, this school provides for full secondary education for Greek Cypriot children. The school is now successfully pursuing its activities for the third year.

Furthermore, the Resolution adopted by the "Turkish Cypriot Council of Ministers" on 23 May 2005 and amended on 8 November 2005, provides a stable and lasting basis for the continued functioning of the Greek Cypriot school, ensuring full primary and secondary education in line with the requirements of the Convention.

With regard to the questions relating to the **freedom of religion**, the Turkish authorities reaffirm that there is no interference in the religious activities of the Greek Cypriots living in northern Cyprus, since restrictions on the freedom of movement have been lifted.

The Turkish authorities furthermore indicate that a new request for the appointment of a second priest to officiate in the Karpas region, introduced by the Cypriot authorities on 29 December 2006 and transmitted by UNFICYP on 27 February 2007, has recently been approved by the “TRNC authorities”.

As regards the issue of **home and property of displaced persons**, the Turkish authorities have provided information on the new “Law for the Compensation, Exchange and Restitution of Immovable Properties” adopted in response to the Court’s judgment in the case of Xenides-Arestis.

In addition, they have made reference to the current economical development in the “TRNC”.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)44 concerning the judgment of the European Court of Human Rights of 10 May 2001 in the case of CYPRUS AGAINST TURKEY

*(Adopted by the Committee of Ministers on 7 June 2005,
at the 928th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”),

Having regard to the judgment of the European Court of Human Rights (“the Court”) in the case of Cyprus against Turkey (application No. 25781/94) delivered on 10 May 2001 and transmitted the same day to the Committee of Ministers under Article 44 of the Convention;

Recalling that the Court, in this judgment, found fourteen violations of the Convention in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974;

Recalling that the obligation incumbent on all states to comply with the judgments of the European Court of Human Rights under Article 46, paragraph 1, of the Convention entails an obligation to adopt measures to put an end to the violations found, to erase as far as possible their consequences and to prevent new violations similar to those found by the Court;

Emphasising that the need to adopt such measures is all the more pressing given the violations at issue, as well as the time that has elapsed since they were found;

Recalling that the execution of the judgment by Turkey has been regularly examined by the Committee since June 2001;

Having focused its examination more particularly on the issue of missing persons, on specific aspects of the living conditions of Greek Cypriots in northern Cyprus, notably those related to education including freedom of expression and freedom of religion, and on the issue of the jurisdiction of military courts in relation to civilians;

Having taken note of developments regarding these issues and the information furnished by Turkey on measures taken or envisaged following the judgment (see appendix);

Issue of missing persons

Stressing that the Court noted in particular the absence of effective investigation into the fate of missing Greek Cypriots, as well as the silence of the Turkish authorities in the face of the real concerns of the relatives of missing persons (continuing violation of Articles 2,3 and 5 of the Convention);

Noting in this respect that, after a long period of inactivity, the Committee on Missing Persons in Cyprus (CMP), set up in 1981 under the aegis of the United Nations, was reactivated at the end of August of 2004 and that a special information unit has been set up for families within the Office of the Turkish Cypriot member of the CMP;

Recalling, in this context, that the Court found that “although the CMP's procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention, especially in view of the narrow scope of that body's investigations” (§135 of the judgment) and its territorial jurisdiction, which is limited to the island of Cyprus (§27 of the judgment);

Noting that the CMP was created with the sole mandate to:

- draw up an exhaustive list of missing persons of both communities and
- determine whether they are alive or dead, and, in the latter case, determine the approximate date of their deaths;

Considering that concrete results obtained in the framework of this mandate can constitute a positive development in the execution of the present judgment, but that further measures are in any event required in order to comply fully with the requirements of the Convention concerning effective investigations, aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances or of whom there is an arguable claim that they were in custody when they disappeared;

Emphasising the urgency of this issue;

Noting with concern that the first exhumations conducted in northern Cyprus have not as yet yielded concrete results,

INVITES Turkey to ensure that its contribution to the work of the CMP facilitates the achievement of concrete and convincing results;

CONSIDERS that, should such results not be achieved in the near future, it will be incumbent on Turkey to take other measures to enable the fate of missing persons to be determined;

CALLS UPON Turkey, in any event, to envisage the necessary further measures so that the effective investigations required by the Court's judgment can be conducted as soon as possible;

Issues relating to education

Recalling that the Court condemned the excessive censorship of school textbooks for use in the primary school of Greek Cypriots living in northern Cyprus (violation of Article 10) and the absence of appropriate secondary education facilities in violation of the right to education of Greek Cypriots living in northern Cyprus (violation of Article 2 of Protocol No. 1);

Noting that the opening of the school in Rizokarpaso, to date providing for three of the six years of secondary education, constitutes an important development in order to remedy the violation found by the Court in this regard;

Noting the undertaking of the Turkish authorities that any screening procedure for schoolbooks will comply with the Convention standards, while considering that further clarifications are necessary;

INVITES Turkey to submit all relevant information regarding any screening procedure for schoolbooks, to ensure full secondary education for enclaved Greek Cypriot and Maronite children and to provide a stable and lasting basis for the functioning of the Rizokarpaso school, by legislative or other appropriate means;

Issues relating to the freedom of religion

Recalling that the Court considered that a certain number of measures limiting the religious life of enclaved Greek Cypriots, in particular restrictions on their freedom of movement, as well as the refusal to appoint a second priest in the region of Karpas, had infringed their freedom of religion (violation of Article 9);

Noting that, according to information provided by Turkey, such restrictions have been lifted in a satisfactory manner, that numerous examples demonstrate a normal and regular religious life and that prior authorisations are only required for reasons of security and public order, in exceptional situations;

Noting also the information provided by Turkey on the question of the appointment of a second priest called on to officiate in the Karpas region;

INVITES Turkey to provide details regarding the reasons for the rejection of the latest request by the Cypriot authorities for the appointment of a second priest and regarding the further developments of this issue;

Issues relating to military courts

Recalling that the Court condemned the legislative practice of authorising the trial of civilians by military courts, taking into account in particular the close structural links between the executive power and the military officers serving on these courts and doubts as to their independence and impartiality that civilians accused of acts characterised as military offences before such courts could legitimately have (violation of Article 6);

Observing that the information provided by the Turkish authorities demonstrates that military officers are no longer entitled to serve on the military courts;

Noting moreover that the jurisdiction of these courts has been limited and that all the cases that were removed from the military courts as a result have been transferred to civilian courts;

DECIDES to close the examination of the issues relating to military courts;

* * * * *

Requests Turkey to intensify its efforts with a view to the full and complete execution of the present judgment,

Underlines in particular the urgency of achieving concrete results in respect of effective investigations into the fate of the missing persons,

Decides to continue the supervision of progress accomplished until all necessary measures have been taken.

Appendix to Interim Resolution ResDH(2005)44

*Information provided by the Government of Turkey
during the examination of the case Cyprus against Turkey
by the Committee of Ministers*

With regard to the issue of **missing persons**, the Turkish authorities invite the Deputies to follow ongoing developments in this context since the reactivation of the CMP in 2004.

Concerning the **ensorship of schoolbooks** for use in the Greek Cypriot primary schools in the north of the island, found excessive by the Court with regard to Article 10 of the Convention, the Turkish authorities have declared that the screening of *all* schoolbooks used in the north of Cyprus is presently conducted in conformity with the Council of Europe standards and that it has been relaxed and accelerated. They have also indicated that one single criterion is used nowadays for the censorship of all or parts of schoolbooks, namely if they contain elements conveying sentiments of hatred or hostility, and that the procedure of examination does not last more than about two weeks. At the end of this procedure, the books are returned to the Greek Cypriot authorities, accompanied by a report containing recommendations the implementation of which is left to latter's discretion.

With regard to **secondary education**, the Turkish authorities announced the opening, on 13 September 2004, of a secondary school in Rizokarpaso. They have also indicated that work was being conducted with a view to the adoption of a law for the regulation of Greek Cypriot and Maronite schools in northern Cyprus.

Furthermore, the Resolution adopted by the "Turkish Cypriot Council of Ministers" on 23 May 2005 provides a stable and lasting basis for the functioning of the Greek Cypriot and Maronite school, also ensuring full primary and secondary education.

With regard to the questions relating to the **freedom of religion**, the Turkish authorities affirm that there is no interference in the religious activities of the Greek Cypriots living in northern Cyprus. Prior authorisations are only required for reasons of security and public order, in exceptional cases, such as:

- the conduct of religious services in churches transformed into museums
- the organisation of religious events bringing together a large number of persons.

These criteria apply to all religions.

In addition, the Turkish authorities indicate that a request formulated several months ago by the Cypriot authorities with a view to the appointment of a second priest had finally been approved by the "TRNC authorities", but that the person proposed could not take up his functions for personal reasons; that a new request by the Cypriot authorities has subsequently been rejected for reasons of security, following a procedure which took a few days.

Concerning **the competence of military courts to try civilians**, the Turkish authorities have announced that, following the judgment of the "Supreme Constitutional Court of the TRNC" of 12 April 2001 concluding that the composition of the "Security Forces Court" infringed the "Constitution" due to the presence of military judges in cases concerning civilians, as well as amendments made to "Law 34/1983 on the Establishment and Judicial Procedure of the Security Forces Court and Security Forces Court of Appeal" (the most recent in September 2004):

- no military judge serves any longer on the Security Forces Court, either at first instance or in appeal proceedings;
- the judges are appointed to the "Security Forces Court" and the "Security Forces Court of Appeal" by an independent non-military judicial authority, the "Supreme Council of Judicature", which is composed only of civilians and only appoints civilian judges;
- civilians who have infringed section 26 and 29 of the "Military Offences and Penalties Law" are no longer tried by the military courts;
- all cases concerned by this restriction of jurisdiction were removed from the military courts and transferred to civilian courts.

The Turkish authorities have also recognised that a certain ambiguity remains in the amended law. The latter qualifies as "military judges" the civilian judges appointed by the "Supreme Council of The Judicature" to sit on the security forces courts. However, Article 41(3) of the same law dealing with the composition of the "Security Forces Court of Appeal", refers to "two *military* judges" and "one *civil* judge". The Turkish authorities have however clarified that this reference to two different categories of judges was due to the presence in this court of a civilian judge appointed *before* the legislative amendments: at his retirement, he will be replaced by a civilian judge appointed by the "Supreme Council of Judicature" and the wording of the Article concerned will be reviewed in due time.

➤ Hulki Güneş

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2007)150 on the execution of the judgment of the European Court of Human Rights HULKI GÜNEŞ against Turkey

*(Adopted by the Committee of Ministers on 5 December 2007,
at the 1013th meeting of the Ministers' Deputies)*

(Application No. 28490/95, judgment of 19 June 2003, final on 19 September 2003,
Interim Resolutions ResDH(2005)113 and CM/ResDH(2007)26)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter referred to as “the Convention” and “the Court”);

Having regard to the judgment transmitted by the Court to the Committee once it had become final;

Recalling that, in that judgment, the Court found violations of the applicant's right to a fair trial before the Diyarbakır State Security Court, on account of:

- the lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court (violation of Article 6, paragraph 1);
- the impossibility for the applicant to examine or to have examined the witnesses who testified against him (violation of Article 6, paragraphs 1 and 3(d));

Noting that the Court found that the applicant had been subjected to inhuman and degrading treatment while in police custody (violation of Article 3);

Recalling that, as a result of the unfair proceedings the applicant was sentenced to death, a sentence which was subsequently commuted to life imprisonment;

Reiterating that, since the first examination of the case by the Committee of Ministers dating back to November 2003, it considered that the Court's judgment required the adoption of individual measures in view of the extent of the violations of the right to a fair trial casting serious doubts on the safety of the applicant's conviction;

Noting however that, despite the adoption of Article 90 of the Turkish Constitution, the Code of Criminal Procedure still excludes the reopening of the criminal proceedings in this case as in numerous other cases pending before the Committee for supervision of execution, as it only provides reopening of proceedings in respect of Court judgments which became final before 4 February 2003 or those rendered in applications lodged with the Court after 4 February 2003;

Recalling that the request for the reopening of proceedings lodged by the applicant had been rejected by domestic courts solely on the ground of this temporal limitation and without any assessment of the need for a new trial to remedy the specific violations found by the Court in the particular circumstances of the case;

Stressing that the Committee has adopted two interim resolutions so far (on 30 November 2005 Interim Resolution ResDH(2005)113 and on 4 April 2007 Interim Resolution CM/ResDH(2007)26) calling upon the Turkish authorities to abide by their obligation, under Article 46, paragraph 1, of the

Convention, to redress the violations found in respect of the applicant and urging them to remove the legal lacuna preventing the reopening of domestic proceedings in the applicant's case;

Recalling further that the acting Chairmen of the Committee addressed two letters on 21 February 2005 and 12 April 2006 to their Turkish counterpart conveying the Committee's concern at Turkey's continuing failure to comply with the judgment and urging for appropriate measures in respect of the applicant;

Deeply deploring that, notwithstanding the Committee's two Interim Resolutions and the two letters from the Chair, no measures have yet been taken by the Turkish authorities, beyond the payment of just satisfaction, to grant the applicant, who is still serving his life sentence, adequate redress for the violations found;

Noting with grave concern that two similar cases, namely the cases of Göçmen and Söylemez, pending before the Committee also call for reopening of domestic proceedings because the applicants were deprived of their right to a fair trial and are still serving their prison sentences;

Stressing that failure to adopt the necessary measures in the present case prevents the possibility of reopening of proceedings in those cases;

Reiterating that a continuation of the present situation would amount to a manifest breach of Turkey's obligations under Article 46, paragraph 1, of the Convention;

FIRMLY RECALLS the obligation of the Turkish authorities under Article 46, paragraph 1, of the Convention to redress the violations found in respect of the applicant;

STRONGLY URGES the Turkish authorities to remove promptly the legal lacuna preventing the reopening of domestic proceedings in the applicant's case;

DECIDES to examine the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2007)26¹²
Execution of the judgment of the European Court of Human Rights
HULKI GÜNEŞ against Turkey

(Application No. 28490/95, judgment of 19 June 2003, final on 19 September 2003,
Interim Resolution ResDH(2005)113)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter referred to as “the Convention” and “the Court”);

Having regard to the judgment transmitted by the Court to the Committee once it had become final;

Recalling that, in that judgment, the Court found violations of the applicant’s right to a fair trial before the Diyarbakır State Security Court, on account of:

- the lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court (violation of Article 6, paragraph 1);
- the impossibility for the applicant to examine or to have examined the witnesses who testified against him (violation of Article 6, paragraphs 1 and 3(d));

Noting that the Court found that the applicant had been subjected to inhuman and degrading treatment while in police custody (violation of Article 3);

Noting further that, as a result of the unfair proceedings the applicant was sentenced to death, a sentence which was subsequently commuted to life imprisonment;

Recalling that, since the first examination of the case by the Committee of Ministers, the Court’s judgment has been consistently held to require the adoption of individual measures in view of the extent of the violations of the right to a fair trial casting serious doubts on the safety of applicant’s conviction;

Recalling that, since no such individual measures were taken, the Committee adopted on 30 November 2005 Interim Resolution ResDH(2005)113 calling on the Turkish authorities to abide by their obligation, under Article 46, paragraph 1, of the Convention, to redress the violations found in respect of the applicant and concluding that the reopening of the impugned criminal proceedings remained the best means to ensure *restitutio in integrum* in this case;

Recalling further that the acting Chairmen of the Committee addressed two letters on 21 February 2005 and 12 April 2006 to their Turkish counterpart conveying the Committee’s concern at Turkey’s continuing failure to comply with the judgment and urging for appropriate measures in respect of the applicant;

Deeply deploring that, notwithstanding the Committee’s Interim Resolution and the two letters from the Chair, no measures have yet been taken by the Turkish authorities, beyond the payment of just satisfaction, to grant the applicant, who is still serving his life sentence, adequate redress for the violations found;

Noting with concern that, despite the adoption of the new Article 90 of the Turkish Constitution, the Code of Criminal Procedure still excludes the reopening of the criminal proceedings in this case as in numerous other cases pending before the Committee for supervision of execution, as it only provides

¹² Adopted by the Committee of Ministers on 4 April 2007 at the 992nd meeting of the Ministers’ Deputies

reopening of proceedings in respect of Court judgments which became final before 4 February 2003 or those rendered in applications lodged with the Court after 4 February 2003;

Recalling in particular that the request for the reopening of proceedings lodged by the applicant had been rejected by domestic courts solely on the ground of this temporal limitation and without any assessment of the need for a new trial to remedy the specific violations found by the Court in the particular circumstances of the case;

Considering that a continuation of the present situation would amount to a manifest breach of Turkey's obligations under Article 46, paragraph 1, of the Convention;

CALLS UPON the Turkish authorities, without further delay, to abide by their obligation under Article 46 paragraph 1 of the Convention to redress the violations found in respect of the applicant;

STRONGLY URGES the Turkish authorities to remove the legal lacuna preventing the reopening of domestic proceedings in the applicant's case.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)113 concerning the judgment of the European Court of Human Rights of 19 June 2003 in the case of HULKI GÜNEŞ against Turkey

*(Adopted by the Committee of Ministers on 30 November 2005
at the 948th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights ("the Court") of 19 June 2003 in the *Hulki Güneş v. Turkey* case (application no. 28490/95) transmitted on 19 September 2003 to the Committee for supervision of execution in accordance with Article 46 § 2 of the European Convention on Human Rights ("the Convention");

Recalling that, in that judgment, the Court found violations of the applicants' right, under the Convention, to a fair trial before the Diyarbakır State Security Court, on account of:

- the lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court (violation of Article 6 § 1);
- the impossibility for the applicant to examine or to have examined the witnesses who testified against him (violation of Article 6 §§ 1 and 3(d));

Noting that, as a result of the unfair proceedings, the applicant was sentenced to death, a sentence which was subsequently commuted to life imprisonment;

Recalling that the Court also found that the applicant had been subjected to inhuman and degrading treatment while in police custody (violation of Article 3);

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including through the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant;

Considering that, in addition to the payment of the just satisfaction awarded by the Court, the adoption of individual measures is necessary in view of the specific circumstances of the present case, notably the extent of the violations found, the serious doubts they cast on the outcome of the criminal proceedings at issue and the gravity of the sentence imposed on the applicant;

Regretting that, more than two years after the finding of the violations in this case, no measures have been taken by the Turkish authorities, beyond the payment of just satisfaction, to grant the applicant adequate redress for the violations found;

Considering that the reopening of the impugned domestic proceedings remains the best means of ensuring *restitutio in integrum* in this case;

Regretting that the Turkish Code of Criminal Procedure does not enable the criminal proceedings to be reopened in the present case, inasmuch as the Code only provides for the reopening of proceedings in respect of European Court judgments which became final before 4 February 2003 or judgments rendered in applications lodged with the Court after 4 February 2003;

Noting with disappointment that the Turkish authorities have so far not responded to the Committee's repeated calls to correct this lacuna in Turkish law;

Recalling, with regard to the other aspects of the execution of the judgment in this case, that the Turkish authorities have already taken comprehensive general measures in order to prevent new similar violations of the right to a fair trial and are presently implementing a comprehensive set of

measures aimed at preventing ill-treatment by members of the security forces (Interim Resolution ResDH(2005)43);

Recalling in particular the recently amended Article 90 of the Constitution enabling direct effect to be given in Turkish law to the requirements of the Convention and case-law of the Court;

CALLS ON the Turkish authorities, without further delay, to abide by their obligation, under Article 46, paragraph 1, of the Convention, to redress the violations found in respect of the applicant through the reopening of the impugned criminal proceedings or other appropriate *ad hoc* measures;

DECIDES to continue to supervise the execution of the Court's judgment in this case at each of its "Human Rights" meetings until full compliance is secured.

➤ **Actions of the security forces**

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2008)69

on the execution of the judgments of the European Court of Human Rights of cases concerning the Actions of the security forces in Turkey - Progress achieved and outstanding issues

(General measures to ensure compliance with the judgments of the European Court of Human Rights in the cases against Turkey concerning actions of members of the security forces) (listed in Appendix II)

(Follow-up to Interim Resolutions DH(99)434, DH(2002)98 and ResDH(2005)43)

(Adopted by the Committee of Ministers on 18 September 2008 at the 1035th meeting of the Ministers' Deputies.)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention");

Having regard to 175 judgments and decisions in the cases against Turkey listed in Appendix II, in which the European Court of Human Rights (the "Court") found that there had been numerous violations of the Convention on account of:

- deaths of the applicants' next-of-kin as a result of excessive use of force by members of security forces;
- failure to protect the right of life of the applicants' next-of-kin;
- death and/or disappearance of the applicants' next-of-kin;
- ill-treatment;
- destruction of property and
- lack of effective domestic remedies into the applicants' complaints;

Bearing in mind that 69 cases involving similar complaints have been struck off the list by the Court following the conclusion of friendly settlements or other solutions found, in particular on the basis of the government's undertaking to take rapid remedial measures;

Noting that most of the violations in the cases at issue took place against the background of the fight against terrorism in the 1990s and recalling that each contracting state, in combating terrorism, must act in full respect of its obligations under the Convention, as set out in the Court's judgments, and developed in the Council of Europe Guidelines on human rights and the fight against terrorism;

Noting further that all these violations resulted from various structural problems, in particular;

- ineffectiveness of procedural safeguards in police custody;
- general attitude and practices of members of security forces, their education and training system, inadequacy of the legal framework governing their activities;
- shortcomings in establishing criminal liability for abuses at the domestic level, and
- shortcomings in ensuring adequate reparation to victims.

Recalling that in response to the violations of the Convention found, Turkey has taken important remedial action aimed at

- improving the procedural safeguards in police custody;
- improving the professional training of members of security forces;

- giving direct effect to the Convention requirements;
- providing reparation to victims;
- establishment of enhanced accountability of security forces;
- training of judges and prosecutors.

Bearing in mind the Committee's assessment of the progress achieved by Turkey in adopting the necessary execution measures, as indicated in the Committee's Interim Resolutions DH(99)434 of 9 June 1999, DH(2002)98 of 10 July 2002 and ResDH (2005)43 of 7 June 2005 and the further measures identified in those texts to ensure that new, similar violations are prevented;

Recalling that, in Interim Resolution ResDH(2005)43, the Committee, in particular:

"Welcomed the adoption of a number of important reforms as well as the ongoing efforts to ensure full compliance with the Convention in these cases;

Expressed satisfaction with the results obtained so far, while encouraging the authorities:

- *to consolidate their efforts to improve the procedural safeguards surrounding police custody through the effective implementation of the new Regulations based on the new Code of Criminal Procedure, in the light of the requirements of the Convention and bearing in mind the recommendations of the Committee for the Prevention of Torture (CPT);*
- *to consolidate their efforts to reorganise the basic, in-service and management training of the police and gendarmerie by making use of the results obtained in the Council of Europe/European Commission Joint Initiative, in particular as regards the mainstreaming of human rights into initial and in-service training;*
- *to take the necessary measures to ensure that the new status of the Convention and the case-law of the Court flowing from the change of Article 90 of the Constitution is translated into the daily practice of the security forces, in particular in the instructions given to them, and that prosecutors and judges are also encouraged to give effect to this new provision;*
- *to ensure the prompt and efficient implementation of the new "Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism", to reconsider its limited time-frame so that all claims can be processed in an impartial manner, and to ensure that individuals do not have to bear a disproportionate burden as a result of lawful actions of the security forces;*
- *to take the necessary measures to remove any ambiguity regarding the fact that administrative authorisation is no longer required to prosecute any serious crimes allegedly committed by members of security forces;*
- *to pursue the training provided for judges and prosecutors in the Academy of Justice, in particular by mainstreaming the training on the Convention and the case-law of the Court into the initial and in-service training of judges and prosecutors within the framework of the Academy;*

Urged the Turkish authorities regularly to keep the Committee of Ministers informed of the practical impact of the measures taken, including the provision of statistics regarding number of investigations, acquittals and convictions into alleged abuses."

Assessment of the Committee of Ministers

Having examined the information provided by the Turkish authorities concerning the measures taken since the adoption of Interim Resolution DH(2005)43 and bearing in mind the measures taken by the Turkish authorities since the adoption of the first two interim resolutions mentioned above (see Appendix I for the information submitted by the Turkish authorities);

A. Improvement of procedural safeguards in police custody

Recalling that in its Interim Resolution ResDH(2005)43 the Committee has welcomed the additional safeguards introduced in Turkish law for persons held in police custody aiming at combating torture and other forms of ill-treatment effectively, notably with regard to;

- the right of all persons to see a lawyer of their own choosing;
- the right to free legal assistance;
- the right to inform a family member or a designated person of their detention;
- the right of apprehended persons to receive information about their rights and charges against them;
- the right of the suspects' representative, in principle, to have access to the investigation file;
- the right to a medical examination without the presence of members of security forces;

Emphasising in this respect the importance of regular monitoring of custody records and detention premises by public prosecutors in order to ensure that the detention facilities and custody records comply with the required standards;

Noting the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) on its December 2005 visit confirming that "detention by law enforcement agencies (police and gendarmerie) is currently governed by a legislative and regulatory framework capable of combating effectively torture and other forms of ill-treatment by law enforcement officials";

Encouraging the Turkish authorities to pursue their efforts in ensuring effective implementation of the Turkish legislation with a special focus on the recommendations of the CPT;

DECIDES to close the examination of this issue as the necessary legislative framework is now in place;

B. Improvement of professional training of members of security forces

Noting that human rights has now become a part of the curriculum in the initial training of members of security forces, in particular of the gendarmerie, as a separate subject and as an integrated aspect of other subjects;

Noting further that the Turkish authorities have assured the Committee that they will continue with their efforts to ensure that members of security forces receive initial and in-service training on human rights with a specific focus on the Convention and the Court's case-law;

DECIDES to close the examination of this issue;

C. Giving direct effect to the Convention requirements

Noting with interest the amendment introduced in June 2007 in "the Law on the duties and legal powers of the police" which now provides that the police are not entitled to use force unless confronted with resistance and that the use of force should be proportionate, be directed to break the resistance, and be increased gradually;

Noting also the detailed instructions given to the gendarmerie with the aim of ensuring that its members comply with the Convention standards in their daily practice and, in particular, use force no more than strictly necessary;

Stressing in this respect that the Committee continues examination of the measures taken and envisaged by the Turkish authorities aiming at ensuring that members of security forces use proportionate force during public demonstrations within the context of the cases of Güzel Şahin and others (No. 68263/01) and Oya Ataman (No. 74552/01);

Welcoming the Circulars of the Minister of Justice drawing the attention of judges and public prosecutors to the shortcomings identified by the Court in its judgments here at issue, in particular with regard to the effectiveness of investigations, as well as Turkey's obligations flowing from the Convention;

Recalling the Turkish authorities' repeated commitments before the Committee that the measures taken shall be applied in compliance with the Convention standards by virtue of Article 90 of the Turkish Constitution giving direct effect to the Convention, as well as their undertaking that the implementation of these measures shall strictly be supervised;

DECIDES to close the examination of this issue;

D. *Prompt and efficient implementation of the "Law on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism"*

Recalling that the "Law on Compensation" of 27 July 2004 provides a possibility to obtain, directly from the administration, compensation for pecuniary damages caused to natural and legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period of July 1987 to December 2006 with a possibility of judicial review of decisions taken in this respect;

Noting that, within the context of the execution of the judgment in the case of Doğan and Others (no. 8803/02), the Turkish authorities have informed the Committee of the measures taken concerning the implementation of the Law on Compensation, in particular with respect to the work carried out by the Damage Assessment and Compensation Commissions;

Noting with satisfaction that it appears from a substantial number of sample decisions furnished by the Turkish authorities in the above case that persons who have sustained damage in cases of denial of access to property, damage to their property or death or injury can successfully claim compensation by using the remedy offered by the Compensation Law and that therefore the Committee decided to close its examination of this case at its 1028th meeting (June 2008) (see, CM/ResDH(2008)60);

Noting that the effectiveness of the Compensation Law was confirmed by the Court in its decision of 12 January 2006 in the case of İçyer (No. 18888/02) where it found that "the provisions of the Compensation Law are capable of providing adequate redress for the Convention grievances of persons who were denied access to their possessions in their places of residence";

Taking note of the assurances given by the Turkish authorities on the availability of a wide range of remedies for situations falling outside the Compensation Law, in particular with regard to the continuing practice of the administrative courts of ensuring reparation by the state for damages caused as a consequence of actions of security forces;

DECIDES to close the examination of this issue;

E. *Establishment of enhanced accountability of members of security forces*

Recalling that the precondition for administrative authorisation required for the investigation of accusations of torture and ill-treatment has been lifted following the amendments introduced in January 2003 to Law No. 4778 on the Prosecution of Civil Servants;

Noting that, with respect to the prosecution of serious crimes other than torture and ill-treatment, there are examples of decisions of courts and prosecutors where prosecutions had been initiated against members of security forces without administrative authorisations having been sought;

Noting however that the amended Turkish legislation appears to have lifted the requirement of administrative authorisations only with respect to allegations of torture and ill-treatment but that it continues to exist with respect to other allegations of serious crimes,

Noting also that highest ranking members of security forces enjoy the special procedures of prosecution applicable to judges;

URGES the Turkish authorities to take the necessary legislative measures to remove any ambiguity regarding the fact that the administrative authorisation is no longer required to prosecute not only for torture and ill-treatment but also any other serious crimes and to ensure that members of security forces of all ranks could be prosecuted without an administrative authorisation;

F. *Training of judges and prosecutors*

Welcoming the ongoing training activities for judges and prosecutors initiated by the Turkish authorities, in particular on the Convention and the Court's case-law, as well as the training activities carried out within the context of the Academy of Justice in the form of seminars, conferences and study-visits;

Noting with satisfaction that training on the Convention and the Court's case-law has now become a part of the curriculum in the initial training of judges and prosecutors at the Academy of Justice;

DECIDES to close the examination of this issue;

G. *Practical impact of the measures taken*

Noting the statistical information provided with regard to the number of investigations, acquittals and convictions of crimes of torture and ill-treatment between 2003 and the first nine months of 2007;

Noting with interest that the statistical information provided can be interpreted as indicating a slight decrease in the number of investigation files opened since 2003 into allegations of torture and ill-treatment;

Regretting however that no information was made available to the Committee with regard to the number of investigations, convictions and acquittals concerning serious offences other than torture and ill-treatment allegedly committed by members of security forces;

Noting the examples provided of indictments lodged with criminal courts and decisions of those courts demonstrating that allegations of abuses by members of security forces are prosecuted and their criminal accountability is established;

STRONGLY ENCOURAGES the Turkish authorities to actively pursue their "zero tolerance" policy aimed at total eradication of torture and other forms of ill-treatment, as well as their efforts to ensure that the domestic authorities carry out effective investigations into alleged abuses by members of security forces;

URGES the Turkish authorities to provide detailed statistical information regarding the number of investigations, acquittals and convictions into alleged abuses with a view to demonstrating the positive impact of the measures taken so far;

Conclusions of the Committee of Ministers

DECIDES to pursue the supervision of the execution of the present judgments until the Committee has satisfied itself that all outstanding general measures have been adopted and their effectiveness in preventing new, similar violations has been established;

DECIDES to resume consideration of these cases, as regards outstanding general measures, at its third DH meeting in 2009.

Appendix I to Interim Resolution CM/ResDH(2008)69

Information provided by the Government of Turkey to the Committee of Ministers on the general measures to comply with the European Court's judgments

A. Improvement of procedural safeguards in police custody

1. General regulations and instructions

a. *Length of detention in police custody:* According to the Code of Criminal Procedure (which came into force on 1 June 2005), the length of detention in police custody shall not exceed 24 hours from the moment of arrest (plus, a maximum period of 12 hours during which a suspect is being brought before a judge) (see Article 91 of the Code). In organised crimes or crimes committed collectively, the detention period shall not exceed 48 hours. In such crimes, the total detention period can be extended to 4 days by a decision of a public prosecutor. After the elapse of 4 days, the accused should be heard by a judge, who is authorised to extend the detention period for further 3 days (this period also applies to crimes committed in areas where a state of emergency is declared) (Article 251§5).

b. *Right to inform a family member:* Anyone who is apprehended or taken into custody or whose custody period is extended shall have the right to inform a family member (Article 95 of the Code of Criminal Procedure).

c. *Right of apprehended persons to receive information about their rights and charges against them at the time they are taken into custody:* According to "Regulation on Apprehension, Police custody and Interrogation" (which also came into force on 1 June 2005 and hereinafter referred to as "Regulation"), anyone who is apprehended shall be informed of his/her rights, including the right to appoint a lawyer (of his/her own choosing or to be appointed by the Bar Association), as well as the nature of the charges against him/her (Article 6 of the Regulation). A suspect or an accused shall be given the same information (including the information on the right to remain silent) before being questioned by police officers (Article 147 of the Code of Criminal Procedure).

d. *Right to a lawyer:* A suspect or an accused shall have the right to a lawyer before being questioned (in private) and during his/her questioning (Articles 147 and 154 of the Code of Criminal Procedure). The provisions of the new Code provide that no statement obtained by security forces in the absence of a lawyer shall be considered as a basis of a conviction unless the suspect or accused confirms that statement before a judge or a court (Article 148 of the Code of Criminal Procedure). The new Code also prohibits the statements obtained under torture, ill-treatment or any methods such as medication, tiring, deception or use of physical force or duress to be used as evidence.

A suspect prosecuted under the Anti-terrorism Law (No. 3713) might be restricted to see his/her lawyer in the first 24 hours of custody by a decision of a judge following a request made by a public prosecutor. However, if such a decision is taken, the suspect shall not be interrogated during the first 24 hours (Article 10 of Law No. 3713).

Furthermore, the legal representative of a suspect shall have the right to have access to the investigation file and to obtain documents. The exercise of this right might be restricted by a decision of a judge if it puts the conduct of the investigation into jeopardy (Article 10 of the Regulation).

In a Circular (No. 24) issued by the Minister of Justice on 01/01/2006, the attention of the authorities is drawn to the effective use of the right to a lawyer at the investigation stage in accordance with the requirements of the Convention and of domestic law.

2. Medical examinations

Article 9 of the new Regulation provides the following rules relating to medical examinations:

- All apprehended persons shall be subject to medical examination at the time of their apprehension.
- When a detainee is transferred to another detention area or a decision is taken to prolong the detention period or when a detainee is released, a medical examination shall be carried out before he or she is brought before the judicial authorities.
- Any detainee whose health deteriorates or whose health situation appears to be suspicious while in custody shall immediately be examined by a doctor and be treated if necessary.
- The police officer who interrogates a detainee or carries out the investigation against him or her should not be the same person who brings the detainee to the medical examination unless there is a lack of personnel in the detention premises.
- When requesting a medical examination of a detainee, members of security forces should indicate in writing to the medical team whether such examination is requested at the beginning of custody or upon release.
- Three copies shall be made of medical reports to be prepared on the entry of a detainee. One copy will remain in the medical file, one copy will be given to the detainee and one copy will be kept in the investigation file. Three copies shall be made of medical reports to be prepared following a decision given to prolong the custody period or the transfer of a detainee or his or her leaving custody. One of these copies will remain in the medical file and two copies will be sent to the relevant public prosecutor in a sealed envelope who shall keep copy in the investigation file and submit the other one to the detainee or to his or her representative. Medical personnel should take the necessary precautions to preserve confidentiality.
- If a doctor finds that torture (Article 94 of the Criminal Code), aggravated torture (Article 95 of the Criminal Code) or torment (Article 96 of the Criminal Code) has been inflicted on the detainee, he or she should immediately report the situation to the public prosecutor. The public prosecutor shall take the necessary steps to make sure that a further medical examination be carried out in accordance with Articles 7 and 8 of Regulation on Physical and Genetic Examinations and Identification in Criminal Procedures.

3. Monitoring of custody records and detention premises by public prosecutors:

With the coming into force of the Code of Criminal Procedure, public prosecutors are now authorised to monitor detention premises, in particular cells and interrogation rooms. Public prosecutors are also responsible for monitoring the state of detainees, the reasons for their detention and the length of their detention and all other relevant information in the custody records. Public prosecutors shall note their findings in the custody register (Article 92).

Members of security forces are also under an obligation to ensure that detention premises comply with the standards as enshrined by the Regulation (Article 26).

In a Circular (No.3) issued by the Minister of Justice on 01/01/2006 the authorities have been reminded of their obligations under the Convention and of the case-law of the Court, as well as domestic law provisions, concerning the right to liberty and security and procedural safeguards in police custody. It is emphasised in the Circular that the necessary measures should be taken rapidly in case the detention facilities are found to be below the standards described in the Regulation. Public prosecutors are requested to fill out a form (a sample of which is attached to the Circular) concerning the monitoring of detention facilities and are asked to return the forms to the Ministry of Justice four times in a year so that they can be presented to the Human Rights Coordination Council attached to the Prime Minister's Office.

4. Report of the Committee of Prevention of Torture (CPT) of 06/09/2006 on the visit to Turkey from 7 to 14 December 2005

The CPT noted in its report that “New Criminal and Criminal Procedure Codes, as well as a revised version of the Regulation on Apprehension, Detention and Statement Taking, entered into force on 1 June 2005. These texts have consolidated improvements which had been made in recent years on matters related to the CPT’s mandate. It is more than ever the case that detention by law enforcement agencies (police and gendarmerie) is currently governed by a legislative and regulatory framework capable of combating effectively torture and other forms of ill-treatment by law enforcement officials” (see §12).

The CPT’s findings confirm that progress continues to be made as regards the implementation in practice of the safeguards against ill-treatment, including the length of detention in police custody and proper keeping of custody records.

However, the CPT noted that problems still remained in certain areas, notably as regards the implementation of the legislation concerning the right to access to a lawyer and confidentiality and quality of medical examinations of detainees (see, in particular, §§21 – 29) (for further information, including the recommendations of the CPT, see <http://www.cpt.coe.int/documents/tur/2006-30-inf-eng.htm>).

B. Improvement of professional training of members of security forces

The Turkish authorities have underlined the importance of raising human rights awareness through human rights courses in police colleges and academies and training activities on human rights in general and on the crime of torture and ill-treatment in particular. In this context, the Turkish authorities referred to the various training projects organised in the past, in particular through the Council of Europe/European Commission Joint Initiative.

The Turkish authorities have also submitted extensive information regarding the human rights education of members of security forces. Interested delegations can review this information at the Secretariat. The information is summarised below:

The Turkish authorities informed that the ongoing efforts to enhance human rights training of security forces, including the anti-terrorism branch, have been intensified following the coming into force of the new Criminal Code and the Code of Criminal Procedure in June 2005. These training activities comprised courses on human rights and on new procedures that came into force after the adoption of the new legislation, as well as seminars on practical aspects of the new legislation and codes of conduct of the security forces.

As far as the Gendarmerie is concerned, the Turkish authorities have in addition informed that human rights training is part of the curriculum, as a separate subject and as an integrated aspect of other subjects, in all relevant education institutions. Human rights courses focus on the following topics: Introduction to human rights, fundamental rights and freedoms, international organisations and human rights instruments (UN, CoE, OSCE and EU) and obligations of members of security forces within the context of human rights. There are also specific courses on the Convention and the case-law of the Court where the judgments of the Court concerning the actions of security forces, in particular the gendarmerie, are examined in depth. In those courses the attention of the participants is drawn to the shortcomings identified by the Court in its judgments against Turkey. Human rights courses are taught between 22 to 34 hours during one school year depending on the rank of the officers in question. Furthermore, a large number of seminars and conferences have been organised for the gendarmerie on the new Turkish legislation, as well as on human rights, between 1999 and 2006.

C. Giving direct effect to the Convention requirements

1. Legal framework regarding the use of force by the police

The Turkish authorities informed of the changes introduced on 2/6/2007 to Law No. 2559 on the duties and legal powers of the police, which now provides that the police are not entitled to use force unless confronted with resistance. According to the amended Article 16 of the law, the use of force should be directed to break the resistance and should be proportionate. The use of force could be increased gradually, depending on the nature and level of the resistance confronted with (i.e. the police shall first use physical force, then will interfere with other devices (such as tear gas, truncheon etc) and, as a last resort only, the police shall use firearms). The police shall warn the person(s) resisting that they will use force if they continue resisting. However, if the circumstances of the resistance so require, the police might use force without warnings. The police shall consider and decide the level of the force that they will use; including the devices they will use to break the resistance. The police are entitled to legitimate defence in cases of attacks directed against them or to third persons. The police are entitled to use weapons in self-defence, in cases where they cannot neutralise resistance by physical force or other devices or in order to secure an arrest, detention or in cases of *flagrante delicto*. In those situations the police shall issue a stop order before using a firearm. The police are entitled to use a firearm without hesitation to person(s) attempting to use a firearm against them within the limits of neutralising the danger.

2. Instructions given to the gendarmerie

As regards the instructions given to the gendarmerie, the Turkish authorities gave detailed information on these instructions which, they said, were aimed at ensuring that the members of the gendarmerie comply with human rights in their daily practice. These instructions can be summarised as follows:

- Compliance with human rights standards and with legal obligations constitutes the fundamental basis for the actions of the members of the gendarmerie. Gendarmes are expected to avoid any action that would violate human dignity or put into question the substance of rights and freedoms. The actions of members of the gendarmerie should be in compliance with human rights irrespective of the crime they will have to deal with.
- The members of the gendarmerie shall use force no more than strictly necessary. When it is necessary to use force, it should be proportionate to the aim pursued.
- During the course of military operations (and during the preparatory phase of such operations) carried out with the help of planes, helicopters and heavy weapons, it is obligatory to take the necessary measures in order to prevent any collateral damage to civilians and to urban areas. In this regard, it should be born in mind that the administration has objective liability. Any damage caused – even involuntarily – should be recorded, photos should be taken or be filmed and the damage should be compensated without delay.
- The investigatory measures taken by gendarmes, such as arrest, taking into custody, carrying out autopsies or identification of bodies etc., should comply with human rights standards, as well as with the relevant domestic legislation. Custody records should be kept meticulously; time of entry to and exit from custody should be recorded in detail. The state of health of detainees should also be kept in the record and, if possible, the detainees should be filmed or photographed before they are taken into custody.
- When a detainee is taken into custody, gendarmes should ensure the following: The detainee should be disarmed in order to prevent him causing harm to others or to himself; the detainee should be informed of the charges against him and of his right to remain silent; he should be allowed to have access to a lawyer; the arrest should be put into record and a form concerning the detainee should be filled in; this form should be read aloud to the detainee in the presence of a witness and a copy of it should be signed by the detainee; all these documents should be transmitted to the office of the public prosecutor who should give the instructions to follow; an arrested person should be allowed to inform his relatives.
- Medical examinations of detainees, accused or convict shall be carried out in private unless there are security concerns.

- The right to life of a person in custody should be protected; necessary measures should be taken to prevent the risk of suicide or self-mutilation. If necessary, medical equipment should be provided without delay.
- No one shall be subjected to ill-treatment, torture or inhuman or degrading treatment. The members of the gendarmerie shall be reminded frequently of the prohibition of torture and ill-treatment; they should likewise refrain from any action that might give rise to allegations of torture or ill-treatment. All complaints of torture or ill-treatment shall be taken into consideration.
- No high volume musical devices or spot light projectors shall be present in interrogation rooms which might lead the detainee to believe that he will be intimidated by making use of such devices.
- High-ranking gendarmes shall take all the necessary measures in order to prevent acts of torture and ill-treatment. Allegations of torture and ill-treatment against gendarmes shall immediately be investigated by their superiors and their withdrawal from service shall be requested from the Gendarmerie Headquarters, in case it is necessary. Allegations of torture and ill-treatment shall be pursued, even if there is no strong evidence to that effect, and investigations shall immediately be initiated.
- During public demonstrations, members of the gendarmerie are expected to maintain their calmness and avoid emotional reactions; it should be kept in mind that failure to do so will be considered as disobedience to orders and might result in disproportionate interference.
- Criminal or administrative proceedings shall rapidly be initiated against members of the gendarmerie who engage in unlawful acts despite the warnings and measures taken.

3. Legal framework regarding armed operations

A Regulation on Operations of the Security Directorate came into force on 16/11/2001 which sets the framework for the instructions to be given to the staff participating in law enforcement operations. According to the Regulation, all operations should be composed of three phases: the preparation, execution and follow-up phases. In particular, the regulation provides for the following: Before the planning of an operation, the staff should ensure to prepare an inventory of the area where the suspects are. An evaluation of the staff that will participate in the operation, the vehicles, arms and other equipment that will be used in the operation should be made. Detailed instructions should be given to senior staff members. During the different phases of the operation staff shall only have recourse to firearms when it is strictly necessary to carry out an arrest. If necessary, specialised staff or psychologists shall intervene in order to establish dialogue with the suspects. Necessary measures should be taken in order to protect the suspects from an eventual attack or lynching attempts. The regulation in question is unpublished.

4. Direct effect given to the Convention

Concerning the direct effect given by prosecutors and judges to the Convention, the Minister of Justice issued a series of Circulars on 01/06/2005 drawing the attention of the former to the newly enacted legislation, as well as the shortcomings identified by the Court in its judgments against Turkey. Recalling Turkey's obligations flowing from the Convention, the Minister referred, in particular, to the following:

- All criminal investigations should be carried out speedily and effectively in compliance with the requirements of the Convention. Respect for human rights presupposes that the interrogation of a suspect in custody should not be used to incriminate the suspect but to collect evidence for and against him or her. Public prosecutors should calculate with diligence the prescription periods and should do all that is necessary in order to finalise the investigations pending without any outcome (Circular No. 2).
- The shortcomings identified by the Court regarding the criminal investigations should be remedied in order to avoid future violations, in particular those relating to ineffective investigations in allegations of torture and ill-treatment, discrepancies in autopsy reports, the absence of photos that should be taken during autopsies and decisions of non-prosecution issued by public prosecutors without the necessary investigation being carried out into the facts (Circular No. 4).

- Investigations into allegations of torture or ill-treatment should be carried out by the chief public prosecutors or a public prosecutor appointed by him or her (not by the police or members of security forces) in accordance with the requirements of international conventions on human rights, the case-law of the Court, the Constitution and the relevant provisions of domestic law (Circular No. 8).
- Investigations into unknown perpetrator killings should be carried out rapidly and effectively taking into account the requirements of the Convention, in particular the pursuit of such crimes should be carried out in coordination with the security forces. All necessary evidence should be collected from the scene of the crime and should be kept with care. The rules on ballistic examinations, autopsy reports and identification of the body should strictly be followed. Furthermore, such investigations should be carried out directly by public prosecutors who should examine the investigation files with regular intervals and do their utmost to make sure that the perpetrators are found rapidly and in any case within the prescription period (Circular No. 22).

It has to be recalled that according to Article 173 of the Code of Criminal Procedure, decisions of public prosecutors not to prosecute can be challenged by the interested persons before the competent assize courts. The European Court rejected in a decision of 31/12/2002 the applicant's complaints in the case of Epözdemir (No: 57039/00) on the grounds that the applicant has not availed himself to this remedy under Turkish law.

5. Instructions regarding the proportionate use of force during public demonstrations

The Ministry of Interior issued three instructions to the General Directorate of Security (in May 2001, April 2003 and August 2004) setting out the level and nature of use of force to be applied by members of security forces during public demonstrations. The instructions state that the use of force should be proportionate and should be increased gradually.

Before any public demonstration (whether or not it is legal), the General Directorate of Security holds meetings at local level in order to ensure that members of security forces use force no more than necessary and aim to protect public order.

Furthermore, the curriculum prepared in 2008 for the training of Special Forces contains special subjects such as the use of arms (including the use of tear gas), the methods to be used during interventions in public demonstrations and issues related to human rights protection.

D. Prompt and efficient implementation of the new “Law on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism” (hereinafter “the Law on Compensation”)

1. The scope of the Law on Compensation

The Turkish Parliament adopted on 27/07/2004 the “*Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism*”. (Several provisions of this law were amended by Law no. 5442 of 28/12/2005; in particular its time-frame was extended for one year). The law provides a possibility to obtain, directly from the administration, compensation for pecuniary damages caused to natural or legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period of July 1987 to December 2006 with a possibility of judicial review of decisions taken in this respect.

The law does not cover the damages settled by the State by other means, damages compensated by the judgments of the European Court, damages resulting from social and economical reasons and damages of those who left their residences voluntarily (reasons not related to concerns of security), damages caused by intentional acts and damages of those who were convicted under Articles 1, 3 and 4 of Anti-terrorism Law and of those who were convicted for aiding and abetting terrorist organisations. On 20 October 2004 the “*Regulation on the Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism*” entered into force, which lays down the rules governing the functioning of “compensation assessment commissions” and their working methods. The Regulation further lays down the rules relating to methods of determining the amounts of compensation to be awarded.

2. The decision of the Court in the case of İçyer v. Turkey (no. 18888/02)

In this case the applicant complained of the refusal of the authorities to allow him to return to his home and land in the south east of Turkey. The Court observed that, when it took its decision, the applicant was not prevented from returning to his village. In this situation the Court concentrated on the availability of adequate economic compensation. It noted that the compensation commissions established with the coming into force of the Law on Compensation seemed to be operational in seventy-six provinces in Turkey and that there were already 170,000 persons seeking a remedy before these commissions. It also appeared from a substantial number of sample decisions furnished by the Government that persons who had sustained damage in cases of denial of access to property, damage to their property or death or injury could successfully claim compensation by using the remedy offered by the Compensation Law. In the Court's opinion, these decisions demonstrated that the remedy in question was available not only in theory but also in practice. The Court therefore concluded that the measures taken by Turkey to remedy the situation of the internally displaced persons, including the Compensation Law, today provided an effective remedy.

E. Establishment of enhanced accountability of security forces

1. Administrative authorisation to prosecute

As regards the requirement of administrative authorisation to prosecute serious crimes allegedly committed by members of security forces, Law No. 4483 on Prosecution of Civil Servants came into force on 2/12/1999 replacing the Law of 1914. The new law lays down the procedures applicable concerning the authorisation to be given in order to bring proceedings against civil servants for the crimes committed during the performance of their duties. However, Article 2 of the law provides for the exceptions to this rule. Accordingly, no administrative authorisation shall be required in the below situations in the prosecution of a civil servant:

- Investigations and prosecutions of civil servants who are subject to special procedures of investigation and prosecution because of the nature of their duties or because of the nature of the crime at issue;
- Situations of *flagrante delicto* requiring severe punishment;
- Disciplinary proceedings;

As a forth exception, the below paragraph was added to Article 2 by Law No. 4778.

- Investigations and prosecutions to be initiated under Articles 243 and 245 of the [former] Criminal Code and Article 154 § 4 of the [former] Code of Criminal Procedure (These articles concerned the crimes of torture and ill-treatment and were replaced by Articles 94 and 95 of the new Criminal Code. Article 154§4 gave authority to public prosecutors to launch proceedings against members of security forces in cases where they fail to carry out the orders and requests of public prosecutors. Article 161 of the new Code of Criminal Procedure confirms the authority of public prosecutors to launch proceedings against members of security forces. However, for prosecutions to be brought against governors and provincial governors, the provisions of Law No. 4483 shall apply. Highest ranking members of security forces shall be prosecuted in accordance with the provisions applicable for judges).

Decisions denying administrative authorisation are subject to appeal before the Council of State.

2. Examples of prosecutions

The Turkish authorities have pointed out a number of indictments lodged against members of security forces between December 2004 and August 2005 in the south-east of Turkey concerning, in particular, the following alleged crimes: negligence in carrying out an effective and prompt investigation: causing bodily harm: disproportionate use of force and trafficking in arms. In particular, the Turkish authorities drew the Committee's attention to a prosecution order from the Ankara Public Prosecutor to the Bakırköy (Istanbul) Public Prosecutor requesting the latter to remedy the shortcomings in an investigation carried out into a killing by unknown perpetrators and to take necessary steps in accordance with requirements of the Convention under Article 2 and with reference to a number of judgments of the Court.

3. Other complaint bodies

The Turkish authorities have informed that on 26/04/2003 a new body was introduced with the aim of receiving and examining complaints about alleged human rights violations committed by gendarmes ("JİHDİM") which is reachable 24 hours per day by internet, telephone or in person. 770 complaints have been received by JİHDİM, 185 of which involved human rights. 18 complaints were referred to judicial organs, in 34 complaints the investigation was already underway and in 3 cases disciplinary sanctions were imposed. 130 complaints have been judged as ill-founded.

Likewise, the Regional and Local Human Rights Councils established in 2000 have substantially been reorganised in 2003 to be able to effectively and rapidly deal with complaints of human rights violations. The total number of the Regional and Local Councils has now reached 931 in 81 regions and 850 provinces. A total of 847 applications have been lodged in 2004 and 1377 in 2005 with the Councils. In 2004, 64 % of the applications lodged with the Councils concerned complaints of ill-treatment. In this regard, it has to be noted that these councils are also charged with duties to monitor the situation in law enforcement establishments.

F. Training of judges and prosecutors

The Turkish authorities provided information regarding a series of conferences and training activities which were carried out in 2004 and 2007 for judges and prosecutors on the Convention and the case-law of the Court in collaboration with the European Commission and various universities and institutes in Turkey.

The Ministry of Justice is also organising regular training activities within the context of "Human Rights Education in Turkey Program 1998-2007" for in-service training of judges and prosecutors, as well as the paralegal staff, who are subject to training on human rights prior to their appointments and promotions.

Furthermore, the Ministry of Justice is regularly publishing the judgments of the Court in its "Bulletin of Jurisprudence" and distributing 13,000 copies of it to the relevant authorities. The judgments of the Court are also published at the Ministry's webpage (www.inhak-bb.adalet.gov.tr). The webpage includes articles written by scholars or judges and public prosecutors on general human rights issues and the Convention.

As regards the training activities carried out within the context of the Academy of Justice, the Turkish authorities have submitted a list of seminars, conferences, study-visits and other training activities organised in 2004, 2005 and in the first three months of 2006 within the context of Council of Europe/European Commission Joint Initiative and with the collaboration with various universities and institutions both in Turkey and abroad. Many of these activities concern seminars given on the Convention and the case-law of the Court, with particular focus on the procedural safeguards in police custody.

Lastly, the Turkish authorities submitted that the curriculum of the Academy of Justice now incorporates training on human rights and fundamental freedoms, including courses on the direct application of the case-law of the European Court of Human Rights and on the standards of the European Convention on Human Rights following the amendments introduced on 27 April 2008 in the Regulation on the initial and final training of trainee judges and prosecutors.

G. Practical impact of the measures taken

The Turkish authorities submitted statistical information regarding the number of investigations, acquittals and convictions into crimes of torture and ill-treatment for years between 2003 and 2007.

This statistical information can be summarised as follows:

Year	Number of investigation files opened	Number of members of security forces indicted	Decision of not to prosecute given	Number of members of security forces convicted	Number of members of security forces acquitted
2003	2612 (against 5588 members of security forces)	2333	1153	862	1375
2004	2413 (against 5173 members of security forces)	1824	1230	462	1631
2005	1721 (against 4277 members of security forces)	1052	1005	459	1870
2006	1965 (against 4443 members of security forces)	831	1216	1921	146
2007 (first nine months)	1421 (against 3722 members of security forces)	426	1068	139	590

The Turkish authorities also drew the Committee's attention to a number of judicial acts between February 2003 and July 2005 (approximately 200 court decisions and public prosecutors' decisions whether to prosecute or not) in which reference was made to the judgments of the Court. In the opinion of the Turkish authorities, these examples are indicative of the direct effect given to the Convention and the case-law of the Court by the Turkish judiciary.

**Appendix II to Interim Resolution CM/ResDH(2008)69
Aksoy group against Turkey**

**- 175 cases concerning the actions of the Turkish security forces
(Interim Resolution ResDH(2005)43)
CM/Inf/DH(2006)24**

I. Violation of the right to life (Article 2)

30015/96	A. and others, judgment of 27/07/2004, rectified on 17/08/2004, final on 27/10/2004
38418/97	A.K. and V.K., judgment of 30/11/2004, final on 28/02/2005
36088/97+	Acar and others, judgment of 24/05/2005, final on 12/10/2005
26307/95	Acar Tahsin, judgment of 08/04/04 - Grand Chamber
23954/94	Akdeniz and others, judgment of 31/05/01, Interim Resolution ResDH(2002)98
25165/94	Akdeniz, judgment of 31/05/2005, final on 31/08/2005
22947/93+	Akkoç Nebahat, judgment of 10/10/00, Interim Resolution ResDH(2002)98
21894/93	Akkum and others, judgment of 24/03/2005, final on 24/06/2005, rectified on
26/01/2006	
56760/00	Akpınar and Altun, judgment of 27/02/2007, final on 27/05/2007, rectified on
01/03/2007	
24351/94	Aktaş, judgment of 24/04/03
63758/00	Anık and others, judgment of 05/06/2007, final on 05/09/2007
55983/00	Anter and others, judgment of 19/12/2006, final on 23/05/2007
30949/96	Ateş Yasin, judgment of 31/05/2005, final on 31/08/2005
25657/94	Avşar, judgment of 10/07/01, final on 27/03/00
41964/98	Ayan Cennet and Mehmet Salih Ayan, judgment of 27/06/2006, final on 11/12/2006
25660/94	Aydın Süheyla, judgment of 24/05/2005, final on 24/08/2005
25659/94	Bilgin İrfan, judgment of 17/07/01, final on 17/10/01, Interim Resolution
ResDH(2002)98	
45403/99	Bişkin, judgment of 10/01/2006, final on 10/04/2006
28298/95	Buldan, judgment of 20/04/2004, final on 10/11/2004
23657/94	Çakıcı, judgment of 08/07/99, Interim Resolution ResDH(2002)98
39436/98	Canan, judgment of 26/06/2007, final on 26/09/2007
54182/00	Çelebi Halit, judgment of 02/05/2006, final on 23/10/2006
27693/95	Çelikkilek, judgment of 31/05/2005, final on 31/08/2005
25704/94	Çiçek, judgment of 27/02/01, final on 05/09/01, Interim Resolution ResDH(2002)98
41335/98	Demir Kamer and others, judgment of 19/10/2006, final on 19/01/2007
27308/95	Demiray, judgment of 21/11/00, final on 04/04/01
68188/01	Diril, judgment of 19/10/2006, final on 19/01/2007
26972/95	Dündar, judgment of 20/09/2005, final on 20/12/2005
28497/95	E.O., judgment of 15/07/2004, final on 15/10/2004
27602/95	Ekinci Ülkü, judgment of 16/07/02, final on 16/10/02
75632/01	Ekrem, judgment of 12/06/2007, final on 12/09/2007
57049/00	Erdoğan Yüksel and others, judgment of 15/02/2007, final on 15/05/2007
57778/00	Eren Aydın and others, judgment of 21/02/2006, final on 21/05/2006
23818/94	Ergi, judgment of 28/07/98, Interim Resolutions DH(99)434 and ResDH(2002)98
28637/95	Erkek, judgment of 13/07/2004, final on 13/10/2004
20764/92	Ertak İsmail, judgment of 09/05/00, Interim Resolution ResDH(2002)98
34594/97	Gezici, judgment of 17/03/2005, final on 17/06/2005
22676/93	Gül Mehmet, judgment of 14/12/00, Interim Resolution ResDH(2002)98
21593/93	Güleç, judgment of 27/07/98, Interim Resolutions DH(99)434 and ResDH(2002)98
16275/02	Gülşenoğlu, judgment of 29/11/2007, final on 29/02/2008
28299/95	Haran Nesibe, judgment of 06/10/2005, final on 06/01/2006
26144/95	İkincisoy A. and H., judgment of 27/07/2004, final on 15/12/2004
25760/94	İpek, judgment of 17/02/2004, final on 17/05/2004
35838/97	Kaçar Fatma, judgment of 15/07/2005, final on 15/10/2005
32444/96	Kanlıbaş, judgment of 08/12/2005, final on 08/03/2006
36749/97	Kaplan and others, judgment of 13/09/2005, final on 13/12/2005
45784/99	Karabulut Sultan, judgment of 19/09/2006, final on 19/12/2006

53489/99 Kavak, judgment of 06/07/2006, final on 06/10/2006
4451/02 Kaya and others, judgment of 24/10/2006, final on 24/01/2007
33420/96+ Kaya Belkıza and others, judgment of 22/11/2005, final on 22/02/2006
22535/93 Kaya Mahmut, judgment of 28/03/00, Interim Resolution ResDH(2002)98
22729/93 Kaya Mehmet, judgment of 19/02/98, Interim Resolutions DH(99)434 and ResDH(2002)98
47544/99 Kaya Sara and others, judgment of 02/10/2007, final on 02/01/2008
22492/93 Kiliç, judgment of 28/03/00, Interim Resolution ResDH(2002)98
27306/95 Kişmir, judgment of 31/05/2005, final on 31/08/2005
27305/95 Koku, judgment of 31/05/2005, final on 31/08/2005
36217/97 Menteşe and others, judgment of 18/01/2005, final on 18/04/2005, rectified on 13/09/2005
49160/99 Mordeniz, judgment of 10/01/2006, final on 10/04/2006
21594/93 Oğur, judgment of 20/05/99 - Grand Chamber, Interim Resolution ResDH(2002)98
31889/96 Orak Abdurrahman, judgment of 14/02/02, final on 14/05/02
25656/94 Orhan Salih, judgment of 18/06/02, final on 06/11/02
32457/96 Özalp and others, judgment of 08/04/2004, final on 08/07/2004
38607/97 Özgen and others, judgment of 20/09/2005, final on 20/12/2005
21689/93 Özkan Ahmet and others, judgment of 06/04/2004, final on 10/11/2004, rectified on 01/03/2005, ResDH(2001)13 ; ResDH(2001)66
50739/99 Perk and others, judgment of 28/03/2006, final on 28/06/2006
21986/93 Salman, judgment of 27/06/00 – Grand Chamber, Interim Resolution ResDH(2002)98
24490/94 Şarli, judgment of 22/05/01, Interim Resolution ResDH(2002)98
52390/99 Şeker, judgment of 21/02/2006, final on 21/05/2006
22876/93 Şemse Önen, judgment of 26/01/02, final on 14/05/02
25354/94 Şen Nuray No. 2, judgment of 30/03/2004, final on 30/06/2004
33384/96 Seyan, judgment of 02/11/2004, final on 30/03/2005
35875/97 Şirin Yılmaz Mehmet, judgment of 29/07/2004, final on 29/10/2004, rectified on 01/02/2005
65899/01 Tanış and others, judgment of 02/08/2005, final on 30/11/2005
26129/95 Tanlı, judgment of 10/04/01, final on 10/07/01, rectified on 28/04/01, Interim Resolution ResDH(2002)98
23763/94 Tanrikulu, judgment of 08/07/99, Interim Resolution ResDH(2002)98
24396/94 Taş Beşir, judgment of 14/11/00, Interim Resolution ResDH(2002)98
27699/95 Tekdağ, judgment of 15/01/2004, final on 14/06/2004
27244/95 Tepe İsak, judgment of 09/05/03, final on 19/08/03
23531/94 Timurtaş, judgment of 13/06/00, Interim Resolution ResDH(2002)98
27601/95 Toğcu, judgment of 31/05/2005, final on 31/08/2005
34506/97 Türkoğlu, judgment of 17/03/2005, final on 17/06/2005
75527/01+ Üçak and others, judgment of 26/04/2007, final on 24/09/2007
37410/97 Uzun Kamil, judgment of 10/05/2007, final on 24/09/2007
22495/93 Yaşa, judgment of 02/09/98, Interim Resolutions DH(99)434 and ResDH(2002)98
48884/99 Yazıcı, judgment of 05/12/2006, final on 05/03/2007
40074/98 Yıldırım Feyzi, judgment of 19/07/2007, final on 19/10/2007
56154/00 Yıldırım Selim and others, judgment of 19/10/2006, final on 19/01/2007
46928/99 Zengin Güli, judgment of 28/10/2004, final on 28/01/2005

II. Violation of the right not to be subjected to torture or to inhuman and degrading treatment

46747/99 Akdoğdu, judgment of 18/10/2005, final on 12/04/2006
47938/99 Akkurt, judgment of 04/05/2006, final on 04/07/2006
21987/93 Aksoy, judgment of 18/12/96, Interim Resolutions DH(99)434 and ResDH(2002)98
32574/96 Algür, judgment of 22/10/02, final on 22/01/03
22279/93 Altay, judgment of 22/05/01, Interim Resolution ResDH(2002)98
56003/00 Asan and others, judgment of 31/07/2007, final on 31/10/2007
19735/02 Atıcı, judgment of 10/05/2007, final on 12/11/2007
32572/96+ Aydın and Yunus, judgment of 22/06/2004, final on 22/09/2004, rectified on 03/02/2005

23178/94 Aydin, judgment of 25/09/97, Interim Resolutions DH(99)434 and ResDH(2002)98
 39812/98 Bakbak, judgment of 01/07/2004, final on 01/10/2004
 50988/99 Baltas, judgment of 20/09/2005, final on 20/12/2005
 22493/93 Berktaş, judgment of 01/03/01, final on 01/06/01, Interim Resolution ResDH(2002)98
 34482/97 Bilen, judgment of 21/02/2006, final on 21/05/2006
 77092/01 Bulut Necdet, judgment of 20/11/2007, final on 20/02/2008
 28340/95 Büyükdağ, judgment of 21/12/00, final on 21/03/01
 52165/99 Çalışır, judgment of 21/02/2006, final on 21/05/2006
 40516/98 Çalışkan Fahriye, judgment of 02/10/2007, final on 02/01/2008
 28039/98 Cancöz, judgment of 04/10/2005, final on 04/01/2006
 44093/98 Çelik and İmret, judgment of 26/10/2004, final on 26/01/2005
 14166/02 Ceylan Eser, judgment of 13/12/2007, final on 13/03/2008
 39449/98 Çiftçi Evrim No. 2, judgment of 26/04/2007, final on 26/07/2007
 32578/96+ Çolak and Filizer, judgment of 08/01/04, final on 08/04/04
 38585/97 Dalan, judgment of 07/06/2005, final on 07/09/2005
 48581/99 Demirel Kekil, judgment of 11/04/2006, final on 11/07/2006
 20869/92 Dikme, judgment of 11/07/00, Interim Resolution ResDH(2002)98
 68351/01 Diri, judgment of 31/07/2007, final on 31/10/2007
 27309/95 Dizman, judgment of 20/09/2005, final on 20/12/2005
 50125/99 Doğanay, judgment of 21/02/2006, final on 21/05/2006
 23145/93+ Elçi and others, judgment of 13/11/03, final on 24/03/04
 29484/95 Esen, judgment of 22/07/03, final on 22/10/03
 49391/99 Güler İrfan, judgment of 10/01/2006, final on 10/04/2006
 29/02 Gündoğan Kazım, judgment of 30/01/2007, final on 30/04/2007
 68694/01 Güven and others, judgment of 12/04/2007, final on 12/07/2007
 71908/01 Güzel (Zeybek), judgment of 05/12/2006, final on 05/03/2007
 22277/93 İlhan Nasir, judgment of 27/06/00, Interim Resolution ResDH(2002)98
 69988/01 Karakaş Hüseyin No. 2, judgment of 22/06/2006, final on 22/09/2006
 63181/00 Karayığit, judgment of 20/09/2005, final on 20/12/2005, rectified on 31/01/2006
 35044/97 Kılıç Hasan, judgment of 28/06/2005, final on 28/09/2005
 18207/03 Koç Nevruz, judgment of 12/06/2007, final on 12/09/2007
 32581/96 Koçak, judgment of 03/05/2007, final on 03/08/2007, rectified on 10/10/2007
 45742/99 Köylüoğlu, judgment of 22/06/2006, final on 22/09/2006
 24276/94 Kurt, judgment of 25/05/98, Interim Resolutions DH(99)434 and ResDH(2002)98
 56365/00 Kurt Cafer, judgment of 24/07/2007, final on 24/10/2007
 12101/03 Kurt Durmuş and others, judgment of 31/05/2007, final on 31/08/2007, revised on 08/11/2007
 30465/02 Mete Ahmet No. 2, judgment of 12/12/2006, final on 23/05/2007
 39464/98 Ölmez, judgment of 20/02/2007, final on 20/05/2007
 31553/02 Onay, judgment of 20/09/2007, final on 20/12/2007
 28520/95 Önder Sadık, judgment of 08/01/04, final on 08/04/04
 54430/00 S.B. and H.T., judgment of 05/07/2005, final on 05/10/2005
 7928/02 Şahin Muhammet, judgment of 25/09/2007, final on 25/12/2007
 31866/96 Satık and others, judgment of 10/10/00, final on 10/01/01, Interim Resolution ResDH(2002)98
 57916/00 Saygılı, judgment of 04/05/2006, final on 04/08/2006
 22496/93 Tekin, judgment of 09/06/98, Interim Resolutions DH(99)434 and ResDH(2002)98
 29422/95 Tepe Ayşe, judgment of 22/07/03, final on 22/10/03
 29100/03 Timur, judgment of 26/06/2007, final on 26/09/2007
 30494/96 Tuncer and Durmuş, judgment of 02/11/2004, final on 02/02/2005
 879/02 Turan Devrim, judgment of 02/03/2006, final on 02/06/2006
 33168/03 Uslu, judgment of 12/04/2007, final on 12/07/2007
 32357/96 Veznedaroğlu Sevtap, judgment of 11/04/00, final on 18/10/00, Interim Resolution ResDH(2002)98
 27473/02 Yağiz Erdoğan, judgment of 06/03/2007, final on 06/06/2007
 69912/01 Yavuz Nazif, judgment of 12/01/2006, final on 12/04/2006
 67137/01 Yavuz, judgment of 10/01/2006, final on 10/04/2006
 29485/95 Yaz, judgment of 22/07/03, final on 22/10/03
 61898/00 Yıldız Emirhan and others, judgment of 05/12/2006, final on 05/03/2007

58030/00 Yılmaz Dilek, judgment of 31/10/2006, final on 31/01/2007
40154/98 Yüksel Mehmet Emin, judgment of 20/07/2004, final on 20/10/2004

III. Violations of the right to respect for the applicants' home (Article 8) and/or of the right to property (Article 1 of Protocol No. 1)

33240/96 Ağtaş, judgment of 02/02/2006, final on 03/07/2006
21893/93 Akdivar, Çiçek, Aktaş, Karabulut, judgment of 16/09/96, Interim Resolutions DH(99)434 and ResDH(2002)98
37850/97 Halis Aksakal, judgment of 15/02/2007, final on 09/07/2007
24561/94 Altun, judgment of 01/06/2004, final on 01/09/2004
33239/96 Artun and others, judgment of 02/02/2006, final on 03/07/2006, rectified on 07/12/2006
23656/94 Ayder and others, judgment of 08/01/04
23819/94 Bilgin İhsan, judgment of 16/11/00, Interim Resolution ResDH(2002)98
25801/94 Dulaş Zubeyde, judgment of 30/01/01, Interim Resolution ResDH(2002)98
22494/93 İlhan Hasan, judgment of 09/11/2004, final on 09/02/2005
33238/96+ Keser and others, judgment of 02/02/2006, final on 03/07/2006, rectified on 07/12/2006
37038/97 Kurt Nuri, judgment of 29/11/2005, final on 01/03/2006
23186/94 Menteş, Turhallı M. and S, and Uvat, judgment of 28/11/97, Interim Resolution DH(99)434
33247/96 Öztoprak and others, judgment of 02/02/2006, final on 03/07/2006
33243/96 Şaylı, judgment of 02/02/2006, final on 03/07/2006
23184/94 Selçuk and Asker, judgment of 24/04/98, Interim Resolutions DH(99)434 and ResDH(2002)98
26973/95 Yöyler, judgment of 24/07/03, final on 24/10/03
36211/97 Yılmaz Kumri and others, judgment of 02/02/2006, final on 03/07/2006, rectified on 07/12/2006

IV. Violations exclusively of the right to tribunal or to an effective remedy against abuses (Articles 6 and 13) or lack of procedural safeguards in police custody (Articles 5 and 8)

22677/93 Çetin, Interim Resolutions DH(99)434 and ResDH(2002)98
42596/98+ Sarı and Çolak, judgment of 04/04/2006, final on 04/07/2006
52392/99 Uçar, judgment of 11/04/2006, final on 11/07/2006
23179/94+ Yılmaz, Ovat, Şahin and Dündar, Interim Resolutions DH(99)434 and ResDH(2002)98

69 Friendly settlements and striking-out concerning actions of the Turkish security forces and involving undertakings by the Turkish government

24940/94 Acar, judgment of 18/12/01 - Friendly settlement
31137/96 Adalı, judgment of 12/12/02 - Friendly settlement
32598/96 Akbay, judgment of 04/10/01 - Friendly settlement
37453/97 Akman, judgment of 26/06/01, final on 25/10/01 – Striking-out
28292/95 Ateş, judgment of 22/04/03 - Friendly settlement
24935/94 Avcı, judgment of 10/07/01 - Friendly settlement
28293/95 Aydın K., C. Aydın and S. Aydın and others, judgment of 10/07/01- Friendly settlement
29289/95 Aydın Mehmet, judgment of 16/07/02 - Friendly settlement
29875/96 Başak and others, judgment of 16/10/03 – Friendly settlement
24922/94 Binbay Yavuz, judgment of 21/10/2004 - Friendly settlement
24946/94 Boğ, judgment of 10/07/01 - Friendly settlement
24938/94 Boğa, judgment of 10/07/01 - Friendly settlement
35851/97 Bozkurt, judgment of 31/03/2005 - Friendly settlement
40299/98 Boztaş and others, judgment of of 09/03/04 - Friendly settlement
41993/98 Çelik and Çelik, judgment of 27/07/2004 - Friendly settlement
24934/94 Değer, judgment of 10/07/01 - Friendly settlement
22280/93 Demir Mahmut, judgment of 05/12/02 - Friendly settlement

24990/94 Demir, judgment of 10/07/01 - Friendly settlement
31845/96 Dilek Kemal, judgment of 17/06/03 - Friendly settlement
24939/94 Doğan, judgment of 10/07/01 - Friendly settlement
32270/96 Doğan Ülkü and others, judgment of 19/06/03 - Friendly settlement
30492/96 Erat and Sağlam, judgment of 26/03/02 – Friendly settlement
31246/96 Ercan, judgment of 25/09/01 - Friendly settlement
26337/95 Erdoğan Mahmut, judgment of 20/06/02 - Friendly settlement
42428/98 Eren and others, judgment of 02/10/03 - Friendly settlement
46649/99 Güler and others, judgment of 22/04/03 - Friendly settlement
24945/94 Güngü Kemal, judgment of 18/12/01 - Friendly settlement
29864/96 H.K. and others, judgment of 14/01/03 - Friendly settlement
25754/94 Haran, judgment of 26/03/02, final on 15/12/2004 - Striking-out
30953/96 I.I., I.S., K.E., and A.O., judgment of 06/11/01 - Friendly settlement
24849/94+ Kalın, Gezer and Ötebay, judgment of 28/10/03 - Friendly settlement
38578/97 Kaplan Süleyman, judgment of 10/10/02 - Friendly settlement
37446/97 Kara and others, judgment of 25/11/03 - Friendly settlement
38588/97 Keçeci, judgment of 26/11/02 - Friendly settlement
42591/98 Kılıç Özgür, judgment of 22/07/03 - Friendly settlement
31890/96 Kınay M. and Kınay R., judgment of 26/11/02 - Friendly settlement
24944/94 Kızılgedik, judgment of 10/07/01 - Friendly settlement
28516/95 Macir, judgment of 22/04/03 - Friendly settlement
42593/98 Memiş, judgment of 21/02/2006, rectified on 30/05/2006 - Friendly settlement
28504/95 Meringç, judgment of 17/06/03 - Friendly settlement
33234/96 N.Ö, judgment of 17/10/02 - Friendly settlement
31865/96 O.O. and S.M., judgment of 29/04/03 - Friendly settlement
39978/98 Oğraş and others, judgment of 28/10/03 - Friendly settlement
31136/96 Önder Yalçın, judgment of 25/07/02 - Friendly settlement
24936/94 Orak Adnan, judgment of 10/07/01 - Friendly settlement
27735/95 Oral and others, judgment of 28/03/02 - Friendly settlement
41306/98 Örnek and Eren, judgment of 15/07/2004 - Friendly settlement
31883/96 Özbey, judgment of 31/01/02 - Friendly settlement
29856/96 Özcan Mehmet, judgment of 09/04/02 – Friendly settlement
37088/97 Özkur and Göksungur, judgment of 04/03/03 - Friendly settlement
24942/94 Parlak, Aktürk and Tay, judgment of 10/07/01 - Friendly settlement
37415/97 Şahmo, judgment of 22/06/2004 - Friendly settlement
29359/95 Saki, judgment of 30/10/01 - Friendly settlement
41926/98 Sarı Ramazan, judgment of 31/07/03 - Friendly settlement
31154/96 Şen Filyet, judgment of 12/12/02 - Friendly settlement
24991/94 Şenses, judgment of 10/07/01 - Friendly settlement
31153/96 Soğukpınar, judgment of 12/12/02 - Friendly settlement
28632/95 Sünnetçi, judgment of 22/07/03 - Friendly settlement
37047/97 Temel, judgment of 13/07/2004 - Friendly settlement
38382/97 Toktaş, judgment of 29/07/03 - Friendly settlement
31731/96 Tosun Hanım, judgment of 06/11/03 - Friendly settlement
36189/97 Yakar, judgment of 26/11/02 - Friendly settlement
31152/96 Yalçın Şaziment, judgment of 12/12/02 - Friendly settlement
37049/97 Yaman Mehmet, judgment of 22/05/03 - Friendly settlement
22281/93 Yaşa Sıddık, judgment of 27/06/02 - Friendly settlement
32979/96 Yıldız Özgür, judgment of 16/07/02 - Friendly settlement
28308/95 Yıldız Zeki, judgment of 22/04/03 - Friendly settlement
31730/96 Yurtseven and others, judgment of 18/12/03 - Friendly settlement
27532/95 Z.Y., judgment of 09/04/02 - Friendly settlement

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)43

ACTIONS OF THE SECURITY FORCES in Turkey

Progress achieved and outstanding problems – General measures to ensure compliance with the judgments of the European Court of Human Rights in the cases against Turkey concerning actions of members of the security forces (listed in Appendix III) (Follow-up to Interim Resolutions DH(99)434 and DH(2002)98)

*(Adopted by the Committee of Ministers on 7 June 2005
at the 928th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”);

Having regard to the 74 judgments and decisions finding that Turkey is responsible for numerous breaches of the Convention relating to the action of its security forces, including disappearances, homicides, torture and ill-treatment, destruction of property and relating also to the lack of effective domestic remedies against state officials responsible (see cases and violations listed in Appendix III);

Bearing in mind that a number of other cases involving similar complaints have been struck off the list by the European Court of Human Rights (the “Court”) following the conclusion of friendly settlements or other solutions found, in particular on the basis of the government's undertaking to take rapid remedial measures;

Noting that most of the violations in the cases at issue took place against the background of the fight against terrorism in the 1990s and recalling that each contracting state, in combating terrorism, must act in full respect of its obligations under the Convention, as set out in the Court's judgments, and developed in the Council of Europe Guidelines on human rights and the fight against terrorism;

Welcoming the lifting of the state of emergency in all areas in South-East Turkey in November 2002 and recalling the government's withdrawal on 29 January 2002 of its derogation from certain of its obligations under the Convention (Article 15), thus making the Convention fully applicable in Turkey;

Recalling that in response to the violations of the Convention found, Turkey has taken important remedial action aimed at

- reinforcing the regulatory framework for the action of the security forces,
- improving the professional training of the members of the security forces and
- ensuring the existence of effective domestic remedies in all cases of alleged abuse;

Bearing in mind the Committee's assessments of the progress achieved by Turkey in adopting the necessary execution measures, as indicated in the Committee's Interim Resolutions DH(99)434 of 9 June 1999 and DH(2002)98 of 10 July 2002, and the further measures identified in those texts to ensure that new, similar violations are prevented;

Recalling that, in Interim Resolution DH(2002)98, the Committee, in particular;

“Called upon the Turkish Government to focus its further efforts on the global reorganisation of the basic, in-service and management training of Police and Gendarmerie, building notably on the efforts deployed in the framework of the Council of Europe's Police training project, with a view to achieving, without delay, concrete and visible progress in the implementation of the major reforms which were found necessary;

Urged Turkey to accelerate without delay the reform of its system of criminal prosecution for abuses by members of the security forces, in particular by abolishing all restrictions on the prosecutors' competence to conduct criminal investigations against State officials, by reforming the prosecutor's office and by establishing sufficiently deterring minimum prison sentences for persons found guilty of grave abuses such as torture and ill-treatment;

Strongly encouraged the Turkish authorities to pursue and develop, in particular in the context of the new Council of Europe/European Commission Joint Initiative, short and long-term training strategies for judges and prosecutors on the Convention and the Court's case-law, including wider dissemination of translated judgments to the domestic courts, rapid adoption and implementation of the legislation on the Turkish Academy of Justice and inclusion in its curricula of in-depth courses on the Convention;

Called upon the Turkish Government to continue to improve the protection of persons deprived of their liberty in the light of the recommendations of the Committee for the prevention of torture (CPT);

Invited the Turkish authorities regularly to keep the Committee of Ministers informed of the practical impact of the measures taken, notably by providing statistics demonstrating effective investigations into alleged abuses and adequate criminal accountability of members of the security forces; “

Bearing in mind furthermore the Committee's Declaration of 12 May 2004 “Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels” and the Recommendations to member States to which it refers¹³, designed to improve the application of the Convention in the domestic law of all member States;

Assessment of the Committee of Ministers

Having examined the information provided by the Turkish authorities concerning the measures taken since the adoption of Interim Resolution DH(2002)98 (see, Appendix I) (for information on the “Council of Europe/European Commission Joint Initiative” see Appendix II) , as well as the Court's judgments dealing with the same issues which have been transmitted since then to the Committee of Ministers for supervision of execution (see Appendix III);

Welcoming the determination of the Turkish authorities to ensure that the actions of the security forces fully comply with the requirements of the Convention and noting with satisfaction the substantial reforms adopted since 2002 to that effect, including most recently the new Penal Code and Code of Criminal Procedure, which came into force on 1 June 2005;

Reinforcing the regulatory framework for the action of the security forces

General regulations and instructions

Welcoming the authorities' “zero-tolerance” policy with regard to torture and ill-treatment by the security forces as well as their ongoing efforts to ensure that existing laws and regulations are implemented, in particular through the issue of circulars calling for the total eradication of human rights violations, so that the right to life is effectively guaranteed and that torture and ill-treatment are prohibited in practice;

Improvement of procedural safeguards in order to prevent torture or ill-treatment in police custody

¹³ 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;

Welcoming the additional safeguards introduced for persons held in police custody, in particular the right of all persons to see a lawyer of their own choosing from the outset of the custody period, the right to free legal assistance, the right of the suspect's representative to have access to the investigation file and the right to a medical examination without the presence of members of security forces;

Stressing the need for strict implementation of all these safeguards, also bearing in mind the recommendations of the Committee for the Prevention of Torture (CPT);

Noting in this context that these additional safeguards have been supplemented by a number of regulations based on the new Code of Criminal Procedure and in line with the Convention's requirements;

Improving the professional training of the members of the security forces

Noting the entry into force of the legislation on the establishment of a Staff Education and Training Unit, which will deal with the initial and in-service training of staff in prisons and detention centres;

Noting the positive outcome of the Council of Europe/European Commission Joint Initiative on "Police, professionalism and the Public in Turkey", which aimed, *inter alia*, at developing local capacity to train members of police and gendarmerie in the field of human rights;

Stressing that the results of the Council of Europe/European Commission Joint Initiative should be consolidated and further developed, in particular as regards the mainstreaming of human rights training into the initial and in-service training of the police and gendarmerie, especially as regards the inclusion of the human rights dimension in practical police and gendarmerie related topics;

Ensuring the existence of effective domestic remedies in all cases of alleged abuse

Direct effect of the Convention in Turkish law

Welcoming the amendments made to the Turkish Constitution in May 2004 concerning, in particular, the abolition of state security courts and the precedence to be given to the Convention and the case-law of the Court in Turkish law and stressing the importance that this reform is translated rapidly into the practice of prosecutors and members of the judiciary;

Adequate compensation for damage caused

Noting the continuing practice of the administrative courts of ensuring reparation by the state for damage caused as a consequence of actions of the security forces;

Noting with interest that, further to the undertaking in Interim Resolution ResDH(2002)98 (see §§ 16-17), a new Law on Compensation of Losses Resulting from Terrorism and from Measures Taken against Terrorism and the relevant implementing regulations have been adopted.

Noting also that this legislation provides an alternative avenue for obtaining directly from the administration, compensation for pecuniary damages caused by natural or legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period 1987 to 2004, and that judicial review of decisions taken in this respect is available;

Stressing that the authorities must now ensure that this legislation is implemented in an effective and impartial manner so as to provide prompt and adequate compensation to all persons having suffered losses as a result of the fight against terrorism during the period in question;

Establishment of enhanced accountability of security forces

Welcoming the enhanced accountability of the security forces in the new Criminal Code as a result of the introduction of minimum prison sentences for crimes of ill-treatment and torture, which may no longer be converted into fines or suspended;

Stressing that criminal investigations into allegations of abuse must be dealt with promptly to avoid impunity resulting from statutory limitations on crimes, bearing also in mind the continuing obligation under the Convention to carry out such investigations;

Welcoming the fact that the administrative authorisation required for criminal investigations in cases of alleged ill-treatment and torture by the security forces was abolished on 10 January 2003 by an amendment to Law No. 4483;

Noting with interest in this connection the developing practice of administrative courts to quash administrative decisions refusing the indictment of members of security forces accused of other unlawful actions;

Recalling also in this context a number of important new safeguards introduced to prevent torture or ill-treatment in police custody, as mentioned above;

Welcoming the provisions of the new Code of Criminal Procedure enabling the involvement of victims or complainants in the criminal investigation and subsequent proceedings, in particular the right of victims to have access to the investigation file;

Welcoming the fact that Turkish law provides an automatic right of judicial review in cases where public prosecutors issue a decision not to prosecute cases of alleged abuse by members of security forces;

Welcoming the efforts made to improve the efficiency of criminal investigations and proceedings through the training of judges and prosecutors, and in particular the positive results obtained in the framework of "Council of Europe/European Commission Joint Initiative"¹⁴ which aimed to develop new, practice-based, training capacities among judges, prosecutors and lawyers on the Convention and the application of the Court's case-law;

Welcoming also the various other awareness-raising and training activities for judges and prosecutors initiated by the authorities, as well as the establishment of the Turkish Academy of Justice, and underlining the need for enhanced efforts to mainstream the Convention training into the initial and in-service training of judges and prosecutors within the framework of the Academy;

Noting the examples provided of indictments lodged with the criminal courts and decisions of those courts demonstrating that allegations of abuses by members of security forces are prosecuted and their criminal accountability is established;

Regretting, nonetheless, that statistics on the number of complaints lodged and on the outcome of such complaints have yet to be provided with a view to ensuring the Committee to assess the efficiency of the reforms adopted;

Conclusions of the Committee of Ministers

Welcomes the adoption of a number of important reforms as well as the ongoing efforts to ensure full compliance with the Convention in these cases;

Expresses satisfaction with the results obtained so far, while encouraging the authorities:

- to consolidate their efforts to improve the procedural safeguards surrounding police custody through the effective implementation of the new Regulations based on the new Code of Criminal Procedure, in

¹⁴ "Council of Europe/European Commission Joint Initiative with Turkey: to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community *acquis* (NPAA) in the accession partnership priority area of democratisation and human rights".

the light of the requirements of the Convention and bearing in mind the recommendations of the Committee for the Prevention of Torture (CPT);

- to consolidate their efforts to reorganise the basic, in-service and management training of the police and gendarmerie by making use of the results obtained in the Council of Europe/European Commission Joint Initiative, in particular as regards the mainstreaming of human rights into initial and in-service training;

- to take the necessary measures to ensure that the new status of the Convention and the case-law of the Court flowing from the change of Article 90 of the Constitution is translated into the daily practice of the security forces, in particular in the instructions given to them, and that prosecutors and judges are also encouraged to give effect to this new provision;

- to ensure the prompt and efficient implementation of the new "Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism", to reconsider its limited time-frame so that all claims can be processed in an impartial manner, and to ensure that individuals do not have to bear a disproportionate burden as a result of lawful actions of the security forces;

- to take the necessary measures to remove any ambiguity regarding the fact that administrative authorisation is no longer required to prosecute any serious crimes allegedly committed by members of security forces;

- to pursue the training provided for judges and prosecutors in the Academy of Justice, in particular by mainstreaming the training on the Convention and the case-law of the Court into the initial and in-service training of judges and prosecutors within the framework of the Academy;

Urges the Turkish authorities regularly to keep the Committee of Ministers informed of the practical impact of the measures taken, including the provision of statistics regarding number of investigations, acquittals and convictions into alleged abuses;

Decides to pursue the supervision of the execution of the present judgments until all necessary measures have been adopted and their effectiveness in preventing new similar violations has been established;

Decides to resume consideration of the measures taken or envisaged in these cases within nine months to a year.

Appendix I to Interim Resolution ResDH(2005)43

Information provided by the Government of Turkey to the Committee of Ministers on the additional general measures to comply with the European Court's judgments (adopted since Interim Resolution ResDH(2002)98

I. Reinforcing the regulatory framework for the action of the security forces

A. *General regulations and instructions*

1. *The Circular of the Ministry of Interior of 16 January 2003* to all Provincial Governors and to the Gendarmerie Central Command, calls for effective respect of the requirements of the ECHR and of the Turkish Constitution and legislation, as recently amended, so as effectively to guarantee the right to life and the prohibition of torture and ill-treatment in day-to-day practice. The Circular states that serious steps will be taken to eradicate human rights violations, such as torture, disappearances, deaths in custody and unacknowledged homicides and recalls the obligation of strict compliance with the Regulations on Apprehension, Police custody and Interrogation (notably as regards the proper record of the detention, medical examination of detainees, etc). It also stresses the importance of in-service training and awareness-raising activities for all personnel of the security forces. (Follow-up instructions for different security forces are presently being prepared by the competent authorities).

2. *The Circular of the Minister of Interior of 18 October 2004* on the European Union's human rights defenders' guidelines. The circular intends to develop cooperation between the local authorities

and human rights defenders in the light of the European Union's Guidelines on Human Rights Advocacy. The Circular states that the local authorities will ensure that the public institutions and law enforcement officers act in the light of the principles set out in the guidelines. To this end, they will organise training and other social activities to promote human rights and good governance, in particular to the members of security forces. Furthermore, the local authorities shall make the necessary effort to develop the cooperation with the NGOs that are active in the field of human rights and shall inform the Ministry the successful examples of cooperation in this regard. The Government expects that the implementation of this circular will take into account the rights of the human rights defenders under the Convention.

B. Improvement of procedural safeguards in order to prevent torture or ill-treatment in police custody

3. *Abolition of State Security Courts and special procedures applicable before them:* State Security Courts were abolished by constitutional amendments introduced on 7 May 2004. As a result, all procedural safeguards provided for by the ordinary criminal procedure have henceforth become applicable in all proceedings without exception.

4. *Right of access to a lawyer:* Law No. 4778 of 11 January 2003 abolished Article 16 § 4 of the Law No. 2845 on State Security Courts, which denied access to a lawyer during the first 48 hours of detention to all persons held in police custody in connection with offences falling within the jurisdiction of State Security Courts. As a result, all persons now have the right to have access to a lawyer as from the beginning of their police custody regardless of the type of offence with which they are charged.

5. The possibility of detained persons to receive free legal assistance and the right of the suspects' representative to have access to the investigation file have been introduced by the amendments made to the *Regulations on Apprehension, Police custody and Interrogation* on 3 January 2004.

6. *Other rights during police custody:* Following the amendments introduced on 18 September 2002 to the *Regulations on Apprehension, Police custody and Interrogation* information is now given to the apprehended persons about their rights at the time they are taken into custody. On 3 January 2004 further amendments were made to these Regulations, which specify that the presence of members of security forces during the medical examination of detainees will be allowed only in the case of a documented request of the forensic doctor based on concerns of personal security. On the latter point, the *Circulars of the Ministry of Justice of 28 May and of 22 August 2002 and the Circular of the Ministry of Health of 10 October 2003* have been issued, which stress on the need to respect the confidentiality of medical examinations. The Circulars further state that law enforcement officers shall respect the confidentiality of medical examinations and shall not be present in the premises while the examination is being carried out. The amendments also require that detention records must be detailed, which should include information on the contact coordinates of the detainee's relatives and all the instances where the detainees leave the detention room.

7. *The new Code of Criminal Procedure*, which came into force on 1 June 2005, provides that the following issues shall be governed by Regulations to be adopted compatible with the Code : The conditions of detention facilities, duties of responsible staff, rules relating to medical examinations, custody records and detention logbooks, documents to be prepared when detainees are taken into custody and released, documents to be submitted to the detainees and other rules related to arrest (Article 99 of the Code).

8. Furthermore, the provisions of the new Code provide that no statement obtained by security forces in the absence of a lawyer shall be considered as a basis of a conviction unless the suspect or accused confirms that statement before a judge or a court (Article 148 of the Code of Criminal Procedure). The new Code also prohibits the statements obtained under torture, ill-treatment or any methods such as medication, tiring, deception or use of physical force or duress to be used as evidence.

II. Improving the professional training of the security forces

9. *Staff Education and Training in Prison and Detention Centres*: Four Regulations were adopted on 4 May 2004 establishing a “Staff Education and Training Unit”, which will deal with initial and in-service training of staff members of prisons and detention centres. The curriculum will also include courses dealing with human rights issues, and notably the protection of prisoners' rights.

10. Training and awareness activities concerning human rights have been ongoing since 1992, both as regular teaching subjects in the gendarmerie schools and as training courses, seminars and conferences. Up until 2002, an overall number of 1,967 officers, 8,804 inferior officers and 18,942 sergeants had benefited from the regular training courses, while 36,303 members of the gendarmerie of all ranks have attended various seminars and conferences since 2000. Courses dealing with human rights topics are also dispensed at the level of the local gendarmerie units, aiming at covering the whole of the gendarmerie staff.

III. Ensuring the existence of effective domestic remedies in all cases of alleged abuse

A. *Direct effect of the Convention in Turkish law*

11. On 7 May 2004 the Turkish Parliament adopted an amendment to Article 90 of the Constitution, which now provides that international human rights agreements will prevail over incompatible domestic law.

12. Following the aforementioned constitutional amendment, the Turkish Government presented to the Committee of Ministers a number of examples of Turkish highest courts referring to and taking into account the requirements of the Convention, as set out in the European Court's judgments.

13. Two recent judgments of the Court of Cassation – one dealing with the re-trial of Sadak, Zana, Dicle and Doğan, and the other one concerning the surveillance of telephone conversations – highlight the direct effect today given to the Strasbourg judgments in the Turkish legal order.

14. The Government considers that these developments in domestic law confirm the will demonstrated on earlier occasions by the highest national judicial authorities to ensure effective respect for the European Court's judgments in the interpretation of Turkish law and of the Convention. The Government stress that it has continuously encouraged these developments (see, e.g. Resolution ResDH(2001)71 in the Akkuş case and Resolution ResDH(2001)70 in the Aka case). Having regard to these developments and to the new Article 90 of the Constitution, it now expects that all Turkish courts will give direct effect to the European Court's judgments, thus fulfilling Turkey's obligation under Article 46 of the Convention to grant redress for the violations of the Convention and to prevent new similar violations in future. The Government undertake to regularly report to the Committee of Ministers about continuous development of domestic case-law in this sense.

B. *Adequate compensation for damages caused*

Compensation through judicial proceedings

15. The administrative courts have continued their practice of ensuring reparation by the State for damage caused as a consequence of actions of security forces. A number of recent examples demonstrate this:

16. In a decision delivered by the Istanbul Administrative Court on 10 December 2003 the court awarded 62,338 Euros for pecuniary and non-pecuniary damages to the plaintiffs who alleged that their son had been killed as a result of the excessive use of force by the members of security forces during a prison riot in Istanbul in 2001. Also in a series of decisions by the Ankara Administrative Court delivered in 2002 the plaintiffs were awarded damages on account of the death of their relatives during prison riots in Ankara in 1999. In all these cases the Ankara Administrative Court held that the prison authorities had failed to secure the right to life of the victims and that the administration was liable to the plaintiffs for the death of their relatives on account of the excessive use of force exercised by members of security forces. In another decision delivered by the Istanbul Administrative Court on 30 September 2002, the court held that the administration was liable to pay damages to the plaintiff on

account of the failure of the authorities to identify the perpetrators in the killing of the applicant's mother within the 20 year statutory time limit.

Additional rights of compensation through special proceedings for damages caused between 1987 and 2004

17. Following the Government's earlier undertakings before the Committee of Ministers (see, notably Interim Resolution DH(2002)98, §§ 16-17) the Parliament adopted on 14 July 2004 the "*Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism*". The law provides an alternative possibility to obtain directly from the administration compensation for pecuniary damages caused natural or legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period 1987 to 2004 with a possibility of judicial review of decisions taken in this respect. The law does not cover the damages settled by the State by other means, damages compensated by the judgments of the European Court, damages resulting from social and economical reasons and damages of those who left their residences voluntarily (reasons not related to concerns of security), damages caused by intentional acts and damages of those who were convicted under Articles 1, 3 and 4 of Anti-terrorism Law and of those who were convicted for aiding and abetting terrorist organisations. On 20 October 2004 the "*Regulation on the Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism*" entered into force, which lays down the rules governing the functioning of "compensation assessment commissions" and their working methods. The Regulation further lays down the rules relating to methods of determining the amounts of compensation to be awarded.

18. The Government will keep the Committee of Ministers informed of the effective implementation and possible developments of this new procedure to ensure that effective compensation is available to victims in line with the Convention requirements as set out in the relevant judgments of the European Court.

C. *The establishment of effective accountability of security forces*

Effective investigation into alleged abuses

19. Public prosecutors have been reminded by *the Circular of the Ministry of Justice of 20 October 2003* of the provisions of international, constitutional and national legislation concerning prevention of torture and ill-treatment. The Circular states that investigations into allegations of torture and ill-treatment should be carried out speedily and effectively by public prosecutors and not by members of security forces.

20. As regards the problems posed by the administrative authorisation required for criminal investigations to be initiated against members of security forces in cases of alleged ill-treatment and torture, this obstacle was abolished on 10 January 2003 by amendment of Law No. 4483 on the Prosecution of Civil Servants. The Government also repeatedly stressed before the Committee of Ministers its position, in line with the Convention requirements, that the criminal investigation into all other violations of the Convention (e.g. unlawful killings, destruction of property etc) by members of security forces was not subject to any administrative authorisation.

21. The Turkish authorities have therefore consistently encouraged the developing practice of administrative courts to quash administrative decisions refusing the indictment of members of security forces of other unlawful actions, such as unintentional homicide, causing bodily harm, causing death in traffic accident, burning of houses. The administrative courts have concluded that Law No. 4483 on the Prosecution of Civil Servants does not grant judicial powers to the administrative authorities but only provides that the relevant administrative councils should send the outcome of their examinations to the judicial authorities in the cases of all abuses. These decisions also stress that it is for the judicial authorities to investigate and decide whether the accused public officials committed the offences and whether they were liable or not.

22. The Government will keep the Committee of Ministers informed of the developments in this sense and of further measures fully to ensure that no administrative obstacle exist to effective investigation into the kind of serious abuses at issue in the present cases.

Access of victims to the investigative procedure

23. As to the right of victims or complainants to be involved in the criminal investigations, Article 243 of the new Code of Criminal Procedure provides that the victim or the complainant may a) request from the public prosecutor to collect evidence b) request a copy of the investigation file c) receive free legal assistance d) request a copy of the evidence e) be informed of the hearings f) take part in the proceedings as an intervening party g) request a copy of the case-file h) request to invite witnesses i) benefit from the assistance of a lawyer during the proceedings j) appeal a decision.

24. As regards effective nature of sanctions, the new Code of Criminal Procedure further provides (in line with Article 165 of the old Code) an automatic right of judicial review in cases where public prosecutors issue a decision not to prosecute cases of alleged abuses by members of security forces.

Effective punishment of abuses

25. Articles of 243 and 245 of the old Criminal Code, which set penalties for torture and ill-treatment, have been amended by Law No. 4778 of 10 January 2003 and Law No. 4963 of 7 August 2003 and provide that the penalties imposed under these provisions can no longer be converted into fines or suspended. According to these amendments, the investigation and prosecution of cases of torture and ill-treatment are to be treated with particular speed, as priority cases. Hearings of cases relating to these offences cannot be adjourned for more than 30 days, unless there are compelling reasons, and these hearings will also be held during judicial recess. These amendments will be incorporated in the new Criminal Code, which came into force on 1 June 2005. Furthermore, a minimal sanction of 5 years of imprisonment has been introduced for torture and ill-treatment with the coming into force of the new Criminal Code. The Government will keep the Committee of Ministers informed of implementation of these new provisions.

26. As to the progress made in ensuring effective prosecution and convictions of members of security forces for unlawful acts, this is demonstrated by a number of recent domestic court decisions. In a decision of the Ankara Assize Court dated 26 March 2004 four police officers, charged with causing the death of a suspect while in police custody, had been convicted to four years, five months and ten days imprisonment. Furthermore, the 8th Chamber of the Court of Cassation quashed on 30 January 2002 a decision of a first instant court, which had acquitted members of security forces for offence of torture. In a decision of the Şırnak Criminal Court of 12 November 2004, a police officer was convicted to two months and fifteen days' imprisonment for having ill-treated the victim. There are also a number of indictments lodged with domestic courts mainly in South-East of Turkey in 2003 and 2004 where members of security forces were charged for unlawful acts, in particular ill-treatment and torture.

27. The Government encourage these developments in domestic courts' practice tending to impose more severe sanctions for abuses, thus contributing to effective implementation by Turkey of the European Court's judgments. The Government will continue to keep the Committee of Ministers informed of further improvements in this domain, including by providing the relevant statistics demonstrating the effective accountability for abuses, as well as specific decisions imposing deterring disciplinary and criminal sanctions against members of security found guilty of torture, ill-treatment or other violations of the Convention.

D. Training of judges and prosecutors

28. On 23 July 2003 the Parliament adopted a law on the establishment, organisation and duties of the Turkish Academy of Justice, an institution consecrated to the education of judges and prosecutors. The law provides that the Academy will ensure basic, pre-service and in service training for general, administrative and military judges and public prosecutors, of lawyers and notaries and of auxiliary justice personnel. Various training curricula and modalities are foreseen depending on the concrete needs of each category of students. On 8 October 2004 the "Regulation on the inter-professional education in the Turkish Academy of Justice" entered into force. According to the provisions of the Regulation human rights education will be included in the curriculum of the Academy.

IV. Final comments

29. Finally, the Government is taking into account CM Recommendations 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 (Rec(2002)13), on the European Convention on Human Rights in university education and professional training (Rec(2004)4) and on the improvement of domestic remedies (Rec(2004)6) in order to ensure that the Turkish law and practice is fully brought in line with the requirements of the Convention and the case-law of the Court.

Appendix 2 to Interim Resolution ResDH(2005)43

Council of Europe's programme "Police and Human Rights – Beyond 2000": Council of Europe/European Commission Joint Initiative "Professionalism and respect for Human Rights in the Turkish National Police and Gendarmerie in their behaviour and relations with the public"

The project's overall objective was to develop professionalism and respect for human rights in the Turkish National Police and the Gendarmerie in their behaviour and relations with the public. The specific objectives of the project were to ensure that training programmes for police officers and gendarmerie are in compliance with Council of Europe standards and to develop local capacity to train all police officers and gendarmerie in Human Rights standards.

In order to achieve the above objectives, the Project activities comprised the following:

- translation of police training materials prepared by the Council of Europe,
- train-the-trainers courses, and
- expertise on the curricula for basic training of Turkish Police and Gendarmerie.

As regards the *translation of police training material*, a series of eight books/brochures were translated and copies were forwarded by the relevant Turkish authorities to be used at the Police and Gendarmerie training institutions.

As regards the *train-the-trainers courses*, their aim was to develop local capacity to train all police officers and gendarmerie in Human Rights standards. Except for the participants in the pilot courses that took place in 2002, the participants (60 persons) were teachers in basic training of the Police and Gendarmerie. These teachers now form a pool of trainers in order to provide training to teachers of new recruits.

As regards expertise on the revised curriculum for the new two-year basic training of the Police, this curriculum was submitted in January 2003 to the Council of Europe (adopted and in use since 15 September 2001). Council of Europe experts carried out an analysis of the curriculum and submitted a number of observations and recommendations aiming, in particular, at taking a more practical approach and at mainstreaming human rights into police related topics. The curriculum was revised following the expert analysis and its implementation is ongoing. The National Gendarmerie finalised the curriculum for basic training and submitted it for analysis by Council of Europe experts.

Objectives of the European Commission/Council of Europe Joint Initiative with Turkey to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA) in the accession partnership priority area of democratisation and human rights

The project's overall objective was to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community *acquis* (NPAA) in the Accession Partnership priority area of human rights and democratisation.

This was achieved by:

- developing training capacities on ECHR case-law standards: devising and implementing short- and long- term strategies on the rule of law and ECHR case-law for judges, prosecutors and lawyers;

- promoting awareness-raising on human rights standards;
- providing legal expertise on draft laws aimed at aligning the national rule of law and human rights framework with European standards.

The following specific objectives were pursued:

1. Devising and implementing short- and long-term training strategies on rule of law and ECHR case-law for judges, prosecutors and public officials;
2. Creating and launching a comprehensive campaign to increase awareness and understanding of human rights among the public at large;
3. Aligning the normative framework and its implementation, in conformity with European standards, in the following areas: judiciary, criminal norms, civil norms, data protection, protection of human rights, freedom of media and expression, democratic institutions

As regards the results achieved so far, the project produced a methodology and a pool of 225 trainers on the ECHR – all judges and prosecutors, subsequently used by the Ministry of Justice to train 9000 judges across Turkey (April to July 2004). A first attempt was also made to increase knowledge of the ECHR case-law and mechanism among legal practitioners by organising four regional training sessions for lawyers. Furthermore, a three-day study visit to Strasbourg for 25 judges and prosecutors who were trained in the framework of the Joint Initiative took place in September 2004 and an initial evaluation of the results of the project was carried out on this occasion.

As regards the Human Rights awareness raising campaigns, the project offered a valuable opportunity to the Human Rights Presidency to publicise its activities, develop contacts and trust among NGOs, and engage in discussion with the Chairmen of the 931 Human Rights Councils from throughout Turkey's 81 regions. The project also provided an opportunity for enhanced contacts and exchanges of views in civil society circles"

As regards the support given to legislative reform, the project completed expert studies of the draft criminal code and the draft code of criminal procedure, and held two expert meetings to discuss the draft criminal code, including with the Turkish parliament. Expert studies of legislation governing enforcement of sentences, family courts, associations, assembly and demonstrations and the press were also prepared.

Appendix 3 to Interim Resolution ResDH(2005)43

Judgments concerning violations of the Convention by the Turkish security forces pending before the Committee of Ministers for control of execution (general measures)

(cases concerning the events which took place outside of the state of emergency region are highlighted in italics)

1. Violation of the right to life (Article 2):

Kaya (22729/93), judgment of 19/02/98, violations of Articles 2 (lack of effective investigation) and 13

Yaşa (22495/93), judgment of 02/09/98, violations of Articles 2 (lack of effective investigation) and 13

Tanrıkulu (23763/94), judgment of 08/07/99, violations of Articles 2 (lack of effective investigation), 13 and former 25

Mahmut Kaya (22535/93), judgment of 28/03/00, violations of Articles 2 (failure to protect the right to life and lack of effective investigation), 3 (in respect of the applicant) and 13

Kılıç (22492/93), judgment of 28/03/00, violations of Articles 2 (failure to protect the right to life and lack of effective investigation) and 13

Akkoç (22947/93), judgment of 10/10/00, violations of Articles 2 (failure to protect the right to life and lack of effective investigation), 3 (in respect of the torture inflicted on the applicant), 13, former 25

Şemsi Önen (22876/93), judgment of 14/05/02, violations of Articles 2 (lack of effective investigation) and 13

Ülkü Ekinci (27602/95), judgment of 16/07/02, violations of Articles 2 (lack of effective investigation) and 13

Tepe (27244/95), judgment of 09/05/03, violations of Articles 2 (lack of effective investigation), 13 and 38

Tahsin Acar (26307/95), judgment of 08/04/04, violations of Articles 2 (the applicant's brother disappeared, presumed death – lack of effective investigation) and 38

Tekdağ (27699/95), judgment of 15/01/04, violations of Articles 2 (lack of effective investigation), 13 and 38

Nuray Şen (no. 2) (25354/94), judgment of 30/03/04, violations of Articles 2 (lack of effective investigation) and 13

Erkek (28637/95), judgment of 13/07/04, violation of Article 2 (lack of effective investigation)

Çakıcı (23657/94), judgment of 08/07/99, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the applicant's brother), 5, 13 and former 25

Ertak (20764/92), judgment of 09/05/00, violations of Article 2 (death attributable to the State and lack of effective investigation)

Timurtaş (23531/94), judgment of 13/06/00, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the applicant), 5 and 13

Taş (24396/94), judgment of 14/11/00, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the applicant), 5 §§ 1, 3, 4 and 5 and 13

Akdeniz and Others (23954/94), judgment of 31/05/01, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the ill-treatment inflicted on the applicant), 5, 13 and former 25

Çiçek (25704/94), judgment of 27/02/01, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the applicant), 5 and 13

İrfan Bilgin (25659/94), judgment of 17/07/01, violations of Articles 2 (death attributable to the State and lack of effective investigation), 5 and 13

Avşar (25657/94), judgment of 10/07/01, violations of 2 (death attributable to the State and lack of effective investigation) and 13

Orhan (25656/94), judgment of 18/06/02, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the applicant), 5, 8, Art 1 P1 (destruction of home and property) and 13

Aktaş (24351/95), judgment of 24/04/03, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the treatment inflicted on the applicant's brother and lack of effective investigation) and 13

İpek (25760/94), judgment of 17/02/04, violations of Articles 2 (death attributable to the State and lack of effective investigation), 3 (in respect of the applicant), 5, Art 1 P1 (destruction of home and property), 13 and former 38

Güleç (21593/93), judgment of 27/07/98, violation of Article 2 (disproportionate use of force and lack of effective investigation)

Ergi (23818/94), judgment of 28/07/98, violations of Articles 2 (failure to protect civilians in the planning and conduct of a military operation and lack of effective investigation) and 13

Oğur (21594/93), judgment of 20/05/99, violation of Article 2 (use of force was not necessary and proportionate and lack of effective investigation)

Gül (22676/93), judgement of 14/12/00, violations of 2 (use of force not absolutely necessary and lack of effective investigation) and 13

Salman (21986/93), judgment 27/06/00, violations of 2 (death in custody and lack of effective investigation), 3 (in respect of the torture inflicted on the applicant's husband), 13 and former 25

Demiray (27308/95), judgment of 21/11/00, violations of Articles 2 (death attributable to the State and lack of effective investigation) and former 25

Tanlı (26129/95), judgment of 10/04/01, violations of Articles 2 (death attributable to the State and lack of effective investigation) and 13

Abdurrahman Orak (31889/96), judgment of 14/02/02, violations Articles 2 (death attributable to the State and lack of effective investigation), 3 (torture inflicted on the applicant's son) and 13

Özalp and others (32457/96), judgment of 08/04/04, violations of Articles 2 (death attributable to the State and lack of effective investigation) and 13

A. and others (30015/96), judgment of 27/07/2004, violations of Articles 2 (death in custody and lack of effective investigation), 3 and 13

Buldan (28298/95), judgment of 20/04/2004, violations of Articles 2 (lack of effective investigation) and 13

E.O (28497/95), judgment of 15/07/2004, violation of Article 2 (lack of effective investigation)

İkincisoy A. and H. (26144/95), judgment of 27/07/2004, violations of Articles 2 (death attributable to the State and lack of effective investigation), 5§§ 3 and 4, 13 and 34

Özkan Ahmet and Others (21689/93), judgment of 06/04/2004, violations of Articles 2 (failure to protect the right to life and lack of effective investigation), 3 (ill-treatment and lack of effective investigation), 5 §§ 1 and 3 and 8 (destruction of property)

Şirin Yılmaz (35875/97), judgment of 29/07/2004, violations of Articles 2 (lack of effective investigation) and 13

Zengin Gülli (46928/99), judgment of 28/10/2004, violations of Articles 2 (lack of effective investigation) and 13

2. Violation of the right not to be subjected to torture or to inhuman or degrading treatment (Article 3)

Aksoy (21987/93), judgment of 18/12/96, violations of Articles 3, 5§3 and 13

Aydın (23178/94), judgment of 27/09/97, violations of Articles 3 and 13

Tekin (22496/93), judgment of 09/06/98, violations of Articles 3 and 13

İlhan (22277/93), judgment of 27/06/00, violations of Articles 3 and 13

Dikme (20869/92), judgment of 11/07/00, violations of Articles 3 and 5 § 3

Veznedaroğlu (32357/96), judgment of 11/04/00, violation of Article 3 (lack of effective investigation)

Satık and others (31866/96), judgment of 10/10/00, violation of Article 3

Büyükdağ (28340/95), judgment of 21/12/01, violations of Articles 3, 6 and 13

Altay (22279/93), judgement of 22/05/01, violations of Articles 3, 5 § 3 and 6

Berktaş (22493/93), judgment of 01/03/01, violations of Articles 3 and 5 § 1

Algür (32574/96), judgment of 22/10/02, violations of Articles 3 and 6 § 1

Güneş (28490/95), judgment of 19/06/03, violations of Articles 3, 6 §§ 1 and 3 (d)

Ayşe Tepe (29422/95), judgment of 22/07/03, violations of Articles 3 and 5 § 3

Esen (29484/95), judgment of 22/07/03, violation of Article 3

Yaz (29485/95), judgment of 22/07/03, violation of Article 3

Elçi and others (23145/93), judgment of 13/11/03, violations of Articles 3, 5 § 1 and 8

Çolak (32578/96), judgment of 08/01/04, violation of Article 3

Önder (28520/95), judgment of 08/01/04, violation of Article 3 (lack of effective investigation)

Aydın and Yunus (32572/96), judgment of 22/06/04, violation of Article 3

Bakbak (39812/98), judgment of 01/06/04, violation of Article 3

Yüksel Mehmet Emin (40154/98), judgment of 20/07/2004, violations of Articles 3 and 13

Tuncer and Durmuş (30494/96), judgment of 02/11/2004, violations of Articles 3 and 5 § 1

Çelik and İmret (44093/98), judgment of 26/10/2004, violations of Articles 3 and 13

Kurt (24276/94), judgment of 25/05/98, violations of Articles 3, 5 and 13 and former Article 25

3. Violations of the right to respect for the applicants' home (Article 8) and/or of the right property (Article 1 of Protocol No. 1):

Akdivar and others (21893/93), judgment of 16/09/96 (merits), violations of Articles 8, Art 1 P1 and former 25

Selçuk (23184/94), judgment of 24/04/98, violations of Articles 3, 8, Art1 P1 and 13

Bilgin (23819/94), judgment of 16/11/00, violations of Articles 8, Art 1 P1, 3, 13 and former 25

Dulaş (25801/94), judgment of 30/01/01, violations of Articles 8, Art 1 P1, 3 and 13

Yöyler (26973/95), judgment of 24/07/03, violations of Articles 8, Art 1 P1, 3 and 13

Ayder and others (23656/94), judgment of 08/01/04, violations of Articles 8, Art 1 P1, 3 and 13

Altun (24561/94), judgment of 01/06/04, violations of Articles 8, Art 1 P1, 3 and 13

4. Violations exclusively of the right to a tribunal or to an effective remedy against abuses (Articles 6 and 13)

Çetin and others (22677/93), judgment of 26/11/96, violation of Article 6 (no access to a tribunal to claim civil rights)

Menteş and others (23186/94), judgment of 28/11/97, violations of Articles 6 and 13

Yılmaz and others (23179/94), violation of Article 13

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2002)98 **ACTION OF THE SECURITY FORCES in Turkey** **Progress achieved and outstanding problems – General measures to ensure compliance with the judgments of the European Court of Human Rights in the cases against Turkey listed in Appendix II (Follow-up to Interim Resolution DH(99)434)**

*(Adopted by the Committee of Ministers on 10 July 2002
at the 803rd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Under the terms of Article 46, paragraph 2 and former Articles 32 and 54, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and to the Rules adopted for the application of these provisions,

Having regard to the forty-two judgments and decisions finding that Turkey is responsible for numerous breaches of the Convention relating notably to homicides, torture, destruction of property inflicted by its security forces and to the lack of effective domestic remedies against the State officers who have committed these abuses (**see cases and violations listed in Appendix II**);

Bearing in mind a number of other cases involving similar complaints which were struck off the list by the European Court following friendly settlements or other solutions found, notably on the basis of the Government's undertaking to take rapid remedial measures;

Noting that most of the violations in the cases here at issue took place against a background of the fight against terrorism in the first half of the 1990s and recalling that each member State, in combating terrorism, must act in full respect of its obligations under the Convention, as set out in the European Court's judgments;

Recalling that, since 1996-1997, when the European Court adopted its first judgments relating to the violations of the Convention committed by the Turkish security forces, the Committee has consistently emphasised that Turkey's compliance with them must *inter alia* entail the adoption of general measures so as to prevent new violations similar to those found in these cases;

Recalling that the necessity of adopting such measures was considered all the more pressing as the judgments denounced such serious violations as torture, inhuman treatment, illegal killings, disappearances and destruction of property;

Recalling its Interim Resolution DH(99)434 of 9 June 1999, in which the Committee noted with satisfaction some progress in the adoption of such measures, while at the same time calling on Turkey rapidly to adopt further comprehensive measures mainly relating to :

- the reorganisation of the education and training of members of the security forces in order to ensure effective respect for human rights in the performance of their duties;
- the modification of the system of criminal prosecution of members of the security forces notably to ensure that prosecutors enjoy the necessary independence and means to conduct effective criminal investigations with a view to identifying and punishing the officials responsible for abuses;
- the effective compensation of victims of violations of the Convention;
- the development of the training of prosecutors and judges in human rights so that they ensure effective respect of the Convention by security forces;

New information provided by the Turkish authorities (see Appendix 1)

Having examined the information provided by the Turkish authorities concerning the measures taken since the adoption of Interim Resolution DH(99)434, as set out in Appendix 1;

Considering with interest the most recent report of the European Committee for the prevention of torture (CPT), which was published on 24 April 2002 with the Government's authorisation, concerning the CPT's visit in Turkey in September 2001;

Assessment of the Committee of Ministers

Noting with satisfaction that, following the adoption of Interim Resolution DH(99)434, Turkey has pursued and enhanced its reform process with a view to ensuring that its security forces and other law enforcement authorities respect the Convention in all circumstances and thus prevent new violations;

Noting in particular the Government's efforts effectively to implement the existing laws and regulations concerning police custody through administrative instructions and circulars issued to all personnel of the Police and *Gendarmerie*, which, *inter alia*, provide for stricter supervision of their activities (see paragraphs 4-6 of the Appendix I);

Noting furthermore with satisfaction the progressive lifting of the state of emergency in South-East Turkey and the Government's withdrawal on 29 January 2002 of its derogation from certain of its obligations under the Convention (Article 15), thus making the latter fully applicable in Turkey, including in the remaining state of emergency regions;

Considering also the recent constitutional and legislative amendments in particular those which limit to 4 days the maximum periods of detention before persons accused of collective offences are presented to a judge, and those which introduce the right of access to a lawyer after a maximum period of 48 hours in police custody in cases of collective offences committed in the state of emergency regions and falling within the jurisdiction of the State Security Courts (see paragraphs 7-8 of Appendix 1);

Concerned however at the continuing existence of new complaints of alleged torture and ill-treatment as evidenced notably through the new applications lodged with the European Court;

Noting in this connection that, in its above-mentioned report, the CPT, whilst noting a gradual improvement as regards the treatment of persons detained by the police in Istanbul, also draws attention to the considerable number of allegations of serious forms of ill-treatment reported in South East regions and to the continuing existence at certain police stations in these regions of interrogation facilities of a highly intimidating character;

Stressing therefore the need to further reinforce the procedural guarantees against torture, notably by lifting restrictions on the right of persons detained on suspicion of collective offences falling under the jurisdiction of the State Security Courts to see their lawyer during the first two days of custody;

Stressing furthermore that the efficient prevention of fresh abuses by security forces requires, in addition to the adoption of new texts, an effective change of attitude and working methods by members of the security forces, effective civil remedies ensuring adequate compensation as well as effective criminal prosecution of those officials who commit violations of the Convention similar to those at issue in these cases;

Noting with concern that, three years after the adoption of Interim Resolution DH(99)434, Turkey's undertaking to engage in a global reform of basic, in-service and management training of the Police and *Gendarmerie* remains to be fulfilled and stressing that concrete and visible progress in the implementation of the Council of Europe's Police Training Project (see paragraphs 9-12 of Appendix 1) is very urgent;

Noting with interest, however, that, as from October 2001, the period of basic training in Police schools has been extended from 9 months to 2 years and that the Turkish authorities intend to introduce, in connection with the Council of Europe's Police training project, comprehensive human rights training as a part of the new curriculum;

Noting with interest the new Council of Europe/European Commission Joint Initiative established in cooperation with the Turkish authorities for the human rights training of Police and *Gendarmerie*;

Noting, as regards the issue of domestic civil remedies, the continuing development of the administrative courts' practice of ensuring rapid reparation by the State of damage caused as a consequence of the security forces' operations and that a bill for extra-judicial reparation of such damages has been prepared by the Government in order to offer a simplified alternative to court proceedings;

Noting, furthermore with interest, the potential deterrent effect of new provisions in Turkish law enabling the State to claim back from the officials found responsible for torture and ill-treatment any just satisfaction paid in accordance with the European Court's judgments;

Stressing that an effective remedy entails, under Article 13 of the Convention, a thorough and effective investigation into alleged abuses with a view to the identification of and the punishment of those responsible, as well as effective access by the complainant to the investigative procedure;

Regretting therefore that repeated demands for the reform of Turkish criminal procedure to enable an independent criminal investigation to be conducted without prior approval by the State's prefects have not yet been met;

Concerned that recent official statistics (see paragraphs 21-25 of Appendix 1) continue to demonstrate that, where crimes of torture or ill-treatment are established, they are sanctioned by light custodial sentences, which are frequently converted into fines and, in most cases, subsequently suspended, thus confirming the persistence of the serious shortcomings in the criminal-law protection against abuses highlighted in the European Court's judgments;

Stressing therefore the need rapidly to establish and apply a sufficiently deterring minimum level of prison sentences for personnel found guilty of torture and ill-treatment and welcoming the envisaged reform of the Turkish Criminal Code on this point (Articles 243 et 245);

Stressing furthermore the need for enhanced and comprehensive training of judges and prosecutors so as to allow them to give direct effect to the requirements of the Convention as set out in the European Court's case law;

Conclusions of the Committee of Ministers

Welcomes Turkey's recent enhanced efforts which have resulted in the adoption of various important reforms necessary to comply with the above-mentioned judgments of the European Court;

Calls upon the Turkish Government to focus its further efforts on the global reorganisation of the basic, in-service and management training of Police and *Gendarmerie*, building notably on the efforts deployed in the framework of the Council of Europe's Police training project, with a view to achieving, without delay, concrete and visible progress in the implementation of the major reforms which were found necessary;

Urges Turkey to accelerate without delay the reform of its system of criminal prosecution for abuses by members of the security forces, in particular by abolishing all restrictions on the prosecutors' competence to conduct criminal investigations against State officials, by reforming the prosecutor's office and by establishing sufficiently deterring minimum prison sentences for persons found guilty of grave abuses such as torture and ill-treatment;

Strongly encourages the Turkish authorities to pursue and develop, in particular in the context of the new Council of Europe/European Commission Joint Initiative, short and long-term training

strategies for judges and prosecutors on the Convention and the European Court's case-law, including wider dissemination of translated judgments to the domestic courts, rapid adoption and implementation of the legislation on the Turkish Academy of Justice and inclusion in its curricula of in-depth courses on the Convention;

Calls upon the Turkish Government to continue to improve the protection of persons deprived of their liberty in the light of the recommendations of the Committee for the prevention of torture (CPT);

Invites the Turkish authorities regularly to keep the Committee of Ministers informed of the practical impact of the measures taken, notably by providing statistics demonstrating effective investigations into alleged abuses and adequate criminal accountability of members of the security forces;

Decides to pursue the supervision of the execution of the present judgments until all necessary measures have been adopted and their effectiveness in preventing new similar violations has been established.

Appendix 1 to Interim Resolution ResDH(2002)98

*Information provided by the Government of Turkey to the Committee of Ministers
on the additional general measures to comply with the European Court's judgments
(adopted since Interim Resolution DH(99)434)*

1. The Turkish Government reaffirms its determination to implement fully the European Convention on Human Rights including the Turkish authorities' obligation to abide by the European Court's judgments (Article 46) which implies, *inter alia*, the adoption without delay of general measures effectively preventing new violations similar to those found by the European Court. The Government is fully aware that the need for these measures is all the more pressing as the violations at issue result from such grave abuses as torture, inhuman treatment, destruction of property, illegal killings and disappearances.

2. The Government concurs with the Committee of Ministers that, despite the remarkable improvements introduced since 1996 as a result of the European Court's judgments here at issue (see below and appendix to the Interim Resolution DH(99)434), more effective results are required. It thus undertakes to give the highest priority to the implementation of effective protection against human rights violations by the Turkish security forces and to continue to inform the Committee of Ministers of the progress made to that effect.

I. Improving the legislative and regulatory framework for protection against violations by the security forces

3. Subsequent to the adoption by the Committee of Ministers on 9 June 1999 of Interim Resolution DH(99)434, the following measures have been taken with a view to improving the legislative and regulatory framework for protection against violations by the security forces.

4. *The Circular of the Prime Minister of 25 June 1999 to the prefects and sub-prefects* stresses the importance of respect for human rights in a modern democratic society and the necessity for strict compliance with the earlier circulars and with the new Regulations on Apprehension, Police Custody and Interrogation. It draws the attention of prefects and of sub-prefects to the possibility of unannounced inspections that could take place at any time¹. It also recalls that speedy measures should be taken to remedy the shortcomings found during such inspections and that the necessary proceedings should be brought against those responsible.

5. *The Circular of the Minister of Interior of 20 December 1999* notably invites all Police and *Gendarmerie* authorities to undertake frequent and unexpected inspections in order to ensure the strict application of the new Regulations on Apprehension, Police custody and Interrogation.

6. *The Circular by the Minister of Interior of 24 July 2001* notably reminds all security personnel of the obligation of strict compliance with the new Regulations on Apprehension, Police Custody and Interrogation (in particular with specific requirements concerning procedural safeguards

during police custody, presumption of innocence, right to protection of private life during home searches, etc). It also reminds the security personnel of the prohibition on torture and ill-treatment, the necessity of official investigations into alleged abuses and instructs all personnel to refrain from abuse of power or disproportionate use of force. It stresses that breaches of these and other rules incur the liability of the State under the European Convention on Human Rights which affects Turkey's reputation and entails the payment of compensation to the victims.

7. The amendment to Article 19 of the Constitution, which entered into force on 17 October 2001, has limited to 4 days the maximum length of police custody before a detainee is presented in person before a judge in the case of collective offences. The Code of Criminal Procedure was subsequently put in conformity with this new constitutional provision. The authorities have provided the Committee of Ministers with specific examples showing that the new legal provisions are effectively applied in practice by police and prosecution authorities.

8. The Law on the procedure before the State Security Courts (Article 16) was amended on 26 March 2002 so as to abolish the restrictions on the right of persons detained for alleged offences falling within the jurisdiction of these courts to meet their lawyer in private.

II. Implementing the effective protection against violations

A. Changing the attitude and working methods of the security forces: education and training of the personnel

9. In order to comply with the judgments here at issue, Turkey undertook before the Committee of Ministers in 1999 to engage in an overall reform of the organisation and training of the Police and Gendarmerie, particularly in the context of the Council of Europe project "Police and Human Rights 1997-2000" (see Interim Resolution DH(99)434). This project, which aimed at ensuring respect for human rights at all levels of the Turkish police, resulted in a number of proposals in April 1999 for some major reforms of basic, management and in-service training of police.

10. This commitment was also included in the Turkish National Programme for the adoption of the EU *acquis*, adopted in March 2001, according to which "the Government plan in the short term (...) to train law enforcement personnel within a period of 7 years, in the framework of a project developed under the "Police and Human Rights 1997-2000" Programme of the Directorate of Human Rights of the Council of Europe".

11. As regards the basic training of security forces personnel, the new Law on the Education of the Police, adopted on 25 April 2001, resulted in the extension, as from October 2001, of the period of basic training in Police schools from 9 months to 2 years. Following this reform, the authorities have undertaken shortly to devise, in close cooperation with the Council of Europe, a new 2 year curriculum which will include comprehensive education and training in Human Rights. The modalities of the Council of Europe's expertise on a new curriculum for police academies and subsequently for the *Gendarmerie* remain to be decided.

12. In January 2002, the implementation of a pilot "train the trainers" project involving some 70 members of the police and gendarmerie was initiated in close collaboration with the Council of Europe with additional funding from the European Commission. This project aims at providing the participants with theoretical and practical skills on new training methods in the Human Rights field which should be used for basic training of the personnel of the security forces. It includes courses in police schools abroad and a period during which the participants' newly acquired skills should be tested, followed by an evaluation. Following the first course, a possible need for adaptation of the written materials will be identified in order to make the context of future training more specific. The extent, modalities and timing of planned subsequent similar training courses remain to be decided.

13. In addition to the above-mentioned medium and long-term training projects the authorities continue to organize *ad hoc* seminars and courses on Human Rights at different levels of the Police and *Gendarmerie*.

14. In April 2002, the Turkish Police Academy started disseminating a collection of 29 judgments of the European Court against Turkey translated into Turkish and commented by two senior

police officers and tutors of the Police Academy. This publication (1000 copies printed at the first issue) is going to be used as training material within the framework of the Academy and police schools' curriculum.

15. As regards the improvement of the security forces' working methods, the Government refers to the existence of various initiatives, some of which are supported by the European Commission, aimed at modernising the techniques of criminal investigation so as to allow the security forces to fulfill their mission in full respect of Turkey's obligations under the Convention.

B. Improving the monetary compensation of victims of violations

16. In Spring 2000, the Government presented to the Committee of Ministers a Bill on reparation of damages caused during antiterrorist operations by the security forces, which provides for a possibility of compensation for damages without bringing judicial proceedings. Compensation could be awarded on the basis of evaluations to be made by multilateral commissions with the participation of administrative officers, members of commercial and industrial chambers. The Bill provides that the compensation is awarded from a fund which is supplied by various taxes. The compensation could be for pecuniary loss, corporal damage or death caused during anti-terrorist operations.

17. The said Bill has however not yet been passed and the Government undertakes to ensure its adoption as soon as possible.

C. Establishing effective criminal prosecution for abuses

1. New legal provisions

18. The Law of 26 August 1999 modified Articles 243(1) and 245 of the Criminal Code to increase the maximum sentences which may be imposed on officials found guilty of torture and ill-treatment: from 5 to 8 years' imprisonment for torture (new Article 243, paragraph 1) and from 3 to 5 years' imprisonment for ill-treatment (new Article 245).

19. Following the Committee of Ministers' appeals to establish sufficiently deterring minimum prison sentences for personnel found guilty of torture and ill-treatment, the Government has the intention to do so and the work has started to introduce new changes to the Criminal Code to that effect. The Government does not however exclude that, even before the adoption of this planned amendment, the domestic courts will give direct effect to the requirements of the Convention as highlighted by the European Court's judgments and will thus impose more severe sentences leading to the effective punishing of those State officials found guilty of torture and ill-treatment. Indeed, the Government would encourage such a development, as it would greatly contribute to Turkey's compliance with its obligations under the Convention.

20. The Law of 2 December 1999 on the prosecution of civil servants and other State officials modified the rules in force. The initiation of a prosecution remains subject to a preliminary agreement which is no longer delivered by the local administrative councils, but by a high State officer, - prefect or sub-prefect - in person. The former procedure however remains applicable to facts prior to 2 December 1999. The new text provides that the decision whether or not to authorise prosecution is preceded by a preliminary investigation by the prefects or by the officials they appoint to that end. A decision refusing the opening of a prosecution is subject to an appeal before the Council of State. The new Law also provides that these proceedings must be concluded within four and a half months (including the appeal before the Council of State).

21. The Law on the duties and the competences of Gendarmerie was amended on 26 March 2002 to abolish the possibility for *Gendarmerie* officers to be appointed as substitutes for governors and sub-governors.

2. Concrete effects

22. The Turkish authorities regularly keep the Committee of Ministers informed of the concrete effects of the measures adopted, in particular by providing statistics concerning disciplinary and/or criminal proceedings taken against the State officials and their outcome.

23. As regards disciplinary sanctions, the official statistics for 1999, show that:

- out of 45 agents prosecuted in 1999 for torture (Article 243 of Criminal Code), 4 have been suspended for a short period from the exercise of their duties, whilst 41 others have received no disciplinary sanctions;

- out of 659 members of the Police prosecuted in 1999 for ill-treatment (Article 245 of Criminal Code), 41 have been suspended for a short period and 13 for a long period from the exercise of their duties, whilst the 605 others have received no disciplinary sanction.

24. As regards the criminal prosecutions, the number of criminal proceedings taken against members of security forces suspected of torture and ill-treatment has increased in the two last years. According to the official statistics for 2000-2001, 1,472 proceedings on charges of ill-treatment and 159 proceedings on charges of torture were opened against police and gendarmerie officers. As a result, 36 officers received prison sentences and 50 others were dismissed from the service.

25. As regards the enforcement of sentences imposed on State officials for abuses, the authorities have provided the Committee with some 50 final judgments delivered in 1999-2000 by the Turkish courts which concern prosecution of members of security forces for human rights violations, such as homicides, wounding, ill-treatment etc.

26. Out of the 53 judgments presented, most of which were delivered in 1999-2000, 14 imposed criminal convictions on the members of the security forces concerned. The sentences imposed varied from 1 year and 1 month of imprisonment in a case of homicide, to a fine and dismissal from public service in some cases of ill-treatment. In practice, 3 sentences (2 months, six months and 1 year imprisonment) have been effectively served by the persons found guilty (2 cases on charges of ill-treatment and 1 case on a charge of failure to report committed offences). All the other sentences have been suspended², and the security officers concerned have remained in office.

3. Training of judges and prosecutors

27. Following Interim Resolution DH(99)434, which notably encouraged the Turkish authorities to develop the awareness raising and the training of judges and prosecutors so that they ensure effective respect for the European Convention and the European Court's judgments by the security forces, further measures were taken in this field.

28. Since 1999, the Ministry of Justice has been regularly sending translations of the European Court judgments concerning Turkey to the Turkish supreme courts, the State Council and the Court of Cassation. In order to further improve the accessibility of the European Court's case-law, judgments are also published in the Ministry of Justice's "Bulletin of case-law" which contains publications of Turkish courts' case-law. Further improvements will be examined, notably in the context of a new Council of Europe/European Commission Joint Initiative (see § 29 below).

29. In addition, during the last three years, the Ministry of Justice has continued to organize *ad hoc* seminars and conferences on human rights for judges and public prosecutors. In order to facilitate research and studies in the human rights field, a number of judges and public prosecutors were sent for training in prominent institutions and universities in Europe. The Training Center for magistrate candidates in Ankara, which ensures 6 month training of new judges and prosecutors before they take their office, has extended from 6 to 10 hours its courses in human rights including the Convention.

30. In 2000, the Government submitted to Parliament a draft law on the organisation and duties of the Justice Academy in Turkey, which constitutes the most ambitious project of reform of judges' and prosecutors' education and training. The draft provides that the new Academy will ensure basic, pre-service and in service training for general, administrative and military judges and public prosecutors, of lawyers and notaries and of auxiliary justice personnel. Various training curricula and modalities are foreseen depending on the concrete needs of each category of students. The draft has been submitted to the expertise of the Council of Europe, which resulted in a globally positive opinion and a number of specific suggestions. The Government will take into account these suggestions and make it a priority to ensure rapid adoption of the bill by the Parliament. The draft has already been

approved by the Committee of legal affairs and is presently pending before the Committee of plan and budget of the Parliament.

31. In June 2002, an agreement was reached with the Council of Europe and the European Commission on a Joint Initiative which includes *inter alia* implementation of a comprehensive strategy for the training of judges, prosecutors and other public officials on the European Convention and the European Court's case law. This enhanced training constitutes a new important development which is distinct from the individual, *ad hoc* initiatives that have been pursued to date. The above Joint Initiative, which is expected to run over two years, will start with devising an appropriate curriculum, and providing the necessary materials, expertise etc. The project will be guided by a high-level advisory group, chaired by the Turkish Ministry of Justice.

Appendix 2 to Interim Resolution ResDH(2002)98

*Judgments concerning violations of the Convention by the Turkish security forces
pending before the Committee of Ministers for control of execution (general measures)*

1. Violations of the right to life (Article 2):

Case Date of the Judgment Other violation(s) of the Convention found

Kaya 19 February 1998 Violation of Article 13
Güleç 27 July 1998
Ergi 28 July 1998 Violations of Articles 13 and former 25§1
Yaşa 2 September 1998 Violation of Article 13
Ogur 20 May 1999
Cakici 08 July 1999 Violations of Articles 3, 5 and 13
Tanrikulu 8 July 1999 Violations of Articles 13 and former 25§1
Kilic 28 March 2000 Violation of Article 13
Kaya Mahmut 28 March 2000 Violations of Articles 3 and 13
Ismail Ertak 9 May 2000
Timurtas 13 June 2000 Violations of Articles 3, 5 and 13
Salman 27 June 2000 Violations of Articles 3, 13 and former 25§1
Akkoc 10 October 2000 Violations of Articles 13 and 3
Tas 14 November 2000 Violations of Articles 3, 5 and 13
Demiray 21 November 2000 Violation of former Article 25§1
Gul 14 December 2000 Violation of Article 13
Cicek 27 February 2001 Violations of Articles 3, 5 and 13
Tanli 10 April 2001 Violation of Article 13
Sarli 22 May 2001 Violation of Article 13
Akdeniz and Others 31 May 2001 Violations of Articles 3, 5 and 13
Avsar 10 July 2001 Violation of Article 13
Bilgin Irfan 17 July 2001 Violations of Articles 5 and 13
Orak 14 February 2002 Violation of Article 13
Önen 14 May 2002 Violation of Article 13

2. Violations of the right not to be subjected to torture or to inhuman or degrading treatment (Article 3):

Case Date of the Judgment Other violation(s) of the Convention found

Aksoy 18 December 1996 Violations of Articles 5 and 13
Aydin 25 September 1997 Violation of Article 13
Kurt 25 May 1998 Violations of Articles 5 and 13
Tekin 9 June 1998 Violation of Article 13
Sevtaş Veznedaroğlu 11 April 2000
Ilhan 27 June 2000 Violation of Article 13
Dikme 11 July 2000 Violation of Article 5
Satik & Others 10 October 2000
Büyükdag 21 December 2000 Violations of Articles 6 and 13
Berktaş 1 March 2001 Violations of Articles 5 and 13
Altay 22 May 2001 Violations of Articles 5 and 6

3. Violations of the right to respect for the applicants' home (Article 8) and/or of the right to property (Article 1 of Protocol No. 1):

Name of the case Date of the Judgment Other violation(s) of the Convention found

Akdivar and others 16 September 1996 Violation of former Article 25§1

Mentes and others 28 November 1997 Violation of Article 13

Selçuk and Asker 24 April 1998 Violations of Articles 3, 13 and former 25§1

Bilgin 16 November 2000 Violations of Articles 8, 13 and 1 of Protocol n°1

Dulas 30 January 2001 Violations of Articles 8, 13 and 1 of Protocol n°1

4. Violations exclusively of the right to a tribunal or to an effective remedy against abuses (Articles 6 or 13):

Name of the case Decision of the Committee of Ministers (former Article 32)

Çetin 15 May 1997

Yilmaz and others 22 April 1998

¹ The inspections carried out in over 2000 Police and *Gendarmerie* stations following the circular (in April-June 2000) showed notably irregularities with regard to the drawing up of a medical report on persons placed in police custody (Police headquarters in two cities), the material conditions in premises where persons are held in police custody (124 Police and 100 *Gendarmerie* stations), the meeting of prisoners' food and health needs (23 Police and 7 *Gendarmerie* stations), and the lack of personnel qualified to carry out questioning (13 Police and 12 *Gendarmerie* stations). As a result, more substantial budgetary resources for Police and especially for *Gendarmerie* have been requested in order to improve in particular the material conditions of detention in police custody. The need to provide specialised training for personnel carrying out questioning has also been established.

Note ² Section 6 of the Sentence Enforcement Act (as amended by Act No.3506 of 7 December 1988) allows the courts to suspend sentences involving fines or prison terms of up to two years. As the law does not establish any strict criteria for the suspension of sentences, the courts have considerable discretion in the matter.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)434 **Human Rights – ACTION OF THE SECURITY FORCES in Turkey:** **Measures of a general character** **(cases of Akdivar and others against Turkey and 12 other cases)**

*(Adopted by the Committee of Ministers on 9 June 1999
at the 672nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Articles 32 and 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”),

Having regard to the decisions of the Committee of Ministers in the cases of Çetin and Yılmaz and others, adopted in accordance with Article 32 of the Convention, and the judgments of the European Court of Human Rights in the cases of Akdivar and others, Aksoy, Aydın, Mentés and others, Kaya, Selçuk and Asker, Kurt, Tekin Güleç, Ergi and Yaşa, all concerning Turkey and brought before the Committee of Ministers for supervision of execution;

Considering that in all these cases, the Court or the Committee of Ministers, agreeing with the opinion expressed by the European Commission of Human Rights in its reports, have found serious violations of the Convention by Turkey, which all result from the actions of its security forces in the south-east of the country, a region subject to a state of emergency for the purposes of the fight against terrorism;

1. Violations of the right to life (Article 2):

Name of the case	Court's judgment	Other violation(s) of the Convention found
<i>Kaya</i>	<i>Judgment of 19 February 1998</i>	<i>Violation of Article 13</i>
<i>Güleç</i>	<i>Judgment of 27 July 1998</i>	
<i>Ergi</i>	<i>Judgment of 28 July 1998</i>	<i>Violations of Articles 13 and 25, paragraph 1</i>
<i>Yaşa</i>	<i>Judgment of 2 September 1998</i>	<i>Violation of Article 13</i>

2. Violations of the right not to be subjected to torture or to inhuman or degrading treatment (Article 3):

Name of the case	Court's judgment	Other violation(s) of the Convention found
<i>Aksoy</i>	<i>Judgment of 18 December 1996</i>	<i>Violations of Articles 5, paragraph 3, and 13</i>
<i>Aydın</i>	<i>Judgment of 25 September 1997</i>	<i>Violation of Article 13</i>
<i>Kurt</i>	<i>Judgment of 25 May 1998</i>	<i>Violations of Articles 5 and 13</i>
<i>Tekin</i>	<i>Judgment of 9 June 1998</i>	<i>Violation of Article 13</i>

3. Violations of the right to respect for the applicants' home (Article 8) or of the right to the peaceful enjoyment of their possessions (Article 1 of Protocol No. 1):

Name of the case	Court's judgment	Other violation(s) of the Convention found
<i>Akdivar and others</i> <i>paragraph 1</i>	<i>Judgment of 16 September 1996</i>	<i>Violation of Article 25,</i>
<i>Mentes and others</i>	<i>Judgment of 28 November 1997</i>	<i>Violation of Article 13</i>
<i>Selçuk and Asker</i> <i>and 25, paragraph 1</i>	<i>Judgment of 24 April 1998</i>	<i>Violations of Articles 3, 13</i>

4. Violations exclusively of the right to a tribunal or to an effective remedy (Articles 6 or 13):

Name of the case	Decision of the Committee of Ministers
<i>Çetin</i>	<i>decision of 15 May 1997</i>
<i>Yılmaz and others</i>	<i>decision of 22 April 1998</i>

Stressing that all High Contracting Parties have undertaken to abide by the judgments of the European Court of Human Rights (Article 53 of the Convention) and by the decisions of the Committee of Ministers (Article 32 of the Convention) and thus have to take measures effectively to prevent new violations of the Convention similar to those found in the Court's judgments and in the decisions of the Committee of Ministers;

Stressing that the necessity of taking such measures is all the more pressing in the case of repeated violations as serious as those established in the present cases, i.e. resulting from torture, inhuman treatment, destruction of property, illegal killings and disappearances;

Having invited the Government of Turkey to inform it of the measures taken in consequence of the violations found in the above-mentioned cases;

Information provided by the Turkish authorities (see appendix)

Having examined the information provided by the Government of Turkey concerning the measures which have been taken so far, which are being adopted or which are planned, in order to prevent new, similar violations to those found, details of which appear in the appendix to this resolution, and considering also the information provided in the context of the Yağiz and Sur cases (see Resolutions DH (99) 20 and DH (99) 26;

Noting, in particular and with satisfaction that Turkey has engaged an important process, including notably measures in respect of regulations and training, in order to implement fully and in all circumstances of the constitutional and legal prohibition of the use of torture and ill-treatment (see the above-mentioned Resolutions Yağiz and Sur);

Noting with interest in this context that the Turkish authorities authorised the publication of the report of the European Committee for the Prevention of Torture (CPT), drawn up following its visit in Turkey in October 1997, and the Turkish authorities' interim reply;

Assessment of the Committee of Ministers

Stressing the duty of any democratic State to ensure effective protection against terrorism, respecting the rule of law and human rights;

Noting that the actions of the security forces challenged in these cases took place in a particular context of the rise of terrorism during the years 1991-1993;

Noting, however, that the principal problems at the origin of the violations found remain, notably in the territory subject to a state of emergency, and, in particular, that investigations relating to these violations, when they have taken place, have as yet not given concrete and satisfactory results;

Stressing that the efficient and systematic implementation of the protection already provided by the Turkish Constitution itself and Turkish legislation against torture, inhuman and degrading treatment, unjustified destruction of property and murder and illegal killings depends essentially on the adoption of efficient preventive and repressive measures;

Noting with satisfaction that during 1997 and 1998 Turkey adopted several texts, of a legislative and regulatory nature, in order to reinforce the normative system governing the actions of the security forces and, in particular, that law no. 4229 of 6 March 1997 as well as regulations on detaining persons for questioning, police custody and interrogation, brought up to date on 1st of October 1998, reinforced the procedural guarantees in order to prevent abuse of power in the course of detention in custody (reduction of maximum periods of detention in custody, extension of *habeas corpus* proceedings to offences coming under the State Security Courts, etc);

Considering that effective preventive measures notably imply providing the agents of the security forces with adequate training so that they fulfil their duties in accordance with the laws and regulations in force, showing full respect for fundamental freedoms and human rights, and also imply the provision of effective remedies against any action on their part which violates these norms;

Considering that, with respect to the training of agents of the security forces, Turkey has undertaken to engage in an overall reform of the organisation and training of the police and *Gendarmerie*, particularly in the context of the Council of Europe programme "Police and Human Rights 1997-2000", aiming at ensuring, at all levels, respect for human rights in the exercise of the duties assigned by Turkish law;

Noting with interest, as regards effective remedies, the initiatives aiming at better training and awareness raising of prosecutors and judges in the field of Human Rights (notably through training courses for judges, organisation of seminars and the recent Ministry of Justice's practice of disseminating the Court's judgments concerning Turkey, in Turkish translation), in order to ensure that the requirements of the Convention effectively taken into account when interpreting the Turkish law;

Noting also the positive development of the jurisprudence of the administrative courts in order to ensure reparation for corporal, pecuniary and non-pecuniary damages caused in the context of the security forces' operations in the south-east of Turkey;

Stressing, however, that the Court has emphasised on numerous occasions that, when an individual formulates an arguable claim for destruction of property, torture, ill-treatment or killings involving the responsibility of the State, the notion of an "effective remedy", in the sense of Article 13 of the Convention, entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access by the complainant to the investigative procedure;

Noting, in respect of the efficiency of criminal proceedings directed against agents of the security forces, that still, more than two years after the first judgments of the European Court of Human Rights denouncing the serious violations of the human rights at issue here, the information provided to the Committee of Ministers does not indicate any significant improvement of the situation with regard to offences falling within the jurisdiction of the state Security Courts and/or committed in the regions subject to a state of emergency;

Considering that efficient criminal investigations will require an important reform of criminal procedure, in particular aiming at abolishing the local administrative boards' competence with regard to the investigation and the decision whether or not to engage proceedings, as well as at reinforcing and reorganising prosecutors' departments in order to give prosecutors the means and independence necessary efficiently to pursue allegations of abuse of power by the security forces;

Considering that, despite the necessity of fighting against terrorism in the south-east of the country and the difficulties faced by the State in this fight, the means used must respect the Turkey's obligations under the Convention, in particular as specified by the Court's judgments and by the Committee of Ministers' decisions,

Conclusions of the Committee of Ministers

Calls upon the Turkish authorities to pursue with the greatest diligence their efforts to reorganise and improve the training of agents of the security forces in order to ensure respect for human rights in the performance of their duties.

Calls upon the Turkish authorities rapidly to complete the announced reform of the present system of criminal proceedings against members of the security forces, in particular by abolishing the special powers of the local administrative councils in engaging criminal proceedings, and to reform the prosecutor's office in order to ensure that prosecutors will in the future have the independence and necessary means to ensure the identification and punishment of agents of the security forces who abuse their powers so as to violate human rights;

Encourages the Turkish authorities to continue their efforts in order to ensure rapid reparation for the victims of violations of the Convention committed by the security forces;

Invites the Turkish authorities to continue to keep the Committee of Ministers informed of the concrete effects of the measures adopted, in particular by providing statistics concerning compensation

awarded, the number of criminal complaints lodged and their outcome as well as details of the scope of the training and management reforms planned and of the means allocated to them;

Encourages the Turkish authorities to develop the initiatives already taken with the view to raising the awareness and improving the training of judges and prosecutors in human rights through integration of these matters into continued education programmes, in order to ensure that these authorities will effectively and rapidly provide a guarantee that the security forces will, in all circumstances, respect human rights;

Encourages the Turkish authorities to adopt all further measures necessary rapidly to ensure respect for human rights by the security forces in all circumstances;

Decides to continue, in accordance with its responsibilities under the Convention, the examination of the above cases until measures have been adopted which will effectively prevent new violations of the Convention.

Appendix to Interim Resolution ResDH(99)434

*Information provided by the Government of Turkey
for the Committee of Ministers' examination
of the execution questions raised by the activities of the security forces in Turkey*

(cases of Akdivar and others against Turkey, Aksoy against Turkey, Çetin against Turkey, Aydın against Turkey, Menten and others against Turkey, Kaya against Turkey, Yılmaz and others against Turkey, Selçuk and Asker against Turkey, Kurt against Turkey, Tekin against Turkey, Güleç against Turkey, Ergi against Turkey, Yaşa against Turkey)

The Turkish Government, conscious of its obligations flowing from the Convention, has constantly presented, and will continue to present orally or in writing, all the necessary information to the Committee of Ministers, which is responsible for supervising the execution of the Court's judgments and of its own decisions.

The aforementioned cases refer to facts, which took place in the context of the fight against the terrorist organisation PKK, which has caused the death of several thousand persons notably during the years 1992-1993. Notwithstanding the difficulties created by these exceptional circumstances, the Government has reiterated and at the highest level and on several occasions its determination to fight against all human rights violations in Turkey.

Following the above-mentioned judgments of the Court and decisions of the Committee of Ministers, the Turkish authorities have taken the following measures to prevent further violations of the Convention (*see also information provided in the above-mentioned cases Yağiz and Sur*);

I. Reform of the legislative and regulatory framework governing the activities of the security forces

A. Prevention of torture, ill-treatment and disappearances

The government recalls that Article 17 of the Turkish Constitution prohibits torture and ill-treatment and that the use of torture or ill-treatment by public employees is an offence under the Penal Code (Articles 243 and 245). Moreover, since 1992 (see the Resolution adopted in the Erdagöz case, DH (96) 17), Article 135A of the Code of Criminal Procedure prohibits the use of torture or ill-treatment as methods of interrogation and specifies that evidence obtained as a result of these methods is null and void regardless of the consent of the person concerned.

The Government has placed before the Turkish National Assembly a Bill aimed at stiffening the penalties applicable to agents of the security forces found guilty of torture or ill-treatment (the penalties provided under the present dispositions are, in principle, three to five years' imprisonment and a disqualification – either temporary or permanent – from public service).

Aware of the link between shortcomings in the system of police custody and the risk that detainees may be tortured or ill-treated while in such custody, the Turkish authorities have adopted a number of laws and regulations reducing the length of time that a person may be held in police custody and introducing important procedural safeguards during the custody period.

Length of police custody

New legislation (Act No. 4229) adopted on 6 March 1997, following the Aksoy judgment, reduced the maximum lengths of time that a person may be held in police custody. The maximum period in the case of offences falling under the jurisdiction of the State Security Courts and committed by several persons in concert was reduced from 15 to 7 days under normal circumstances and from 30 to 10 days in a state of emergency. In the case of offences falling under the jurisdiction of the State Security Courts and committed by individuals, the maximum period in a state of emergency was reduced from 96 to 48 hours. Finally, the maximum periods of police custody were also reduced in the case of ordinary offences committed by several persons in concert: from 8 to 7 days both under normal circumstances and in a state of emergency. In all cases, the extension of police custody beyond four days requires a court order, following application by the prosecution.

Safeguards during police custody

Act No. 4229 of 6 March 1997

Under Act No. 4229, all persons held in police custody in connection with offences falling under the jurisdiction of the State Security Courts were given the right to see their lawyer at any time once they had been held for four days. The same law provides that such persons may bring judicial proceedings challenging the lawfulness of their detention under Article 128, paragraph 4, of the Code of Criminal Procedure (application for a writ of *habeas corpus*).

The new legislation also further extends the scope of the ordinary criminal law by removing from the competence of the State Security Courts offences committed in respect of means of transport and telecommunications (Articles 384 and 385 of the Criminal Code). Persons suspected of such crimes, accordingly, now also enjoy the ordinary guarantees during police custody.

Interior Ministry circular of 31 March 1997 (No. 071618)

Shortly after the adoption of Act No. 4229, an Interior Ministry circular dated 31 March 1997 (No. 071618), specifically reminded all provincial governors firstly of Turkey's international obligations as a member State of the Council of Europe and a party to the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and secondly of the series of provisions adopted under domestic law to protect and develop human rights, including those of Act No. 4229 on the maximum length of police custody and the detainee's right to see a lawyer.

Prime Minister's circular, No. 1997/73 of 3 December 1997, entitled "Order concerning police custody, interrogation and statements"

The Prime Minister's circular, No. 1997/73 of 3 December 1997, entitled "Order concerning police custody, interrogation and statements", instructs the security forces to observe a number of conditions when persons are in police custody, irrespective of the offence involved. Among these rules the following may be mentioned:

Persons placed in police custody must be informed of their rights under the law, notably those relating to access to a lawyer; special forms for this purpose must be issued to them, without exception, at the beginning of the period of custody;

Details of persons placed in police custody must imperatively be recorded and a full record kept concerning their detention, transfer and release, in accordance with current procedures;

A medical report must be made on every person detained in police custody, regardless of the length of detention, both at the start of the period of custody and again before the detainee's release;

The necessary work will be done to bring the physical conditions of premises in which persons are held in custody up to international standards; premises that cannot be brought up to this standard must no longer be used;

The necessary investigations into allegations of ill treatment will begin immediately.

The chief area administrative officers (prefects) and their deputies have the task of permanently supervising the security forces' application of the circular's provisions; regular reports on their findings will be sent to the responsible ministries.

Regulation on apprehension¹⁵, police custody and interrogation, updated on 1 October 1998

On 1 October 1998, the updated version of the Regulation on apprehension, police custody and interrogation came into force with its publication in the Official Journal. This text sums up and clarifies the rules applicable under the existing legislation to the procedures for detention in custody and interrogation.

The regulation recalled the time-limits on custody set by Law No. 4229 and prescribed in particular the following guarantees to be respected during apprehension, detention in police custody and interrogation:

Information to be given upon apprehension

Regardless of the offence with which they are charged, persons shall be informed as soon as they are taken into custody of the reasons for their apprehension, their right to remain silent and their right to inform their next of kin.

A report shall be drawn up on any apprehension and a copy of that report shall be forwarded to the person apprehended together with a "Form setting out the rights of the accused", appended to the said regulation.

Registration of detainees

All detainees shall be registered in the detention register, which shall be checked; entries in this register shall include, in particular, all information concerning the identity of the detainee, the date, time and other details of the detainee's apprehension and custody, the references and summary of the medical report, the name of the next of kin informed, the statement containing a request for a lawyer, details concerning the extension of custody, etc.

Contact with a lawyer

The apprehended person may meet his or her lawyer at any time in a place where their discussions may not be heard by anyone else. In the cases falling within the jurisdiction of the State Security courts, the person apprehended may meet his or her lawyer only after extension of the police custody beyond 4 days. Correspondence of the apprehended person with his or her lawyer may not be subject to any control.

Informing next of kin

During apprehension, the person will be given the opportunity to inform relatives (in the case of foreigners, their Embassy or Consulate). In the cases falling within the jurisdiction of the State Security courts, the relatives of the person apprehended will be informed in the same conditions if this does not harm the outcome of the investigation.

¹⁵ According to the Turkish law, only a judge can order the "arrest" of an accused person (Article 106, paragraph 1, of the Code of Criminal Procedure, as amended by the Law No; 3842 of 18 November 1992). The term "apprehension" ("*interpellation*" in French) is accordingly used to designate an action of the security forces when arresting the person in the common sense of this word.

Access to a doctor

When persons are taken into custody or apprehended by force, their state of health shall be checked by a doctor; when they are transferred to a new place of detention, released or brought before the courts, or when the period of custody is extended, their state of health shall be established anew.

Persons whose health is affected in any way shall immediately be brought before a doctor; all medical checks and care shall be afforded free of charge by police surgeons, court medical officers or official health service doctors.

In the cases falling within jurisdiction of the State Security courts, a medical report shall be drawn up at the moment of extending the detention by the judge and the time between two medical controls may not exceed 4 days.

The doctor who is in charge of the medical legal report shall examine the person apprehended in private, except when this is not possible because of restrictions due to the investigation or to reasons of security.

Medical reports shall be drawn up in quadruplicate: the first copy shall be kept at the detention centre, the second shall be delivered to the detainee, the third added to the case-file and the fourth kept by the health service.

Physical condition of the detention

A place of detention shall be at least 7 m², 2.5 metres high and 2 metres between two walls; sufficient natural light and air circulation shall be ensured.

Statements and examinations

The apprehended person shall be entitled to the presence of his or her lawyer or a lawyer appointed by the Bar, without powers of representation, when making a statement.

Statements by suspects must be based on their free will; statements obtained by prohibited means, even with the consent of the suspect, may not be used as evidence.

Apprehended persons may not be subjected to physical or psychological treatment preventing the expression of their free will, such as torture or ill-treatment with the use of force or violence.

Judicial proceedings

Regardless of the offence with which the apprehended person is charged, he or she may appeal to the courts against the decision issued by the Public Prosecutor regarding his or her apprehension or the extension of custody, and ask to be released.

Police forces legally authorised to carry out apprehensions, detention in custody and interrogation are responsible for implementing the said regulation.

B. Prevention of the destruction of property and unlawful killing

The government recalls that the Turkish Penal Code makes it an offence to start a fire deliberately or otherwise (especially Articles 369, 370, 371, 372 and 383), to damage another person's property deliberately (Article 526 *et seq.*), to take life involuntarily (Articles 452 and 459) or deliberately (Article 448) or to commit murder (Article 450). If members of the armed forces are suspected of having committed such offences they can be prosecuted for causing serious damage or for violating human life or property, unless they were acting under orders (Article 89 of the Code of Military Justice).

The government's efforts to reduce the use of force include the following:

The Standing Instruction of the Commandant General of the *Gendarmerie*, dated 23 December 1996, sent to all ranks of the *Gendarmerie* following the judgment of the European Court of Human Rights in the Akdivar case and containing orders which, in particular, reflect Turkey's obligations under the Convention. Specifically, it requires that any use of force during armed operations should be absolutely necessary.

The Instruction of the *Gendarmerie* General Command, Human Rights Section, sent to all ranks of the *Gendarmerie*, requiring that they take all possible care and precautions to protect the lives and property of members of the public; that, when evacuating sites for security reasons, they comply with decisions taken by the territorial authorities in accordance with the law and the relevant regulations, and that they take the necessary measures to avoid damage during evacuations.

These instructions are of particular relevance to establishing the liability of members of the security forces under criminal and civil law and in disciplinary proceedings.

II. Implementing the new legislative and regulatory framework

A. Educational measures for the security forces

The government stresses that beyond the new procedural safeguards introduced by the Act No. 4229 of 6 March 1997, the latter together with the subsequent regulations have had important incidences on the attitudes of members of the security forces regarding respect for fundamental rights during detention in police custody. This effect is reinforced in particular by the drawing up and progressive adoption of regulatory and educational measures in order to ensure at all levels of the security forces the effective application of the different norms and regulations relating to detention in police custody.

Furthermore, in 1995-96 a human rights education programme was run in the security forces. It included a series of talks co-ordinated by the presidency of the chiefs of staff and was held, in particular, in certain districts (Diyarbakir, Elâzığ and Van) where a state of emergency was in force.

In 1996 and 1997 the *Gendarmerie* General Command introduced educational programmes, including workshops and other forms of theoretical and practical training in human rights, which are to be built on and developed. Accordingly, in May 1998, Command headquarters published a "Brochure on human rights" (*İnsan Hakları Brosürü*) designed to raise awareness of the subject throughout the force and to strengthen a sense of responsibility in this respect on the part of all *Gendarmerie* personnel. This brochure was circulated to all units of the force.

More recently, as part of the Council of Europe's pan-European "Police and Human Rights 1997-2000" programme, the possibility to reorganise Turkish police basic, in-service and management training has been studied in close co-operation with the police authorities. This feasibility study has resulted in April 1999 notably in a number of proposals in the field of basic, management and continued training of police. The appropriate funds and means are being allocated presently in order to implement these major suggested reforms found to be necessary. For the moment, it has not been decided if this programme will be applied to the National *Gendarmerie*.

The main purpose of these and other current initiatives is to ensure that, as soon as they take up their duties, all police officers and gendarmes will be trained to respect human rights and fundamental freedoms. In the case of senior officers, the aim is also to provide them with sound management training so that they can ensure human rights are respected in day-to-day practice.

B. Measures concerning effective remedies against the security forces' activities

The Government reports that the various existing remedies under Turkish law for ill-treatment, the destruction of property or the taking of life by members of the security forces are currently being strengthened.

Applications for compensation

Article 125 of the Constitution provides that the administration shall provide compensation for any damage arising from its acts or measures. Additional Section 1 of Act No. 2935 of 25 October 1983 on the state of emergency provides that applications for such compensation shall be lodged with the administrative courts.

On the basis of these provisions, the Turkish administrative courts have, in recent years, developed a practice of awarding compensation to victims of physical harm and material or non-material damage, relying either on fault on the part of the authorities (in a small number of cases) or, most commonly, on the theory of "social risk", which implies the objective liability of the administration and exempts the applicant from proving fault and even from identifying the persons responsible. The government has submitted numerous judgments by the Turkish administrative courts to the Committee of Ministers, which, on the basis of the State's objective liability, awarded compensation to victims of armed operations in the districts where a state of emergency is in force (some fifty of the judgments submitted were delivered in 1998). The government also points out that the European Court of Human Rights found in a recent judgment (*Aytekin against Turkey*, judgment of 23 September 1998) that lodging a compensation claim on the principle of the State's objective liability was an element that could be taken into account when examining whether domestic remedies had been exhausted or not (paragraphs 84, third indent, and 85 of the judgment).

In the government's view, it is clear from the foregoing that a practice of payment of compensation for damage caused by the security forces or by unidentified persons has developed.

The government has, moreover, tabled a bill in the Turkish National Assembly that envisages compensation system for victims by means of special funds, without obliging them to introduce legal action before the courts.

Criminal proceedings

The government recalls that under Articles 151 and 153 of the Code of Criminal Procedure, complaints about the destruction of property, killings, and the infliction of torture or ill-treatment can be made to the public prosecutor or to the local administrative authorities. The public prosecutor and the police are under obligation (under Article 153) to investigate complaints made to them and under Article 148, the prosecutor decides whether or not proceedings should be brought.

However, under Section 4, paragraph 1, of Legislative Decree No. 285 of 10 July 1987, if the person suspected of an offence is a public employee or civil servant – and members of the security forces are included in that category – the opening of proceedings has to be authorised by the local administrative council (the executive committee of the provincial assembly), which conducts a preliminary investigation.

Following the Prime Minister's Circular of 26 February 1998, the government tabled a bill in the Turkish National Assembly proposing the abolition of this procedure in cases brought against public employees. As a result of the reform, State prosecutors will also become entirely responsible, in accordance with the ordinary provisions of the Code of Criminal Procedure, for investigations of alleged crimes committed by members of the security forces.

Dissemination and the publication of the Court's judgments

The Ministry of Justice has sent translations of all the judgments concerned, as well as of other cases against Turkey, at least to the Turkish supreme jurisdictions, the State Council and the Court of cassation, in order to allow them to align their interpretation of Turkish law to the requirements of the Convention as defined in the judgments of the European Court. Recently, the translation of the Court's judgment has been included in the Ministry of Justice's "Bulletin of case-law" which publishes the Turkish courts' case-law.

Certain judgments have furthermore been published in the Journal of the Ankara Bar and all of them in the Bulletin of Judgments of the European Court of Human Rights, published by Hacettepe

University's Foreign Policy Institute, which also assures the translation of the judgments (with the participation of the Council of Europe).

Training of judges and prosecutors

In recent years a number of measures have been undertaken in order to ensure that judges and prosecutors in the performance of their duties effectively assist in implementing the Convention and in particular the judgments of the European Court of Human Rights. In this spirit two seminars have been organised for judges and prosecutors with the participation of the President of the European Commission of Human Rights (notably one in 1997 involving the judges and prosecutors of the regions subjected to emergency rule concentrating on the problems highlighted by the judgments of the European Court). Subsequently, in 1998, a conference was organised with the participation of the Council of State, the Supreme Court of Appeal, the Ministry of Foreign Affairs and representatives of the European Court of Human Rights (concentrating on the problems relating to the legislation regarding the criminal responsibility of civil servants).

An increase in the number of seminars, conferences and information sessions on the Convention aimed at the legal profession is planned. In addition, in order to ensure a more general awareness of the requirements of the Convention, a course in human rights, including the Convention, has been introduced by the Ministry of Justice as part of the ordinary training programme of future judges and prosecutors. As a complement, as from 1999, the government has allocated funds to allow certain magistrates to seek internships at the Council of Europe, notably at the European Court of Human Rights.

The government also wishes to stress the interest demonstrated in the Convention by different bar associations (notably the bar associations of Istanbul and Izmir) and other organisations and the fact that information meetings have been organised also by such bodies. Judges and prosecutors often participate in these meetings.

➤ Political parties

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)529 concerning the judgment of the European Court of Human Rights of 25 May 1998 in the case of THE SOCIALIST PARTY and OTHERS against Turkey

*(Adopted by the Committee of Ministers on 28 July 1999
at the 677bis meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights in the case of the Socialist Party and others against Turkey of 25 May 1998 and to Interim Resolution DH (99) 245 adopted by the Committee of Ministers on 4 March 1999;

Recalling that the Committee of Ministers, in the above-mentioned interim resolution, insisted on Turkey's obligation under Article 53 of the Convention to abide by the judgment of the Court and to erase, without delay, through action by the competent Turkish authorities, all the consequences, notably the applicant's imprisonment and prohibition to engage in political activities, resulting from his criminal conviction on 8 July 1998;

Recalling that the Chairman of the Committee of Ministers, in a letter of 19 May 1999 to the Minister of Foreign Affairs of Turkey, notably stated that he counted on the co-operation of the Government of Turkey to ensure that full effect would be given to the judgment of the European Court and to the interim resolution of the Committee of Ministers;

Having noted that in his response of 5 July 1999 the Minister of Foreign Affairs of Turkey confirmed the growing importance his government attaches to the Council of Europe as an organisation where issues concerning member States are handled in a co-operative spirit based on mutual understanding;

Noting, however, with regret that up to now action has still not been taken by the Turkish authorities to give full effect to the judgment of the European Court and to the interim resolution of the Committee of Ministers;

Concluding, accordingly, that Turkey has not complied with its obligations under the European Convention on Human Rights,

Urges Turkey, without further delay, to take all the necessary action to remedy the situation of the former Chairman of the Socialist Party, Mr Perinçek.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)245
concerning the judgment of the European Court of Human Rights of
25 May 1998 in the case of the SOCIALIST PARTY AND OTHERS against Turkey

*(Adopted by the Committee of Ministers on 4 March
at the 662th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights in the case of the Socialist Party and others against Turkey, delivered on 25 May 1998, relating to the dissolution of this party on account of certain statements made in 1991 by one of the applicants, the Party's Chairman, Mr Perinçek;

Considering that the Court unanimously held, notably, that there had been a violation of Article 11 of the European Convention on Human Rights and that it was not necessary to determine whether there had been a violation of Article 10 of the Convention as this part of the complaint related to the same facts as those considered under Article 11;

Having examined the case, in accordance with Article 54 of the Convention, in subsequent meetings since June 1998 and having invited the Government of Turkey to inform it of the measures taken in consequence of the judgment of 25 May 1998;

Having regard to Turkey's obligation under Article 53 of the Convention to abide by this judgment and, accordingly, to erase the consequences of the violation found;

Having been informed that the Government of Turkey paid, within the time-limit set, the just satisfaction awarded by the Court;

Having, however, been informed that by judgment of 8 July 1998 - *i.e.* after the judgment of the European Court of Human Rights - the Court of Cassation of Turkey confirmed a criminal conviction imposed on Mr. Perinçek by the first State Security Court of Ankara on 15 October 1996, according to which the sanction of dissolution of the party also carried with it personal criminal responsibility;

Noting that the Court of Cassation based its judgment on the statements which had been pronounced by Mr Perinçek in 1991;

Noting, furthermore, that by virtue of this conviction, Mr Perinçek has been sentenced to a 14-month prison sentence, which he started to serve on 29 September 1998, and has furthermore *inter alia* been banned from further political activities;

Insists on Turkey's obligation under Article 53 of the Convention to erase, without delay, through action by the competent Turkish authorities, all the consequences resulting from the applicant's criminal conviction on 8 July 1998;

Decides, if need be, to resume consideration of the present case at each of its forthcoming meetings.

➤ Freedom of expression

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)38 FREEDOM OF EXPRESSION cases concerning Turkey: General Measures

*(Adopted by the Committee of Ministers on 2 June 2004
at the 885th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to 27 judgments and decisions rendered by the Convention organs finding that the criminal convictions of the applicants on account of statements contained in articles, books, leaflets or messages addressed to, or prepared for, a public audience, had violated their freedom of expression guaranteed by Article 10 of the Convention (see cases listed in Appendix 1);

Bearing in mind a number of other cases involving similar complaints which the European Court has struck out of its list following the conclusion of friendly settlements on the basis not least of undertakings by the government to bring Turkish Law into line with the requirements of Article 10 of the Convention (see cases listed in Appendix I);

Recalling its Interim Resolution ResDH(2001)106 on violations of the freedom of expression in Turkey, in which it encouraged the Turkish authorities to bring to a successful conclusion the comprehensive reforms planned to bring Turkish law into conformity with the requirements of Article 10 of the Convention;

Having examined the significant progress achieved in further series of reforms undertaken with a view to aligning Turkish law and practice with the requirements of the Convention in the field of freedom of expression;

Welcoming the changes made to the Turkish Constitution, in particular to its Preamble to the effect that only anti-constitutional activities instead of thoughts or opinions can be restricted, as well as to Articles 13 and 26 which introduce the principle of proportionality and indicate the grounds for restrictions of the exercise of freedom of expression, similar to those contained in paragraph 2 of Article 10 of the Convention;

Welcoming also the recent, important legislative measures adopted as a result of these reforms, in particular the repeal of Article 8 of the Anti-terrorism Law and the modification of Articles 159 and 312 of the Turkish Criminal Code;

Noting nonetheless that the violations of freedom of expression found as a result of the application of Article 6 of the Anti-terrorism Law have yet to be specifically addressed;

Stressing that the effectiveness of these important reforms will, to a large extent, depend on the interpretation of the law by the national courts in the light of the case-law of the European Court of Human Rights;

Welcoming in this context the "train the trainers" programme currently being carried out in the framework of the "Council of Europe/European Commission Joint Initiative with Turkey: to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA) in the accession partnership priority area of democratisation and human rights" (see Appendix 3) and noting that this programme aims, among other things at devising a long-

term strategy for integrating Convention training into the initial and in-service training of judges and prosecutors;

Noting in this context the recent establishment of the Judicial Academy, as well as many Convention awareness-raising and training activities for judges and prosecutors initiated by the Turkish authorities;

Welcoming furthermore the amendment of Article 90 of the Constitution, recently adopted by the Turkish Parliament, which should facilitate the direct application of the Convention and case-law in the interpretation of Turkish Law;

Encourages the Turkish authorities to consolidate their efforts to bring Turkish Law fully into conformity with the requirements of Article 10 of the Convention;

Invites in particular the Turkish authorities to ensure, by appropriate means, that statements or accusations falling under Article 6 of the Anti-terrorism Law which serve the public interest and in respect of which the proof of truth is offered, or in respect of which the person concerned is in good faith about the truth, are not punishable and nor indeed are the printing of other statements covered by this article which do not incite to violence;

Encourages the Turkish authorities to take further measures to enhance the direct effect of the Convention and of the European Court's judgments in the interpretation of Turkish law, in particular by judges and prosecutors, taking into account the relevant Recommendations of the Committee of Ministers in this area;

Decides to resume consideration of the general measures in these cases within nine months, and outstanding individual measures concerning the respective applicants at its 897th meeting (September 2004), it being understood that the Committee's examination of those cases involving applicants convicted on the basis of former Article 8 of the Anti-terrorism Law will be closed upon confirmation that the necessary individual measures have been taken.

Appendix 1 to Interim Resolution ResDH(2004)38

- Judgements concerning violations of the right to freedom of expression pending before the Committee of Ministers for supervision of execution

Aksoy Ibrahim, judgment of 10/10/00,
Arslan, judgment of 08/07/99
Aslantaş Sedat, Interim Resolution by the Committee of Ministers DH(99)560 of 08/10/99
Baskaya and Okçuoğlu, judgment of 08/07/99
C.S.Y., judgment of 04/03/03
Çetin, judgment of 13/02/03
Ceylan, judgment of 08/07/99
E.K., judgment of 07/02/02,
Erdoğdu, judgment of 15/06/00
Erdoğdu and Ince, judgment of 08/07/99
Gerger, judgment of 08/07/99
Gökçeli Yaşar Kemal, judgment of 04/03/03,
Inçal, judgment of 09/06/98
Karataş, judgment of 08/07/99
Karataş Seher, judgment of 09/07/02,
Karakoç and others, judgment of 15/10/02,
Karkın, judgment of 23/09/03,
Kızılyaprak, judgment of 02/10/03,
Küçük Yalçın, judgment of 05/12/02,
Okçuoğlu, judgment of 08/07/99
Öztürk, judgment of 28/09/99
Polat, judgment of 08/07/99
Sürek II, judgment of 08/07/99
Sürek IV, judgment of 08/07/99

Sürek and Özdemir, judgment of 08/07/99
Özgür Gündem, judgment of 16/03/00
Öztürk Ayşe, judgment of 15/10/02,
Yağmurdereli, judgment of 04/06/02,

- Complaints struck out of the list by the Court following the conclusion of friendly settlements on the basis of the Government's undertakings

Altan, judgment of 14/05/02 - Friendly settlement
Demirtaş 1, judgment of 09/10/03 – Friendly settlement
Erkanlı, judgment of 13/02/03 - Friendly settlement
Erol Ali, judgment of 20/06/02 - Friendly settlement
Kiliç Özcan, judgment of 26/11/02 - Friendly settlement
Özler, judgment of 11/07/02 - Friendly settlement
Sürek Kamil Tekin V, judgment of 16/07/02 - Friendly settlement
Zarakolu, judgment of 27/05/03 - Friendly settlement
Zarakolu Ayşenur No.1, judgment of 02/10/03 – Friendly settlement
Zarakolu Ayşenur No.2, judgment of 02/10/03 – Friendly settlement
Zarakolu Ayşenur No. 2, judgment of 02/10/03 – Friendly settlement
Caralan, judgment of 25/09/03 – Friendly settlement
Demirtaş Nurettin, judgment of 09/10/03 – Friendly settlement

Appendix 2 to Interim Resolution ResDH(2004)38

Information provided by the Government of Turkey to the Committee of Ministers on the general measures taken in the area of freedom of expression

2.1. Constitutional amendments

A. On 03/10/2001, a number of constitutional amendments concerning, among other things, the provisions on freedom of expression were adopted and are directly applicable.

i. The Preamble to the Constitution now provides that only anti-constitutional “activities” (rather than “thoughts or opinions”) may be restricted and, according to the new Article 13, such restrictions should respect the principle of proportionality and be based on the specific grounds listed in the relevant articles of the Constitution.

The amendment is an important step towards the enhancement of freedom of expression. With the amendment, it is activities, not expressions of ideas or opinions, against national interests and principles which are targeted.

ii. Article 26 of the Constitution on freedom of expression and dissemination of thought has been amended as well. The second paragraph of this Article lists the exceptional situations in which freedom of expression can be restricted. The following addition was made to this paragraph:

"The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

"The third paragraph restricting the use of languages prohibited by law and the seizure of written and printed documents etc. has been repealed."

The following paragraph was added to the Article:

"The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law."

iii. A further amendment was made to Article 28 on the freedom of the press. Before the amendment, the Article provided that publication could not be made in any language prohibited by law. This paragraph was removed from the text.

iv. Article 31 on the right to use mass media other than the press owned by public corporations was also amended. The second paragraph concerning the restrictions on this right has been amended.

B.i. A second amendment was made to the Constitution by Law No. 4777 which entered into force on 31 December 2002. The scope of freedom of thought and expression was further expanded with the amendment of Article 76. This Article regulates the conditions to be eligible to become a member of parliament. The previous conditions stipulated in this Article 7 provided that eligibility requires "not having participated in ideological or anarchical acts". This wording was repealed and a new provision regarding "participation in acts of terrorism" was introduced.

C. On 7 May 2004 the Turkish Parliament adopted an amendment to Article 90 of the Constitution, which now provides that international agreements will prevail over incompatible domestic law.

2.2. Legislative amendments to Articles 159 and 312 of the Turkish Criminal Code and Article 7 of the Anti-terrorism Law

Following the constitutional amendments, Turkey launched a comprehensive review of its legislation. Seven comprehensive legal amendments have been enacted in line with the constitutional amendments, all of them contributing to the enhanced implementation of freedom of expression.

The First Harmonisation Package, adopted on 6 February 2002, amended Article 312 and introduced a new criterion to the Article, namely "incitement in a manner which is explicitly dangerous to public order". Only overtly criminal acts or active disobedience of the law will be punishable under this amendment.

The First and Seventh Harmonisation Packages amended Article 159 of the Turkish Criminal Code and reduced the sentences. Another amendment to Article 159 was made by the Third Harmonisation Package, enacted on 3 August 2002. Under the terms of the amended articles, penalties have been lifted for expressions of thought, which will fall within the scope of freedom of thought and expression and are merely critical in nature. According to the new version of Article 159, written, oral or visual expressions of thought which are merely critical in nature and which involve no deliberate attempt to insult or deride the bodies and institutions listed in the said Article, do not incur any penalty. Thus no penalties are provided for expressions of thought which fall within the scope of freedom of expression which are merely critical in nature.

Article 7 of the Anti-terrorism Law has been amended so as specifically to sanction propaganda carried out on behalf of terrorist organisations in a manner that encourages resort to violence or other terrorist means.

These amendments have already led to acquittals or reduced sentences in a number of cases. It is just a matter of time before these amendments will find stronger expression in the case-law of our national courts as well as in the practice of administrative authorities. In fact, cases referred to the Court of Cassation are now being quashed on the basis of the recent amendments, and the recent case-law of the State Security Courts clearly demonstrates that national courts are applying the latest amendments in accordance with the jurisprudence of the European Court of Human Rights.

2.3. Law on the election of members of parliament

The amendment to Article 11 of the Law on the Election of the members of Parliament in the Fourth Harmonisation Package is another development contributing to the fulfilment of freedom of expression. Before amendment, the Article provided that persons convicted under Article 312 of the

Turkish Criminal Code could not participate in parliamentary elections. This paragraph was amended to read as "persons convicted of terror crimes" are banned from participation in parliamentary elections.

2.4. Repeal of Article 8 of the Anti-terrorism Law

Law No. 4928 of 19 July 2003 repealed Article 8 of the Anti-terrorism Law, which prohibited written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic or the indivisible unity of the nation. As regards procedures initiated under this Article before its repeal, Law No. 4928 provides that preliminary prosecutions shall be discontinued, that persons arrested shall be released and that cases pending for decision or for execution shall be urgently examined by the competent courts in conformity with the principle set by Article 2 of the Turkish Criminal Code (nullum crimen, nulla poena sine lege).

2.5. Press Law No. 5680

Some provisions of the press law have also been amended, notably by deleting prison penalties and establishing respect for the confidentiality of journalists' sources in law. The possibilities of preventing distribution and collection of printed material have been limited. The period for which a periodical may be suspended in cases of conviction for press offences has been shortened. Sentences have been reduced in respect of persons who continue to publish a suspended periodical, or those who publish a new periodical which is clearly a continuation of a suspended periodical. The criminal responsibility of editors and publishers for the use of any language prohibited by the law has been lifted.

2.6. Other legislative changes having effect on freedom of expression

- Articles of the "Act on the Establishment of Radio and Television Enterprises and Their Broadcasts" have been amended so as to remove a much criticised broadcasting principle of "private lives of the individuals are not to become subjects of broadcasts with the exception of cases where this is necessary for public good". The abstract expression of "pessimism and desperation and encouragement of chaos and violent tendencies" has also been removed from Article 4 thus enhancing freedom of expression.

With an amendment to Article 26 of the above mentioned Act, the matter of re-transmission has been clarified and alignment with the European Convention on Trans-frontier Television is ensured.

- Article 6 of the Law on Associations was amended by the Fourth Harmonisation Package, adopted on 2 January 2003. Here, the requirement that associations should only use Turkish in their correspondence was amended. The obligation to use Turkish is now limited solely to associations' official correspondence with Turkish public institutions.

- The amendments to various Articles of the Act on Political Parties and Law on Associations also have important effects on freedom of expression.

Appendix 3 to Interim Resolution ResDH(2004)38

Objectives of the Joint European Commission/Council of Europe Initiative with Turkey to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA) in the accession partnership priority area of democratisation and human rights

The project's overall objective is to enhance the ability of the Turkish authorities to implement the National Programme for the adoption of the Community acquis (NPAA) in the Accession Partnership priority area of human rights and democratisation.

This will be achieved by:

- developing training capacities on ECHR case-law standards: devise and implement short- and long- term strategies on the rule of law and ECHR case-law for judges, prosecutors and lawyers;
- promoting awareness-raising on human rights standards;
- providing legal expertise on draft laws aimed at aligning the national rule of law and human rights framework with European standards.

The key indicators of project success are:

- pool of trainers trained to impart ECHR case-law courses to judges;
- increased public awareness of human rights;
- fulfilment of commitments vis-à-vis the Council of Europe and the Community acquis;
- effective functioning of the national legal framework and institutions protecting the rule of law and human rights.

The following specific objectives will be pursued:

1. Devise and implement short- and long-term training strategies on rule of law and ECHR case-law for judges, prosecutors and public officials;
2. Create and launch a comprehensive campaign to increase awareness and understanding of human rights among the public at large;

Align the normative framework and its implementation, in conformity with European standards, in the following areas: judiciary, criminal norms, civil norms, data protection, protection of human rights, freedom of media and expression, democratic institutions.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2001)106 **Violations of FREEDOM OF EXPRESSION in Turkey: Individual Measures** **(cases of Incal - judgment of 09/06/1998 and 16 other cases)**

*(Adopted by the Committee of Ministers on 23 July 2001
at the 760th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of former Articles 32 and 54 as well as of new Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgments of the European Court of Human Rights transmitted to it for supervision of execution and to its decisions in the above-mentioned cases concerning Turkey;

Having regard to the Rules for the application of Article 46, paragraph 2, of the Convention;

Recalling that, in all these cases, the Court or the Committee of Ministers have notably found that the criminal convictions of the applicants, on account of statements contained in articles, books, leaflets or messages addressed to, or prepared for, a public audience, had violated their freedom of expression guaranteed by Article 10 of the Convention;

Having been informed that a comprehensive programme of reforms has been drawn up with a view to aligning, in the short-term, Turkish law and practice with the Convention's requirements in the field of freedom of expression, in order to prevent new violations similar to those found in these cases;

Considering however that, in most of these cases, the convictions are still in the criminal records of the applicants and restrictions of their civil and political rights remain in place;

Stressing the obligation of every State, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including the adoption of individual measures putting an end to the violations found and removing as far as possible their effects;

Having regularly invited the Government of Turkey, since it examined the first of these cases in 1998, to inform it of the measures taken by the Turkish authorities in order to comply with the abovementioned obligation;

Noting that, according to the Turkish Government, a reform of the Code of Criminal Procedure would be necessary to reopen the impugned proceedings and redress the violations;

Regretting that such a reform, announced in September 1999 by the Minister of Foreign Affairs of Turkey, is still not foreseen for the immediate future and that, as yet, no ad hoc measures have been taken pending the adoption of the aforementioned reform;

Urges the Turkish authorities, without further delay, to take ad hoc measures allowing the consequences of the applicants' convictions contrary to the Convention in the above-mentioned cases to be rapidly and fully erased and decides to resume consideration of these cases at each of its meetings until the adoption of the individual measures required;

Encourages the Turkish authorities to bring to a successful conclusion the comprehensive reforms planned to bring Turkish law into conformity with the requirements of Article 10 of the Convention.

➤ **Loizidou against Turkey**

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2003)174 concerning the judgment of the European Court of Human Rights of 28 July 1998 in the case of LOIZIDOU against Turkey

*(Adopted by the Committee of Ministers on 12 November 2003
at the 860th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights ("the Court") of 28 July 1998 in the case of Loizidou against Turkey and transmitted the same date to the Committee for supervision of execution in accordance with Article 46 § 2 of the European Convention on Human Rights ("the Convention");

Recalling that, in that judgment, the Court held that Turkey was to pay to the applicant as just satisfaction specific sums for damages and for costs and expenses;

Recalling its three earlier Interim Resolutions and the fact that on 19 June 2003, before the Committee of Ministers, the Turkish authorities declared unambiguously that they had initiated the measures necessary to enable the Committee to take note of payment of the just satisfaction award and approve a draft final resolution at the DH meeting on 7 and 8 October 2003;

Recalling that it was clear that this payment had to intervene before the examination of the draft final resolution;

Very deeply deploring the fact that Turkey did not honour its undertaking and has thus still not complied with its obligation under Article 46 of the Convention to abide by this judgment;

Stressing anew that the obligation to comply with the Court's judgments is unconditional;

Strongly urges Turkey to reconsider its position and to pay without any conditions whatsoever the just satisfaction awarded to the applicant by the Court, within one week, i.e. 19 November 2003 at the latest,

Declares the Committee's resolve to take all adequate measures against Turkey if Turkey fails once more to pay the just satisfaction awarded by the Court to the applicant.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2001)80 concerning the judgment of the European Court of Human Rights of 28 July 1998 in the case of LOIZIDOU against Turkey

*(Adopted by the Committee of Ministers on 26 June 2001
at the 757th meeting of the Ministers' Deputies)*

The Committee of Ministers, acting under the terms of former Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention" below),

Having regard to the judgment of the European Court of Human Rights ("the Court" below) of 28 July 1998 which ordered Turkey to pay to the applicant before 28 October 1998 specific sums for damages and for costs and expenses;

Recalling its Interim Resolution DH (2000) 105, in which it declared that the refusal of Turkey to execute the judgment of the Court demonstrated a manifest disregard for Turkey's international obligations, both as a High Contracting Party to the Convention and as a member State of the Council of Europe, and strongly insisted that, in view of the gravity of the matter, Turkey comply fully and without any further delay with this judgment;

Very deeply deploring the fact that, to date, Turkey has still not complied with its obligations under this judgment;

Stressing that every member State of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms;

Stressing that acceptance of the Convention, including the compulsory jurisdiction of the Court and the binding nature of its judgments, has become a requirement for membership of the Organisation;

Stressing that the Convention is a system for the collective enforcement of the rights protected therein,

Declares the Committee's resolve to ensure, with all means available to the Organisation, Turkey's compliance with its obligations under this judgment,

Calls upon the authorities of the member States to take such action as they deem appropriate to this end.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim¹⁶ Resolution DH(2000)105
concerning the judgment of the European Court of Human Rights of
28 July 1998 in the case of LOIZIDOU against Turkey

*(Adopted by the Committee of Ministers on 24 July 2000
at the 716th meeting of the Ministers' Deputies)*

The Committee of Ministers, acting under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Deeply deploring the fact that, to date, Turkey has still not complied with its obligations under the judgment delivered by the European Court of Human Rights on 28 July 1998 in the case of Loizidou against Turkey;

Recalling its Interim Resolution DH (99) 680 of 6 October 1999, in which, *inter alia*, the Committee of Ministers strongly urged Turkey to pay the just satisfaction awarded in this case so as to ensure that Turkey, as a High Contracting Party, meets its obligations under the Convention;

Recalling that, subsequently, the Chairman of the Committee of Ministers wrote to his Turkish counterpart recalling that, as for all Contracting Parties, Turkey's obligation to abide by judgments of the Court is unconditional;

Stressing that Turkey has had ample time to fulfil in good faith in the present case its obligations,

Emphasises that the failure on the part of a High Contracting Party to comply with a judgment of the Court is unprecedented;

Declares that the refusal of Turkey to execute the judgment of the Court demonstrates a manifest disregard for its international obligations, both as a High Contracting Party to the Convention and as a member State of the Council of Europe;

In view of the gravity of the matter, strongly insists that Turkey comply fully and without any further delay with the European Court of Human Rights' judgment of 28 July 1998.

¹⁶ When this resolution was originally published, the word "Interim" was omitted from the title by mistake.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)680 concerning the judgment of the European Court of Human Rights of 28 July 1998 in the case of LOIZIDOU against TURKEY

*(Adopted by the Committee of Ministers on 6 October 1999
at the 682nd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Having regard to the judgment of the European Court of Human Rights of 28 July 1998 which ordered Turkey to pay to the applicant before 28 October 1998 specific sums for damages suffered and for costs and expenses ;

Considering that this judgment has been transmitted to the Committee of Ministers for supervision of its execution in accordance with Article 54 of the Convention;

Having regard to the fact that Turkey's compliance with this judgment has been examined by the Committee of Ministers' Deputies in subsequent meetings since September 1998;

Considering that the Government of Turkey has indicated that the sums awarded by the European Court could only be paid to the applicant in the context of a global settlement of all property cases in Cyprus and concluding that the conditions of payment envisaged by the Government of Turkey cannot be considered to be in conformity with the obligations flowing from the Court's judgment ;

Deploring the fact that Turkey has not yet complied with the judgment by paying to the applicant the sums awarded by the Court,

Stressing the obligation undertaken by all contracting States to abide by the judgments of the Court, in accordance with Article 53 of the European Convention on Human Rights;

Strongly urges Turkey to review its position and to pay the just satisfaction awarded in this case in accordance with the conditions set out by the European Court of Human Rights so as to ensure that Turkey, as a High Contracting Party, meets its obligations under the Convention.

➤ **Sadak and others against Turkey**

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)31 concerning the judgment of the European Court of Human Rights of 17 July 2001 in the case of SADAK, ZANA, DICLE AND DOĞAN against Turkey

*(Adopted by the Committee of Ministers on 6 April 2004
at the 879th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights ("the Court") of 17 July 2001 in the Sadak, Zana, Dicle and Doğan against Turkey case (applications No. 29900/96 and others) transmitted the same date to the Committee for supervision of execution in accordance with Article 46, paragraph 2, of the European Convention on Human Rights ("the Convention");

Recalling that, in that judgment, the Court found violations of the applicants' right, under the Convention, to a fair trial when they were convicted in 1994 by the Ankara State Security Court and sentenced to a 15-year prison term;

Recalling that, further to the adoption of Interim Resolution ResDH(2002)59, the Turkish authorities adopted legislation allowing for the reopening of criminal proceedings and that the applicants' trial was reopened in February 2003 and thirteen hearings have been held so far;

Noting that the applicants' numerous requests for release pending the outcome of the new trial have all been rejected without any convincing reasons being given by the State Security Court;

Recalling that on 20 November 2003, the Chairman of the Committee of Ministers, at the request of the Committee, conveyed the latter's concerns to the Turkish authorities regarding this state of affairs;

Noting that, in his reply of 19 February 2004, the Minister for Foreign Affairs of Turkey stated that the applicants' detention was maintained inasmuch as they continued to serve their original sentences;

Stressing in this connection, the importance of the presumption of innocence as guaranteed by the Convention;

Deplores the fact that, notwithstanding the re-opening of the impugned proceedings, the applicants continue to serve their original sentences and thus remain in detention almost three years after the Court's finding of a violation of the Convention in this case;

Stresses the obligation incumbent on Turkey, under Article 46, paragraph 1, of the Convention, to comply with the Court's judgment in this case notably through measures to erase the consequences of the violation found for the applicants, including the release of the applicants in the absence of any compelling reasons justifying their continued detention pending the outcome of the new trial.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2002)59 concerning the judgment of the European Court of Human Rights of 17 July 2001 in the case of SADAK, ZANA, DICLE and DOGAN against Turkey

*(Adopted by the Committee of Ministers on 30 April 2002
at the 794th meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights ("the Court") of 17 July 2001 in the Sadak, Zana, Dicle and Dogan v. Turkey case (applications No. 29900/96 et al) transmitted the same date to the Committee for supervision of execution in accordance with Article 46 § 2 of the European Convention on Human Rights ("the Convention");

Recalling that, in that judgment, the Court found important violations of the applicants' right, under the Convention, to a fair trial before the Ankara State Security Court, on account of:

- the lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court (violation of Article 6§1);
- the lack of timely information about the legal recharacterisation of the accusation brought against the applicants and lack of sufficient time and facilities to prepare the applicants' defence (violation of Article 6§3 a and b taken together with Article 6§1);
- the impossibility for the applicants to examine or to have examined the witnesses who testified against them (violation of Article 6§3d taken together with Article 6§1);

Recalling that the applicants were convicted in 1994 to a 15-year prison term as result of these proceedings;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including through the adoption of individual measures putting an end to the violations found and removing as far as possible their effects;

Recalling that the Turkish authorities have already taken certain general measures in order to prevent new similar violations, notably by abolishing the military judge on the state security courts (see Resolution DH (1999)555 in the case of Ciraklar against Turkey) and, recently, by ensuring constitutional protection for the right to fair trial (see the amendment to Article 36 of 17 October 2001);

Noting that further general measures are being taken in order to give full effect to the judgment of the Court;

Considering, however, that, in the present case, the adoption of individual measures, in addition to the payment of the just satisfaction, is also necessary in view of the extent of the violations found and the fact that the applicants continue to serve the heavy prison sentences imposed (*cf.* the Committee's Recommendation DH(2000)2);

Noting the engagement of the Government of Turkey to take all measures required in order to ensure the reopening of judicial proceedings when this is necessary in order to abide by the judgments of the Court;

Strongly urges the Turkish authorities, without further delay, to respond to the Committee's repeated demands that the said authorities urgently remedy the applicants' situation and take the necessary measures in order to reopen the proceedings impugned by the Court in this case, or other *ad hoc* measures erasing the consequences for the applicants of the violations found;

Decides, in view of the urgency of the situation, to resume its control of the adoption of these individual measures, if necessary at each of its meetings.

UKRAINE

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2008)35 on the execution of the judgment of the European Court of Human Rights in the case GONGADZE against Ukraine (Application No. 34056/02, judgment of 08/11/2005, final on 08/02/2006)

(Adopted by the Committee of Ministers on 5 June 2008 at the 1028th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter "the Convention" and "the Court");

Having regard to the judgment of the European Court of Human Rights ("the Court") in the Gongadze case transmitted to the Committee of Ministers once it had become final under Article 44 of the Convention;

Recalling that, in the present judgment, the Court unanimously found a violation of Article 2 of the Convention on account both of the authorities' failure to protect the life of the applicant's husband and of subsequent failings in the investigation relating to his disappearance and death as well as a violation of Article 3 of the Convention on account of the investigation authorities' attitude to the applicant and her family amounting to inhuman and degrading treatment;

Having regard to the fact that the Court also found a violation of Article 13 of the Convention, stating that the failure to conduct an effective investigation for more than 4 years and the impossibility of seeking compensation through civil proceedings pending the outcome of the criminal investigation, constituted a denial of an effective remedy;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Having examined the information submitted by the Ukrainian authorities on the measures taken in this respect (as appears in the Appendix to the present interim resolution).

Individual measures

Recalling that in accordance with the Committee's well-established practice, the respondent state has a continuing obligation to conduct an effective investigation where procedural violations of Article 2 have been found;

Noting that such investigation must be conducted thoroughly and with reasonable expedition, and must provide for sufficient public accountability and scrutiny;

Taking into consideration in this respect the information provided by the Ukrainian authorities regarding the measures taken to identify and bring to justice the perpetrators, instigators and organisers of the murder of the applicant's husband;

Noting that the proceedings pending before the Kyiv Court of Appeal since 2006 against the three former police officers charged with the murder of the applicant's husband resulted in a judgment of

15 March 2008 finding the defendants guilty and sentencing two of them to 12 and the third to 13 years of imprisonment;

Regretting however that the progress in the investigation has been limited to bringing to justice the perpetrators of the crime and that the investigation with respect to the instigators and organisers of the murder of the applicant's husband has not been completed since 2001;

Stressing that the necessity of taking measures to identify and bring to justice the instigators and organisers of the murder is all the more pressing in this case, considering the seriousness of the violations found and the time that has elapsed since the Court's judgment became final;

Noting with particular interest that in the course of the investigation an agreement has been reached whereby the original tape recordings, which might contribute to identification of the instigators and organisers of the murder of the applicant's husband, will be examined by a group of international experts;

Regretting, however, that no international experts have been appointed so far,

URGES the authorities of the respondent state to take with reasonable expedition all necessary investigative steps to achieve concrete and visible progress in identifying instigators and organisers of the murder of the applicant's husband and bringing them to justice;

INVITES the respondent state to keep the Committee regularly informed of the measures taken and the result achieved, in particular as regards verification of the relevant tape recordings;

General measures

Stressing the importance of securing independent investigations in all cases in which Article 2 of the Convention might be at issue;

Noting in this respect the information provided by the Ukrainian authorities on the measures taken with a view to better guaranteeing the independence and effectiveness of investigations in Ukraine, in particular on reform of the prosecution system which is to be carried out,

ENGOURAGES the Ukrainian authorities to intensify their efforts to strengthen the independence of investigative bodies, in particular, the prosecution service, thus contributing to better guaranteeing the effectiveness of investigations in Ukraine;

INVITES the Ukrainian authorities to keep the Committee informed about the measures taken or envisaged in this respect;

DECIDES to resume consideration of this case, as regards outstanding individual measures, at each of its Human Rights meetings and as regards general measures at intervals not longer than six months.

Appendix to Interim Resolution CM/ResDH(2008)35

Information provided by the Ukrainian authorities in the context of the examination by the Committee of Ministers of the Gongadze case

Individual measures:

1) Trial of the perpetrators of the murder: On 15/03/2008 the Kyiv City Court of Appeal found the three former police officers guilty of murder of the applicant's husband and sentenced them to over ten years' imprisonment.

2) Investigation aimed at identifying and bringing to justice the instigators and organisers of the murder: The investigation has been pending since 2001. During this investigation the authorities questioned a number of witnesses, including high state officials, conducted various examinations, reconstructed events in the President's Secretariat's premises where the tape recordings which might contribute to identifying the instigators and the organisers of the crime had allegedly been made.

Following a proposal of the Parliamentary Assembly of the Council of Europe, a multilateral agreement has been reached to set up a group of international experts, including FBI specialists, to examine the tape recordings. The government obtained assurances from the key witness that the original tape recordings in question will be handed to the group of experts. According to the authorities, no group of experts has been set up so far, despite several attempts by the Prosecutor General's office to obtain a list of experts from the Embassy of the United States in Kyiv.

Further measures are being taken to find the whereabouts of the fourth accused who was the superior of the convicted policemen.

General measures:

1) Independence of investigations: On 16/01/2007 the Ukrainian authorities provided information on the rules governing investigation procedures and legislative amendments under way. In particular, in 2006, in compliance with the opinion of the Venice Commission and the Recommendations of the Parliamentary Assembly, the Verkhovna Rada withdrew the draft law "On amendments to the Law of Ukraine "On the public prosecutor's office" as its provisions were not compatible with the role of the prosecution system in a democratic society. A working group was set up by the Parliament to amend the draft law.

Following the Presidential Decree No. 39 of 20/01/2006, the Ministry of Justice was also entrusted with the drafting of a new law "On the public prosecutor's office". The work will start once the general concept of the criminal justice reform has been approved by the President. The concept is at the final drafting stage.

2) Remedies against the excessive length of investigations: In the context of the examination of the Merit case and the Zhovner group of cases, the Ukrainian authorities informed the Committee of 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)". The draft provides the possibility of complaining to administrative courts about a violation of the right to pre-trial investigation within reasonable time and claiming compensation for delays. The draft laws also provides for sanctions against those responsible for delays.

3) Publication and dissemination: The judgment of the European Court has been translated into Ukrainian, placed on the Ministry of Justice official web-site and published in the *Official Herald of Ukraine*, No. 10, 03/2006 as well as in other print sources.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2008)1

on the execution of the judgements of the European Court of Human Rights in the case of ZHOVNER and 231 other cases against Ukraine relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy

(See Appendix for the list of cases in the Zhovner group)

(Adopted by the Committee of Ministers on 6 March 2008, at the 1020th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”);

Having regard to the great and steadily increasing number of judgments of the Court finding Ukraine in violation of Article 6, paragraph 1, of the Convention and of Article 1 of Protocol 1 to the Convention on account of the authorities' failure to comply with or serious delay in abiding by final domestic judicial decisions delivered in the applicants' favour;

Having regard to the fact that in several cases the Court also found a violation of Article 13 of the Convention in that the applicants had no domestic remedy whereby they might secured their right to an enforcement of a domestic judgment within a reasonable time as guaranteed by Article 6, paragraph 1, of the Convention;

Recalling the obligation of every state under Article 46, paragraph 1, of the Convention to abide by the judgments of the Court; this obligation includes the adoption of individual measures, as well as general measures preventing new, similar violations;

Stressing that the need for such measures is all the more pressing in cases of repetitive violations revealing an important structural problem;

Recalling in this respect Recommendation Rec(2004)6 of the Committee of Ministers' to member states regarding the need to improve the efficiency of domestic remedies;

Having invited Ukraine to inform the Committee of Ministers of the measures taken or being taken in the light of these judgments and having examined the information provided by the Ukrainian authorities in this respect (as it appears in Appendix to this interim resolution);

Individual measures:

Recalling that according to Article 46 of the Convention, the respondent state has an obligation, beyond the payment of just satisfaction, to adopt under the Committee of Ministers' supervision individual measures with a view to ensuring that the injured party is put, as far as possible, in the same situation as he/she enjoyed prior to the violation of the Convention (*restitutio in integrum*);

Noting that in cases where a violation has been established on account of the failure to enforce a domestic judgement, *restitutio in integrum* cannot be achieved unless and until this judgment is executed;

Noting with satisfaction that in the majority of cases the domestic judicial decisions at issue were enforced while the proceedings were pending before the European Court or shortly after its judgment;

Noting however with concern that in a number of cases, domestic judicial decisions delivered in the applicants' favour remain unexecuted until now (see Appendix) and stressing that this situation is incompatible with the respondent's obligation under Article 46 of the Convention to abide by the Court's judgments;

General measures:

1) Measures to remedy the non-enforcement of judgments

Noting that the extent of the problem concerning the non-execution of domestic judicial decisions in Ukraine and the large number of people affected by it has been acknowledged within the Committee of Ministers from the outset;

Welcoming the Ukrainian authorities' approach of taking specific measures pending the adoption of comprehensive legal reforms on sector-by-sector basis,

Sector-specific measures

Noting with satisfaction, in particular, the measures taken with a view to finding a global solution in respect of certain categories of persons in the applicants' position in different problem sectors, thus contributing to eliminating the need to lodge complaints before the Court:

- debts owed to educational sector employees have been acknowledged and restructured so as to be paid by instalments over a period of 5 years;
- necessary funds have been foreseen in the State Budget of Ukraine for 2008 to cover the whole amount of the debt owed to the "Atomspetsbud" employees;
- a number of commissions for the monitoring of salary payments have been established within particular Ministries in charge of the debtor companies to ensure timely payment of salaries and other payments;

Encouraging the Ukrainian authorities to continue their efforts in further implementing the measures already announced and also to take similar measures in other specific sectors;

Recalling however that given the gravity and the extent of the systemic problem, these positive developments have to be complemented by other, more comprehensive reforms to ensure full compliance with the Court's judgments and to prevent new, similar violations of the Convention;

Legislative measures

Noting with satisfaction that a number of initiatives have been taken by the Ukrainian authorities at legislative level to resolve the main problems identified by the Court in its judgments, in particular:

- a draft law to abolish the moratorium on the forced sale of property in companies in which the state holdings exceed 25%;
- a draft law on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time;
- a draft law to amend various legislative acts relating to the enforcement procedure to increase its efficiency.

Underlining the Convention organs' consistent position that, while improving enforcement proceedings and/or their particular aspects is important, it is incumbent on the State to execute spontaneously all judicial decisions delivered against public authorities, without compelling the claimants to go through enforcement proceedings, and thus irrespective of the availability of funds;

Stressing that the lack of proper execution of judicial decisions severely affects the efficiency of State structures, frustrates the citizens' legitimate expectations and their confidence in the judicial system;

Noting in this respect that such spontaneous execution continues to be hampered in particular by a number of persistent problems, notably by the lack of a clear and efficient execution procedure for

judgments delivered against the State and its entities and by important shortcomings in the legislation governing budgetary procedures;

Considering further that the prevention of new violations of the Convention may be achieved through setting up domestic remedies against non-execution at the domestic level;

2) Measures regarding domestic remedies

Stressing, in view of the urgency of the situation, the need for priority action to improve domestic remedies in order to ensure that the state cannot without consequences delay or refuse to execute final domestic judgements delivered against it, including at least adequately compensating for any delay in execution and possibilities to accelerate pending execution proceedings;

Welcoming in this respect the draft law providing for domestic remedies against the excessive length of enforcement proceedings, namely 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);

Deploring however that no progress in adopting of this draft law has been achieved since 2005;

Recalling also in this respect the Convention organs' consistent position that the effectiveness of compensatory remedies is contingent of the existence of adequate budgetary provision allowing swift payment of compensation awards;

Stressing that the need for special budgetary arrangements is all the greater in countries facing a systemic problem of non-enforcement of judicial decisions against the state and its entities;

Noting in addition that the setting up of a merely compensatory or acceleratory remedy may not suffice to ensure rapid and full compliance with obligations under the Convention, and that further avenues must be explored, e.g. through the combined pressure of various domestic remedies (punitive damages, default interest, adequate possibility of seizure of state assets, etc), provided that their accessibility, sufficiency and effectiveness in practice are convincingly established;

Noting in this respect that the experience of other states may usefully be taken into account, e.g. as reflected in the Conclusions of the Round Table on "Non-enforcement of domestic courts decisions in member states: general measures to comply with European Court judgments" held on 21-22 June 2007 in Strasbourg;

Recalling the consistent position of the Convention organs that the setting up of domestic remedies does not relieve states from their general obligation to solve structural problems underlying the violations;

STRONGLY URGES all Ukrainian authorities concerned to comply without further delay with their obligation under the Convention to enforce those domestic judgments where this has not been done.

EXPRESSES PARTICULAR CONCERN that notwithstanding a number of legislative and other important initiatives, which have been repeatedly brought to the attention of the Committee of Ministers, little progress has been made so far in resolving the structural problem of non-execution of domestic judicial decisions;

STRONGLY ENCOURAGES the Ukrainian authorities to enhance their political commitment in order to achieve tangible results and to make it a high political priority to abide by their obligations under the Convention and by the Court's judgments, to ensure full and timely execution of the domestic courts' decision;

CALLS UPON the Ukrainian authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to effectively implementing the package of measures announced and other measures which may be necessary to tackle the problem at issue;

URGES the Ukrainian authorities to adopt as a matter of priority the draft laws that were announced before the Committee of Ministers, in particular the 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)*;

ENCOURAGES the authorities, pending the adoption of the draft laws announced, to consider the adoption of interim measures limiting as far as possible the risk of new violations of the Convention of the same kind, and in particular:

- to consider the adoption of measures similar to those taken in the education sector in other sectors which raise similar problems;
- to take measures to ensure effective management and control over state entities and enterprises to avoid debts arising to employees;
- to ensure in practice the effective liability of civil servants for non-enforcement;
- to award compensation for delays in enforcement of domestic judicial decisions directly on the basis of the Convention's provisions and the Court's case-law as provided by the Law on enforcement of judgments and the application of the case-law of the European Court;

INVITES the Ukrainian authorities to consider, in addition to the measures announced, appropriate solutions in the following areas:

- to improve budgetary planning, particularly by ensuring compatibility between the budgetary laws and the state's payment obligations;
- to ensure the existence of specific mechanisms for rapid additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations; and
- to ensure the existence of an effective procedure and funds for the execution of domestic courts' judgements delivered against the state;

INVITES the competent Ukrainian authorities to ensure wide dissemination of this Interim Resolution to the government, the parliament and the judiciary;

DECIDES to resume consideration of the present issues in the context of the Court's judgments concerned at the latest at the 1035th meeting (16-18 September 2008) (DH).

Appendix to Interim Resolution CM/ResDH(2008)1

*Information provided by the Ukrainian authorities in the context of the examination by the Committee of Ministers of 232 cases against Ukraine relative to failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy
(Zhovner group of cases)*

Measures already taken

Individual measures:

In the majority of these cases, the domestic judicial decisions, the non-enforcement of which was criticised by the Court, have been executed.

However, in a number of cases (listed below) the domestic courts' decisions remain unenforced notwithstanding the violations found in this respect by the Court. Urgent individual measures are therefore required to comply with the Court's judgements and to put an end to the continuing violations of the Convention.

27282/03	Sivokoz, judgment of 04/10/2005, final on 04/01/2006
22219/02	Drobotyuk, judgment of 20/09/2005, final on 20/12/2005
71186/01	Fuklev, judgment of 07/07/2005, final on 30/11/2005
15366/03	Chernyayev, judgment of 26/07/2005, final on 30/11/2005
41073/02	Andrusenko, judgment of 10/08/06, final on 10/11/06
23390/02	Ishchenko and others, judgment of 08/11/2005, final on 08/02/2006
10174/02	Khanenko, judgment of 13/12/2005, final on 12/04/2006
41030/02	Kurshatsova, judgment of 29/11/2005, final on 01/03/2006
22972/02	Lyutykh, judgment of 13/09/2005, final on 13/12/2005
9719/02	Pomazanyy and Shevchenko, judgment of 04/04/2006, final on 04/07/2006
58312/00	Trykhlid, judgment of 20/09/2005, final on 20/12/2005
39404/02	Mukhin, judgment of 19/10/2006, final on 19/01/2007)
32166/04	Sarafanov and others, judgement of 14/12/2006, final on 14/03/2007
27349/03	Kozhanova, judgment of 22/11/2005, final on 22/02/2006
35765/05+	erevyanko and Beletskiy, judgement of 11 October 2007, final on 11/01/2008
42478/04	Mirvoda, judgement of 7/12/2007, final 07/03/2007
25476/02	Pogrebna, judgement 15/02/2007, final 09/07/2007

General measures:

A) Measures taken to resolve the problems at the basis of the violations

The Ukrainian authorities have recognised the existence and the importance of the problem highlighted by these judgments in a number of policy papers containing more global strategies since 2006, in particular:

- Action Plan for the Improvement of the Judicial System and Ensuring Fair Trial in Ukraine in Line with European Standards (approved by the Decree of the President of Ukraine no. 242/2006 of 20/03/2006);
- National Action Plan for Ensuring Due Enforcement of Courts Decisions (approved by the Decree of the President of Ukraine by the Decree No. 587/2006 of 27/06/2006.

A number of measures to remedy the underlying problem have been and are being taken, including legislative initiatives and specific measures to ensure rapid funding in the areas particularly concerned by this problem:

- the debt owed to educational sector employees have been acknowledged and restructured so as to be paid out by instalments within the period of 5 years;
- a number of salary payment monitoring commissions has been established within particular Ministries in charge of the debtor companies to ensure timely payment of salaries and other payments;
- necessary funds have been envisaged in the State Budget of Ukraine for 2008 to cover the whole amount of the debt owed to the "Atomspetsbud" employees;
- a draft law abolishing the moratorium on the forced sale of property in companies in which the state holdings exceed 25% has been elaborated;
- a draft law to amend various legislative acts relating to enforcement procedure in order to increase its efficiency has been elaborated.

The authorities also indicated that prosecutors' control over proper enforcement of the domestic courts' judgements has been reinforced. A number of criminal proceedings were initiated against the top management of companies wilfully delaying the payment of salaries or against officials involved in the enforcement procedures.

The authorities have furthermore ensured regular translation and the publication of all the judgments from Zhovner group. They were translated into Ukrainian and placed on the Ministry of Justice's official website (www.minjust.gov.ua). The judgments were also published in the official government's print outlet – *Official Herald of Ukraine [Ofitsiynyi Visnyk Ukrayini]* as well as in other publications and journals, and thus are easily available to the authorities and to the public.

B) Legislative measures to introduce a domestic remedy in cases of excessive length of judicial proceedings

Since 2005 the Ukrainian authorities have informed the Committee about the 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), which has been modified on several occasions, to introduce in domestic law an effective remedy with respect to the length of the enforcement proceedings, providing a right to apply for compensation for delays and sanctions against those responsible.

C) Further measures expected

In the context of the Execution Assistance programme, the Council of Europe organised on 21-22 June 2007, in Strasbourg, a high-level Round Table which involved representatives of the Council of Europe and the authorities of different states confronted with this issue, to discuss solutions to the structural problems of non-enforcement of domestic court decisions. The constructive exchanges between different participants led to the adoption of Conclusions in which the main problems underlying non-enforcement were identified and a range of possible solutions to be envisaged by the authorities while elaborating their respective action plans were proposed.

Furthermore, a Memorandum on the non-enforcement of domestic judicial decisions in Ukraine (CM/Inf/DH(2007)30rev) was prepared by the Secretariat to assist the Committee of Ministers and the Ukrainian authorities in reflection on the underlying problems. The Memorandum was issued and declassified at the 997th meeting (June 2007). The Memorandum takes stock of the current situation in each area of concern and points out the issues that remain to be considered with a view to ensuring the Ukraine's compliance with the European Court's judgments.

The Ukrainian government stresses Ukraine's commitment to abide fully by the European Court's judgment in this, as indeed in all other cases, and the authorities will intensify their efforts in the adoption of the measures already announced as well as all other measures which may necessary to prevent new similar violations of the Convention.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)14 concerning the judgment of the European Court of Human Rights of 25 July 2002 (final on 6 November 2002) in the case of SOVTRANSVTO HOLDING against Ukraine

*(Adopted by the Committee of Ministers on 11 February 2004
at the 871st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights ("the Court") of 25 July 2002 in the Sovtransavto Holding case transmitted to the Committee of Ministers once it had become final under Article 44 of the Convention;

Recalling that the case originated in an application (No. 48553/99) against Ukraine, lodged with the Court on 11 May 1999 under Article 34 of the Convention by Sovtransavto Holding, a Russian company, and that the Court declared admissible the complaints relating,

- first, to a violation of its right to a fair trial before an impartial and independent tribunal due to repeated attempts by the Ukrainian authorities, including the President of Ukraine, to influence the domestic court decisions, to the application of the "*protest*" procedure ("supervisory review procedure" – allowing the quashing of final judicial decisions without any limitations) and to the refusal by the courts to examine the applicant company's arguments on the merits in a public hearing and to the absence of adequate motivation of the judicial decisions and
- secondly to a violation of the effective enjoyment of its right of property due to the manner in which these proceedings were conducted and ended, and to the uncertainty in which the applicant company was left;

Whereas in its judgment of 15 July 2002 the Court held:

- unanimously that there had been a violation of Article, 6 paragraph 1, of the Convention;
- by six votes to one that there had been a violation of Article 1 of Protocol 1 to the Convention;
- unanimously that it was not necessary to decide whether the applicant was a victim of discrimination on the basis of its nationality;
- unanimously that the question of application of Article 41 was not ready for decision, and consequently, reserved it and postponed it for a later stage;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Recalling that this obligation implies the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant, as well as general measures preventing new violations of the Convention similar to those found in the Court's judgments including, where appropriate, making available effective domestic remedies pending the entry into effect of the necessary changes;

Stressing that the adoption of general measures is particularly pressing in cases where a judgment reveals structural problems which may give rise to a large number of new, similar violations of the Convention;

Having invited Ukraine to inform it of the measures adopted or being taken in consequence of the judgment in this case;

Having examined the information provided by the Ukrainian authorities concerning the measures adopted or being planned to abide by the judgment (as it appears in the Appendix to this resolution);

Noting with interest, as regards the applicant company's situation, that on 19 August 2003 the Ukrainian Supreme Court ordered the reopening of the impugned proceedings and emphasising the need to guarantee that these new proceedings are conducted in full respect of the Convention and of the case-law of the European Court in this case;

Noting also that European Court, on 2 October 2003, delivered its judgment under Article 41 on just satisfaction, which will become final in accordance with the terms of Article 44, paragraph 2 of the Convention;

Welcoming, as regards the general measures, the fact that, prior to the Court's judgment, the procedure for supervisory review (*protest*), which was one of the main structural problems at the basis of the violations found, was abolished through a comprehensive judicial reform of 21 June 2001 and stressing the importance of ensuring that prosecutors do not retain powers similar to that of "protest" in civil cases under other legal provisions;

Further welcoming the reforms adopted in 2002 aimed at reinforcing the independence of the judiciary's, in particular the establishment of the State Judicial Administration and the new arrangements by which the courts are financed from the central state budget instead of from the budgets of local authorities;

Welcoming the order made by the President of Ukraine on 12 July 2003 aiming at ensuring the unconditional implementation of all legal norms, including the Convention, protecting the independence of the judiciary, the adoption of any further legislation deemed necessary for this purpose and the enhancement of training measures in co-operation with the Council of Europe and the European Union to ensure that the administration of justice conforms with the legislation in force and international law, including the Convention;

Stressing the importance of rapid and efficient action to give effect to this order so as to ward off attempts to influence the administration of justice, and to ensure that adequate sanctions are imposed on the authors of any such attempts and other appropriate measures are taken to enhance the independence of the judiciary;

Emphasising in this connection the responsibility of the authorities to provide adequate training and awareness-raising, not least concerning the case-law of the European Court, for judges, prosecutors and other public officials;

Noting the importance of the training of Ukrainian judges in particular on the Convention conducted within the Joint Programme of co-operation between the European Commission and the Council of Europe to strengthen democratic stability in Ukraine;

Noting with interest the establishment by the Decree of the President of Ukraine of October 2002 of the Judges' Academy of Ukraine the main task of which is the initial and in-service training of judges including training courses on the Convention;

Welcoming the practice of publishing of the European Court's judgements, including the judgment in the present case, in Ukrainian in the Official Journal and in the Bulletin of the Ministry of Justice of Ukraine;

ENCOURAGES the Ukrainian authorities rapidly to ensure that the necessary measures are taken to guarantee that each and every state authority fully respects the independence of the judiciary, in particular by ensuring:

- that effective sanctions are imposed on officials who in any way interfere, or attempt to interfere, with pending court proceedings;
- that all necessary measures to implement the President's order of 12 July 2003 are taken so as to guarantee the respect of the Constitution and the Convention;
- that it is no longer possible for public prosecutors to question the final character of court judgments in civil cases;

CALLS ON the competent authorities to continue the training on the Convention, including the case-law of the European Court, during the initial and in-service training of judges and prosecutors and to ensure that the latter have ready access to such case-law;

ENCOURAGES the further development of the training of Ukrainian judges, in particular in co-operation with the Council of Europe institutions;

URGES the Ukrainian authorities to ensure the wide dissemination of the present resolution in Ukrainian translation to the Government ministries, General prosecutor's office, local authorities and courts;

EXPECTS to receive further information soon on additional measures planned to execute the judgment in this case and,

DECIDES to continue the examination of the case until the judgment has been fully executed.

Appendix to Interim Resolution ResDH(2004)14

*Information provided by the Government of Ukraine
during the examination of the Sovtransavto Holding case
by the Committee of Ministers*

As regards individual measures

The applicant company's request for reopening of the impugned proceedings with a view to obtaining redress for the violations of the Convention was granted by the Supreme Court on 19 August 2003. The case was referred to the court of first instance for a new hearing (the Economic Court of Loughansk, former "arbitration court"). The outcome of these proceedings is awaited.

As regards general measures

The following general measures have so far been taken by the Ukrainian authorities:

- the procedure for supervisory review (*protest*) was abolished in Ukrainian law by the judicial reform of 21 June 2001;
- the Law on the Judiciary, adopted in February 2002, sets up the State Judicial Administration, which is a specialised institution, independent from the executive, responsible for organising the management of the national judiciary; the law also provides that all Ukrainian courts are henceforth financed from the central budget and that the budget assigned to the courts is administered by the country's supreme courts;

- in order to give effect to the judgment, the President of Ukraine, on 12 July 2003, instructed:
 - o the Prime Minister to ensure, with the participation of the General Prosecutor's Office, the unconditional implementation of the provisions of Ukrainian law and of the Convention (which has the force of law in Ukraine) concerning the inadmissibility of any form of interference in the independence of the judiciary, whether in pending proceedings or otherwise, in order to influence courts or judges;
 - o the Ministry of Justice to analyse the legislation of Ukraine concerning the guarantees of independence of judiciary with a view to submitting, if necessary, proposals on improvement of legislation and appropriate administrative and financial measures and as well as design and implement, together with the Ministry of Foreign Affairs and in co-operation with the Council of Europe and the European Union, the training measures necessary to ensure that the Ukrainian administration of justice conforms with the legislation in force and international treaties, including the Convention;
- on 26 August 2003, the Cabinet of Ministers ordered ministries and other central or regional bodies having executive power in Ukraine to take all necessary measures to implement the President's above-mentioned order;
- as a result of systematic training of Ukrainian judges between 2001 and 2003 in the framework of the Council of Europe/European Commission Joint Programme (consisting of one-day training on the Convention for all judges, two "train-the-trainers" seminars in Kiev, and 73 seminars in different regions of Ukraine), domestic courts apply the Convention and the case-law of the European Court more frequently (as evidenced by a number of decisions notably from the Constitutional Court - decision n°9-zp of 25/12/97, dec. n°6-rp/99 of 24/06/99, dec. n°11-rp/99 of 29/12/99, opinion n°2-v/2000 of 11/07/00, dec. n°11-rp/2000 of 18/10/00, dec. n°13-rp/2001 of 10/10/01 and dec. n°15-rp/2001 of 14/11/01).
- the European Court's judgment was translated and published in the Official Journal of Ukraine, issue n°44/2003, in the Bulletin of the Ministry of Justice, issue n°9/2003, on the Ministry of Justice Internet site www.minjust.gov.ua and in the journal *Case-law of the ECHR*, issue n°3/2002 and has been sent out to the authorities directly concerned, i.e. to the Supreme Court and the Supreme Commercial Court of Ukraine (letters of the Ministry of Justice of Ukraine of 6 August 2002, n° 44-5/793 and 44-5/794) and to the Government ministries, General prosecutor's office, local authorities and courts.

The Ukrainian Government stresses Ukraine's commitment to abide fully by the European Court's judgment in this, as indeed in all other cases, and the authorities will pursue the adoption of the measures required to prevent new similar violations of the Convention. In this connection, the Government, in particular, encourages the courts, prosecutors and other authorities to develop further the direct effect of the Convention and of the judgments of the European Court.

THE UNITED KINGDOM

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)59 concerning the judgment of the European Court of Human Rights of 25 November 1999 (Grand Chamber judgment) in the case of HASHMAN and HARRUP against the United Kingdom

*(Adopted by the Committee of Ministers on 5 July 2005
at the 933rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as “the Convention”),

Having regard to the judgment of the European Court of Human Rights in the Hashman and Harrup case (application No. 25594/94) delivered on 25 November 1999 and transmitted to the Committee of Ministers on the same day under Article 44 of the Convention;

Recalling that the case involved a violation of Article 10 of the Convention due to the fact that the order by which the applicants, who had not breached the peace, were bound over to keep the peace and not to behave *contra bonos mores* did not comply with the requirement of Article 10, paragraph 2, of the Convention that it should be “prescribed by law”;

Recalling also that the Court, in its judgment, emphasised in this respect the lack of precision of such a binding over order, which offered little guidance to the applicants as to the type of conduct which would amount to a breach of the order, with the result that it could not be said that what they were being bound over not to do must have been apparent to them;

Recalling that the undertaking of the High Contracting Parties to abide by the Court's judgments in accordance with Article 46, paragraph 1, of the Convention implies, *inter alia*, an obligation to take general measures without delay in order to prevent the recurrence of violations similar to those found by the Court;

Having invited the Government of the United Kingdom to inform it of the measures taken in consequence of the judgment;

Noting that the judgment has been published in several law reports (*inter alia*: [2000] Crim LR 185; [1999] EHRLR 342; (2000) 30 EHRR 241; Times LR, 01/10/98);

Noting also with interest the publication of the *Crown Prosecution Service Casework Bulletin No. 6 of 2000*, giving guidance to prosecutors, first, that they should not ask courts to consider binding-over orders unless there is evidence of past conduct which, if repeated, is likely to cause a breach of the peace in future, and second, suggesting that courts could be encouraged to ensure that the behaviour to be avoided was made quite clear in the order;

Noting further that a consultation document entitled “Bind Overs: A Power for the 21st Century” was issued in March 2003, including a recommendation that courts issuing binding-over orders should not specify “to keep the peace” or “to be of good behaviour” but rather that the individual concerned is bound over to do or refrain from doing specific activities, as well as a recommendation that the details

of the conduct specified by the court should be included in an order served by the court on all relevant parties;

Regretting that to date no Practice Direction has been issued and no other measure taken in accordance with these recommendations;

Emphasising that it is now more than five years since the judgment was delivered;

Noting further that according to the information provided by the Government, around 20 000 persons are bound over each year, of whom a proportion have, like the applicants in the present case, not been found to have committed a breach of the peace,

URGES the United Kingdom authorities to take the remaining measures necessary to meet its obligations under the Convention without further delay;

CALLS UPON the government to keep the Committee informed of the timetable foreseen for the adoption of these measures and of the progress made in this regard;

DECIDES to resume consideration of this case, as far as general measures are concerned, at the latest within six months from the date of adoption of the present interim resolution.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2004)39 concerning the judgment of the European Court of Human Rights of 23 September 1998 in the case of A. against the United Kingdom

*(Adopted by the Committee of Ministers on 2 June 2004
at the 885th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of former Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of A. against the United Kingdom, delivered on 23 September 1998 and transmitted the same day to the Committee of Ministers;

Recalling that the undertaking of the High Contracting Parties to abide by the Court's judgments in accordance with this provision implies, *inter alia*, an obligation to take general measures in order to prevent effectively new violations of the Convention similar to those found in the Court's judgments;

Having invited the Government of the United Kingdom to inform it of the measures taken in consequence of the judgment;

Recalling that the case involved the acquittal, on the basis of the defence of reasonable chastisement, of a man charged with assault occasioning actual bodily harm after having beaten his nine-year-old stepson with a garden cane, which had been applied with considerable force on more than one occasion;

Recalling also that the Court, in its judgment, considered that treatment of this kind reaches the level of severity prohibited by Article 3, emphasised that children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against ill treatment in breach of Article 3 of the Convention, found that the law did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3 and held that the failure to provide adequate protection constituted a violation of Article 3 of the Convention;

Having regard to the fact that, before the Court, the United Kingdom admitted that there had been a violation of Article 3 of the Convention and committed itself to amending its domestic law to ensure that the corporal punishment of children would be unlawful under domestic law if it breached the standards required by the Article 3 of the Convention;

Noting that, upon the coming into force of the Human Rights Act 1998 on 2 October 2000, the Convention rights became directly applicable by domestic courts in cases of alleged violations of the Convention arising after that date;

Noting also that, subsequently, the Court of Appeal found in its judgment of 25 April 2001 in the case of *R v H* that domestic courts were now obliged to take account of the criteria applied by the European Court of Human Rights in determining whether certain treatment falls within the scope of treatment prohibited by Article 3 of the Convention, and that this judgment has been reported in a number of law reports;

Recalling that the case involved acquittal of a father who had admitted hitting his four and a half year old son across the back with a belt, several times, causing bruising, as a punishment for refusing to write his name;

Having been informed by the United Kingdom authorities that, in the light of the coming into force of the Human Rights Act 1998 and of the aforementioned decision of the Court of Appeal, they do not

intend to legislate on this matter and consider that the current state of the law in the United Kingdom complies with the Court's judgment in the present case;

Noting in this context that the possibility for criminal liability to be extended through case-law has been recognised by the European Court of Human Rights, provided that such developments occur in accordance with the requirements of the Convention;

Considering, however, that a debate has arisen as to whether the application of the criteria enunciated by the Court of Appeal by the domestic courts in the case of *R v H* itself and in subsequent case-law clearly demonstrates that the corporal punishment of children in breach of the standards required by the Article 3 of the Convention is now unlawful under domestic law in the United Kingdom, or whether this fact has been effectively brought to the knowledge of the public so as to achieve the necessary deterrence;

Considering, therefore, that it is not at present able to conclude whether United Kingdom law complies with this judgment;

DECIDES to resume its consideration of the present case at a forthcoming meeting not later than 12 months hence, in the light of the measures taken to date and any further developments.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2002)85 concerning the judgment of the European Court of Human Rights of 8 February 1996 in the case of MURRAY JOHN and 4 other cases against the United Kingdom

*(Adopted by the Committee of Ministers on 11 June 2002
at the 798th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to its decisions of 11 June 1998¹ and 10 July 1998² under former Article 32 of the Convention in the Murray Kevin and Quinn cases respectively and to the judgments of the European Court of Human Rights of 8 February 1996, in the Murray John case³, and 6 June 2000 (final on 6 September 2000) in the Averill and Magee cases, all of them concerning the right to silence, the right not to incriminate oneself and the denial of access to legal advice during the first 48 hours of detention (24 hours in the Averill case), combined with the provisions in national law whereby the choice of the accused to remain silent could result in the court or jury drawing unfavourable conclusions (violations of Article 6, paragraph 3c alone or combined with Article 6, paragraph 1);

Recalling Interim Resolution DH(2000)26 of 14 February 2000 in which the Committee of Ministers decided to resume consideration of the Murray John case, as far as general measures are concerned, when the amendments to the Youth Justice and Criminal Evidence Act 1999 and the Criminal Evidence (Northern Ireland) Order 1999 enter into force or, at the latest, at one of its meetings in 2000;

Having regularly invited the Government of the United Kingdom in 2000, 2001 and 2002, to inform it of any progress in the adoption of the measures envisaged by the United Kingdom authorities, as summarised in Interim Resolution DH(2000)26;

Regretting that, more than two years after the adoption of Interim Resolution DH(2000)26, the amendments to the Youth Justice and Criminal Evidence Act 1999, in particular the new Section 58, and the Criminal Evidence (Northern Ireland) Order 1999 have still not entered into force;

Strongly encourages the United Kingdom authorities to take all the necessary measures to ensure the rapid entering into force of the amendments to the "Youth Justice and Criminal Evidence Act 1999 and the Criminal Evidence (Northern Ireland) Order 1999, so as to effectively prevent new violations of the Convention similar to those found in these cases,

Decides to resume consideration of the matter once the legislation in question has entered into force or, at the latest, at its 819th meeting (December 2002).

Note ¹ Interim Resolution DH(1998)156

Note ² Interim Resolution DH(1998)214

Note ³ Interim Resolution DH(2000)26

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2001)79 concerning the judgment of the European Court of Human Rights of 18 February 1999 in the case of MATTHEWS against the United Kingdom

*(Adopted by the Committee of Ministers on 26 June 2001
at the 757th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the case of Matthews against the United Kingdom, delivered on 18 February 1999, in which the Court, notably, held that there had been a breach of Article 3 of Protocol No. 1, due to the inability of the applicant to vote in elections to the European Parliament in Gibraltar and that the respondent state was to pay the applicant, within three months, certain sums for just satisfaction;

Having regard to the Rules adopted for the application of Article 46, paragraph 2, of the Convention;

Having invited the Government of the United Kingdom to inform it of the measures which had been taken following the judgment of 18 February 1999, with regard to the United Kingdom's obligation under Article 46, paragraph 1, of the Convention to abide by it;
Having been informed that the Government of the United Kingdom paid, within the time-limit set, the just satisfaction awarded by the Court, and that the judgment has received extensive newspaper coverage and has also been published in the *Human Rights Report*, *Human Rights Digest* and other legal journals;

Recalling that the undertaking of the contracting states to abide by the Court's judgments (Article 46, paragraph 1, of the Convention) implies, *inter alia*, an obligation to take general measures in order to prevent effectively new violations of the Convention similar to those found in the Court's judgments;

Aware of the complexity of the issues raised by this judgment;

Noting the United Kingdom's unequivocal acceptance of its obligation and the fact that it is actively seeking enfranchisement of Gibraltar before the 2004 elections to the European Parliament;

Noting, however, that more than two years after the Court's judgment, the legal provisions which led to the violation of Article 3 of the Protocol No. 1, are still in force and that no adequate measures have yet been presented with a view to preventing new similar violations in the future;

Urges the United Kingdom to take the necessary measures to secure the rights under Article 3 of Protocol No. 1 in respect of elections to the European Parliament in Gibraltar,

Decides, accordingly, if need be, to resume consideration of the present case at each of its forthcoming meetings in order to ensure the proper execution of the Court's judgment.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2000)27 concerning the judgment of the European Court of Human Rights of 17 December 1996 in the case of SAUNDERS against the United Kingdom

*(Adopted by the Committee of Ministers on 14 February 2000
at the 695th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Saunders case delivered on 17 December 1996 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 19187/91) against the United Kingdom, lodged with the European Commission of Human Rights on 20 July 1988 under Article 25 of the Convention by Mr Ernest Saunders, a British national, and that the Commission declared admissible the complaint that the use, at the applicant's trial, of statements made by him to the Department of Trade and Industry inspectors under their compulsory powers had deprived him of a fair hearing;

Recalling that the case was brought before the Court by the Commission and the Government of the United Kingdom on 9 and 13 September 1994 respectively;

Whereas in its judgment of 17 December 1996 the Court:

- held, by sixteen votes to four, that there had been a violation of Article 6, paragraph 1, of the Convention;
- held, unanimously, that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage sustained;
- held, unanimously, that the Government of the respondent State was to pay the applicant, within three months, 75 000 pounds sterling, in respect of costs and expenses, and that simple interest at an annual rate of 8% should be payable from the expiry of the above-mentioned three months until settlement;
- dismissed, unanimously, the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the Government of the respondent State to inform it of the measures which had been taken in consequence of the judgment of 17 December 1996, having regard to the United Kingdom's obligation under Article 53 of the Convention to abide by it;

Whereas during the examination of the case by the Committee of Ministers, the Government of the respondent State gave the Committee information about the provisional measures taken preventing new violations of the same kind as those found in the present judgment, while new legislation is being examined (this information appears in the appendix to this interim resolution);

Having satisfied itself that on 27 February 1997, within the time-limit set, the Government of the respondent State paid the applicant the sum provided for in the judgment of 17 December 1996,

Declares, after having taken note of the information supplied by the Government of the United Kingdom, that it has provisionally exercised its functions under Article 54 of the Convention and

decides to resume consideration of this case, in accordance with its responsibilities under the Convention, once the new legislative measures envisaged by the Government of the United Kingdom enter into force or, at the latest, in December 2000.

Appendix to Interim Resolution ResDH(2000)27

*Information provided by the Government of the United Kingdom
during the examination of the Saunders case
by the Committee of Ministers*

The Government of the United Kingdom indicated that, in response to the judgment of the European Court of Human Rights in the Saunders case, the Attorney General has, as an interim measure, promulgated a guidance note to prosecuting authorities about the handling of cases where the evidence available to the prosecution includes answers obtained by the exercise of compulsory powers.

According to the note, answers obtained pursuant to a procedure which includes the power to compel answers, whatever the investigative or regulatory regime, cannot be used in subsequent criminal proceedings as part of the prosecution case, except for the very limited purposes of proceedings for offences arising out of the giving of evidence (e.g. perjury). The guidance note therefore covers not only evidence obtained by the exercise of powers under Section 434 of the Companies Act 1985, which was in issue in the case of Saunders against the United Kingdom, but also evidence obtained under analogous powers. In addition, the guidance restricts the use by prosecutors of compulsorily acquired answers for the purposes of cross-examination.

On the legislative level a number of amendments designed to prevent new, similar violations are contained in the Youth Justice and Criminal Evidence Act 1999. The Act has received royal assent but is not yet in force.

The Government of the United Kingdom is of the opinion that the guidance note will help to prevent new violations of the Convention similar to those found, pending the entry into force of the necessary legislative amendments.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution ResDH(2000)26
concerning the judgment of the European Court of Human Rights of
8 February 1996 in the case of JOHN MURRAY against the United Kingdom

*(Adopted by the Committee of Ministers on 14 February 2000
at the 695th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the John Murray case delivered on 8 February 1996 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 18731/91) against the United Kingdom, lodged with the European Commission of Human Rights on 16 August 1991 under Article 25 of the Convention by Mr John Murray, a British national, and that the Commission declared admissible the complaints that the provision of the Criminal Evidence Order 1988 which permits inferences to be drawn by a tribunal from the failure of the accused to answer police questions or to give evidence and their use in determining his guilt had constituted a violation of his right to a fair trial and of the presumption of innocence; that denying the applicant access to a solicitor during the first forty-eight hours of police custody amounted to a violation of Article 6, paragraph 3.c, of the Convention; and, that the practice in Northern Ireland not to allow access to a lawyer, unlike the practice in England and Wales, was discriminatory;

Recalling that the case was brought before the Court by the Commission on 9 September 1994 and by the Government of the respondent State on 11 October 1994;

Whereas in its judgment of 8 February 1996 the Court:

- held, by fourteen votes to five, that there had been no violation of Article 6, paragraphs 1 and 2, of the Convention arising out of the drawing of adverse inferences on account of the applicant's silence;
- held, by twelve votes to seven, that there had been a violation of Article 6, paragraph 1, in conjunction with Article 6, paragraph 3.c, of the Convention as regards the applicant's lack of access to a lawyer during the first forty-eight hours of his police detention;
- held, unanimously, that it was not necessary to examine the applicant's complaint of a violation of Article 14 in conjunction with Article 6;
- held, unanimously, that, as regards pecuniary and non-pecuniary damage, the finding of a violation of Article 6, paragraph 1, in conjunction with paragraph 3.c, constituted, in itself, sufficient just satisfaction for the purposes of Article 50 of the Convention;
- held, unanimously, that the Government of the respondent State was to pay, within three months, for costs and expenses 15 000 pounds sterling less 37 968.60 French francs to be converted into pounds sterling at the rate of exchange applicable on the date of delivery of the present judgment and that simple interest at an annual rate of 8% should be payable from the expiry of the above-mentioned three months until settlement;
- dismissed, unanimously, the remainder of the claim for just satisfaction;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the Government of the respondent State to inform it of the measures which had been taken in consequence of the judgment of 8 February 1996, having regard to the United Kingdom's obligation under Article 53 of the Convention to abide by it;

Considering that High Contracting Parties are required to take the necessary measures to conform herewith, notably by preventing new violations of the Convention similar to those found in the Court's judgments;

Whereas the Government of the respondent State provided the Committee of Ministers with information about the measures taken so far to this effect (this information appears in the Appendix to this resolution);

Having satisfied itself that on 30 April 1996, within the time-limit set, the Government of the respondent State paid the applicant the sum provided for in the judgment of 8 February 1996,

Declares, after having taken note of the information supplied by the Government of the United Kingdom, that it has provisionally exercised its functions under Article 54 of the Convention in this case;

Decides to resume consideration of this case, as far as general measures are concerned, when the Act on "Youth Justice and Criminal Evidence" enters into force or, at the latest, at one of its meetings in September 2000.

Appendix to Interim Resolution ResDH(2000)26

*Information provided by the Government of the United Kingdom
during the examination of the John Murray case
by the Committee of Ministers*

The Government of the United Kingdom expresses its regret concerning the time it has taken to identify the necessary measures to implement this case. It points out that the important problems caused by the developments of the situation in Northern Ireland since the adoption of the judgment of the European Court of Human Rights have made it difficult to find a permanent solution taking into account all the pertinent elements (including the protection of lawyers having access to persons arrested in connection with terrorist activities).

The government has, nonetheless, identified and taken a number of important steps to prevent a repetition of the circumstances that arose in the case of John Murray. The judgment in this case concerned the interaction of two pieces of legislation and careful consideration was necessary before determining the most appropriate way to respond to the Court's ruling. The Government consulted on a number of options for change and, on 1 December 1998, announced an interim administrative solution pending the introduction and implementation of legislation.

Guidance was issued in December 1998 to prosecutors and the police both in England and Wales and in Northern Ireland. This guidance seeks to ensure that the usual practice will be for suspects to have access to legal advice before being interviewed at a police station. Where access to legal advice is denied, the police are encouraged to put questions from which inferences might be drawn again, after the suspect has been given the opportunity to obtain such advice. Additionally, prosecutors have been advised not to seek reliance on inferences drawn from silence before access to legal advice was granted. Where the court, of its own volition, indicates an intention to draw such inferences, prosecutors are advised to draw its attention to the judgment of the European Court in this case.

In December 1998, the government introduced legislation which included an amendment to the relevant law so as to prohibit the drawing of inferences from silence when a suspect is being questioned at a police station or other authorised place of detention, when he or she has been denied access to legal advice. The Youth Justice and Criminal Evidence Act 1999 received royal assent in July 1999. Before the relevant provision of this Act (Section 58) can be implemented in England and Wales, it will be necessary to make certain amendments to the Code of Practice Covering the detention, treatment and questioning of persons by police officers which is issued under the Police

and Criminal Evidence Act 1984. In particular, these amendments will relate to the terms in which suspects are cautioned or warned about the consequences of a failure or refusal to answer questions.

Amendments to the Code involve extensive public consultation and the changes proposed must be debated in both Houses of Parliament. A review of the Codes of Practice has begun and the aim is to bring in a revised Code C by summer 2000, which will enable the implementation of Section 58 of the Youth Justice and Criminal Evidence Act 1999.

Similar legislation for Northern Ireland (the Criminal Evidence (Northern Ireland) Order 1999) was made in October 1999. Before the relevant provision of this Order (Article 36) can be implemented, the Codes of Practice under the Police and Criminal Evidence (Northern Ireland) Order 1989 will need to be amended.

The further information about the necessary legislative changes should be available towards the end of the year 2000. The Government therefore suggests the postponement of the Committee of Ministers' examination of the case until December 2000.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(99)725 concerning the judgment of the European Court of Human Rights of 25 June 1997 in the case of HALFORD against the United Kingdom

*(Adopted by the Committee of Ministers on 3 December 1999
at the 688th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 54 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the judgment of the European Court of Human Rights in the Halford case delivered on 25 June 1997 and transmitted the same day to the Committee of Ministers;

Recalling that the case originated in an application (No. 20605/92) against the United Kingdom, lodged with the European Commission of Human Rights on 22 April 1992 under Article 25 of the Convention by Ms Alison Halford, a British national, and that the Commission declared admissible the complaints in relation to alleged interferences with telephone calls made on her office and home telephones;

Recalling that the case was brought before the Court by the Commission and the Government of the United Kingdom on 28 May 1996 and 27 August 1996 respectively;

Whereas in its judgment of 25 June 1997 the Court:

- held, unanimously, that Article 8 of the Convention was applicable to the complaints concerning both the office and the home telephones, that there had been a violation of Article 8 in relation to calls made on the applicant's office telephones and that there had been no violation of Article 8 in relation to calls made on the applicant's home telephone;
- held, unanimously, that there had been a violation of Article 13 of the Convention in relation to the applicant's complaint concerning her office telephones;
- held, by eight votes to one that there had been no violation of Article 13 of the Convention in relation to the applicant's complaint concerning her home telephone;
- held, unanimously, that it was not necessary to consider the complaints under Article 10 and 14 of the Convention;
- held, unanimously, that the government of the respondent state was to pay the applicant, within three months, in respect of pecuniary and non-pecuniary damage 10 600 pounds sterling and 25 000 pounds sterling, in respect of costs and expenses, together with any VAT which may be chargeable, and that simple interest at an annual rate of 8% should be payable from the expiry of the above-mentioned three months until settlement;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 54 of the Convention;

Having invited the government of the respondent state to inform it of the measures which had been taken in consequence of the judgment of 25 June 1997, having regard to the United Kingdom's obligation under Article 53 of the Convention to abide by it;

Whereas during the examination of the case by the Committee of Ministers, the government of the respondent state gave the Committee information about the provisional measures taken preventing new violations of the same kind as those found in the present judgment, while new legislation is being examined (this information appears in the appendix to this interim resolution);

Having satisfied itself that on 9 July 1997, within the time-limit set, the government of the respondent state paid the applicant the sum provided for in the judgment of 25 June 1997,

Decides to continue, in accordance with its responsibilities under the Convention, the examination of the above case once the new legislative measures envisaged by the Government of the United Kingdom enter into force.

Appendix to Interim Resolution ResDH(99)725

*Information provided by the Government of the United Kingdom
during the examination of the Halford case
by the Committee of Ministers*

In order to give effect to the judgment of the European Court of Human Rights of 25 June 1997, the Government of the United Kingdom, issued a circular of 23 March 1999 offering guidance on the interception of non-public telecommunication networks. Such guidance is designed to ensure as far as possible and pending the adoption of the new legislation, that such breaches of the Convention, as found by the Court, do not recur.

In the above-mentioned circular, addressed to all government departments and chief officers of police, the Home Office indicates that the lack of a statutory framework for the interception of non-public networks formed the basis of an adverse judgment by the European Court of Human Rights and, hence, invites all the departments involved to ensure that the contents of the circular is made available as necessary to public bodies for which they are responsible.

The guidance mainly recalls that, in order for the interception of private networks to take place while complying with the Halford judgment, it is necessary to address the three elements of the judgment: expectation of privacy, adequate warning that interception might take place and interception in accordance with the law. It is for each operator to decide how best to implement the recommendations and to ensure that they have taken all reasonable steps to address the issues raised by the European Court of Human Rights.

Furthermore, the government has outlined its comprehensive legislative proposals for the field of the interception of communications in a consultation paper "The Interception of Communications in the United Kingdom", published in June 1999. Among other things, the paper specifically refers to the Halford case and makes proposals for legislative changes to give effect to the judgment. The responses to the consultation paper are being considered with a view to preparing a draft legislative proposal which will be introduced as soon as Parliamentary time allows.

The Government of the United Kingdom is of the opinion that this circular will help to prevent new violations of the Convention similar to those found, pending the entry into force of the new legislation.

➤ Action of the Security Forces in Northern Ireland

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

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)

Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix III

*(Adopted by the Committee of Ministers on 6 June 2007,
at the 997th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix III, in all of which the Court unanimously held that there had been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death of the applicants' next-of-kin and in one of which (McShane) the Court also held, unanimously, that there had been a failure by the State to comply with its obligations under Article 34 of the Convention (these findings are summarised in Appendix III to this Resolution);

Recalling the first Interim Resolution on these cases (IntResDH(2005)20), adopted on 23 February 2005, which took stock of the measures taken or envisaged by the United Kingdom authorities until that date and called on the Government of the respondent State rapidly to take all outstanding general and individual measures in order to comply with the Court's judgments and to keep the Committee regularly informed thereof;

Recalling that at the Summit held in Warsaw in May 2005, the Heads of State and Government underlined among other things that member states must accelerate the execution of the Court's judgments;

General measures

Noting the additional information provided by the Government of the respondent State regarding the general measures taken or envisaged since the adoption of the first Interim Resolution (see Appendix I);

Welcoming the significant progress that has been made;

Recalling that on the basis of the developments which have taken place and the clarifications given, the Committee has thus been able at the 948th (DH) meeting (November 2005) to close its examination of several aspects, namely the issues regarding

- the role of the inquest procedure in securing a prosecution in respect of any criminal offence,
- the scope of examination of inquests,
- the compellability of witnesses at inquests,
- the disclosure of witness statements prior to the appearance of a witness at the inquest and
- legal aid for the representation of the victim's family;

Recalling that details of the measures adopted and the reasons for the Committee's decision to close these issues have been explained in the memoranda made public by the Committee (the latest being CM/Inf(2006)4 revised 2);

Noting however that several issues remained outstanding, which are considered below;

- *The lack of independence of police investigators investigating an incident from those implicated in the incident*

Stressing the importance of securing independent police investigations in all cases in which Article 2 of the Convention might be at issue;

Recalling further the longstanding practice of the Chief Constable of the Police Service of Northern Ireland (PSNI) to request that serious incidents involving police officers be investigated by officers from another police force ("calling in arrangements");

Noting that the United Kingdom Government has recently assured the Committee that where the Chief Constable is satisfied that there are objective reasons to believe that an investigation by the PSNI would not be seen to be independent and no other independent investigation routes are available, he will promptly call in another Police Force to investigate the incident or incidents;

Recalling that decisions not to "call in" are subject to judicial review if an application in this regard is made;

Recalling the establishment in 2000 of the Police Ombudsman who has the power to investigate complaints against the police, to supervise the investigation of complaints by the Chief Constable and to investigate other matters of her own motion;

Noting further that Section 55(2) of the Police Service (Northern Ireland) Act 1998 provides that, "The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person";

Noting the clarifications given as regards the Ombudsman's powers to efficiently investigate complaints, and the authority of the Ombudsman's findings in the context of the Prosecution Service's decision whether or not to initiate prosecution;

Noting also the Police Ombudsman's duty to liaise effectively with victims' families;

Noting that the Police Ombudsman is currently conducting a five-yearly review of the working of the police complaints system focused on the operation of the legislation governing the operation of the Police Ombudsman's office;

Stressing the importance for the Police Ombudsman to possess the necessary means and powers with a view to conducting effective investigations in conformity with the Convention requirements;

INVITES the Government of the respondent State to provide the Committee with the Police Ombudsman's report of the five-yearly review of her powers and with the response of the authorities to its content;

- *Defects in the police investigations*

Noting the improved safeguards for the independence of police investigations and their relevance for the efficiency of these investigations;

Recalling the establishment, on 28 March 2003, of the Serious Crimes Review Team (SCRT), which has the task of providing a thorough and independent reappraisal of unresolved cases, with the aim of identifying and exploring any evidential opportunities that exist, and, if evidential opportunities are identified, to proceed with the investigation of the crime;

Noting with interest the establishment in late 2005 of the Historical Enquiries Team (HET), which has the same task and powers as the SCRT, but specifically in relation to historical cases attributable to the security situation in Northern Ireland between 1968 and 1998;

Welcoming the family-centred approach of the HET;

Recalling that the competence of the Police Ombudsman also covers past cases which might also fall within the remit of the HET;

Emphasising the importance, in particular for the victims' families, of good coordination between the HET and the Police Ombudsman as regards cases in which both of them have an investigative role to play, and in this context welcoming ongoing discussions on the Ombudsman-HET Protocol;

Considering that the HET has only approximately a year ago started reviewing cases assigned to it;

Emphasising the need for rapid progress in the investigation into all past cases that fall within the remit of the HET and/or the Police Ombudsman;

WELCOMES the progress achieved as regards the establishment of appropriate institutions for the purpose of conducting effective police investigations;

INVITES the authorities to continue to keep the Committee informed as regards the progress made in the investigation of historical cases, and in particular to provide information concerning concrete results obtained in this context both by the HET and by the Police Ombudsman;

- *The lack of public scrutiny of and information to victims' families on reasons for decisions of the Director of Public Prosecutions not to bring any prosecution*

Noting that the Code for Prosecutors came into operation in June 2005, which among other things sets out the Prosecution Service's policy on the giving of reasons for non-prosecution, including in cases where death is, or may have been, occasioned by the conduct of agents of the state;

Noting further that decisions of the Prosecution Service not to prosecute are subject to judicial review if an application in this regard is made;

DECIDES to close its examination of this issue;

- *The fact that the public interest immunity certificate in McKerr had the effect of preventing the inquest examining matters relevant to the outstanding issues in the case*

Noting the clarifications the United Kingdom authorities have provided on the new procedure, established in 2004, regarding public interest immunity certificates in inquest proceedings according to which the decision whether to issue such certificates is now taken by the coroner or the judge as the case may be, and that when making such decisions these officials today have access to the relevant information;

Noting further that coroners' decisions regarding public interest immunity certificates are subject to judicial review if an application in this regard is made;

DECIDES to close its examination of this issue;

- *The fact that the inquest proceedings did not commence promptly and were not pursued with reasonable expedition*

Taking note of the recent extensive reforms of the Coroners Service in Northern Ireland;

Welcoming the statement made by the United Kingdom authorities that these reforms will significantly shorten the length of inquest proceedings and the time before which an inquest will be opened;

Noting however that no concrete result of these reforms is yet measurable, because of the recent date on which these reforms were implemented and by the fact that all cases are treated in chronological order;

INVITES the authorities of the respondent State to continue to keep the Committee informed as regards the concrete effects of the reforms of the Coroners Service of Northern Ireland, in particular on the length of inquest proceedings and the length of the period before an inquest is opened;

- *The application of the package of measures to the armed forces*

Taking into account that cases in which a death occurs that might have been caused by an army officer are investigated by the police;

Noting that all the above-mentioned improvements apply to investigations into incidents involving army officers in which Article 2 of the Convention might be at issue, also if the incident in question took place in the framework of a joint operation of the army and the police;

Noting in particular that the United Kingdom Government has recently assured the Committee that where the Chief Constable is satisfied that there are objective reasons to believe that an investigation by the PSNI would not be seen to be independent and no other independent investigation routes are available, he will promptly call in another Police Force to investigate the incident or incidents arising from joint police/military operations;

DECIDES to close its examination of this issue;

Individual measures

Noting that the United Kingdom authorities view their obligations to take appropriate measures to implement the judgments in these cases as arising out of Article 46 rather than Article 2;

Recalling that the Court in principle refuses to indicate appropriate individual measures in such cases, but rather considers that it falls to the Committee of Ministers acting under Article 46 of the Convention to address the issues as to what may be required in practical terms by way of compliance in each case;

Recalling in this regard the respondent State's obligation under the Convention 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 the Committee's consistent position that there is a continuing obligation to conduct effective investigations inasmuch as procedural violations of Article 2 were found by the Court in these cases (see *inter alia* the first Interim Resolution in these cases, ResDH(2005)20);

Noting with interest the information provided by the Government of the respondent State regarding individual measures to erase the consequences of the violations found in these cases for the applicants and in particular that the investigations are ongoing (see Appendix II);

Regretting however that in this field, as opposed to in the field of general measures, progress has been limited and that in none of the cases an effective investigation has been completed;

Stressing that the necessity of taking such measures is all the more pressing in these cases, considering the seriousness of the violations found and the time that has elapsed since the European Court's judgments became final;

URGES the authorities of the respondent State to take, without further delay, all necessary investigative steps in these cases in order to achieve concrete and visible progress;

INVITES the Government of the respondent State to keep the Committee regularly informed thereof;

DECIDES to pursue the supervision of the execution of the present judgments until the Committee has satisfied itself that all general measures have been adopted and their effectiveness in preventing new, similar violations has been established and that all necessary individual measures have been taken to erase the consequences of the violations found for the applicants,

DECIDES therefore to resume consideration of these cases, as regards outstanding individual measures at each of its DH meetings and as regards general measures at intervals not longer than six months.

* * *

Appendix I to Interim Resolution CM/ResDH(2007)73

General measures

Additional information provided by the Government of the United Kingdom to the Committee of Ministers since the first Interim Resolution in these cases (Res/DH(2005)20) on general measures taken so far or envisaged to comply with the European Court's judgments

The Government of the United Kingdom recalls at the outset the information already provided and summarised in the first Interim Resolution in these cases (ResDH(2005)20), adopted at the 914th (DH) meeting (February 2005). They have provided the following additional information with respect to general measures to comply with the European Court's judgments in the present cases. This information is described in more detail in the memorandum on these cases (CM/Inf/DH(2006)4 revised 2) and in the addendum to this memorandum (CM/Inf/DH(2006)4 Addendum revised 3), both of which are public. The information below is categorised similarly as the information reflected in these documents.

A – Lack of independence of police investigators investigating an incident from those implicated in the incident

- Police Ombudsman

As regards the powers of the Police Ombudsman, legislation places a bar on the Ombudsman investigating matters which already have been the subject of disciplinary or criminal proceedings, except where there may have been a criminal offence or disciplinary proceedings, the case is grave or exceptional and there is fresh evidence. However, these conditions apply only to complaints made by members of the public to the Ombudsman. A number of public authorities (such as the Chief Constable or the Secretary of State) may also refer a case to her, and in some cases must do so. In this context, Section 55(2) of the Police Service (Northern Ireland) Act 1998 provides that "The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person". The Ombudsman may also, at her own discretion, begin an investigation. This power applies if it appears that a member of the police force may have committed a criminal offence or acted in a manner which would justify disciplinary proceedings and it is in the public interest for an investigation by the Ombudsman to take place. The Ombudsman has never been challenged over the exercise of her power to call herself into a case. Both the Chief Constable and the Ombudsman would take into account their respective obligations under the Convention, and Article 2 in particular, when considering the exercise of their discretion to refer or call-in a case.

The fact that a person has left the police force does not mean that they may not be investigated by the Ombudsman; what is relevant is whether or not a person was a member of the police force at the time of the incident under investigation. In the case of a person off duty, what is relevant is whether or not their status as a member of the police is relevant to the incident. A person who is no longer a serving police officer may no longer be the subject of disciplinary proceedings. This means that former officers are in the same position as other civilians when it comes to the powers the Ombudsman has to compel cooperation with an investigation. The legislation confers on the Ombudsman powers under the Police and Criminal Evidence (Northern Ireland) Order 1989 (see section 56 of the Police (Northern Ireland) Act 1998), so that her powers are the same as those of the police. Whether or not

the police or the Ombudsman have a power to compel cooperation in a particular case will depend on whether or not the person is a witness or a suspect.

Two examples of retrospective investigations carried out by the Police Ombudsman, in the cases of Brown and Devenny, have been provided to the Secretariat. In these cases the Ombudsman, after investigating the police handling of the respective investigations, made a number of recommendations to the Police Service of Northern Ireland (PSNI). The public statements she made in both cases can be found on her website at www.policeombudsman.org. The recommendations the Ombudsman made in these cases were implemented by the PSNI.

Where the Ombudsman finds evidential opportunities relating to the actions of police officers they will be exploited and, where appropriate, recommendations for prosecution forwarded to the Director of the Public Prosecution Service for Northern Ireland (DPP). Where evidence of crimes by individuals who are not police officers is uncovered this information will be passed to the PSNI for appropriate action.

The Public Prosecution Service disagreed with the recommendation of the Police Ombudsman on prosecution in roughly 3% of the cases that were transmitted.

As regards the average time needed for a Police Ombudsman investigation, more minor cases are dealt with by an informal resolution process requiring a minimal (informal) investigation and followed by a form of mediation. 91% of complaints suitable for informal resolution are referred within 3 days to the police who carry out the process which can normally be completed quite quickly. More serious cases would be dealt with by formal investigation and would ultimately involve the DPP and the Coroner. The average time for formal investigations to be completed is 117 days. This includes time taken up by the Coroner and the DPP fulfilling their role.

The Police Ombudsman has an extensive family liaison process. This involves the appointment of a named family liaison officer, with an identified telephone number, who is available to families as reasonably required. Families will be updated at 6-weekly intervals on the progression of the investigation. This process is quality assured and the most recent quality assurance tests indicate that such updating is occurring in 81% of cases. The Police Ombudsman has a target for the incoming year of ensuring that 90% of families are updated on a six-weekly basis. Ultimately the aim is to update all families every six weeks. The assumption is that information should be shared with families unless there are cogent reasons to withhold such information. There is a provision of the Police (Northern Ireland) Act 1998 which makes it a criminal offence for staff to disclose information other than in accordance with the Act. However this does not prevent proper disclosure of information to families.

The Police Ombudsman is aware that families need as much information as can be factually proved, as rapidly as it becomes available. Material made available to families has included information in relation to informants, intelligence held by the Royal Ulster Constabulary(RUC)/PSNI, police processes and practices, and the reasons given by officers in justification of their actions. The Police Ombudsman recognises the need to protect informants and also the need to protect sensitive investigation methodology. On occasion witnesses have also stated that they have been threatened or intimidated when they have given evidence to the Police Ombudsman's investigators, and the need to protect such witnesses means that details of their addresses etc will not be released. On occasion the Police Ombudsman has refrained from giving families information because disclosure of the information could prejudice an ongoing trial (accused persons could argue that the release of information would prejudice their ability to defend themselves). In those circumstances (and they are rigorously assessed) the Police Ombudsman will inform the families of matters in so far as it is possible, and will advise them that at the conclusion of the ongoing criminal proceedings further disclosure will be made to them.

A five-yearly review of the working of the police complaints system by the Police Ombudsman is currently ongoing. The review focuses on the operation of the legislation governing the operation of the Police Ombudsman's office. It is a large exercise involving extensive consultation both internally and externally. The review is expected to be completed in autumn 2007. When the review is completed and presented to the Secretary of State, the Northern Ireland Office will respond to its content.

- "Calling-in" arrangements

The arrangements used by the PSNI as regards calling-in arrangements have worked and continue to work well.

Generally, a decision to "call in" outside assistance will be initiated by the Chief Constable himself. In other cases, for example, cases which might fall within the remit of the Historical Enquiries Team (HET) (see under B), the decision to call in outside assistance may be taken by the Chief Constable after a considerable level of discussion with the Northern Ireland Office and other stakeholders, including the families. The decision to use outside assistance, however, remains a decision for the Chief Constable.

Section 55(2) of the Police Service (Northern Ireland) Act 1998 provides that "The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person".

Where the Chief Constable is satisfied that there are objective reasons to believe that an investigation by the PSNI would not be seen to be independent and no other independent investigation routes are available, he will promptly call in another Police Force to investigate the incident or incidents.

The decision by the Chief Constable whether or not to call in an outside force is subject to judicial review.

The question of resources is in general not decisive in the decision to "call in" assistance from another police service. In Northern Ireland there are no cases where resources, or a lack of resources, has been decisive in any decision to "call in" or not.

B - Defects in the police investigation

The United Kingdom authorities have indicated that, on 28 March 2003, the Chief Constable of the PSNI established the Serious Crimes Review Team (SCRT), whose remit is "to review a number of unsolved major crimes, including murder and rape, where it is thought that new evidential leads may be developed". If, as a result of this review, it appears that new evidence might come to light, reinvestigation of any of the present cases might follow.

The PSNI, with the support of and funding from the Northern Ireland Office, has established a new unit of the SCRT, that is dedicated to re-examining all deaths attributable to the security situation in Northern Ireland between 1968 and the Good Friday Agreement in 1998 ("the Troubles"). This Historical Enquiries Team (HET) has been designed to provide a thorough and independent reappraisal of unresolved cases, with the aim of identifying and exploring any evidential opportunities that exist. The HET is operationally independent and reports directly from its Head of Branch to the Chief Constable.

The review process is designed to be exhaustive, and includes a re-examination of all documentation, any exhibits associated with the case and any intelligence on the case (both internal, partner agencies and open source). The intention is to take advantage of any developments in forensic science (e.g. fingerprint technology, DNA possibilities) to identify any evidential opportunities arising from witnesses (either people never seen or where the passage of time allows for changed loyalties etc), and to exploit any potential opportunities from intelligence that may have arisen since or which were not used at the time.

If evidential opportunities are identified during the review process by the HET, the investigation of the death will proceed and where there is credible evidence available reports will be forwarded to the Public Prosecution Service with a view to prosecution. The investigation process will be undertaken 'in-house' by the HET, and will be focused on the evidential opportunities that the review process identifies.

The first and primary objective of the HET is to provide a 'family centred' approach, seeking to identify and address issues that are unresolved from the families' perspectives. The HET's intention is to address, as far as possible, all the unresolved concerns that families raise. A bespoke Family Liaison Strategy has been designed, comprising a help desk, individual liaison officers for families and access for families to the two senior commanders in any case that is required. The principle that the HET

adopts in dealing with families, underwritten personally by the Chief Constable, is maximum permissible disclosure, in line with legal and ethical considerations.

As regards the possible interplay between the HET and the Police Ombudsman with regard to historical cases, the HET have a very good working relationship with the Office of the Police Ombudsman (OPONI). Since the inception of the unit, discussions have taken place on how issues that affect each agency, within individual or linked cases, can be progressed. A programme of minuted meetings has been instituted, at strategic (monthly), tactical (weekly) and operational (as required) levels. The HET have provided office space and IT support for an OPONI presence at the HET site. To preserve the independence of each party, discussions are continuing on how a parallel investigation process can best be managed in relevant cases. At present, the HET's view is that those cases that allegedly involve the actions of police officers exclusively will be reviewed by the Ombudsman alone, however the HET is committed to supporting them in any way possible that legislation allows. In those cases of parallel investigation (e.g. some police and some external collusion alleged) the meetings structure is designed to facilitate prompt exchange of relevant information and co-ordinated investigative response.

C – Lack of public scrutiny of and information to victims' families on reasons for decisions of the Director of Public Prosecutions not to bring any prosecution

The Code for Prosecutors came into operation on 13 June 2005. The Code, among other things, sets out the Prosecution Service's policy on the giving of reasons for decisions not to prosecute. It states that, "the Prosecution Service recognises that there may be cases arising in the future, which it would expect to be exceptional in nature, where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. Subject to compelling grounds for not giving reasons, including duties under the Human Rights Act 1998, the Prosecution Service accepts that in such cases it will be in the public interest to reassure a concerned public, including the families of victims, that the rule of law has been respected by the provision of a reasonable explanation. The Prosecution Service will reach a decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case."

The Code itself is not binding but it gives rise to obligations that can be enforced in law. Judicial review is possible under two heads. Firstly, a freestanding challenge to a failure to give detailed reasons for a decision not to prosecute would be possible under the Human Rights Act, based on the failure to conduct an Article 2-compliant investigation. The possibility to bring such a challenge existed independently of any Code for Prosecutors. Secondly, in accordance with a well developed doctrine in domestic law in the United Kingdom, if a public body states that it will follow a given policy, this creates a legitimate expectation that the body will follow that policy unless there exist compelling reasons not to do so. Judicial review is possible on the basis of this legitimate expectation and is therefore possible on the basis of legitimate expectations arising out of the Code.

On a judicial review of a decision by the Prosecution Service in respect of the giving of reasons for not prosecuting, the court will review whether the reasons given in that case were in accordance with the Code for Prosecutors and were capable of supporting the decision not to prosecute. Such review will be conducted on the basis of consideration by the court of relevant correspondence and affidavit(s) sworn on behalf of the Prosecution Service for the judicial review proceedings. Generally, the court will also have access to relevant witness statements upon which the decision for no prosecution was made by the Prosecution Service.

It is open to the court to conclude that the reasons given are manifestly bad reasons and that the maker of the decision for no prosecution had failed to take relevant matters into account or had taken irrelevant matters into account. In such circumstances the court would almost certainly grant an order of certiorari. The effect of such an Order is to quash the original decision for no prosecution. This would require the Prosecution to reconsider the case and come to a fresh decision on prosecution.

The United Kingdom authorities have provided several examples of decisions on judicial review of decisions by the prosecutor not to prosecute.

D – The inquest procedure did not allow any verdict or findings which might play an effective role in securing a prosecution of any criminal offence and E - The scope of the examination for the inquest was too restricted

By way of example of the application in practice of the principles set out in the *Middleton* case (*R v. Her Majesty's Coroner for the Western District of Somerset (Respondent) and another (Appellant) ex parte Middleton (FC) (Respondent)* [2004] UKHL 10) and in the case of *Jordan* ([2004] NICA 29 and [2004] NICA 30), the United Kingdom authorities provided a total of eleven copies of verdicts on inquests. These included both narrative verdicts and verdicts in which the jury made detailed findings of fact in response to a list of specific questions asked by the coroner.

F – The persons who shot the deceased could not be required to attend the inquest as witnesses

The United Kingdom authorities referred to the information previously provided to the Committee, summed up in the first Interim Resolution in these cases (ResDH(2005)20 of February 2005).

G – Non-disclosure of witness statements prior to the appearance of a witness at the inquest prejudiced the ability of families to prepare for and to participate in the inquest and contributed to long adjournments in the proceedings

The Northern Ireland Court Service has contacted all coroners in its jurisdiction, and all of the coroners confirmed that in Article 2 cases where there is no public interest immunity certificate, families of the deceased will be given witness statements and will be informed of the relevant information that the coroner has, as soon as the relevance of the information and the absence of such a certificate has been established.

H – Absence of legal aid for the representation of the victim's families

The United Kingdom authorities referred to the information previously provided to the Committee, summed up in the first Interim Resolution in these cases (ResDH(2005)20 of February 2005).

I – The public interest immunity certificate in McKerr had the effect of preventing the inquest examining matters relevant to the outstanding issues in the case

Public interest immunity issues at inquests are dealt with in the same manner as in litigation, but modified to take account of the coroner's inquisitorial role. If the coroner identifies documents which contain material the disclosure of which would cause real damage to the public interest, for example the identity of an informant, revelation of whose role would put his or her life at risk (thereby engaging Article 2 of the Convention), then it will be for the relevant Minister (or the Chief Constable) to decide whether a claim for public interest immunity should be asserted.

The Minister (or Chief Constable) will conduct a balancing exercise between the damage to the public interest if the material was disclosed and the public interest in disclosure. If he considers the balance falls in favour of disclosure he will not assert a claim for public interest immunity and the material will be disclosed. If he considers the balance falls against disclosure he will assert a claim for public interest immunity. Whether the claim for public interest immunity is asserted by a Minister or by the Chief Constable will depend on the nature of the information which is to be protected and whether a certificate is required. At present in Northern Ireland all public interest immunity certificates are signed by Ministers.

If the Minister (or Chief Constable) decides to assert a claim for public interest immunity, the coroner will in turn conduct a similar balancing exercise. He may examine the documents in order to carry out that exercise. The coroner will then make his own decision as to where the balance of the public interest falls. That decision may be that the balance falls in favour of disclosure or against. The coroner is not bound by the Minister's (or Chief Constable's) decision to assert a claim for public interest immunity. If the coroner decides the balance falls in favour of disclosure the document will be disclosed unless the Minister (or Chief Constable) successfully applies for judicial review. A decision by the coroner in agreement with the Minister's (or Chief Constable's) public interest immunity claim could also be challenged by judicial review. Therefore, a judicial authority makes the ultimate decision

about whether material should be disclosed or not, taking into account potentially competing Convention rights and the circumstances of the individual case.

The coroner's decision to allow or disallow a public interest immunity claim may be challenged by judicial review.

J – The inquest proceedings did not commence promptly and were not pursued with reasonable expedition

A paper on Modernising the Coroners Service in Northern Ireland was published by the Northern Ireland Court Service on 1 April 2005. This reforms proposed in this paper have been fully implemented and the new coroners service was launched on 14 June 2006. The programme included the following reforms:

- the creation of a single Northern Ireland coroners jurisdiction;
- the appointment of a High Court Judge as presiding judge for the Coroners Service;
- the creation of a full time coronial judiciary with the appointment of two new full time coroners to work alongside the existing senior coroner;
- the appointment of coroners liaison officers to provide an improved service to bereaved families, and
- new accommodation and a new computer system.

In addition, new information leaflets have been developed including a Coroners Service Charter which set out the service standards that can be expected, with specific regard to the families' rights to participate during coroners investigations and inquests.

The authorities indicated that these reforms will significantly shorten the length of inquest proceedings and the time before which an inquest will be opened. They have also indicated that the overall number of outstanding cases will decrease as a result of the new structure. However, there will always be a number of outstanding cases for reasons outside the coroner's control, for example, cases awaiting the receipt of a final post-mortem report.

Recent statistics available on inquest proceedings show that the average time between the date of death and the start of an inquest for the District of Greater Belfast in 2005 was 108.81 weeks. The coroners are targeting the oldest cases first to deal with the backlog of cases, and this has an impact on the statistics for average time frame. The number of cases pending before the coroner is 1,472. This was the figure at the end of 2005 and this figure excludes the district of North Antrim (which goes up to the end of June 2005). The figure of 1,472 includes all deaths reported to the coroner. In respect of the majority of these deaths the coroner is likely to decide no further investigation is required following inquiries or a post mortem, and that therefore an inquest should not be held.

K – Issues relating the application of the package of measures to the armed forces

The Police Ombudsman's competence to investigate complaints concerning police conduct extends to complaints concerning police investigations into deaths caused by members of the armed forces.

It is the Chief Constable's decision on whether to seek assistance from another police force (call-in). This remains the case where operations have been conducted jointly with the armed forces. In making such a decision the Chief Constable exercises his professional judgement. The Chief Constable is very conscious of the need to ensure that, in appropriate cases, an incident involving the armed forces is investigated by persons who are independent of those implicated in the incident.

Where the Chief Constable is satisfied that there are objective reasons to believe that an investigation by the PSNI would not be seen to be independent and no other independent investigation routes are available, he will promptly call in another Police Force to investigate the incident or incidents arising from joint police/military operations.

Decisions by the Chief Constable are, as stated under A, challengeable in the courts through judicial review.

The handling of complaints made against the Armed Forces depends on the specific nature of the complaint. All complaints alleging criminal conduct by soldiers are investigated by the PSNI and the Armed Forces fully cooperate with all such investigations as required. If, following investigation, the police decide a soldier may have broken the law, they will pass the evidence to the Public Prosecution Service which will decide if a prosecution should take place.

Non-criminal or informal complaints are dealt with by either the Civil Secretary at the Armed Forces' Headquarters Northern Ireland, Lisburn, or a Civilian Representative (Civ Rep), who will conduct an investigation locally. Significantly, as civil servants employed by the Northern Ireland Office, Civ Reps have an impartial status, acting as liaison between members of the local community and the Armed Forces. The vast majority of complaints are resolved informally, to the satisfaction of both parties. In some cases, the Claims Investigation Team (CIT), made up of Royal Military Police (RMP) personnel wholly independent of the military chain of command, will also conduct non-criminal investigations and enquiries. Their primary function is to investigate Litigation Claims lodged against the MOD.

Since 1993 there has been an Independent Assessor of Military Complaints Procedures (IAMCP), who reviews the Army's procedures for investigating non-criminal complaints against members of the Armed Forces in Northern Ireland, and in doing so seeks to reassure the public that there is independence in the procedures. He may periodically call in at the Headquarters in Northern Ireland to see files or to check on the procedures of an investigation and is given access to relevant files as required. The remit of the IAMCP is set out in Section 98 and Schedule 11 of the Terrorism Act 2000. Under his statutory terms the Assessor can investigate the handling of a, "complaint about the behaviour of a member of Her Majesty's forces under the command of the General Officer Commanding Northern Ireland," and specifically: "(a) shall keep under review the procedures adopted by the General Officer Commanding Northern Ireland for receiving, investigating and responding to complaints to which this section applies, (b) shall receive and investigate any representations about those procedures, (c) may investigate the operation of those procedures in relation to a particular complaint or class of complaints, (d) may require the General Officer Commanding to review a particular case or class of cases in which the Independent Assessor considers that any of those procedures have operated inadequately, and (e) may make recommendations to the General Officer Commanding about inadequacies in those procedures, including inadequacies in the way in which they operate in relation to a particular complaint or class of complaints." Further, as outlined in schedule 11, "the Independent Assessor may report to the Secretary of State on any matter which comes to his attention in the course of the performance of his functions."

* * *

Appendix II to Interim Resolution CM/ResDH(2007)73

Individual measures

Information provided by the Government of the United Kingdom to the Committee of Ministers on individual measures taken so far or envisaged to comply with the European Court's judgments

The United Kingdom authorities have underlined that they view their obligations in these cases as arising out of Article 46 rather than Article 2. The Government has confirmed its commitment to abide by the judgments of the Court in these cases and to implement the judgments, in accordance with Article 46. This commitment is not affected by the findings of the House of Lords in the *McKerr* judgment of 11 March 2004 (*In re McKerr* [2004] 1 WLR 807) that the Human Rights Act 1998 does not have retrospective effect and that under domestic law, there was no continuing breach of Article 2 in that case. The House of Lords' judgment does not address the question of the measures to be taken in implementation of the international obligations arising under Article 46.

In the latter respect, different factors are at issue in each case and some reveal more problems than others. Further proceedings have been conducted and the Government considers that any measures required are under way in each case. The main question, in the Government's view, is whether, on the facts in each case, a fresh investigation is actually possible. The Government concedes that new investigations in the present cases could not satisfy the Convention requirements in respect of promptness and expedition.

Information regarding the proceedings conducted prior to the judgment in each case is contained in the relevant judgments. The following information, provided by the Government, concerns the measures currently under way in each case:

In the Jordan case, the inquest opened in January 1995 experienced a series of adjournments relating, inter alia, to a number of judicial review applications by the applicants or in similar cases. The inquest had been suspended pending the outcome of the family's petition to the House of Lords regarding the scope of the inquest. It is now open for the inquest to proceed following the House of Lords decision of 28 March 2007 in the cases of *Jordan and McCaughey (Jordan v. Lord Chancellor and another (Northern Ireland); McCaughey v. Chief Constable of the Police Service Northern Ireland (Northern Ireland) [2007] 2 WLR 754*).

Civil proceedings were also instituted in 1992 alleging death by wrongful act. The applicant wishes to await the outcome of the inquest before pursuing civil action further.

In the McKerr case, the family of Mr McKerr brought legal proceedings seeking to compel the Government to provide a fresh investigation into his death. These proceedings concluded with the House of Lords' judgment, delivered on 11 March 2004 (reference above). In that case, the House of Lords declined to order a fresh investigation, as it considered that no right to an investigation in accordance with the procedural requirements of Article 2 of the Convention existed under domestic law at the time of the relevant events and that as such, there could be no continuing right under domestic law to such an investigation at present since the Human Rights Act (which came into force on 2 October 2000) did not apply retrospectively. The House of Lords left open, however, the question whether such a continuing obligation existed under international law in this case. Two of the five judges did not address the issue; the remaining three doubted that there was such an obligation. The House of Lords observed that the Committee of Ministers had not yet decided whether the Government's proposals for implementation (which did not at that time allow for further investigation into the death in McKerr) were sufficient. It may be recalled that the Committee has, since then, adopted the first Interim Resolution in these cases (Res/DH(2005)20).

The case is now a matter for the Police Ombudsman who is responsible for investigating deaths as a result of the actions of a police officer. She will identify possible further evidentiary opportunities and will look into the original police investigation conducted. The case has been referred to the Ombudsman in accordance with the HET/OPONI protocol and the Ombudsman has given an assurance to expedite the case as best she can. OPONI are aware of the issues associated with the case.

The Kelly and others case concerned a single incident in which nine men were killed. These deaths are among 3000 cases which fall within the terms of reference of the HET. The review process is currently underway. Progress depends on evidential leads, and it is therefore impossible to assess at this stage when a final conclusion will be reached.

As regards civil actions, the family of Anthony Hughes issued proceedings against the Ministry of Defence in 1988 and the case was settled in 1991. Six other families, including the Kelly family, issued proceedings in 1990 but the families have not set down the cases for hearing.

The Shanaghan case also falls within the terms of reference of the HET, since the perpetrator of the shooting was never identified. The HET are currently reviewing this case to assess if any new evidential opportunities exist. Research is ongoing in relation to fingerprints. The family met senior officers from the HET and have agreed to engage with the Team. Further engagement between the Senior Investigating Officer and the family have taken place. After this review, the HET will decide how to take the case forward. It is not possible to say at this stage when there will be an outcome from this review.

The applicant has taken no further steps in the civil proceedings commenced in 1994.

In the McShane case, an inquest was opened in May 1998 but adjourned pending the outcome of various legal proceedings and decisions at domestic level. However, a full-time coroner has now been assigned to this inquest which commenced in early 2005. He is now in the process of attempting to obtain further video footage of the incidents surrounding the death of Mr McShane as well as

additional statements to which the Committee on the Administration of Justice might have access. In light of the hearing of the *Jordan and McCaughey* appeal in the House of Lords and following consultation with interested parties, including representatives of the deceased's family, the coroner had however indicated that he was not minded to list the inquest into the death of Mr McShane prior to judgment being given by the House of Lords. It is now open for the inquest to proceed following the House of Lords decision in *Jordan and McCaughey*. The coroner remains under an obligation to report to the Director of Public Prosecutions any evidence that comes to light at the inquest that appears to disclose that a criminal offence may have been committed.

This case will also be reassessed by the HET. They allocated the case to the Review and Investigation stage on 13 December 2006.

The applicant has not moved forward with civil proceedings brought against the Ministry of Defence and the Chief Constable of the Royal Ulster Constabulary.

In the *Finucane* case, two special police inquiries (the first two Stevens inquiries) were instituted to respond to concerns arising out of allegations of collusion between loyalist organisations and the security forces. The first of these two inquiries led to the reporting or charging of 59 people and the conviction of one person of conspiracy to murder persons other than Patrick Finucane. The second inquiry did not lead to the prosecution of any person.

The United Kingdom authorities have indicated that the third Stevens inquiry should be regarded as the individual measure aimed at fully executing the Court's judgment in this case. The investigation, which started in April 1999, is ongoing. The inquiry is squarely concerned with the Finucane murder. 17 individuals have so far been arrested in the course of the investigation in connection with the murder of Mr Finucane. One person has so far been successfully prosecuted for this murder.

On 15 April 2003, 63 files were submitted to the Prosecution Service by the Stevens Team. The subjects of some of these files are serving or former PSNI and Army personnel. These files remain under consideration by the Prosecution Service, which has kept close contact with the Attorney General regarding the issue.

In addition, the Government announced on 23 September 2004 that steps could now be taken to implement the decision to hold a new inquiry into this death. The inquiry will be held on the basis of the Inquiries Act 2005, which is designed to provide a statutory framework for a wide range of future inquiries, and its provisions are based to a large extent on existing legislation and practice. Most of the inquiries that will be held under it are in the Government's view not likely to engage Article 2. However, the Government is satisfied that, in those cases in which Article 2 is engaged, the Act is capable of being used to hold an inquiry that will discharge or contribute to the discharge of the state's obligations under that article to provide an effective official investigation. The Government also emphasised that the provisions of the Inquiries Bill had been scrutinised in great detail by Parliament, and that the House of Lords had made a number of amendments to strengthen the role of the inquiry chairman, to increase parliamentary involvement in inquiries and to provide for public access to inquiry records under the Freedom of Information Act 2000.

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Appendix III to Interim Resolution CM/ResDH(2007)73

Judgments concerning violations of the Convention by or involving allegations of collusion by the United Kingdom security forces pending before the Committee of Ministers for supervision of execution

Application number	Case name	Date of judgment	Date of final judgment
24746/94	Jordan	04/05/2001	04/08/2001
28883/95	McKerr	04/05/2001	04/08/2001
30054/96	Kelly and others	04/05/2001	04/08/2001
37715/97	Shanaghan	04/05/2001	04/08/2001

43290/98	McShane	28/05/2002	28/08/2002
29178/95	Finucane	01/07/2003	01/10/2003

In the above cases the Court found that there had been a violation of Article 2 of the Convention in respect of various failings in the investigative procedures concerning the death of the applicants' relatives. The various failings may be summarised on a case-by-case basis as follows:

- Lack of independence of police investigators investigating the incident from the officers or members of the security forces implicated in the incident

Jordan, McKerr, Kelly and others, Shanaghan, McShane, Finucane

- The independent police investigation did not proceed with reasonable expedition

McKerr, McShane

- Lack of public scrutiny and information to the victims' families on the reasons for the decision of the Director of Public Prosecutions not to prosecute any officer in respect of relevant allegations

Jordan, McKerr, Kelly and others, Shanaghan, Finucane

- The inquest procedure did not play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed

Jordan, McKerr, Kelly and others, Shanaghan, McShane, Finucane

- The scope of examination of the inquest was too restricted

Shanaghan, Finucane

- There was no prompt or effective investigation into allegations of collusion

Shanaghan, Finucane

- The persons who shot the deceased, and in the McShane case, the soldier who drove the armoured personnel carrier that fatally injured the applicant's husband, could not be required to attend the inquest as witnesses

Jordan, McKerr, Kelly and others, McShane

- The non-disclosure of witness statements prior to the appearance of a witness at the inquest prejudiced the families' ability to prepare for and to participate in the inquest and/or contributed to long adjournments

Jordan, McKerr, Kelly and others, Shanaghan, McShane

- The absence of legal aid for the representation of the victim's family

Jordan

- The public interest immunity certificate had the effect of preventing the inquest from examining matters relevant to the outstanding issues in the case

McKerr

- The inquest proceedings did not commence promptly and did not proceed with reasonable expedition

Jordan, McKerr, Kelly and others, Shanaghan, McShane

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution ResDH(2005)20 Action of the Security Forces in Northern Ireland (Case of McKERR against the United Kingdom and five similar cases)

Measures taken or envisaged to ensure compliance with the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix III

*(Adopted by the Committee of Ministers on 23 February 2005
at the 914th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 (hereinafter referred to as "the Convention"),

Having regard to the judgments of the European Court of Human Rights in the cases against the United Kingdom listed in Appendix III and forwarded to the Committee of Ministers for supervision of their execution once they had become final under Article 44 of the Convention;

Recalling that in all these cases the applicants complained of violations of their right to an effective investigation into the death of their next-of-kin at the hands of the police or armed forces in Northern Ireland or in circumstances giving rise to allegations of collusion between the security forces and the killers;

Whereas in all of these judgments the Court unanimously held that there had been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death of the applicants' next-of-kin (these findings are summarised in Appendix III to this resolution);

Whereas in the McShane case the Court also held, unanimously, that there had been a failure by the State to comply with its obligations under Article 34 of the Convention;

Having regard to the Rules adopted by the Committee of Ministers concerning the application of Article 46, paragraph 2, of the Convention;

Having invited the government of the respondent State to inform it of the measures which have been taken in consequence of the judgments, delivered on 4 May 2001, 28 May 2002 and 1 July 2003, having regard to the United Kingdom's obligation under Article 46, paragraph 1, of the Convention to abide by them;

Having satisfied itself that the government has paid the applicants the sums provided for in the judgments;

Whereas, from the outset of the Committee's examination of the present cases, the government of the respondent State has reiterated its commitment to abide by the Court's judgments in these cases in accordance with its obligations under Article 46, paragraph 1;

Whereas the government of the respondent State has provided the Committee with information about the general measures taken so far or envisaged to this effect (this information appears in Appendix I to this resolution);

Whereas the said government has also provided information in each of these cases regarding the issue of individual measures to erase the consequences of the violations found for the applicants (this information appears in Appendix II to this resolution);

General assessment of the Committee of Ministers

Welcomes the firm commitment of the government of the respondent State to abide by the judgments of the Court in the present cases;

Takes note with interest of the information provided by the government of the respondent State regarding the general measures taken so far or envisaged to comply with the judgments;

Notes nonetheless that certain general measures remain to be taken and that further information and clarifications are outstanding with regard to a number of other measures, including, where appropriate, information on the impact of these measures in practice;

Notes in this connection that the Committee's on-going assessment of measures taken so far or envisaged covers the range of issues referred to in the appended information, inter alia:

- "calling in" arrangements for police investigations;
- the role of the Serious Crimes Review Team;
- the possibility of judicial review of decisions not to prosecute;
- new practices with respect to the verdicts of coroners' juries at inquests;
- developments regarding disclosure at inquests;
- legal aid for inquests under the previous *ex gratia* scheme;
- measures to give effect to recommendations following reviews of the coroners' system;
- the Inquiries Bill intended to serve as a basis for a further inquiry in one of these cases;

Calls on the government of the respondent State rapidly to take all outstanding measures and to continue to provide the Committee with all necessary information and clarifications to allow it to assess the efficacy of the measures taken, including, where appropriate, their impact in practice;

Recalls that the obligation to take all such measures is all the more pressing in cases – such as these – where procedural safeguards surrounding investigations into cases raising issues under Article 2 of the Convention are concerned;

Notes the information provided by the government of the respondent State regarding individual measures to erase the consequences of the violations found in these cases for the applicants;

Recalls in this regard the respondent State's obligation under the Convention 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 the Committee's consistent position that there is a continuing obligation to conduct such investigations inasmuch as procedural violations of Article 2 were found in these cases;

Calls on the government of the respondent State rapidly to take all outstanding individual measures in these cases and to keep the Committee regularly informed thereof;

Conclusions of the Committee of Ministers

DECIDES to pursue the supervision of the execution of the present judgments until all necessary general measures have been adopted and their effectiveness in preventing new, similar violations has been established and the Committee has satisfied itself that all necessary individual measures have been taken to erase the consequences of the violations found for the applicants,

DECIDES also to resume consideration of these cases, as far as individual measures are concerned, at each of its DH meetings, and, as far as outstanding general measures are concerned, at the latest within nine months from today.

Appendix I to Interim Resolution ResDH(2005)20

*Information provided by the Government of the United Kingdom
to the Committee of Ministers on general measures taken so far or envisaged to comply with the
European Court's judgments*

The Government of the United Kingdom has provided the following information with respect to general measures taken so far or envisaged to comply with the European Court's judgments in the present cases. Furthermore, in order to demonstrate its firm commitment to abide by the judgments and to allow a transparent and open debate on these measures, the Government wishes to point out that the most recent memorandum prepared for the Committee of Ministers' examination of the present cases (document CM/Inf/DH(2004)14rev2) was made public on 6 January 2005.

Independence of police investigators investigating an incident from the officers or members of the security forces implicated in the incident

Investigations into deaths allegedly caused by the police

- Police Ombudsman

Since November 2000, there has been an independent Police Ombudsman in Northern Ireland, established by virtue of the Police (Northern Ireland) Act 1998, with the power to investigate all complaints against the police, including deaths alleged to have been caused by police officers acting in the course of their duty. Where it appears that the conduct of a member of the police service may have resulted in the death of a person the Chief Constable is required, under section 55(2) of the Act, to refer the matter to the Police Ombudsman. The Ombudsman is an independent authority and has her own team of independent investigators. She can recommend criminal or disciplinary proceedings against police officers and may direct that disciplinary proceedings be brought where the Chief Constable refuses to do so. The Ombudsman does not adjudicate on guilt or punishment.

Where the Ombudsman considers that the report of the investigation indicates that a criminal offence may have been committed by a police officer, the Ombudsman is required to send a report, together with any appropriate recommendations, to the Director of Public Prosecutions, who carefully considers the evidence, information and recommendations of the Ombudsman. It is for the DPP to decide if a prosecution should be commenced; this decision is based on the application of the test for prosecution, namely whether there is sufficient, admissible evidence to afford a reasonable prospect of conviction and, if there is, whether prosecution is in the public interest. In all cases, the DPP informs the Ombudsman by letter of the decision taken and the reasons for it. The principles governing the giving of reasons for decisions not to prosecute, described below (see under "Public scrutiny..."), apply.

- "Calling-in" arrangements

In addition, under the Police Act 1996, where one police service may provide aid to another, the Chief Constable of the Police Service of Northern Ireland (PSNI) may request that an incident be investigated by officers from a police service from Great Britain. It is a matter for the professional judgment of the Chief Constable to decide if the assistance of another police service is required in an investigation, taking account of local knowledge, interpretation of any intelligence, or any specialised skills that may be required. When such assistance is required, an appropriate police service is identified in discussion with Her Majesty's Inspector of Constabulary.

Cases identified by the Chief Constable as potentially requiring the appointment of an external service are monitored and discussed with the Policing Board. Moreover, the Chief Constable, as a public authority within the meaning of the Human Rights Act 1998, would, under section 6(1) of the Act, be acting unlawfully if he acted in a manner incompatible with a Convention right. His decision whether or not to call in an outside force may accordingly be subject to judicial review.

Investigations into deaths allegedly caused by the armed forces

In accordance with the relevant legislation and the Queen's Rules, military law does not apply to certain criminal offences, including murder, manslaughter, genocide, aiding, abetting, counselling or procuring suicide and various other offences. In Article 2 cases, therefore, as a matter of law, it is not the military but the civil authorities that investigate and prosecute. Accordingly, investigations into deaths caused by members of the armed forces are carried out by the police, who are separate from the armed forces and who are subject to scrutiny by the Police Ombudsman. The police investigation is subject to the Chief Constable's discretion to ask that the incident be investigated by another police force.

Allegations of collusion involving members of the armed forces and the police

Where there is an allegation of collusion involving members of the armed forces and the police, the Chief Constable of the PSNI may use his above-mentioned powers to bring in an outside police force to investigate.

Steps taken in response to defects identified in police investigations

On 28 March 2003, the Chief Constable of the PSNI established the Serious Crimes Review Team (SCRT), whose remit is "to review a number of unsolved major crimes, including murder and rape, where it is thought that new evidential leads may be developed". More than 2000 cases of unresolved deaths are to be examined by the SCRT. If, as a result of this review, it appears that new evidence might come to light, reinvestigation of any of the present cases might follow. The passage of time remains an influencing factor in that it can inevitably affect the availability of witnesses, exhibits and documentation, but it cannot be used in itself as a bar to reinvestigation.

The PSNI has adopted a three-stage approach to "historical" cases. First, a preliminary case assessment is carried out to ascertain if any potential evidential opportunities exist to move the investigation forward. Second, where these are identified then a full deferred case review will be commissioned by the Assistant Chief Constable. Subsequently, as the third stage of the process, the case may be referred to a murder investigation team for further investigation subject to the accepted recommendations of the Review.

The work of the SCRT is painstaking and places significant demands on police resources. As a consequence the Government have been discussing with the PSNI how this work might be expanded to process greater numbers of unresolved deaths and to do so in a way that commands the confidence of the wider community.

Public scrutiny of and information to victims' families on reasons for decisions of the Director of Public Prosecutions not to prosecute any officer in respect of relevant allegations

Judicial review of a failure to give detailed reasons for a decision not to prosecute in Article 2 cases would now be possible under the Human Rights Act 1998, based on the failure to conduct an Article 2-compliant investigation. This amounts to a claim of unlawfulness and already exists, independently of any further measures taken.

In addition, on 1 March 2002 the Attorney General tabled a statement in the House of Lords which recognised that there may be cases arising in the future where an expectation will arise that a reasonable explanation will be given for not prosecuting where death is, or may have been, occasioned by the conduct of agents of the State. The statement indicated that the Director of Public Prosecutions accepted that in such cases it would be in the public interest to reassure a concerned public, including the families of victims, that the rule of law had been respected by the provision of a reasonable explanation. The Director would reach a decision as to the provision of reasons, and their extent, having weighed the applicability of public interest considerations material to the particular facts and circumstances of each individual case.

A draft Code for Prosecutors in Northern Ireland was published for consultation in March 2004. Section 4.11 of the Code sets out the DPP's policy on the giving of reasons, which notes that in many

cases the reason for non-prosecution is a technical one, lists the main interests at stake in striking a balance between the proper interest of victims, witnesses and other concerns, and reiterates almost verbatim the statement of the Attorney General referred to above. As regards the giving of reasons for not prosecuting where death is, or may have been, caused by state agents, this text clearly reflects the policy announced by the Attorney General in 2002 and is not subject to change. The final Code, like the drafts, will be public. It is intended that the final Code will be produced in spring 2005.

In accordance with a well developed doctrine in domestic law in the United Kingdom, if a public body states that it will follow a given policy, this creates a legitimate expectation that the body will follow that policy unless there exist compelling reasons not to do so. Judicial review of decisions not to prosecute in Article 2 cases would therefore be possible on the basis of the legitimate expectation arising out of the Attorney General's statement of 1 March 2002, and will in future be possible on the basis of legitimate expectations arising out of the Code.

In addition, as regards information to victims' families more generally, both the PSNI and the Police Ombudsman now have family liaison officers, whose duty is to keep in contact with a victim's family during the course of an investigation.

Role of the inquest procedure in securing a prosecution in respect of any criminal offence that may have been disclosed

The inquest provides a public forum for the investigation of a death. The inquest is heard in a courtroom open to the public. It is the practice of coroners to sit with a jury in inquests into the deaths of persons alleged to have been killed by the security forces (although this is not a statutory obligation). It is a statutory requirement under the Coroners Act (Northern Ireland) 1959 that the inquest determine who the deceased was and how, when and where he or she came to his or her death.

Under Article 6 of the Prosecution of Offences (Northern Ireland) Order 1972, the coroner is required to send to the Director of Public Prosecutions a written report where the circumstances of any death appear to disclose that a criminal offence may have been committed. The report will include all the evidence before the coroner together with a full record of the proceedings. Upon receipt of such a report, the Director of Public Prosecutions for Northern Ireland considers the evidence then available to him to determine whether to prosecute. Such a report will either result in a prosecution or in the Director applying the new policy on the giving of reasons.

In addition, the House of Lords delivered judgment on 11 March 2004 in the *Middleton* case (*R v. Her Majesty's Coroner for the Western District of Somerset (Respondent) and another (Appellant) ex parte Middleton (FC) (Respondent)* [2004] UKHL 10). This judgment makes clear that in order to provide an Article 2-compliant investigation, an inquest is required, when examining "how" the deceased came by their death, to determine not only "by what means" but also "*in what circumstances*" the deceased came by their death. This means that inquests are now required to examine broader circumstances surrounding the death than was previously the case.

Following this judgment, the Court of Appeal in Northern Ireland found on 10 September 2004 in the case of *Jordan* ([2004] NICA 29 and [2004] NICA 30) that Rule 16 of the Coroners' Rules for Northern Ireland could and must be read in such a manner as to allow the inquest to set out its findings regarding the contested relevant facts that must be determined to establish the circumstances of the death. This could be achieved either in the form of a narrative verdict or of a verdict giving answers to a list of specific questions asked by the coroner.

By way of example of the application of these principles in practice, the United Kingdom authorities have provided a copy of a verdict on inquest delivered in the County Court Division of Greater Belfast on 24 August 2004, in which the jury made detailed findings of fact in response to a list of specific questions asked by the coroner.

Scope of examination of inquests

It is the duty of the coroner to decide on the scope of an inquest. The coroner is a "public authority" for the purposes of section 6(1) of the Human Rights Act 1998, and it is thus unlawful for him to act in a manner incompatible with the Convention rights. Accordingly, if an issue is now raised at an inquest which, under Article 2 of the Convention, ought to be the subject of investigation (such as an allegation of collusion by the security forces), it is the duty of the coroner to act in a manner compatible with Article 2 and in particular to ensure that the scope of the inquest is appropriately wide. The judgments of the European Court, as applied through the Human Rights Act, will thus allow inquest procedures which can play a role in securing a prosecution for any criminal offences that may have been revealed.

To ensure that coroners are fully aware of this duty, copies of four of the judgments have been circulated to all coroners in Northern Ireland. Moreover, training sessions for coroners have been organised both by the Judicial Studies Board for Northern Ireland and by the Home Office in London.

Compellability of witnesses at inquests

The Lord Chancellor has brought forward an amendment to the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 so that, in future, witnesses suspected of involvement in a death can be compelled to attend the inquest, although they cannot be compelled to give self-incriminating answers.

The Government considered whether to replace the protection against self-incrimination under the amendment to the Coroners Rules with a rule which required a witness to provide incriminatory answers but which prevented those answers from being adduced in evidence at the criminal trial. However, as the principal objective of the procedural requirements of Article 2 is to ensure that criminal conduct is identified with a view to prosecution, it seems that compelling the giving of self-incriminating answers which could not themselves assist in the bringing of any prosecution would go beyond the purposes of the Article 2 investigation. Moreover, if such answers were required to be given under compulsion in the public inquest proceedings, that would itself be likely to jeopardise the possibility of there being a fair trial of the state agents themselves, and so would actually have the effect of undermining the effectiveness of the Article 2 procedures in holding state agents to account for their conduct.

Disclosure of witness statements prior to the appearance of a witness at the inquest

A Home Office Circular of April 1999 dealing with deaths in police custody and deaths at the hands of the police has been implemented by the Chief Constable of the Royal Ulster Constabulary (now the PSNI) by a Force Order, issued under the Chief Constable's statutory authority to direct and control the Police Force under Section 33 of the Police Act (NI) 2000. While the Home Office Guidelines, on which the Force Order is based, are restricted to deaths in custody and deaths at the hands of the police, the Chief Constable has chosen to interpret the latter flexibly, so that the Force Order would apply, for example, to events such as those in the McShane case, where an army vehicle was ordered towards a barricade by a member of the police force.

As a result of the implementation of this circular, the Chief Constable normally will disclose to interested persons, including the family of the deceased, the statements sent to the coroner where the death occurred in police custody or where it resulted from the actions of a police officer acting in the course of his duty. The Chief Constable has followed this practice in all current cases relating to deaths caused by the security forces. The Chief Constable considers that he is obliged to provide to the coroner all statements concerning the death obtained by him in the course of an investigation, whether from police, security forces or civilian sources. Where he is also obliged to disclose statements to the next of kin or family, then the same situation pertains.

The application of the above practice is enforceable by judicial review, and has been enforced by the courts in Northern Ireland in the cases of McClory (judgment of the Queen's Bench division of the High Court of 8 January 2001) and Thompson.

As regards disclosure by the Ministry of Defence, it is the policy and practice of the Ministry of Defence to co-operate fully with all police inquiries. There are no circumstances in which the armed forces or the Ministry of Defence can avoid disclosure to the Chief Constable in the course of a criminal investigation. All relevant information and persons are made available to the police in the execution of their investigation. However, this is subject to the right of the Secretary of State for Defence, like other Government departments and agencies, to seek public interest immunity when disclosable information may be made available to other persons, the disclosure of which would cause harm to the public interest. This might take the form of damage to national security or the lives of individuals being threatened.

As witnesses, members of the armed forces are no different from any other government agent. The Ministry of Defence, on behalf of the armed forces, exercises its public interest duties in the same manner as any other government department. The assessment of the public interest in allowing the disclosure of witness statements by members of the armed forces is no different from that for any other witness.

As regards documents, before deciding whether to claim public interest immunity in respect of a document which is otherwise disclosable, the Secretary of State will have to balance the public interest in the administration of justice against the public interest in maintaining the confidentiality of the document of which the disclosure would be damaging to the public interest. He may decide to assert public interest immunity where he considers that disclosure would cause real damage or harm to the public interest. Where a claim for public interest immunity is made in an inquest and is challenged, it is for a court to decide where the balance lies between the interests of justice and, for example, the interests of national security. The Minister is never the final arbiter in relation to a claim for public interest immunity.

Public interest immunity certificates

Since the domestic proceedings described in the *McKerr* judgment of the European Court, there have been significant developments in the law and practice in relation to public interest immunity. First, since the 1994 case of *R v Chief Constable of West Midlands, ex-parte Wiley*, it has been clear that where a minister examines material which is subject to public interest immunity and considers that the overall public interest does not favour its disclosure, or is in doubt as to whether to disclose the information, then the minister should put the matter to the courts. It is therefore the courts, and not the executive, which determine whether a public interest immunity certificate is necessary.

Second, in December 1996, the Attorney General announced to Parliament changes in the Government's practice in relation to public interest immunity. In particular, the Government would no longer apply the division of claims into class and contents claims, but would in future focus on the damage caused by disclosure.

Although these changes were addressed to England and Wales, the Government has indicated that Ministers in the Northern Ireland Office have already applied the *Wiley* approach, and the new approach focusing on damage was also quickly adopted in Northern Ireland. Several examples of cases have been provided in which the claim of public interest immunity was at issue and in which the fairness of the trial was not found to be at risk. The approach taken was first to examine the necessity of the claim of public interest immunity and second to balance the competing interests of open justice and real damage to the public interest if full disclosure were made.

As regards the discharging of procedural obligations under Article 2 through inquests, the position on public interest immunity in respect of inquests has changed following the judgment of 20 January 2004 of the High Court in the judicial review case of *McCaughey and Grew*. It is now clear that the Police or Ministry of Defence are under a duty to disclose all documents to the coroner, and that it is then for the coroner to assess their relevance. At this stage the coroner will be aware of any public interest concerns that the Police or Ministry of Defence have in relation to the disclosure of the documents. If the documents that the coroner decides are relevant contain information which causes concern to the Police or Ministry of Defence, it is for them to decide whether to present to the coroner public interest immunity certificates setting out their concerns. If they do so, it will then fall to the coroner to conduct the balance for and against disclosure.

Legal aid for the representation of the victim's family

Following the judgments in the present cases, an *ex gratia* scheme was established by the Lord Chancellor to provide for legal representation at certain exceptional inquests in Northern Ireland where the applicant had a sufficiently close relationship to the deceased to warrant the funding of representation. In deciding whether to grant legal aid under this Scheme, the Lord Chancellor was obliged, by virtue of the Human Rights Act, to act in a manner compatible with the Convention.

The scheme governing legal aid for inquests is now on a statutory footing. The relevant legislation came into operation on 2 November 2003. The scheme is supported by ministerial and administrative guidance. While there have been a number of judicial review applications concerning legal aid for the representation of the victim's family at inquests, the questions raised in these cases are essentially technical, in the Government's view, in that the question at stake is the scheme under which legal aid is available to families for preparatory work for inquests, rather than whether legal aid is available at all.

Steps taken to ensure that inquest proceedings are commenced promptly and pursued with reasonable expedition

In accordance with the Human Rights Act 1998, coroners are now required to act in a manner compatible with Article 2 of the Convention to ensure that inquest proceedings are commenced promptly and pursued with reasonable expedition.

An additional full-time Deputy coroner has been appointed for Belfast to expedite business, so that in Belfast there are now one full-time coroner, one full-time deputy coroner and one part-time deputy coroner. The Northern Ireland Court Service is also providing additional administrative support to part-time coroners. The coroners in Belfast have an administrative support team of five staff and a computer system to facilitate their work. The coroners also have a dedicated legal resource and, in more difficult cases, counsel is instructed.

While a backlog of 40 inquests into deaths occurring prior to the judgments of the European Court of 4 May 2001 had built up at the office of the coroner for Greater Belfast, these deaths are cases to which Article 2 may apply and consequently had not been listed for hearing because the coroners were awaiting the outcome of the *Middleton* judicial review and not because of lack of judicial resources. Without prejudice to their judicial independence in that regard, coroners would take steps to list inquests for hearing once the Court of Appeal had given judgment in the *Jordan* case, which had also been adjourned pending the outcome of the *Middleton* case.

Two major inquiries have been conducted into the functioning of coroners' inquests in the United Kingdom. The report of the Fundamental Review of Death Certification and Coroner Services in England, Wales and Northern Ireland (Luce Review), which made a number of recommendations in relation to the inquest system for England, Wales and Northern Ireland, was published in June 2003. In addition, the Shipman Inquiry, established to investigate allegations of the murder by a doctor of at least 15 of his patients, issued its third report in July 2003, dealing with death certification and the investigation of deaths by coroners in England and Wales.

Following extensive consultation on the Luce Review, the Northern Ireland Court Service (NICtS) published a Consultation Paper outlining its proposals for the administrative redesign of the Coroners Service in Northern Ireland. The aim of the proposals is to modernise and improve the service by administrative means for all users, particularly the relatives of the deceased. The paper outlines the steps which might be taken to improve the inquest system in Northern Ireland in these areas and which can be implemented without primary legislation. The Home Office has also issued a position paper outlining the Government's response to the Luce and Shipman Reports.

In Northern Ireland, an interdepartmental working group has now been set up to consider and make recommendations for improving the arrangements for death certification and investigation in Northern Ireland having particular regard to the Luce Report, the Shipman Inquiry Third Report, the NICtS Proposals for Administrative Redesign and the Home Office position paper. The responses to the

proposals of the NICtS, which were the subject of a period of public consultation, have been collated, and Ministerial approval will be sought to publish the full results of the consultation and a timetable for the introduction of the new proposals. It is hoped that the majority of the proposals can be introduced during 2005.

Individual right of petition

As to the violation of Article 34 in the McShane case, the Government's firm policy is to ensure that its obligations under this Article are respected. The Government has drawn the terms of the McShane judgment to the attention of all responsible for litigation in Northern Ireland on behalf of the Security Forces. In a recent case, where an undertaking was sought not to use documents disclosed by the Royal Ulster Constabulary, the undertaking was modified to ensure that disclosure to the European Court would not constitute a breach of that undertaking. Thus the solicitor from whom the undertaking was sought would not commit a disciplinary offence if the documents were disclosed to the European Court.

Appendix II to Interim Resolution ResDH(2005)20

*Information provided by the Government of the United Kingdom
to the Committee of Ministers on individual measures taken so far or envisaged to comply with the
European Court's judgments*

In terms of the obligations incumbent on the United Kingdom under the Convention, the Government has confirmed its commitment to abide by the judgments of the Court in these cases and to implement the judgments, in accordance with Article 46. This commitment is not affected by the findings of the House of Lords in the *McKerr* judgment of 11 March 2004 that the Human Rights Act 1998 does not have retrospective effect and that under domestic law, there was no continuing breach of Article 2 in that case. The House of Lords' judgment does not prejudice the question of the international obligations arising under Article 46. In the latter respect, different factors are at issue in each case and some reveal more problems than others. Further proceedings have been conducted and the Government considers that any measures required are under way in each case. The main question, in the Government's view, is whether, on the facts in each case, a fresh investigation is actually possible. The Government concedes that new investigations in the present cases could not satisfy the Convention requirements in respect of promptness and expedition.

Information regarding the proceedings conducted prior to the judgment in each case is contained in the relevant judgments. The following information, provided by the Government, concerns the measures currently under way in each case:

In the Jordan case, the inquest opened in January 1995 experienced a series of adjournments relating, inter alia, to a number of judicial review applications by the applicants or in similar cases. Following the judgment of the Court of Appeal for Northern Ireland of 10 September 2004 in the Jordan judicial review application, however, the Coroner for Greater Belfast has indicated his intention to list the inquest in early 2005.

Civil proceedings were also instituted in 1992 alleging death by wrongful act. The applicant wishes to await the outcome of the inquest before pursuing civil action further.

In the McKerr case, the family of Mr McKerr brought legal proceedings seeking to compel the Government to provide a fresh investigation into his death. These proceedings concluded with the House of Lords' judgment, delivered on 11 March 2004 (*In re McKerr*, [2004] UKHL 12, on appeal from [2003] NICA 1). In that case, the House of Lords declined to order a fresh investigation, as it considered that no right to an investigation in accordance with the procedural requirements of Article 2 of the Convention existed under domestic law at the time of the relevant events and that as such, there could be no continuing right under domestic law to such an investigation at present, even after the Human Rights Act came into force on 2 October 2000. The House of Lords left open, however, the question whether such a continuing obligation existed under international law in this case, observing that it was for the Committee of Ministers to decide on this issue, in exercise of its functions under Article 46 § 2 of the Convention.

Without fresh evidence, there is, in the Government's view, no scope for reopening the investigation into the death of Gervaise McKerr. This case is, however, among the more than 2000 cases of unresolved deaths that will be reviewed by the SCRT to re-examine whether there are any evidentiary opportunities.

The Kelly and others case concerned a single incident in which nine men were killed. These deaths, like those in the McKerr and Shanaghan cases, fall within the terms of reference of the SCRT and will be among the more than 2000 cases of unresolved deaths to be re-examined.

As regards civil actions, the family of Anthony Hughes issued proceedings against the Ministry of Defence in 1988 and the case was settled in 1991. Six other families, including the Kelly family, issued proceedings in 1990 but the families have not set down the cases for hearing.

The Shanaghan case also falls within the terms of reference of the SCRT, since the perpetrator of the shooting was never identified. The applicant has taken no steps for 9 years in the civil proceedings commenced in 1994.

In the McShane case, an inquest was opened in May 1998 but adjourned pending the outcome of various legal proceedings and decisions at domestic level. However, a full-time coroner has now been assigned to this inquest and it is expected to commence in early 2005. The coroner remains under an obligation to report to the Director of Public Prosecutions any evidence that comes to light at the inquest that appears to disclose that a criminal offence may have been committed.

The applicant has not moved forward with civil proceedings brought against the Ministry of Defence and the Chief Constable of the Royal Ulster Constabulary.

In the Finucane case, two special police inquiries (the first two Stevens inquiries) were instituted to respond to concerns arising out of allegations of collusion between loyalist organisations and the security forces. The first of these two inquiries led to the reporting or charging of 59 people and the conviction of one person of conspiracy to murder persons other than Patrick Finucane. The second inquiry did not lead to the prosecution of any person. The third Stevens inquiry is squarely concerned with the Finucane murder and has led to a criminal prosecution being brought. One person was successfully prosecuted for the murder. This investigation continues.

The Government announced on 23 September 2004 that steps could now be taken to implement the decision to hold a new inquiry into this death. The inquiry will be held on the basis of new legislation, which is currently pending before the Parliament (Inquiries Bill).

Appendix III to Interim Resolution ResDH(2005)20

Judgments concerning violations of the Convention by or involving allegations of collusion by the United Kingdom security forces pending before the Committee of Ministers for supervision of execution

Application number	Case name	Date of judgment	Date of final judgment
24746/94	Jordan	04/05/2001	04/08/2001
28883/95	McKerr	04/05/2001	04/08/2001
30054/96	Kelly and others	04/05/2001	04/08/2001
37715/97	Shanaghan	04/05/2001	04/08/2001
43290/98	McShane	28/05/2002	28/08/2002
29178/95	Finucane	01/07/2003	01/10/2003

In the above cases the Court found that there had been a violation of Article 2 of the Convention in respect of various failings in the investigative procedures concerning the death of the applicants' relatives. The various failings may be summarised on a case-by-case basis as follows:

- Lack of independence of police investigators investigating the incident from the officers or members of the security forces implicated in the incident
Jordan, McKerr, Kelly and others, Shanaghan, McShane, Finucane
- The independent police investigation did not proceed with reasonable expedition
McKerr, McShane
- Lack of public scrutiny and information to the victims' families on the reasons for the decision of the Director of Public Prosecutions not to prosecute any officer in respect of relevant allegations
Jordan, McKerr, Kelly and others, Shanaghan, Finucane
- The inquest procedure did not play an effective role in securing a prosecution in respect of any criminal offence which may have been disclosed
Jordan, McKerr, Kelly and others, Shanaghan, McShane, Finucane
- The scope of examination of the inquest was too restricted
Shanaghan, Finucane
- There was no prompt or effective investigation into allegations of collusion
Shanaghan, Finucane
- The persons who shot the deceased, and in the *McShane* case, the soldier who drove the armoured personnel carrier that fatally injured the applicant's husband, could not be required to attend the inquest as witnesses
Jordan, McKerr, Kelly and others, McShane
- The non-disclosure of witness statements prior to the appearance of a witness at the inquest prejudiced the families' ability to prepare for and to participate in the inquest and/or contributed to long adjournments
Jordan, McKerr, Kelly and others, Shanaghan, McShane
- The absence of legal aid for the representation of the victim's family
Jordan
- The public interest immunity certificate had the effect of preventing the inquest from examining matters relevant to the outstanding issues in the case
McKerr
- The inquest proceedings did not commence promptly and did not proceed with reasonable expedition
Jordan, McKerr, Kelly and others, Shanaghan, McShane