



H/Exec(2015)9
Last update: October 2015

**COLLECTION OF
INTERIM RESOLUTIONS
2009-2015
(by country)**

**Document prepared by the
Department for the execution of judgments of the
European Court of Human Rights**

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ALBANIA

Interim Resolution CM/ResDH(2013)115

Execution of the pilot judgment *Manushaqe Puto* and 11 other judgments of the European Court of Human Rights concerning the failure to enforce final domestic judicial and administrative decisions relating to the right of the applicants to restitution or compensation (whether pecuniary or in kind) for property nationalised during the communist regime in Albania (see Appendix)

*(Adopted by the Committee of Ministers on 6 June 2013
at the 1172nd 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 "the Convention");

Recalling that this group of cases concerns the longstanding structural problem of the non-enforcement of final domestic judicial and administrative decisions relating to the right of the applicants to restitution or compensation (whether pecuniary or in kind) for property nationalised during the communist regime (violations of Article 6 § 1 and Article 1 of Protocol n° 1), as well as the lack of an effective remedy in that regard (violation of Article 13);

Recalling that in view of the scale and persistent ineffectiveness of the current compensation mechanism, the European Court of Human Rights delivered a pilot judgment in the case of *Manushaqe Puto* and others, in which it set an 18 month deadline – namely until the 17 June 2014 – for the Albanian Government to establish an effective compensation mechanism;

Underlining the support given by the Committee to the Albanian authorities, since it has been supervising the execution of this group of cases, in the identification of measures to adopt urgently in order to resolve this longstanding structural problem;

Noting with great concern that to date, only one of the measures identified has been finalised, namely the land valuation map, and that no action plan demonstrating the ability of the Albanian authorities to establish an effective compensation mechanism within the deadline set by the Court, has been submitted;

Recalling that the non-enforcement of domestic final decisions represents a grave danger to the rule of law, risks undermining the confidence of citizens in the judicial system, and as such calls into question the credibility of the State;

Underlining the obligation of every State, under the terms of Article 46, paragraph 1, of the Convention to abide by the final judgments of the European Court in any case to which they are a party;

CALLS ON the Albanian authorities, at the highest level, to give the highest priority to the preparation of an action plan capable of establishing, within the deadline set by the European Court, an effective compensation mechanism, which takes account of the measures already identified with the support of the Committee.

Appendix
List of cases concerned

Application	Case	Judgment of	Final on
604/07+	MANUSHAQE PUTO AND OTHERS	31/07/2012	17/12/2012
DRIZA GROUP			
Application	Case	Judgment of	Final on
33771/02	DRIZA	13/11/2007	02/06/2008
7352/03	BESHIRI AND OTHERS	22/08/2006	12/02/2007
6397/04	BUSHATI AND OTHERS	08/12/2009 14/02/2012	08/03/2010 14/05/2012
10810/05	CAUSH DRIZA	15/03/2011	15/06/2011
49106/06	DELVINA	08/03/2011	08/06/2011
16530/06	ELTARI	08/03/2011	15/09/2011
10508/02	GJONBOCARI AND OTHERS	23/10/2007	31/03/2008
45264/04	HAMZARAJ No.1	03/02/2009	06/07/2009
12306/04	NURI	03/02/2009	06/07/2009
38222/02	RAMADHI AND 5 OTHERS	13/11/2007	02/06/2008
35720/04+	VRIONI AND OTHERS ¹	29/09/2009 07/12/2010	29/12/2009 11/04/2011

¹ This application was lodged against Italy and Albania but the European Court found no violation in respect of Italy.

AZERBAIJAN

Interim Resolution CM/ResDH(2015)156 Execution of the judgment of the European Court of Human Rights Ilgar Mammadov against Azerbaijan

Application	Case	Judgment of	Final on
15172/13	ILGAR MAMMADOV	22/05/2014	13/10/2014

*(Adopted by the Committee of Ministers on 24 September 2015
at the 1236th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provide that the Committee supervises the execution of final judgments of the European Court of Human Rights ("the Court" below);

Concerning the individual measures, recalled that the violations found, and in particular that of Article 18 taken together with Article 5, call into question the well-foundedness of the criminal proceedings against the applicant, a political opposition figure;

Deeply deplored that, notwithstanding the Committee's decisions and Interim Resolution CM/ResDH(2015)43, the applicant has still not been released;

Firmly reiterated its call that the applicant be released immediately and strongly urged the authorities to guarantee his physical integrity in the meantime;

Expressed concerns about the current situation of Khalid Bagirov, who was the applicant's representative until his licence was suspended;

Expressed moreover its deepest concern in respect of the lack of adequate information on the general measures envisaged to avoid any circumvention of legislation for purposes other than those prescribed, which represents a danger for the respect of the rule of law;

Exhorted the authorities to resume the dialogue with the Committee in order to achieve rapid and concrete progress in the execution of this judgment;

Underlined, in view of the situation, the obligation of every member State of the Council of Europe to comply with its obligations under Article 3 of the Statute of the Council of Europe which provides: "Every member 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, and collaborate sincerely and effectively in the realisation of the aim of the Council [of Europe] ..";

Called on the authorities of the member States and the Secretary General to raise the applicant's situation with the highest authorities in Azerbaijan in order to get him released; invited the observer States to the Council of Europe and international organisations to do the same;

Decided to examine this case at its 1243rd meeting (December 2015) (DH).

Interim Resolution CM/ResDH(2015)43
Execution of the judgment of the European Court of Human Rights
Ilgar Mammadov against Azerbaijan

Application	Case	Judgment of	Final on
15172/13	ILGAR MAMMADOV	22/05/2014	13/10/2014

*(Adopted by the Committee of Ministers on 12 March 2015
at the 1222nd meeting of 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 "the Convention");

Recalling that the violations found in this case, and in particular that of Article 18 in conjunction with Article 5, challenge the foundation of the criminal proceedings against the applicant who is an opposition politician, expressed its very serious concern about the fact that the applicant is still detained despite the obligation of Azerbaijan to comply with the judgment of the Court;

Reiterated with insistence its call to the authorities to ensure without further delay the applicant's release and to adopt the other measures necessary to erase the consequences of the violations established, in particular that of Article 18 taken in conjunction with Article 5 of the Convention;

Noted, in this regard, that the applicant's appeal against his conviction is still pending before the Supreme Court, and expressed its deep concern about the fact that the Supreme Court has postponed its consideration *sine die*;

Reiterated its call upon the Azerbaijani authorities to provide, without delay, concrete and comprehensive information on the measures taken and/or planned to avoid that criminal proceedings are instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor's office, as well as to prevent new violations of the presumption of innocence by the Prosecutor's office and members of the government;

Decided to resume consideration of these issues at its 1230th meeting (June 2015) (DH).

Interim Resolution CM/ResDH(2014)183
Execution of the judgments of the European Court of Human Rights
Mahmudov and Agazade against Azerbaijan and
Fatullayev against Azerbaijan

Application	Case	Judgment of	Final on
35877/04	MAHMUDOV AND AGAZADE	18/12/2008	18/03/2009
40984/07	FATULLAYEV	22/04/2010	4/10/2010

*(adopted by the Committee of Ministers on 25 September 2014
at the 1208th meeting of 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 "the Convention"),

Recalling that the present cases concern violations of the applicants' right to freedom of expression, in particular on account of both their unjustified convictions and sentences of imprisonment for defamation as well as on account of the arbitrary application of other criminal laws to the detriment of freedom of expression, namely anti-terrorism legislation and legislation against incitement to ethnic hatred (violations of Article 10); and violations of the right to an impartial tribunal and of the right to presumption of innocence (*Fatullayev* case, violations of Articles 6§1 and 6§2);

Recalling its Interim Resolution CM/ResDH(2013)199 as well as the different decisions adopted since then;

Noting with interest, as regards *the legislation on defamation*, that, in response to the Committee's decision of June 2014, the authorities intend to submit the legislative proposal of the Plenum of the Supreme Court (aimed at reducing the imposition of prison sentences in defamation cases) to the parliamentary session of autumn 2014 and to co-operate with the Secretariat on this issue;

Invited the authorities to specify, given the Court's case-law, in the final text of their legislative proposal the situations in which it remains possible to impose prison sentences, as well as to report on the state of progress of the larger draft "law on defamation" submitted to the Venice Commission in 2012 and on the measures adopted with a view to resuming co-operation with the latter;

Insisted on the need to receive urgently a timetable of the different stages of this process;

Insisted, further, on the importance of training and awareness-raising measures for the attention of judges and prosecutors, in the continuation of the decision of principle of the Plenum of the Supreme Court of February 2014, in order to ensure that the Convention requirements are fully taken into account when applying the legislation relevant to defamation, including as regards awarding proportionate damages and interest in civil defamation cases;

Reiterating, as regards the *arbitrary application of criminal legislation to limit freedom of expression*, that the present situation raises serious concerns, in particular on account of the reported recent use of different criminal laws - similar to the ones used in the present group of cases (accusations of illegal activities, abuse of authority, treason, hooliganism or other crimes which can have close links to the legitimate exercise of the freedom of expression) - against journalists, bloggers, lawyers and members of NGOs;

Noted with interest, in this connection, the initiative to reintroduce the working group composed of members of the presidential administration and civil society, while underlining the importance of other rapid and concrete action, including by the highest authorities and in particular the Supreme Court, in order to ensure effective protection against arbitrariness and to guarantee that every conviction likely to affect freedom of expression is supported by "sufficient and relevant" reasons, fully in line with the Convention requirements;

Noted further with interest, as regards the independence of the judiciary, that amendments were introduced in June 2014 to the law on judges and courts, reinforcing notably the budgetary independence of the Judicial and Legal Council which seems to respond to certain recommendations made in the framework of the Eastern Partnership project;

Urged, nonetheless, the authorities to explore further measures to ensure the independence of the judiciary, taking into account the different proposals expressed before the Committee;

Also invited the authorities to take urgently other measures in order to ensure a non-arbitrary application of the criminal legislation, thereby respecting freedom of expression;

Recalled, in this latter respect, the importance of strengthening training activities for judges and prosecutors aiming at better delimiting the protected right of freedom of expression, on the one hand, and criminal responsibility, on the other hand, and the interest, in this perspective, of having a new decision of the Plenum of the Supreme Court in order to guide the application by judges and prosecutors of the criminal legislation which may have close links with freedom of expression and to ensure that the requirements of this freedom are fully respected;

Invited the authorities, in the pursuit of the reforms, to seize the opportunities offered by the Action Plan of the Council of Europe for Azerbaijan and to advance rapidly with the other measures required in this group of cases (violations of Articles 6§1 and 6§2);

Insisted, moreover, on receiving, without further delay, detailed information on all criminal charges pending against the applicants' representative in the present group of cases, who is also the representative in several applications in the *Namat Aliyev* group of cases, equally under examination by the Committee, as well as in numerous applications currently pending before the Court in relation to freedom of expression.

Interim Resolution CM/ResDH(2013)199
Execution of the judgments of the European Court of Human Rights
Mahmudov and Agazade against Azerbaijan
Fatullayev against Azerbaijan

*(Adopted by the Committee of Ministers on 26 September 2013
at the 1179th 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 "the Convention"),

Noting that the present cases concern violations of the right to freedom of expression of the applicants, in particular on account of their conviction to imprisonment for defamation as well as of arbitrary application of anti-terrorism legislation (violations of Article 10);

Noting further that the Fatullayev case also concerns violations of the right to an impartial tribunal and of the right to presumption of innocence (violations of Articles 6§1 and 6§2);

Recalling that the Azerbaijani authorities had indicated to the Committee that, in response to these judgments, they had been elaborating a draft law on defamation and had requested the assistance of the Venice Commission to that effect;

Expressing its grave concern that to date no progress has been achieved in preparing this draft law despite the time that has elapsed and the Committee's call upon the authorities to cooperate fully with the Venice Commission and to ensure that this cooperation process covers all the provisions pertaining to defamation;

Strongly regretting that amendments were introduced, last June, to the Criminal Code with a view to widening the scope of criminal sanctions for defamation and insult on the internet while the cooperation process with the Venice Commission was underway and that consultation in this context could have facilitated the adoption of legislative measures that would contribute to the execution of these judgments;

Noting also with concern that notwithstanding the questions raised repeatedly by the Committee regarding the non-arbitrary application of domestic legislation by the Azerbaijani courts, the right to an impartial tribunal and the respect of the presumption of innocence, to date the authorities have provided no tangible information demonstrating that the Court's findings have been duly taken into account,

STRONGLY URGES the authorities of Azerbaijan to take, without any further delay, all necessary measures with a view to aligning the relevant legislation pertaining to defamation and its implementation with the Convention requirements as interpreted by the Court's case law;

CALLS upon the authorities to provide the Committee without any further delay with tangible information on the measures taken or envisaged to guarantee a non-arbitrary application of the legislation by the domestic courts and to ensure the right to an impartial tribunal as well as the respect of the presumption of innocence.

BOSNIA AND HERZEGOVINA

Interim Resolution CM/ResDH(2012)233 Execution of the judgment of the European Court of Human Rights Sejdić and Finci against Bosnia and Herzegovina

(Application No. 27996/06, judgment of 22/12/2009 – Grand Chamber)

*(Adopted by the Committee of Ministers on 6 December 2012
at the 1157th 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 Grand Chamber judgment of the European Court of Human Rights ("the Court") of 22 December 2009 in the case of Sejdić and Finci against Bosnia and Herzegovina transmitted to the Committee for supervision of its execution under Article 46 of the Convention;

Recalling that, from the beginning of its examination of this case, the Committee considered that the execution of this judgment would require a number of amendments to the Constitution of Bosnia and Herzegovina and to its electoral legislation;

Underlining that these amendments, by allowing all citizens of Bosnia and Herzegovina to run for elections, would enhance the functioning of democratic institutions in the country and citizens' confidence in them;

Stressing the particular responsibility of the authorities and political leaders of Bosnia and Herzegovina in this respect, having regard also to the bearing that this matter has on Bosnia and Herzegovina's prospect for European integration;

Noting with profound disappointment that, despite their latest commitment to amend the Constitution by 30 November 2012 and, to this end, to present draft constitutional amendments to the Parliamentary Assembly of Bosnia and Herzegovina by 31 August 2012, the executive authorities and political leaders of Bosnia and Herzegovina have, once again, failed to reach a consensus and to amend the Constitution;

Reiterating once again that, in becoming a member of the Council of Europe in 2002, Bosnia and Herzegovina undertook to "review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary"¹;

Reiterating also the willingness of the Council of Europe to assist the authorities of Bosnia and Herzegovina in meeting this commitment;

Bearing in mind that in September 2012, Commissioner Štefan Füle and the Secretary General of the Council of Europe Thorbjørn Jagland noted in a joint statement with great disappointment that, despite their commitments, the executive authorities and political leaders have, once again, failed to reach a consensus and to present draft constitutional amendments to the Parliamentary Assembly of Bosnia and Herzegovina by 31 August 2012;

Stressing that reaching a political consensus is an indispensable condition for the amendment of the Constitution and the electoral legislation in order to ensure not only the execution of the present judgment but also full compliance of future elections with Convention requirements;

FIRMLY RECALLS the obligation of Bosnia and Herzegovina under Article 46 of the Convention to abide by the judgment of the Court in the case of Sejdić and Finci;

¹ see Opinion 234(2002) of the Parliamentary Assembly of the Council of Europe of 22 January 2002, § 15 (iv)(b); see also § 21 of the present judgment.

STRONGLY URGES the authorities and political leaders of Bosnia and Herzegovina to amend the Constitution and the electoral legislation and to bring them in conformity with the Convention requirements without any further delay;

DECIDES to examine the present case at each of its "Human Rights" meeting until the political leaders and authorities of Bosnia and Herzegovina reach a consensus on the measures required for the execution of this judgment.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2011)291 **Execution of the judgment of the European Court of Human Rights** **Sejdić and Finci against Bosnia and Herzegovina** **(Application No. 27996/06, judgment of 22/12/2009 – Grand Chamber)**

*(Adopted by the Committee of Ministers on 2 December 2011
at the 1128th 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 Grand Chamber judgment of the European Court of Human Rights ("the Court") of 22 December 2009 in the case of Sejdić and Finci against Bosnia and Herzegovina transmitted to the Committee for supervision of its execution under Article 46 of the Convention;

Recalling that in this judgment the Court:

found a violation of the right to free elections and discrimination against the applicants, citizens of Bosnia and Herzegovina of Roma and Jewish origin, who were ineligible to stand for election to the House of Peoples of Bosnia and Herzegovina (the second chamber of Parliament) due to the lack of affiliation with a constituent people (Bosniacs, Croats or Serbs) (violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1) and ;

found that the applicants were discriminated against because of their ineligibility to stand for election to the Presidency of Bosnia and Herzegovina (the collective Head of State) due to their lack of affiliation with a constituent people (violation of Article 1 of Protocol No. 12).

Recalling that, from the beginning of its examination of this case, the Committee considered that the execution of this judgment would require a number of amendments to the Constitution of Bosnia and Herzegovina and to its electoral legislation;

Bearing in mind that, during the Ministerial Session held on 11 May 2010, the outgoing and incoming Chairpersons of the Committee made a joint declaration urging "the authorities of Bosnia and Herzegovina to bring the country's Constitution and laws in line with the European Convention on Human Rights as a matter of priority";

Bearing in mind further that, on 7 July 2010, on the occasion of the examination of Bosnia and Herzegovina's honouring of its obligations and commitments, the Ministers' Deputies urged the authorities of Bosnia and Herzegovina to bring the Constitution of Bosnia and Herzegovina in line with the Convention, in compliance with the present judgment;

Stressing that, in becoming a member of the Council of Europe in 2002, Bosnia and Herzegovina undertook to "review within one year, with the assistance of the European Commission for Democracy through Law (Venice Commission), the electoral legislation in the light of Council of Europe standards, and to revise it where necessary"¹;

Noting also that the Parliamentary Assembly has periodically reminded Bosnia and Herzegovina of this post-accession obligation²;

¹ see Opinion 234(2002) of the Parliamentary Assembly of the Council of Europe of 22 January 2002, § 15 (iv)(b); see also § 21 of the present judgment.

² see Resolution 1383 (2004), Resolution 1513 (2006), Resolution 1626 (2008), Resolution 1701 (2010) and Resolution 1725 (2010).

Recalling that, in response to the judgment, the Council of Ministers and the Central Election Commission of Bosnia and Herzegovina prepared two action plans in February and March 2010 in which the authorities responsible for taking the necessary measures were identified and specific deadlines were fixed;

Regretting however that the measures envisaged in these action plans have not been taken within the deadlines set therein as a result of the absence of political consensus on the content of the constitutional and legislative amendments;

Recalling that the Committee of Ministers deeply regretted¹ that the elections took place in Bosnia and Herzegovina on 3 October 2010 in accordance with the legislation which was found to be discriminatory by the Court in the present judgment;

Noting that, in response to the Committee's repeated calls, the "Joint Interim Commission for the Implementation of the Sejdić and Finci judgment of the Parliamentary Assembly of the Bosnia and Herzegovina" was constituted following a decision adopted by the Parliamentary Assembly of Bosnia and Herzegovina at the session of the House of People held on 30 September 2011 and at the session of the House of Representatives held on 10 October 2011;

Noting in this respect that the Parliamentary Assembly of Bosnia and Herzegovina set specific deadlines to the Joint Interim Commission of 30 November 2011 for presenting amendments to the Constitution and 31 December 2011 for amendments to the electoral law;

Expressing expectation that the authorities and political leaders of Bosnia and Herzegovina will rapidly reach an agreement on the content and scope of the constitutional and legislative amendments;

Stressing that such an agreement is an indispensable condition for the execution of the present judgment and for ensuring full compliance of future elections with the Convention requirements;

Having regard to the obligation undertaken by the authorities of Bosnia and Herzegovina under Article 46 of the Convention to abide by the judgments of the Court;

REITERATES ITS CALL ON the authorities and political leaders of Bosnia and Herzegovina to take the necessary measures aimed at eliminating discrimination against those who are not affiliated with a constituent people in standing for election to the House of Peoples and the Presidency of Bosnia and Herzegovina and to bring its constitution and electoral legislation in conformity with the Convention requirements without any further delay;

ENCOURAGES the Joint Interim Commission to make tangible progress in its work and present amendments to the Constitution and to the electoral law, taking into consideration the relevant opinions of the Venice Commission in this regard;

INVITES the authorities of Bosnia and Herzegovina to inform the Committee regularly of the progress achieved in the Constitutional reform, as well as the change of relevant electoral legislation.

¹ Decision adopted at the 1100th meeting (December 2010).

BULGARIA

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)223

Execution of the judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings in 84 cases against Bulgaria (see Appendix III)

(Adopted by the Committee of Ministers on 2 December 2010, at the 1100th 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 Bulgaria in violation of Article 6, paragraph 1 and Article 13 of the Convention on account of the excessive length of judicial proceedings and the absence of an effective remedy in this regard (see Appendix III to this resolution);

Recalling that excessive delays in the administration of justice constitute a serious danger, in particular to respect for the rule of law and access to justice;

Recalling also its Recommendation Rec(2010)3 to member states on the need to improve the effectiveness of domestic remedies for excessive length of proceedings, and emphasising the importance of this question where judgments reveal structural problems likely to give rise to a large number of further similar violations of the Convention;

Having examined the information supplied by the Bulgarian authorities concerning the measures taken or envisaged in response to those judgments (see Appendix I), including the statistical data on the length of judicial procedures (see Appendix II);

Assessment of the Committee of Ministers

I. 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 acceleration, as far as possible, of proceedings which were still pending after the findings of violations by the Court;

Noting however with concern that the domestic proceedings in seven cases are still pending before the domestic courts and that the authorities have been unable to provide information about two other cases (see Appendix I);

CALLED UPON the Bulgarian authorities to provide for acceleration as much as possible of the proceedings pending in these cases, in order to bring them to an end as soon as possible, and to inform it of the progress of proceedings in the two afore-mentioned cases;

II. General measures

Measures aimed at reducing the length of judicial proceedings

Noting the numerous violations found by the Court on account of the excessive length of civil and criminal proceedings in Bulgaria, revealing certain structural problems in the administration of justice at the time of the relevant facts;

Welcoming the numerous legislative reforms adopted by the authorities in order to remedy these structural problems and in particular the adoption of the new codes of criminal and civil procedure (see Appendix I);

Welcoming likewise the other measures taken by the authorities to increase the efficiency of the judicial system, and in particular the establishment of assessment and monitoring mechanisms, including the collection and analysis of statistical data;

Noting that the 2009 statistics show a reduction in the backlog in the Bulgarian courts as a whole, and an increase in the number of cases dealt with in the space of 3 months (see Appendix II);

Noting however that, according to the statistics, the backlog in the district courts located in regional centres has increased slightly by reason of the substantial rise in the number of cases registered, and that those courts were responsible for examining half the cases pending in the country in 2009 (see Appendix II);

Noting also that the legislative reforms introduced between 2006 and 2010 have not yet produced their full impact on the length of proceedings and that a longer period of time is needed before the effectiveness of all the measures taken can be fully and completely assessed;

ENCOURAGED the Bulgarian authorities to pursue their efforts in following up the reforms introduced, in order to consolidate their positive effects, in particular as regards the situation in the district courts located in regional centres;

CALLED ON the authorities to continue to monitor the effects of these reforms as it proceeds, with a view to adopting, if appropriate, any further measure necessary to ensure its effectiveness, and to keep the Committee informed of the developments in this regard;

Measures relating to the effectiveness of remedies

Recalling that the Court has found numerous violations of the right to an effective remedy in contesting the excessive length of proceedings in Bulgaria, revealing certain structural problems in this field;

Recalling its Recommendation Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to grant compensation to interested parties for damage suffered;

Noting with interest that Articles 255-57 of the Code of Civil Procedure provide that, if a court does not take a procedural step in due time, the parties may at any time apply to the superior court for a time-limit to be set for the taking of the procedural step in question, thus affording a remedy designed to speed up the civil proceedings (see Appendix I);

Noting also that there exist in criminal law certain forms of non-pecuniary redress, such as the possibility of reducing the sanction, where there is a finding of excessive length of proceedings;

Noting however that at the present time no domestic remedy is available for expediting excessively lengthy criminal proceedings or obtaining pecuniary compensation if appropriate (see Appendix I);

Welcoming in this context the reform undertaken by the authorities aimed at introducing into Bulgarian law a compensatory remedy where excessive length of judicial proceedings is alleged (see Appendix I);

INVITED the Bulgarian authorities to complete as soon as possible the reform undertaken in order to introduce a remedy whereby compensation may be granted for prejudice caused by excessive length of judicial proceedings, and to keep the Committee informed of its progress and of any other measure that may be envisaged in this field;

Having regard to the foregoing, the Committee of Ministers

DECIDED to resume its examination of progress made at the latest:
by the end of 2011, with regard to the question of effective remedy;
by mid-2012, with regard to the question of the excessive length of judicial proceedings.

Appendix I to Interim Resolution CM/ResDH(2010)223

*Information supplied by the Bulgarian government
on the measures taken by the Bulgarian authorities*

Individual measures

The proceedings which were still pending before the domestic courts at the time when the Court gave its judgments have been terminated in most of the cases. At the present time, the proceedings have not yet been terminated in the Belchev, Hamanov, Nedyalkov, Valkov, Kamburov, Kavalovi and Merdzhanov cases. Information is still awaited also on the state of progress in the proceedings in the Kolev and Sidjimov cases.

General measures

1) Measures aimed at reducing the length of proceedings

- *Legislative measures*

In 2007 a new Code of Civil Procedure ("CCvP") was adopted. The adoption of that code, which came into force on 1 March 2008, forms part of the overall reform of the civil justice system in Bulgaria designed in particular to speed up judicial proceedings. The new code seeks *inter alia* to concentrate decisions relating to the judicial investigation in the proceedings at first instance and to limit appeal and cassation proceedings.

The most important provisions of the new CCvP provide for:

- the express obligation on civil courts to examine cases within a reasonable time (Article 13);
- the "concentration principle" whereby evidence is brought together in the first instance proceedings; according to this principle, the parties may submit evidence or ask for evidence to be taken no later than the first hearing (Articles 127, 133, 143 and 146); after the first hearing, the parties may only request the taking of evidence which could not be adduced earlier; by way of comparison, the 1952 code allowed evidence to be submitted throughout the judicial investigation, including elements which could have been submitted earlier, subject to payment of procedural costs;
- the change of second instance from a "second first instance" to an appeal instance, examining only the points raised in the appeal (Article 269), at which the parties may no longer submit evidence and arguments which they could have raised in the court of first instance (Article 266);
- limitation of the grounds for lodging an appeal in cassation to the Supreme Court; henceforth, there are only three categories of judgments handed down by the second-instance courts which can be subject to appeal in cassation (those which are at variance with the case-law of the Supreme Court of Cassation, those relating to a question on which courts deciding on the merits have handed down contradictory judgments, and those relating to a question considered important for the development of law or for the precise application of the law); under the previous cassation system, the Supreme Court of Cassation was competent to judge the lawfulness and validity of the great majority of judicial decisions taken at second instance;
- simplification of summons arrangements, with the possibility of serving a summons by delivering it to the letter-box of the person concerned or affixing it to his/her front door.

The authorities consider that a longer period of time will be needed for the real impact of the new CCvP on length of proceedings to be assessed.

A new Code of Criminal Procedure ("CCrP"), adopted in 2005, came into force on 29 April 2006. Like the new CCvP, it aims in particular to speed up criminal proceedings. For example, it prescribes short time-limits for the examination of a case and for postponement of its examination (Articles 252, 271 and 345) and the more widespread use of simplified procedures (Articles 356-361, 362-367 and 370-374). According to the 2009 report of the president of the Supreme Court of Cassation on the work of the courts, the simplified judicial procedures most often used in 2009 in the field of criminal justice related to summary judicial investigation and plea bargaining between the accused and the prosecution (an agreement enabling the prosecution to be terminated provided the court approves).

The other important provisions of the CCrP provide for:

the obligation on the courts and bodies responsible for the preliminary investigation to examine criminal cases within a reasonable time; in addition, cases in which the accused is held in detention must be given priority over other cases by the courts examining and judging them (Article 22);

time-limits for termination of the preliminary investigation and prohibition on the use in court of any evidence obtained outside the time-limit (Article 234);
 the introduction of summary judicial investigation in courts of first instance; this procedure makes it possible for the accused to obtain a reduction of sentence if he admits the offence and relinquishes the production of evidence, provided he is assisted by counsel (where necessary appointed by the court);
 broader applicability of the simplified procedure whereby the accused may be absolved of his criminal responsibility and an administrative penalty imposed instead.

Furthermore, the 2005 CCrP was amended in 2010 for the purpose, in particular, of avoiding (a) unjustified referrals at the preliminary investigation stage (Article 249§3) and (b) postponement of the hearing where the representative of the accused fails to appear without good reason (Article 94). In addition, it is to be noted that now the possibility for the prosecution to bring further charges during the judicial investigation has been widened, even if those charges relate to different facts or an offence carrying a more severe penalty (Article 287§1).

Some other changes are aimed at reducing the excessive formalism of criminal procedure in Bulgaria (for example, the abrogation of the requirement that the investigator draws up a formal document setting out his conclusions – Articles 231-235).

- Administrative measures designed to improve the organisation and management of the courts

Among other reforms designed to improve the efficiency of the Bulgarian judicial system, should be mentioned the creation in 2007 of an electronic commercial register managed by an administrative agency (see the commercial register law in force since 1 July 2007). Thus the regional courts which were responsible for registering commercial companies in the past have been absolved of that responsibility.

Furthermore, following the adoption of the new Code of Administrative Procedure in 2006, 28 administrative courts were set up in 2007. These new administrative courts have powers previously exercised by the regional courts. In addition, as an *ad hoc* measure aimed at lightening the workload of the Supreme Court of Cassation, labour disputes pending before it when the 2007 CCvP came into force have been transferred to the appeal courts.

It should also be pointed out that the judicial authorities now have access to the national database containing the population register, which should overcome certain delays arising from requests for information needed to take judicial proceedings forward.

Finally, Bulgaria has achieved a high level of computerisation designed to assist both judges and other personnel (for further details, see the 2010 report of the European Commission for the Efficiency of Justice – CEPEJ). Moreover, the courts are continuing their efforts to improve their IT equipment in order to communicate with parties. Those efforts were recently rewarded by the award of the 2010 “Crystal Scales of Justice” prize to the Yambol administrative court for the work it has done to improve users’ understanding of judicial procedure.

- Mechanisms for periodic assessment and monitoring of the work of the courts

Two bodies – the Supreme Judicial Council Inspectorate and the Ministry of Justice Inspectorate – have the main responsibility for monitoring and assessing the work of the courts, prosecution services and investigating magistrates.

The Supreme Judicial Council Inspectorate, established in 2007, comprises an inspector-general and ten inspectors elected by Parliament for terms of five and four years respectively (Article 132a of the Constitution). It oversees the administrative organisation of the courts, prosecution services and bodies in charge of preliminary investigations, together with the proper organisation of preliminary investigations and cases pending before prosecutors and courts. In particular, the inspectorate oversees compliance with the time-limits laid down by law for dealing with cases. It carries out its tasks (a) through planned regional inspections and (b) through inspections focussing on particular questions. It may also conduct inspections in response to reported irregularities (Articles 54 and 56 of the law on judicial powers).

Following inspections, it makes recommendations, particularly concerning compliance with the time-limits laid down by law for dealing with cases. Implementation of its recommendations is monitored in the course of follow-up inspections. The inspectorate may also make proposals to courts’ administrative authorities and to the Judicial Service Commission for the imposition of disciplinary penalties on judges, prosecutors and investigating magistrates (see “Disciplinary measures” below). The work of the inspectorate is covered in the progress report of the Supreme Judicial Council.

The Ministry of Justice Inspectorate oversees, among other things, the manner in which case registration and handling are managed, as well as closure of cases within the legal time-limits. This inspectorate organises thematic controls in accordance with a programme approved by the Ministry of Justice. It may make recommendations and supervises their implementation in the course of subsequent inspections.

The Ministry of Justice Inspectorate is also responsible for overseeing application of the new CCvP and CCrP. During inspections already carried out, it has observed some of the causes of procedural delays and made recommendations in this regard.

Furthermore, the presidents of the Supreme Court of Cassation and the Supreme Administrative Court are required to present annual reports on the functioning of trial and appeal courts, in addition to annual reports on their own activities (Articles 114§§1 and 2 and 122§§1 and 2 of the law on judicial powers). Lastly, each year the Supreme Judicial Council centralises and analyses the statistics on the work of all the country's courts (cf. Appendix II).

- *Disciplinary measures*

Under the law on judicial powers, systematic failure to comply with the time-limits laid down in procedural laws, and action or inaction such as to delay proceedings in an unjustified manner, are disciplinary offences (Article 307§4). The Judicial Service Commission has the power to impose disciplinary penalties (other than comment and reprimand, which are imposed by the hierarchical superior) on judges, prosecutors and investigating judges. The public bodies responsible for enforcing judicial decisions and the bodies responsible for entries in the land registry may be sanctioned by the Ministry of Justice (Article 311).

The authorities have stated that during the period 2007-2009 the number of disciplinary proceedings before the Supreme Judicial Council rose steadily (13 in 2007, 28 in 2008 and 83 in 2009). By way of example, in 2009 seven judges and one head of administration were sanctioned, mainly for systematic failure to comply with the time-limits laid down by law. Among them, three judges were dismissed and three others had their salaries reduced by 10 to 25% for periods of up to a year.

- *Long-term strategies*

The Bulgarian authorities have adopted several strategies on judicial reforms. For example, a criminal policy strategy for the period 2010-2014 has been adopted, the principal objective being to further reduce the excessive formalism of criminal procedure. It should be noted that the amendments to the 2010 CCrP were decided on the basis of this strategy (see above).

Further, in 2009 the government adopted a plan to eradicate the causes of violations of the Convention found by the European Court in its judgments concerning Bulgaria. That plan was drawn up by a working party which included representatives of the Ministry of Justice as well as human rights activists. Among the tangible results obtained on the basis of this plan, should be mentioned the working party set up to introduce an application for compensation in cases of excessive length of judicial proceedings (see below). In June 2010 the government adopted the strategy on continued judicial reforms in Bulgaria following its accession to the European Union.

2) Measures relating to the effectiveness of remedies

- *Remedy concerning speeding up of civil proceedings*

A remedy allowing to question the length of civil proceedings was introduced into Bulgarian law as long ago as 1999 (Article 217a of the former CCvP). The provisions governing this remedy were maintained to a great extent in the new CCvP of 2007. Articles 255 to 257 thereof stipulate that, if a court fails to take a procedural step in time, the parties may at any time request the superior court to set a deadline for taking the procedural step in question. The request is lodged through the court seised of the case, which must send it to the superior court together with its own opinion. If the court seised of the case takes the requested steps immediately, the request is deemed to be withdrawn unless the party concerned states that it wishes to maintain the request. In cases where the request is transmitted to the superior court, it must be examined within one week by a judge of that court. If he finds that there has been unjustified delay, the superior court sets a deadline by which the procedural step must be taken. The order of the superior court is final.

According to the data supplied by the authorities, the regional courts examined 242 applications for speeding up of civil proceedings in 2007. 110 applications were examined in 2008 and 142 in 2009. Also in 2009, the appeal courts examined 78 applications for the speeding up of proceedings.

The European Court has accepted that the remedy provided for in Article 217a of the former CCvP is effective in principle (see *Simizov v. Bulgaria*, no. 59523/00, § 56, 18 October 2007, *Jeliazkov and others v. Bulgaria*, no. 9143/02, § 48, 3 April 2008, and *Stefanova v. Bulgaria*, no. 58828/00, § 69, 11 January 2007). It has however stated that account must be taken of the circumstances of each case (*Stefanova*, cited above, § 69) and of the effect which such application might have on the overall length of the proceedings in question (*Simizov*, cited above, §§ 54-56). In several cases the Court has found that the application in question has not or could not have prevented certain delays by reason of their specific causes, such as for example inactivity on the part of the prosecution, inability of the domestic authorities to ensure that one party to the proceedings is properly summonsed, or errors in the application of the law (*Stefanova*, cited above, §§ 70 and 71, *Mincheva v. Bulgaria* no. 21558/03, § 105, 2 September 2010, *Maria Ivanova v. Bulgaria* no. 10905/04, § 35, 18 March 2010).

Furthermore, the European Court observed that it was unclear whether this remedy was available before the Supreme Court of Cassation, in so far as there was no higher court.

The authorities have indicated that these shortcomings will be taken into account when defining a new application for compensation in cases of excessive length of judicial proceedings (see below).

- Remedy concerning speeding up of criminal proceedings

The provisions of Articles 368 and 369 of the new CCrP, which incorporated Article 239a of the 1974 CCrP, envisaged the possibility for the accused to request referral of his case to the competent court once a period of 1 to 2 years, depending on the gravity of the charges, had elapsed since the start of the preliminary inquiry. The court to which that request was submitted could order the prosecuting authority to complete the preliminary inquiry within a period of two months or else bring the criminal proceedings to an end.

In the *Ganchev* judgment (no. 57855, §§ 26-34, 12 July 2007), the European Court declared the complaint based on Article 6 § 1 inadmissible for failure to exhaust the domestic remedies, because the applicant had not availed himself of the remedy provided for in Article 239a of the 1974 CCrP. However, it should be noted that in another case examined by the European Court (*Shishkovi v. Bulgaria*, no. 17322/04, 25 March 2010), the application of Article 239a of the 1974 CCrP was the cause of the closure of a criminal inquiry into ill-treatment. In that case the European Court found a violation of Article 3 of the Convention.

Articles 368 and 369 were abrogated as from 28 May 2010. The authorities indicated in this connection that the abrogated provisions had mainly served as a reason for terminating the criminal proceedings, without guaranteeing a full inquiry. They consider that new provisions relating to the possibility of imposing disciplinary penalties for systematic failure to comply with time-limits or for unjustified delays could be seen as a guarantee of expeditious criminal proceedings (for more details, see the Government's reply to one NGO's observations on this point on the Committee of Ministers website: [DH-DD\(2010\)335](#)).

- Compensatory remedy

The European Court has consistently pointed to the absence in Bulgarian law of a remedy enabling compensation to be obtained for excessive length of judicial proceedings (see, for example, the *Mincheva v. Bulgaria* judgment cited above, § 107).

In this connection the Government has indicated that, in the context of implementing a plan to eradicate the causes of the violations found by the European Court in judgments concerning Bulgaria, it has set up a working party to prepare a bill amending the law on the responsibility of the state and municipalities for prejudice caused to individuals. This bill envisages, in particular, the introduction of an application for compensation in cases of unjustified delay in the proceedings. This working party has drafted a bill providing that the state may be held responsible, in addition to the cases already settled, where unjustified delay in civil, criminal and administrative proceedings are attributable to the judicial authorities.

As regards criminal proceedings, it should also be noted that certain forms of non-pecuniary redress exist in cases of excessive length of proceedings, such as the possibility of reducing the penalties. This form of redress has been recognised by the European Court as an effective remedy in certain circumstances (*Bochev against Bulgaria* judgment of 13 November 2008, § 83).

Appendix II to Interim Resolution CM/ResDH(2010)223

Statistical data

I. Statistics on length of judicial proceedings before the Bulgarian courts

1) Data for Bulgarian courts as a whole¹

The general trend which emerges from the data available shows that, despite a resurgence in the number of cases registered, the number of cases terminated for all courts is on the increase (in 2009 it was 4.59% higher than in 2007, and 15.46% higher than in 2008). Similarly, the backlog facing the courts as a whole decreased for the second year running. Thus the decrease in the number of cases pending at the end of 2009 is of 10.26% as compared with 2007 and of 2.35% as compared with 2008.

The number of judges, taking all courts together, was 2,162 in 2009, 1.45% more than in 2007 and 1.74% more than in 2008.

2) Supreme Court of Cassation²

- Criminal bench

One consequence of the entry into force of the 2005 CCrP was a fall in the number of cases registered, since judgments delivered on appeal upholding the judgments delivered at first instance are now not subject to review by the Supreme Court of Cassation. Thus, while the criminal bench had examined 3,950 cases at public hearings in 2006, the corresponding figures for 2008 and 2009 were 2,081 and 1,955 cases respectively.

In 2009 the criminal bench registered 131 cases more than in 2008, and its backlog also increased (from 279 cases at the end of 2008 to 383 cases at the end of 2009). However, that increase in the backlog had no major effect on the length of proceedings before the criminal bench. Indeed, in 2009, the proceedings following appeals in cassation and applications for reopening of procedures took between 3 and 4 months, as in 2008.

- Civil bench

Despite an increase in the number of new cases registered in 2009 (2,191 more than in 2008 and 513 more than in 2007), the backlog before the civil bench decreased at the end of the same year (4,706 cases pending at the end of 2009 as compared with 5,361 in 2008 and 8,555 in 2007).

- Commercial bench

The backlog before the commercial bench at the end of 2009 was on the increase (1,385 cases pending at the end of 2009 as compared with 634 at the end of 2008). That increase was the result of the higher number of cases registered (55.46% more than in 2008), notwithstanding the increase in the number of cases terminated in 2009 (21.31% more than in 2008).

3) Supreme Administrative Court³

Despite a constant increase in the number of cases terminated by this court between 2007 and 2009 (13,777 cases in 2007, 15,095 cases in 2008 and 16,263 cases in 2009), its backlog slightly increased during that period due to the increase in the number of cases registered (13,659 cases in 2007, 16,402 cases in 2008 and 17,190 in 2009). In 2009, 7% of cases terminated were concluded within one month and 66% within three months, while 27% took over three months.

¹ The data summarised in this part are available on the website of the Supreme Judicial Council, in the section on judicial statistics.

² Data available on the website of the Supreme Court of Cassation, particularly in its annual report for 2009: http://www.vks.bg/Docs/VKS_Doklad_2009.pdf

³ These data form part of the report of the president of the Supreme Administrative Court for 2009 and are available on that court's website: <http://www.sac.government.bg/home.nsf/v/PagesLookup/Доклад%202009-Народно%20събрание-bg?OpenDocument>

4) Appeal courts

The backlog in the appeal courts is constantly decreasing. The number of cases pending at the end of 2009 (1,713) decreased by 45.89% as compared with 2007 and by 22.28% as compared with 2008.

5) Military tribunals

The same trend is observed in military tribunals. In 2009, the backlog decreased by 52.07% as compared with 2007 and by 35.20% as compared with 2008.

6) Regional courts and the Sofia City court

The creation in 2007 of 28 administrative courts, as well as an agency responsible for entries in the commercial register, led to a significant decrease in the number of cases registered by regional courts in 2009 (42.73% fewer than in 2007 and 2.64% fewer than in 2008). Cases pending at the end of 2009 numbered 23,392, a figure 31.76% lower than in 2007 and 15.99% lower than in 2008.

7) District courts located in regional centres

The backlog in these courts at the end of 2009 had grown by 1.05% as compared with 2007 and by 7.03% as compared with 2008. This increase is due to the rise in the number of cases they had to deal with in 2009 (23.05% more than in 2007 and 18.29% more than in 2008), and despite a larger number of cases terminated during that year (28.36% more than in 2007 and 20.70% more than in 2008).

In 2009 the district courts located in regional centres registered 285,547 cases; 94,317 cases were registered by the Sofia district court, i.e. 33% of all cases newly registered with the courts in this category.¹

8) District courts located outside regional centres

The backlog in these courts at the end of 2009 had fallen (by 12.64% as compared with 2007 and by 7.54% as compared with 2008) notwithstanding an increase in the number of cases they had to deal with (11.30% more than in 2007 and 15% more than in 2008).

This trend was due to the increase in the number of cases terminated in 2009 (16.47% more than in 2007 and 19.72% more than in 2008). It is also to be noted that in 2009, 92,541 cases were concluded within three months, a figure 22.88% higher than for 2007 and 25.71% higher than for 2008.

9) Administrative courts

These courts began sitting in 2008. In 2009 they dealt with 45,164 cases, a figure 8.81% higher than in 2008. The number of cases terminated in 2009 was 10.09% higher than in 2008. Despite that increase, the number of cases pending at the end of 2009 was 4.23% higher than for 2008.

II. Statistics for the length of preliminary investigations

In 2009, cases in which the preliminary investigation was under way numbered 213,151, a figure 4% higher than for 2008. Investigations started during 2009 numbered 139,894, 6% more than for 2008. Investigations initiated during the year represented 66% of investigations under way in 2009. The backlog at the start of 2009 consisted of 73,257 cases being investigated. The backlog at the end of 2009 consisted of 52,511 cases being investigated (as against 59,048 in 2007).

As regards cases in which the investigation was suspended, their number fell from 961,713 in January 2007 to 654,334 at the end of 2009. In 98% of these cases, the reason for suspension is the impossibility of identifying the perpetrator of the criminal offence.

¹ Additional information on the performance of trial and appeal courts is available in the 2009 report of the president of the Supreme Court of Cassation: <http://www.vss.justice.bg/bg/start.htm>

Appendix III to Interim Resolution CM/ResDH(2010)223

- 47 cases of length of criminal proceedings and of lack of an effective remedy

37104/97	Kitov, judgment of 03/04/03, final on 03/07/03
35825/97	Al Akidi, judgment of 31/07/03, final on 31/10/03 rectified on 16/10/03
61662/00	Angelov Vasil, judgment of 12/04/2007, final on 12/07/2007
61596/00	Atanasov and Ovcharov, judgment of 17/01/2008, final on 17/04/2008
70843/01	Balabanov, judgment of 03/07/2008, final on 03/10/2008
39270/98	Belchev, judgment of 08/04/2004, final on 08/07/2004
36552/03	Dimitrov Maxim, judgment of 07/01/2010, final on 07/04/2010
50401/99	Dimitrov Vasko Yordanov, judgment of 03/05/2006, final on 03/08/2006
56762/00	Dimov, judgment of 08/03/2007, final on 08/06/2007
68356/01	Doinov, judgment of 27/09/2007, final on 27/12/2007
43231/98	E.M.K., judgment of 18/01/2005, final on 18/04/2005
44062/98	Hamanov, judgment of 08/04/2004, final on 08/07/2004
35436/97	Hristov, judgment of 31/07/03, final on 31/10/2003
32461/02	Hristov Ivan, judgment of 20/03/2008, final on 20/06/2008
36244/02	Hristov Stoine No. 2, judgment of 16/10/2008, final on 16/01/2009
67189/01	Ivanov, judgment of 24/05/2007, final on 12/11/2007
76942/01	Ivanov Valentin, judgment of 26/03/2009, final on 26/06/2009
49163/99	Kalpachka, judgment of 02/11/2006, final on 02/02/2007
65051/01	Karagyozev, judgment of 25/10/2007, final on 25/01/2008
76965/01	Karmo, judgment of 06/12/2007, final on 06/03/2008
45964/99	Karov, judgment of 16/11/2006, final on 26/03/2007
50326/99	Kolev, judgment of 28/04/2005, final on 28/07/2005
30380/03	Lisev, judgment of 26/02/2009, final on 26/05/2009
71605/01	Mirchev and others, judgment of 27/11/2008, final on 27/02/2009
58775/00	Mladenov, judgment of 12/10/2006, final on 12/01/2007
43428/02	Myashev, judgment of 08/01/2009, final on 08/04/2009
38106/02	Nalbantova, judgment of 27/09/2007, final on 27/12/2007
44241/98	Nedyalkov, judgment of 03/11/2005, final on 03/02/2006
40896/98	Nikolova No. 2, judgment of 30/09/2004, final on 30/12/2004
54178/00+	Osmanov and Yuseinov, judgment of 23/09/2004, final on 23/12/2004
50358/99	Pekov, judgment of 30/03/2006, final on 30/06/2006
48137/99	Popov, judgment of 01/12/2005, final on 01/03/2006
14387/03	Rangelov, judgment of 23/04/2009, final on 23/07/2009
56337/00	Rezv, judgment of 15/02/2007, final on 15/05/2007
37355/97	S.H.K., judgment of 23/10/03, final on 23/01/04
55057/00	Sidjimov, judgment of 27/01/2005, final on 27/04/2005
58733/00	Sodadjiev, judgment of 05/10/2006, final on 05/01/2007
62594/00	Terziev, judgment of 12/04/2007, final on 12/07/2007
38299/05	Todorov Spas, judgment of 05/11/2009, final on 05/02/2010
56308/00	Toshev, judgment of 10/08/2006, final on 10/11/2006
42987/98	Vachev, judgment of 08/07/2004, final on 08/10/2004
72636/01	Valkov, judgment of 08/01/2009, final on 08/04/2009
59913/00	Vasilev, judgment of 02/02/2006, final on 02/05/2006
61257/00	Vasilev and others, judgment of 08/11/2007, final on 08/02/2008
70728/01	Yankov No. 2, judgment of 07/02/2008, final on 07/05/2008
27207/04+	Yankov and Manchev, judgment of 22/10/2009, final on 22/01/2010
45563/99	Zhbanov, judgment of 22/07/2004, final on 22/10/2004

- 37 cases of length of civil proceedings and lack of an effective remedy

45950/99	Djangozov, judgment of 08/07/2004, final on 08/10/2004
56793/00	Babichkin, judgment of 10/08/2006, final on 10/11/2006
28583/03	Bratovanov, judgment of 23/04/2009, final on 23/07/2009
27918/02	Demirevi, judgment of 28/05/2009, final on 28/08/2009
47829/99	Dimitrov, judgment of 23/09/2004, final on 23/12/2004
15154/02	Givezov, judgment of 22/05/2008, final on 22/08/2008, rectified on 30/09/2009
62722/00	Gospodinov, judgment of 10/05/2007, final on 10/08/2007
58497/00	Hadjibakalov, judgment of 08/06/2006, final on 08/09/2006
7254/02	Ilievi, judgment of 28/05/2009, final on 28/08/2009
19207/04	Ivanov Petko, judgment of 26/03/2009, final on 26/06/2009
14226/04	Ivanovi, judgment of 07/01/2010, final on 07/04/2010

9143/02 Jeliazkov and others, judgment of 03/04/2008, final on 03/07/2008
55350/00 Kambourov, judgment of 14/02/2008, final on 14/05/2008
60939/00 Karcheva and Shtarbova, judgment of 28/09/2006, final on 28/12/2006
74487/01 Kavalovi, judgment of 17/01/2008, final on 17/04/2008
44626/98 Kiurkchian, judgment of 24/03/2005, final on 24/06/2005
76763/01 Kostova, judgment of 03/05/2007, final on 03/08/2007
9161/02 Kouncheva, judgment of 03/07/2008, final on 03/10/2008
57641/00 Kovacheva and Hadjiilieva, judgment of 29/03/2007, final on 29/06/2007
29802/02 Krastev, judgment of 24/07/2008, final on 01/12/2008
66535/01 Kroushev, judgment of 03/07/2008, final on 03/10/2008
77147/01 Kuiyumdjiyan, judgment of 24/05/2007, final on 24/08/2007
20568/02 Marinova and Radeva, judgment of 02/07/2009, final on 02/10/2009
50954/99 Maslenkovi, judgment of 08/11/2007, final on 02/06/2008
69316/01 Merdzhanov, judgment of 22/05/2008, final on 22/08/2008
15099/04 Nachev, judgment of 05/11/2009, final on 05/02/2010
72855/01 Parashkevanova, judgment of 03/05/2007, final on 03/08/2007
39855/03 Pavlova, judgment of 14/01/2010, final on 14/04/2010
47877/99 Rachevi, judgment of 23/09/2004, final on 23/12/2004
7148/04 Ruga, judgment of 02/07/2009, final on 06/11/2009
16880/02 Sheremetov, judgment of 22/05/2008, final on 22/08/2008
59523/00 Simizov, judgment of 18/10/2007, final on 18/01/2008
58828/00 Stefanova, judgment of 11/01/2007, final on 11/04/2007
19256/03 Stefanova Donka, judgment of 01/10/2009, final on 01/01/2010
39832/98 Todorov Nikolai Petkov, judgment of 18/01/2005, final on 18/04/2005
2380/03 Tzvyatkov, judgment of 22/10/2009, final on 22/01/2010
55956/00 Vatevi, judgment of 28/09/2006, final on 28/12/2006

GREECE

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

**Interim Resolution CM/ResDH(2014)84
Execution of the judgments of the European Court of Human Rights
Bekir-Ousta and Others against Greece,
Emin and Others against Greece,
Tourkiki Enosi Xanthis against Greece**

Application	Case	Judgment of	Final on
35151/05	BEKIR-OUSTA AND OTHERS	11/10/2007	11/01/2008
34144/05	EMIN AND OTHERS	27/03/2008	01/12/2008
26698/05	TOURKIKI ENOSI XANTHIS AND OTHERS	27/03/2008	29/09/2008

*(Adopted by the Committee of Ministers on 5 June 2014
at the 1201st 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"),

Noting that the present cases concern violations of the applicants' right to freedom of association (Article 11), in particular on account of the refusal by the authorities to register their associations in the Bekir Ousta and Others and Emin and Others cases, and on account of the dissolution of their association in the Tourkiki Enosi Xanthis case;

Noting further that, following the judgments of the European Court, the applicants have not succeeded in having their cases re-examined in the light of the Court's findings;

Recalling the commitment reiterated by the Greek authorities to implementing fully and completely these judgments, without excluding any avenue in that respect, so that the applicants benefit from proceedings in compliance with the Convention requirements, in the light of the Court's case-law;

Recalling further that since June 2013, the Greek authorities have indicated to the Committee that, in response to these judgments, they were considering the most appropriate solution to execute the individual measures;

Strongly regretting that, despite the Committee's call, the Greek authorities have provided no concrete and tangible information on the measures explored to implement the individual measures, accompanied by an indicative calendar for their adoption;

CALLS upon the Greek authorities to take, without any further delay, all necessary measures so that the applicants benefit from proceedings in compliance with the Convention requirements, in the light of the Court's case-law;

CALLS further upon the authorities to provide the Committee, without any further delay, with tangible information on the measures taken or envisaged, accompanied by an indicative calendar for their adoption, to achieve the aforementioned goals in compliance with the Court's judgments.

ITALY

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)83
Execution of the judgments of the European Court of Human Rights
in the case Ben Khemais against Italy

(Application No. 246/07, judgment of 24 February 2009, final on 6 July 2009)

*(Adopted by the Committee of Ministers on 3 June 2010,
 at the 1086th 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 Court which was transmitted to the Committee once it had become final;

Recalling that the applicant in the present case was expelled to Tunisia on 2 June 2008 despite the Court's interim measure under Rule 39 of the Rules of the Court requiring the Italian authorities not to do so until further notice;

Noting that the Court consequently found that the applicant's expulsion amounted to violations of Article 3 and of Article 34 of the Convention;

Recalling that, in the context of the examination of the present case, the Committee noted, at its 1078th meeting (March 2010), that the Italian authorities were fully committed to complying with the interim measures indicated by the Court under Rule 39;

Deploring that, despite this commitment, the Italian authorities expelled another applicant, Mr. Mannai, to Tunisia on 1 May 2010 in breach of an interim measure indicated on 19 February 2010 by the Court requiring the Italian authorities not to do so until further notice;

Noting with concern that in at least two other cases the Italian authorities have expelled applicants to Tunisia although the Court had previously indicated not to do so under Rule 39¹;

Recalling firmly that, according to the Court's well-established case-law, Article 34 of the Convention entails an obligation to comply with interim measures indicated pursuant to Rule 39 of the Rules of the Court since the Grand Chamber's judgment of 4 February 2004 in the case of Mamatkulov and Askarov against Turkey,

Stressing once again the fundamental importance of complying with interim measures indicated by the Court under Rule 39 of the Rules of Court;

Expressing confidence however that the Italian authorities will finally take the necessary measures to ensure that interim measures indicated by the Court are strictly complied with, to prevent similar violations in the future;

FIRMLY RECALLS the obligation of the Italian authorities to respect interim measures indicated by the Court;

¹ The applicants in the cases of Ali Toumi and Trabelsi were expelled on 2 August 2009 and 13 December 2008 respectively. The Court rendered a judgment in the latter case finding again violations of Articles 3 and 34 of the Convention (judgment of 13 April 2010 – not final yet).

URGES the Italian authorities to take all necessary steps to adopt sufficient and effective measures to prevent similar violations in the future;

DECIDES to examine the implementation of this judgment at each human rights meeting until the necessary urgent measures are adopted.

⇒ Excessive length of proceedings

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)224

Execution of the judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings in Italy:

- 2183 cases against Italy concerning the excessive length of judicial proceedings (follow up to Interim Resolutions [DH\(97\)336](#), [DH\(99\)436](#), [DH\(99\)437](#), [ResDH\(2000\)135](#) ; [ResDH\(2005\)114](#); [CM/ResDH\(2007\)2](#), [CM/ResDH\(2009\)42](#);

- including 118 cases concerning the length of proceedings concerning civil rights and obligations before administrative courts

(See [Appendix for the list of cases](#))

- and including 2065 cases concerning the length of judicial proceedings

(See [Appendix for the list of cases](#))

and

- 24 cases concerning bankruptcy proceedings (Articles 1 of Protocol No.1 and 6, paragraph 1) (listed in Appendix I)

(Adopted by the Committee of Ministers on 2 December 2010 at the 1100th 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 "the Convention"),

Given the considerable number of judgments of the European Court of Human Rights (hereinafter "the Court") and decisions of the Committee of Ministers ("the Committee") 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 the Court of Audit which led the Committee to close its examination of these aspects of the problem in the 1990s (see Resolutions ResDH(92)26, ResDH(95)82 and ResDH(94)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 in the context of length of proceedings was definitely confirmed (Interim Resolution ResDH(2000)135);

Bearing in mind that the Committee, in its last Interim Resolution CM/ResDH(2009)42, called upon the authorities to envisage and adopt urgently ad hoc measures to reduce the civil and criminal backlog; to provide the resources needed to guarantee the implementation of all the reforms; and to pursue the consideration of any other measure to improve the efficiency of justice, inviting them to draw up a timetable for anticipated medium-term results with a view to assessing them as the reforms proceed, and to adopt a method for analysing these results in order to make any necessary adjustments, if need be;

Recalling that, as regards administrative procedures, the Committee encouraged the Italian authorities to continue with their undertakings aimed at measuring precisely the backlog, adopting any measures envisaged further to reduce it and assessing the impact on the backlog of any measure taken;

Bearing in mind that, as regards bankruptcy proceedings, in its latest Interim Resolution CM/ResDH(2009)42, the Committee called upon the Italian authorities to assess the effects of the Bankruptcy Proceedings Reform as it proceeds with a view to adopting any further measures necessary to ensure its effectiveness, and to take also any measures necessary to expedite pending proceedings to which the reform does not apply;

Recalling that in Interim Resolution CM/ResDH(2009)42, the Committee also strongly encouraged the authorities to consider amending Act No. 89/2001¹ with a view to setting up a financial system, resolving the problems of delay in the payment of compensation awarded, to simplify the procedure and to extend the scope of the remedy to include injunctions to expedite proceedings; recalling further that more than 500 applications exclusively concerning the issue of delay in payment of compensation have been communicated by the Court to the Italian government (see the Simaldone judgment, application No. 22644/03);

Reiterating that excessive delays in the administration of justice constitute a serious danger for the respect of the rule of law, resulting in a denial of rights enshrined in the Convention;

Noting with concern that, since the last Interim resolution adopted in March 2009, on the several outstanding issues there has not been a constant and sufficient flow of information, thus not allowing the Committee to make an effective assessment;

Noting however that, among the few statistics provided referring to the year 2008, a significant decrease in the average length of proceedings before first- and second-instance civil courts, as well as before justices of the peace is reported while, on the contrary, before criminal courts a slight increase is registered; as regards administrative proceedings, an increase in the number of pending cases is registered in 2008;

Regretting that statistics concerning year 2009 were submitted shortly before the meeting, thus making it impossible for the Committee of Ministers to assess them at the present meeting;

Underlying the importance of building an effective medium- and long-term strategy to find a solution to this structural problem, which requires a strong political commitment;

URGES the Italian authorities at the highest level strongly to hold to their political commitment to resolving the problem of the excessive length of judicial proceedings and to take all necessary technical and budgetary measures accordingly;

FIRMLY INVITES the Italian authorities to undertake interdisciplinary action, involving the main judicial actors, co-ordinated at the highest political level, with a view to drawing up urgently an effective strategy and to present it to the Committee, together with up-to-date data and statistics.

¹ Award of just satisfaction in the event of a breach of the requirement to dispose of proceedings within a reasonable time, referred to as the Pinto Law.

Appendix I

- 24 cases concerning bankruptcy proceedings (Articles 1 of Protocol No. 1 and 6§1) Interim Resolutions [CM/ResDH\(2007\)27](#) and [CM/ResDH\(2007\)2](#) [CM/Inf/DH\(2008\)42](#)

32190/96	Luordo, judgment of 17/07/03, final on 17/10/03
47778/99	Bassani, judgment of 11/12/03, final on 11/03/04
14448/03	Bertolini, judgment of 18/12/2007, final on 07/07/2008
56298/00	Bottaro, judgment of 17/07/03, final on 17/10/03
13697/04	Carbe and others, judgment of 23/06/2009, final on 23/09/2009
30408/03	Cavalleri, judgment of 26/05/2009, final on 26/08/2009
24824/03	Colombi, judgment of 26/05/2009, final on 26/08/2009
1595/02	De Blasi, judgment of 05/10/2006, final on 12/02/2007
10347/02	Di Ieso, judgment of 03/07/2007, final on 03/10/2007
37360/04	Diurno, judgment of 23/06/2009, final on 23/09/2009
77986/01	Forte, judgment of 10/11/2005, final on 10/02/2006
10756/02	Gallucci, judgment of 12/06/2007, final on 12/11/2007
10481/02	Gasser, judgment of 21/09/2006, final on 12/02/2007
55984/00	Goffi, judgment of 24/03/2005, final on 06/07/2005
6480/03	Mur, judgment of 26/05/2009, final on 26/08/2009
7503/02	Neroni, judgment of 20/04/2004, final on 10/11/2004
39884/98	Parisi and 3 others, judgment of 05/02/04, final on 05/05/04
44521/98	Peroni, judgment of 06/11/03, final on 06/02/04
34562/04	Roccaro, judgment of 23/06/2009, final on 23/09/2009
52985/99	S.C., V.P., F.C. and E.C., judgment of 6/11/03, final on 6/02/04
981/04	Shaw, judgment of 10/03/2009, final on 10/06/2009
13606/04	Vicari Maria, judgment of 26/05/2009, final on 26/08/2009
29070/04	Vinci Mortillaro, judgment of 23/06/2009, final on 23/09/2009
7842/02	Viola and others, judgment of 08/01/2008, final on 08/04/2008

CONSEIL DE L'EUROPE

COMITÉ DES MINISTRES

Interim Resolution CM/ResDH(2009)42

Execution of the judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings in Italy: Progress achieved and outstanding issues in the context of general measures to ensure compliance with the judgments of the European Court of Human Rights

- in the 2183 cases against Italy concerning the excessive length of judicial proceedings (listed in Appendix I) (Follow-up to Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135, ResDH(2005)114, and CM/ResDH(2007)2, and)

- in the cases concerning bankruptcy proceedings (Articles 1 of Protocol no.1 and 6§1) (listed in Appendix II) (Follow-up to Interim Resolution [CM/ResDH\(2007\)27](#))

(Adopted by the Committee of Ministers on 19 March 2009 at the 1051st 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 "the Convention"),

Considering the large number of judgments of the European Court of Human Rights ("the Court") and decisions of the Committee of Ministers ("the Committee") 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 the Court of Audit which led the Committee to close its examination of these aspects 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 in the context of length of proceedings was definitely confirmed (Interim Resolution DH(2000)135);

Recalling that, as in Interim Resolution ResDH(2005)114, the Committee in its last Interim Resolution, CM/ResDH(2007)2, urged the Italian authorities to hold to their political commitment to resolve the problem of the excessive length of judicial proceedings and invited them to undertake interdisciplinary action involving the main judicial actors and co-ordinated at the highest political level with a view to drawing up a new, effective strategy;

Bearing in mind that in Interim Resolution [CM/ResDH\(2007\)27](#) concerning bankruptcy proceedings the Committee welcomed the 2006 reform of bankruptcy proceedings and its immediate effect in erasing many of the restrictions on rights and freedoms criticised in the Court's judgments; moreover, it called on the Italian authorities to provide information on the effects of this reform as regards the acceleration of bankruptcy proceedings and decided to examine these cases in conjunction with those related to the more general problem of the excessive duration of judicial proceedings;

Recalling that the dysfunction of the justice system, as a consequence of the length of proceedings, represents an important danger, not least for the respect of the Rule of Law;

Welcoming the regular and close co-operation established between the Italian authorities and the Secretariat in particular through bilateral meetings at high level that took place in Rome in October 2007 and in October 2008, with a view to keeping the Committee of Ministers informed on the progress achieved following Interim Resolution CM/ResDH(2007)2 with respect to the structural problem of length of proceedings before the civil, criminal, and administrative courts, and the efficiency of justice in general;

Noting with satisfaction the continuing political commitment of the authorities to overcome the structural problem of the length of judicial proceedings and welcoming the efforts made in recent years focusing simultaneously on legislative reform, reorganisation of the judiciary and management of proceedings by judges;

Underlining the declarations made, at the beginning of 2009, by the Presidents of the highest courts (Constitutional Court and Supreme Court of Cassation), as well as by the Ministry of Justice, which show the authorities' determination to give the structural problem of the length of proceedings the necessary priority in their own fields of action by ensuring the implementation of the measures already taken and the prompt adoption of further measures intended to improve the efficiency of justice;

Assessment of the Committee of Ministers

Having examined the information provided by the Italian authorities concerning the measures taken since the adoption of Interim Resolutions CM/ResDH(2007)2 and CM/ResDH(2007)27, as presented in Information Document CM/Inf/DH(2008)42 of 28 November 2008 and in Appendix II to the present resolution;

1) Civil and criminal proceedings

Noting that, notwithstanding the measures taken, the statistics for the years 2006-2007 still show an increase in the length of proceedings in particular before certain jurisdictions (justices of peace [*giudici di pace*] and courts of appeal), as well as a substantial backlog in the civil and criminal fields (approximately 5.5 million pending civil cases and 3.2 million pending criminal cases), and that therefore a permanent solution to the structural problem of length of proceedings must be found;

Noting with interest the progress achieved through the measures adopted so far in the field in particular:

Law-Decree No. 112 of 25 June 2008, converted into Act No. 133 of 6 August 2008, which introduced amendments designed to bring about a significant reduction in civil claims in which the behaviour of litigants delays the proceedings;

Law-Decree No. 92 of 23 May 2008, converted into Act No. 125 of 24 July 2008, which amended the Code of Criminal Procedure with a view to accelerating and rationalising criminal-law proceedings;

Considering that the reforms adopted will show their results only in the medium term;

Noting also in this respect the Bill (A.S. 1082), currently pending before Parliament, which specifically aims to expedite the processing of civil cases by broadly reforming civil procedure with an underlying strategy of reducing the number of trials; accelerating the on-going trials and developing the use of alternative dispute regulation;

Recalling that in several judgments concerning the remedy against the excessive length of proceedings (Law No. 89/2001, Award of just satisfaction in the event of a breach of the requirement to dispose of proceedings within a reasonable time and amendment of Article 375 of the Code of Civil Procedure, referred to as the Pinto Law), the European Court found that the late payment of compensation to the applicant did not afford adequate redress and considered the applicant continued to be a victim of a breach of the "reasonable-time" requirement, and that the statistics provided by the government show an increase in the length of proceedings before the courts of appeal competent to deal with "Pinto Law" appeals;

CALLS UPON the Italian authorities to pursue actively their efforts to ensure the swift adoption of the measures already envisaged for civil proceedings; to envisage and adopt urgently ad hoc measures to reduce the civil and criminal backlog by giving priority to the oldest cases and to cases requiring particular diligence; to provide the resources needed to guarantee the implementation of all the reforms; and to pursue the consideration of any other measure to improve the efficiency of justice;

ENCOURAGES the authorities to continue implementing awareness-raising activities among judges to accompany the implementation of the reforms;

INVITES the authorities to draw up a timetable for anticipated medium-term results with a view to assessing them as the reforms proceed, and to adopt a method for analysing these results in order to make any necessary adjustments, if need be;

STRONGLY ENCOURAGES the authorities to consider amending Act No. 89/2001 (the Pinto Law) with a view to setting up a financial system resolving the problems of delay in the payment of compensation awarded, to simplify the procedure and to extend the scope of the remedy to include injunctions to expedite proceedings.

2) Administrative proceedings

Acknowledging the progress achieved following the reform of administrative proceedings (Act No. 205 of 21 July 2000) to expedite them, which has begun to have a concrete effect on the length of such proceedings;

Bearing in mind that the real problem of administrative courts is the backlog, which in 2007 amounted to 640 000 pending cases at first instance and 21 000 pending cases at appeal;

Noting that, with a view to reducing the backlog, specific measures have been adopted, such as Act No. 133 of 6 August 2008 which *inter alia* decreased the time limit for the lapsing of an administrative complaint from 10 to 5 years, unless the parties apply to the court for a hearing date, and the broader application of information technology (*Nuovo Sistema Informativo della Giustizia Amministrativa*), which should make it easier to identify of time-barred proceedings;

Noting also the measures envisaged in the field (in particular, the setting up of special provisional sections);

ENCOURAGES the Italian authorities to continue with their undertakings:
to measure precisely the backlog in administrative proceedings;
to adopt any measures envisaged further to reduce that backlog;
and to assess the impact on the backlog of any measure taken.

3) Bankruptcy proceedings

Noting the reform brought in by Act No.80 of 14 May 2005 and Legislative Decree No. 5 of 9 January 2006 on bankruptcy proceedings (the measures of which are detailed in the appendix), which aimed, *inter alia*, at expediting such proceedings and simplifying the different procedural steps;

Noting that, on the basis of the statistics provided by the government, in absolute numbers, the bankruptcy petitions filed, as well as the bankruptcy declarations, decreased by approximately 40% in 2007, (that is after the entry into force of the reform);

Noting also that as far as expedition of proceedings is concerned, the reform has contributed to reducing substantially the phase of auditing claims, now grouped in one hearing ;

Bearing in mind that, as far as the length of bankruptcy proceedings is concerned, the reform has not yet been fully deployed insofar as it applies only to proceedings introduced following its entry into force and statistics are only available up to 2007;

Recalling, however, that the length in days of these proceedings remained stable, even in 2007, around a 2003-2007 average of 3300 days (i.e. approximately 9 years), and that proceedings pending before the entry into force of the reform, to which the reform does not apply, continue to be affected by this length;

CALLS UPON the Italian authorities to continue their efforts to ensure the Bankruptcy Proceedings Reform fully contributes to the acceleration of bankruptcy proceedings, to assess the effects of the reform as it proceeds with a view to adopting any further measures necessary to ensure its effectiveness, and to take also any measures necessary to expedite pending proceedings to which the reform does not apply.

4) Measures for improving the efficiency of the judiciary

Recalling the measures adopted aimed at improving the structural organisation of the judiciary (Law-Decree no. 143 of 16 September 2008, the increase of the number of ordinary judges, and disciplinary procedures against judges), as well as the fact that within the current legal framework, certain courts in different parts of the country have already achieved excellent results in terms of reduction of the backlog and expediting proceedings by improving their organisation and work management;

Noting the Ministry of Justice is continuing its efforts to develop the application of information technology in all judicial offices, in particular by the introduction of the Electronic Civil Trial (*Processo civile telematico*);

INVITES the authorities to ensure the dissemination of these best practices to other courts, implement any organisational measures taken, including the widespread use of information technologies to all jurisdictions, and adopt any additional measures to enhance more responsible and efficient behaviour from all players in the judicial system.

In view of the above, the Committee of Ministers

DECIDES to resume consideration of the progress achieved at the latest:
at the end of 2009 for administrative proceedings, with a view to considering the possibility of closing the examination of the cases concerned;
mid-2010 for civil, criminal, and bankruptcy proceedings;

INVITES the Italian authorities to keep the Committee of Ministers informed of all developments in order to ensure a continued monitoring of the progress, if need be, through bilateral meetings between the authorities and the Secretariat.

Appendix I to Interim Resolution CM/ResDH(2009)42

Information provided by the Italian authorities to the Committee of Ministers on general measures taken to comply with the European Court's judgments on excessive length of judicial proceedings are summarised in the Information Document CM/Inf/DH(2008)42 of 28 November 2008 "Stock-taking of the measures adopted by the Italian authorities in 2006-2008 on the excessive length of judicial proceedings".

- 2183 cases against Italy

2183 cases concerning the length of judicial proceedings

(see also, for more detailed information, CM/Inf/DH(2005)31 and addendum 1 and 2, CM/Inf/DH(2005)33, CM/Inf(2005)39, CM/Inf/DH(2008)42

Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135 and CM/ResDH(2007)2

[\(See Appendix for the list of cases\)](#)

Appendix II to Interim Resolution CM/ResDH(2009)42

- Cases concerning bankruptcy proceedings (Articles 1 of Protocol No. 1 and 6§1)

Interim Resolution ResDH(2007)27

CM/Inf/DH(2008)42

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
14448/03	Bertolini, judgment of 18/12/2007, final on 07/07/2008
1595/02	De Blasi, judgment of 05/10/2006, final on 12/02/2007
10347/02	Di Ieso, judgment of 03/07/2007, final on 03/10/2007
77986/01	Forte, judgment of 10/11/2005, final on 10/02/2006
10756/02	Gallucci, judgment of 12/06/2007, final on 12/11/2007
10481/02	Gasser, judgment of 21/09/2006, final on 12/02/2007
55984/00	Goffi, judgment of 24/03/2005, final on 06/07/2005
7503/02	Neroni, judgment of 20/04/2004, final on 10/11/2004
39884/98	Parisi and 3 others, judgment of 05/02/04, final on 05/05/04
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
7842/02	Viola and others, judgment of 08/01/2008, final on 08/04/2008

Additional information provided by the Italian authorities with respect to excessive length of bankruptcy proceedings

The reform is based upon two pieces of legislation: Act No.80 of 14 May 2005 and Legislative Decree No. 5 of 9 January 2006 on bankruptcy proceedings. In addition to the changes (concerning the individual restrictions following bankruptcy and remedies against the acts of the liquidators and magistrates) carried out to bring the situation into conformity with the ad hoc indications given by the Court, the reform also dealt with the goal of expediting bankruptcy proceedings, in particular by the following means:

the personal scope of bankruptcy proceedings has been reduced, whereas the amount of debts necessary to obtain a bankruptcy declaration has been increased;

the procedure in the case of bankruptcy adjudicated by a non-competent court, as well as in the case of an appeal lodged against a bankruptcy declaration has been simplified;

higher professional competencies are required to exercise the function of liquidator;

the competencies of the credits committee have been enlarged;

shorter and stricter time-limits have been introduced for the preparatory stages of the proceedings, which precede the declaration of bankruptcy, as well as stricter statutory time-limits for examining liabilities as from the bankruptcy declaration (180 days). Stricter statutory time-limits have also been introduced for auditing liabilities (120 days as from the deposit of the bankruptcy declaration); for lodging requests for admission to the liabilities (30 days before the audit hearing date); and for out-of-time demands. Shorter time limits are also in place for contesting the substantive proceedings, which also have a simplified procedure;

proceedings for the determination of liabilities have been rationalised and simplified, the delegate judge will in principle give immediate approval;

at the beginning of the procedure and no later than 60 days from the compilation of the inventory, the liquidator must present a plan for liquidation of the assets, with particular regard to the modalities and the timetable for claiming them;

introductory and prescription time-limits have been introduced, fixed with respect to the action to set aside a debtor's fraudulent transaction, in order to limit the disputes following the bankruptcy itself;

a simplified procedure for sharing assets has been introduced;

any possibility of early closure of the bankruptcy proceedings by means of economic agreements (agreement with creditors or any similar instrument) has been favoured;

the possible recuperation of the defaulting business or the improvement of the situation of the bankrupt have been favoured, in particular, for the former, by increasing the chances for the business to continue its activities and for the latter by the possibility for the bankrupt to have personal debts which remained unsatisfied at the end of the bankruptcy proceedings, deleted if the bankrupt has co-operated and allowed the proceedings to be expedited (*esdebitazione*);

the possibility of immediate closing of proceedings in the event of insufficient assets has been foreseen;

controlled administration has been abolished: this caused a delay of two years in the bankruptcy proceedings in the event it became clear it was impossible for the business to continue trading.

The reform extended the chamber proceedings to proceedings following from the bankruptcy proceedings, since the chamber proceedings are faster and less complicated proceedings, but preserve the adversarial aspect and the principle of equality of arms.

According to the information provided by the Ministry of Justice, the reform led to a significant reduction of petitions filed to obtain a bankruptcy declaration and, therefore, of the bankruptcy proceedings opened. Moreover, as far as expedition of pending proceedings is concerned, the reform has already shown positive effects with respect to the phase of auditing claims, which has been substantially reduced.

Due to the fact that the reform, under Article 150, applies only to proceedings introduced following its entry into force (16 July 2006) and that statistics available stop at 2007, it is not currently possible to collect information on its effects on the following phases of the bankruptcy proceedings. This information will be provided as soon as it becomes available.

Statistics on bankruptcy proceedings

Table No.1 shows the evolution of the number of bankruptcy petitions filed in all the Court of Appeal's districts for the period 2003-2007.

Table No.2 shows the evolution of the number of declarations of bankruptcy as a consequence of the first reform and of the most recent definition of the bankruptcy criteria.

Finally, the application of the new bankruptcy procedure has shown that the length of the preliminary phase of bankruptcy remained unchanged, while the phase of auditing claims has been drastically reduced by concentrating it in a single hearing.

1: Number of bankruptcy petitions filed before first instance courts for each Court of Appeal's district
 Period: 2003-2007

Districts	Years				
	2003	2004	2005	2006	2007
ANCONA	1 495	1 676	1 610	1 270	916
BARI	1 633	1 864	2 186	1 550	975
BOLOGNA	2 752	3 331	3 118	2 543	1 626
BOLZANO/BOZEN	224	273	274	218	142
BRESCIA	1 967	2 317	2 352	1 780	1 051
CAGLIARI	872	942	969	651	479
CALTANISSETTA	259	363	300	240	111
CAMPOBASSO	280	362	319	254	134
CATANIA	1 527	1 748	1 684	1 463	741
CATANZARO	965	1 242	1 102	977	554
FIRENZE	3 013	3 200	3 590	2 721	1 803
GENOVA	1 466	1 640	1 544	1 120	507
L'AQUILA	1 357	1 486	1 598	1 085	646
LECCE	955	973	829	652	307
MESSINA	425	515	572	416	182
MILANO	4 827	5 411	5 538	4 095	2 537
NAPOLI	4 457	4 644	4 631	3 369	1 601
PALERMO	1 785	1 863	1 850	1 399	699
PERUGIA	875	988	932	665	435
POTENZA	480	535	633	451	208
REGGIO CALABRIA	421	458	422	354	194
ROMA	6 065	6 588	6 297	5 443	2 790
SALERNO	1 122	1 138	1 221	1 088	594
SASSARI	474	472	408	315	88
TARANTO	475	661	688	372	158
TORINO	2 999	2 989	2 867	2 215	1 273
TRENTO	199	266	245	188	103
TRIESTE	843	964	902	599	431
VENEZIA	3 146	3 513	3 571	2 804	1 923
National total	47 358	52 422	52 252	40 297	23 208

2: Number of declarations of bankruptcy before first instance courts for each Court of Appeal's district
 Period: 2003-2007

Districts	Years				
	2003	2004	2005	2006	2007
ANCONA	297	303	309	259	202
BARI	296	315	396	339	227
BOLOGNA	551	651	666	571	424
BOLZANO/BOZEN	54	69	101	98	92
BRESCIA	502	627	711	564	277
CAGLIARI	159	127	110	108	115
CALTANISSETTA	42	37	28	38	25
CAMPOBASSO	39	46	43	39	31
CATANIA	233	260	279	213	161
CATANZARO	155	163	153	125	105
FIRENZE	888	703	816	746	441
GENOVA	364	395	422	319	140
L'AQUILA	329	233	295	259	182
LECCE	176	137	224	166	95
MESSINA	59	86	72	74	37
MILANO	1 419	1 513	1 570	1 325	825
NAPOLI	908	1 004	1 103	912	251
PALERMO	269	314	327	314	270
PERUGIA	172	184	194	227	106
POTENZA	67	71	87	72	50
REGGIO CALABRIA	41	41	63	55	47
ROMA	1 617	1 749	1 832	1 383	640
SALERNO	175	139	148	106	95
SASSARI	93	118	67	47	17
TARANTO	96	90	101	107	47
TORINO	842	888	894	753	422
TRENTO	41	70	56	40	56
TRIESTE	217	255	235	175	139
VENEZIA	847	931	977	838	547
National total	10 948	11 519	12 279	10 272	6 066

Mean duration of proceedings (in days)

CIVIL		PROCEDURES					
Mean duration							
	Year 2001	Year 2002	Year 2003	Year 2004	Year 2005	Year 2006	Year 2007
Bankruptcy petitions filed	171	163	146	138	141	138	159
Bankruptcies	3 539	3 553	3 359	3 140	2 990	3 266	3 754

PORTUGAL

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)34

Execution of the judgment of the European Court of Human Rights in 25 cases against Portugal relating to the excessive length of judicial proceedings (see Appendix II)

*(Adopted by the Committee of Ministers on 4 March 2010,
at the 1078th 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 "the Convention"),

Having regard to the number of judgments of the European Court of Human Rights (hereinafter "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 III to this Resolution);

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

Recalling that the Committee, in its Interim Resolution CM/ResDH(2007)108, welcomed the numerous reforms adopted by the Portuguese authorities to solve this structural problem; that it encouraged the authorities to continue their efforts in this field, inviting them to provide further information on the practical impact of the reforms;

Recalling that in that Interim Resolution, the Committee also referred to its Recommendation to member states Rec(2004)6 on the need to improve the efficiency of domestic remedies, and underlying the importance of this issue when the judgments point to structural problems likely to lead to an important number of new, similar violations of the Convention;

Having also examined the information provided by the Portuguese authorities on additional measures taken or envisaged since the adoption of the Interim Resolution (see Appendix I), comprising comparative statistical data concerning the length of proceedings in the civil, criminal and administrative fields (see Appendix III).

Assessment of the Committee of Ministers

Individual measures

Noting with concern that in the Oliveira Modesto and others case (judgment of 08/06/00) the domestic proceedings, which are still pending, have lasted more than 22 years;

URGES the Portuguese authorities to provide for acceleration as much as possible of these proceedings, in order to bring them to an end as soon as possible;

General measures

1) Civil proceedings

Noting that, while the statistics show a decrease in the average length and the backlog before “higher” civil courts, the situation before the first-instance courts remains a subject of concern;

Noting also that the reform introduced by Law-decree No. 303/2007 has not yet produced the desired impact on the length of proceedings, insofar as it only applies to proceedings initiated after its entry into force (i.e. 1/01/2008);

URGES the authorities to envisage the adoption of *ad hoc* measures to reduce the civil backlog by giving priority to the oldest cases and to cases requiring particular diligence;

ENCOURAGES them to pursue actively their efforts to ensure reduction of the length of civil proceedings, especially before first-instance courts and to assure appropriate monitoring of the reform of 2007 so as to evaluate its effects;

INVITES the authorities also to submit information and statistical data on the general trend before family courts, no information being currently available on this issue.

2) Criminal proceedings

Noting with satisfaction that the reform of criminal proceedings which entered in force on 15 September 2007, has contributed to an important decrease in the backlog, in particular before first-instance criminal courts and that, at least as far as procedures before “higher” courts are concerned, it also contributed to a decrease in their average length;

ENCOURAGES the Portuguese authorities to continue their efforts in monitoring the reform, in view of a full consolidation of its positive effects on the average length of proceedings, including those before first-instance criminal courts.

3) Administrative proceedings

Noting with satisfaction that following the establishment of the Central Administrative Tribunal in 1997, the number of pending cases and registered cases before the Supreme Administrative Court reduced by 50% between 1994 and 2000 and that the statistics on fiscal and administrative proceedings show a decrease of the length of proceedings before “higher” administrative courts;

Noting with interest the wide-ranging reform of administrative proceedings which entered into force on 1 January 2004, aimed at providing effective judicial protection and improving access to justice by amending several procedural aspects;

Noting however that the statistics also show an important increase in the average length of proceedings before first-instance courts;

STRONGLY ENCOURAGES the Portuguese authorities to pursue actively their efforts to reduce the length of administrative and fiscal proceedings, in particular before first-instance courts;

INVITES them to continue appropriate monitoring of the implementation of the reform of 2004, so as to be able to evaluate its impact on length of proceedings, and to keep the Committee of Ministers informed of any development on this issue.

4) Enforcement proceedings

Noting with concern that, notwithstanding the reform brought in by Law-decree No. 38/2003, the statistics show an increase in both length of proceedings and backlog;

Noting the recent reform brought in by Law no.18/2008 and Law-Decree no. 226/2008, as well as by Ministerial Decrees Nos. 312, 313, 321-A and 321-B of 30 March 2009, aimed at simplifying and expediting enforcement proceedings, as well as avoiding bringing actions devoid of purpose before courts;

Bearing in mind that the reform has not yet been fully deployed in respect of enforcement proceedings, insofar as it only entered into force on 31 March 2009 and therefore an assessment cannot be carried out at this stage;

ENCOURAGES the Portuguese authorities to continue their efforts to ensure that the recent reform of enforcement proceedings fully contributes to the acceleration of such proceedings;

CALLS UPON the authorities to assess the effects of the reform as it proceeds, with a view to adopting, if appropriate, any further measures necessary to ensure its effectiveness, and to keep the Committee of Ministers informed of the developments in this field.

5) Measures for improving the efficiency of the judiciary

Noting the measures adopted by the authorities to reduce the congestion of courts, in particular strengthening alternative dispute resolution measures;

Noting in addition with interest that during 2008 digital treatment of cases and management of files (Citius project) have been introduced;

INVITES the Portuguese authorities to assess the effects of the measures adopted, to take any further necessary measures, if appropriate, to improve their effectiveness and to keep the Committee of Ministers informed of this assessment and on possible developments on this issue,

6) Measures regarding effective remedies

Noting with interest the adoption of Law No. 67/2007 of 31/12/2007 which explicitly regulates the application of extra-contractual responsibility of the state to the violation of the right to a judicial decision within a reasonable time (Article 12);

Noting, however, that there currently exist discrepancies in the jurisprudence as regards the application of this law to the issue of compensation for non-pecuniary damages and that in its judgment of 10/06/2008 in the Martins Castro and Alves Correia de Castro case, the European Court found that the action for extra-contractual civil responsibility of the state will not offer an effective remedy under Article 13 of the Convention, as long as the case-law of the Supreme Administrative Court and in particular its decision of 28 November 2007 – which is in line with the case law of the European Court concerning compensation of damages – is not consolidated in the Portuguese legal order through the harmonisation of the jurisprudential discrepancies which may be observed;

Noting also that in the judgment mentioned above the European Court recalls that Article 152 of the Procedural Code of Administrative Courts provides the public prosecutor with the power to ask the Supreme Court for harmonisation of jurisprudence and recommends the use of this instrument to put an end to this uncertainty in the case-law;

Noting also the publication and the broad dissemination of the Court's judgment in the Martins Castro and Alves Correia de Castro case and considering that these measures are also appropriate since they themselves may encourage the harmonisation of the domestic case-law, favouring the recognition of the findings of the Court by the courts concerned;

ENCOURAGES the authorities to pursue their efforts to introduce the remedy for harmonisation of the domestic courts' case-law as soon as possible;

INVITES them to provide information on the current practice of courts and its evolution following the Court's judgment in the Martins Castro and Alves Correia de Castro case;

In view of the above, the Committee of Ministers

DECIDES to resume consideration of the progress achieved at the latest:

At the end of 2010 as far as the issue of an effective remedy is concerned;

In mid-2011 as far as the issue of excessive length of judicial proceedings is concerned.

Appendix I to Interim Resolution CM/ResDH(2010)34

*Information provided by the Government of Portugal
on measures adopted by the Portuguese authorities
on the excessive length of judicial proceedings
following the adoption of the Interim Resolution CM/ResDH(2007)108, in October 2007*

Individual measures

Since the adoption of the Interim Resolution CM/ResDH(2007)108 the domestic proceedings in two additional cases have been closed (Garcia da Silva and Sociedade Agricola do Peral). At present, proceedings are still pending in only one case (Oliveira Modesto and others).

General measures

1) General remarks on civil and criminal proceedings before the first instance courts

2008 is the third consecutive year in which the number of pending cases before civil and criminal first instance jurisdictions has decreased (-2,7%). This decrease results from the fact that the number of completed cases (around 788 918) was higher than the number of incoming cases (around 747 387). The clearance rate¹, which measures how the judicial system is coping with the in-flow of cases and how the backlog is reduced, was 106% in 2008 as against 101% in 2007. It should be noted that since 2006, the clearance rate has been above 100% and is constantly slightly increasing.

2) Civil proceedings

As regards “higher” civil courts, not only the number of incoming cases equals that of the completed cases, but the statistics for the years 2003-2008 show a stable average length of proceedings (4 months, with a decrease to 3 months in 2008) and a decrease in the backlog (from 7267 to 5751 cases in the same period).

On the contrary, the statistics for the years 2003-2007 show an increase in the average length of civil proceedings before first instance jurisdictions (from 24 in 2003 to 33 months in 2007), as well as a substantial growing backlog in the civil field (from approximately 1.12 million pending cases in 2003, to 1.25 million in 2007).

Concerning first-instance courts, a first positive signal was noted in 2008, when the average length of proceedings decreased compared to 2007 (from 33 to 30 months). Positive results regarding these courts have also been noted regarding declaratory actions, insofar as in 2008 the number of completed cases exceeded the number of incoming cases (111 202 and 102 687 cases respectively) and the average length of proceedings has sensibly decreased (from 33 months in 2007 to 24 months in 2008). However, such proceedings represent only around 10% of civil litigation before first-instance courts.

In this context, it should be noted that the reform introduced by Law-decree No. 303/2007, amending the Code of Civil Procedure with the aim of reducing the number of appeals brought in general and to the Supreme Court in particular, applies only to proceedings initiated after its entry in force on 1 January 2008 and it has not yet produced the desired impact on the length of proceedings.

As to the ad hoc chambers established to treat the backlog (“Juízos” of the first-instance civil court of Lisbon), they have been gradually phased out and ended their functions as of 31 August 2009.

¹ The clearance rate, expressed as a percentage, is obtained when the number of resolved cases is divided by the number of incoming cases and the result is multiplied by 100. A clearance rate equal to 100% indicates the ability of the court or of a judicial system to resolve cases received within the given time period. A clearance rate above 100% indicates the ability of the system to resolve more cases than received, thus reducing any backlog. When a clearance rate goes below 100%, the received cases are not resolved within the given period and the number of unresolved cases at the end of the year (backlog) will rise.

3) Criminal proceedings

Between 2003 and 2007 a reduction in the backlog was noted, from 230 000 to 208 000 cases (before first-instance courts) and from 4500 to 3600 cases (before “higher” courts) in 2003-2007. The reform of criminal proceedings which entered in force on 15 September 2007 has contributed.

In fact, in the same period the number of completed cases was higher than the number of incoming cases: 210 137 and 203 573 respectively before first-instance courts and 12 632 and 12 429 respectively before “higher” courts. In 2008, the total number of completed cases before first-instance courts was again higher than the number of incoming cases (242 000 and 172 480 cases respectively).

In the same period (2003-2007) the average length of proceedings before “higher” courts also decreased (from 5 to 4 months), while a slight increase in the length of proceedings before first- instance courts was registered (from 12 to 14 months).

It is also worth noting that in 2008 the number of incoming cases before criminal courts decreased by around 33%. Thus, as regards first-instance courts, the number of incoming cases in 2007 was around 203 000, while in 2008 it was around 172 000. The decrease in the number of incoming cases appears to be the main cause of the important decrease in the backlog observed in 2008 before these courts (from 208 104 cases at the end of 2007 to 137 880 cases at the end of 2008). No data on the impact of this decrease on the backlog and on the average length of proceedings before these jurisdictions are available to date.

4) Administrative proceedings

Between 1994 and 2000 pending cases and registered cases before the Supreme Administrative Court dropped by 50%. This evolution obviously derives from the implementation of Law-decree No. 229/96, which introduced a second-instance of administrative jurisdiction (the Central Administrative Tribunal, in place since 1997) and re-organised competences between the three levels of jurisdiction.

However, in the same period, no decrease in the average length of proceedings at the three levels of jurisdiction was registered: the average length remained stable at, respectively, 14 months for the Supreme Administrative Court, 12 months for the Central Administrative Tribunal, and 15 months for administrative courts of first instance.

As regards 2003-2007, the average length of terminated administrative and fiscal proceedings before administrative courts reduced, passing from an average of 13,4 months in 2003-2006 to 13 months in 2007. As far as first-instance administrative courts are concerned, the statistics for the same period show an increase in the average length of terminated proceedings (from 13 to 23 months). No data are available for fiscal first-instance courts.

No information for 2008 has been submitted.

Furthermore, two important reforms entered in force on 1 January 2004: the reform of administrative proceedings carried out by Law. No. 13/2002 (approving the new Statute of administrative and fiscal tribunals) and Law No. 15/2002 (approving the Code of procedure applicable in administrative and fiscal tribunals, hereinafter CPTA). These two reforms aimed to provide effective judicial protection and improve access to justice by amending several procedural aspects. In particular, the means to achieve the aims areas follows:

- reorganisation of the different kinds of proceedings (ordinary, special, urgent, conservative and enforcement proceedings);
- redefinition of appeals to higher courts (i.e. *per saltum* appeal, providing the possibility to appeal directly before the Administrative Supreme Court in case of mere violation of substantial law or procedural rules);
- introduction of the principle of “plurality of actions” (Article 4 CPTA), allowing the filing of a single action for claims bearing the same material link;
- Introduction of the possibility to condemn public administrations acting in bad faith in the framework of administrative proceedings (Article 6 CPTA);
- attribution of the capacity to stay as a defendant to the public law corporation itself or to the concerned ministry (Article 10 CPTA), implying that claimants are no longer required to identify precisely the individual (natural person) who carried out the contested act;

- introduction of the possibility to summons public administrations in urgent proceedings, to obtain information on the status of certain administrative procedures and access to the files;
- introduction of the possibility to summons public administrations in urgent proceedings when an urgent decision is necessary in order to exercise a certain right;
- introduction of the possibility for administrative courts to adopt all conservative measures which are necessary with a view to the final judgment or to anticipate the final decision on the main claims (Article 121 CPTA), provided that the requirements of *fumus boni iuris ad periculum in mora* are met;
- introduction of the possibility to appeal before the Supreme Administrative Court for particularly sensitive issues, in line with its role of “juridical guidance” for the lower courts (Article 150 CPTA);
- management and simplification of procedure (i.e. Article 48 CPTA, dealing with repetitive cases).

5) Enforcement proceedings

Notwithstanding the reform brought in by Law-decree No. 38/2003, the statistics for 2007-2008 show an increase in the average length of civil enforcement proceedings (from 27 to 35 months in 2003-2007), as well as a substantial increase in the backlog (from 724 000 to 976 000 pending cases for the same period).

The situation is similar, though in smaller numbers, regarding enforcement of labour courts' cases, the average length of enforcement proceedings increasing from 17 to 28 months in the same period. However, the backlog did not increase, in particular thanks to a decrease in the number of applications (from 7900 to 5100).

A recent reform in the field of enforcement proceedings entered in force on 31 March 2009 (brought in by Law no.18/2008 and Law-Decree no. 226/2008, as well as by Ministerial Decrees no. 312, 313, 321-A and 321-B of 30 March 2009, which entered into force on 31 March 2009). It aims to simplify and expedite enforcement proceedings, as well as to avoid bringing actions devoid of purpose before courts, while at the same time continuing to protect the guarantees of the intervening parties. In particular, the reform provides:

- electronic filing, reception and distribution of enforcement requests;
 - enlargement and strengthening of the role of the “enforcement agent” (*agente de execução*), who can make extensive use of electronic means such as databases;
 - scrutiny of the activity of “enforcement agents” by an independent body with a view to increasing their efficiency;
 - the possibility for lawyers to apply for posts of “enforcement agents”, thus increasing the speed with which pending proceedings may be dealt with;
- the possibility to apply for arbitration;
- creation of public lists of enforcement proceedings in which a distribution to creditors did not take place for lack of debtor's assets: the aim is to deter further creditors' applications, the execution of which would obviously be ineffective. At the same time, such lists constitute a source of information for anyone interested in negotiating/entering into a contract with a subject or an entity subject to enforcement proceedings.

6) Measures for improving the efficiency of the judiciary

An Action Plan was adopted by the authorities in 2005 and another in 2007 aimed at reducing the congestion of courts. In particular, the 2005 Action Plan made possible:

- reduction of the period of suspension of judicial activities due to court vacations (Law No 42/2005 of 29 August 2005);
- the introduction of a “class-action” (Law decree No. 108/2006 of 8 June 2006);

The 2007 Action Plan in particular made possible:

- the creation of arbitration centres dealing with litigation in the field of intellectual property (Law Decree No. 143/2008 of 25 July 2008);
- the creation of four courts of justices of the peace in 2007 and of four more in 2008 (see in particular law-decree No. 22/2008 of 1 February 2008);
- strengthening of the mediation system in family and labour matters in all the national territory;

Further highlights in 2003-2008 were:

- the increase in 2003-2007 in the number of ordinary judges from 1633 to 1859 and of the number of public prosecutors from 1204 to 1349;
- the increase in 2005-2008 of the number of justices of the peace (*juígados de paz*) from 17 to 24; the number of cases brought before them increased from 697 in 2003 to 6453 in 2008; in 2008, 5845 proceedings were completed and 2818 remain pending;
- the increase in 2005-2007 in the number of arbitration centres (alternative dispute resolution measures) from 16 to 27 and the reduction of their backlog (1546 pending applications in 2006 and 1157 in 2007), for an equal level of equal demand (around 9 000 applications per year), which seems to imply a reduction in the waiting-time for justice;

Furthermore, in 2008, a project called "Citius" made it possible to modernise the judicial system thanks to the introduction of the digital treatment of cases and management of files.

7) Measures regarding effective remedies

In the Portuguese legal order, the remedy for excessive length of judicial proceedings was initially developed by case-law on the basis of Law-Decree No. 48051/1967 on extra-contractual civil responsibility of the state. Subsequently, Law No. 67/2007 of 31/12/2007 explicitly regulated the application of extra-contractual responsibility of the state to the violation of the right to a judicial decision within a reasonable time (Article 12).

In this framework, the case-law of the Supreme Administrative Court, and in particular its judgment of 28 November 2007, affirmed that applicable domestic legislation must be interpreted in conformity with the Convention case-law and that non-pecuniary damage following from the finding of a violation of Article 6 of the Convention on the ground of excessive length of proceedings must be compensated accordingly.

In its judgment in the Martins Castro and Alves Correia de Castro case (judgment of 10/06/2008), the European Court noted with satisfaction that the Supreme Administrative Court, in its judgment of 28 November 2007, respected entirely the principles emerging from the case-law of the European Court. It found, however, that this case-law of the Supreme Administrative Court did not seem to be sufficiently consolidated in the domestic legal order, due to several divergences observed in courts' practice. The European Court therefore found that the action on extra-contractual responsibility of the state did not offer an effective remedy in the sense of Article 13 and that such an action would not be considered as an effective remedy as long as the above case-law of the Supreme Administrative Court was consolidated in the Portuguese legal order through the harmonisation of the domestic courts' case-law.

The European Court furthermore underlined that the existence of a remedy was not in itself sufficient, and that it was also necessary that national courts apply the European Court's case-law directly in the internal legal order and that their knowledge of such case-law is facilitated by national authorities (§65 of the Martins Castro and Alves Correia de Castro judgment). In response to this finding, the Portuguese authorities transmitted the judgment of the European Court, translated into Portuguese and accompanied by an explanatory note, to the Principal State Prosecutor, to the Judicial Service Commission and to the Administrative and Fiscal Tribunals Commission in view of its dissemination to the competent authorities. The judgment has been published on the website of the Centre for Research and Comparative Law of the Office of the Principal State Prosecutor ("Procuradoria Geral da República").

Appendix II to Interim Resolution CM/ResDH(2010)34

**- 25 Cases of length of judicial proceedings
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
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e. Case before labour courts

53795/00	Farinha Martins, judgment of 10/07/03, final on 10/10/03
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Appendix III to Interim Resolution CM/ResDH(2010)34

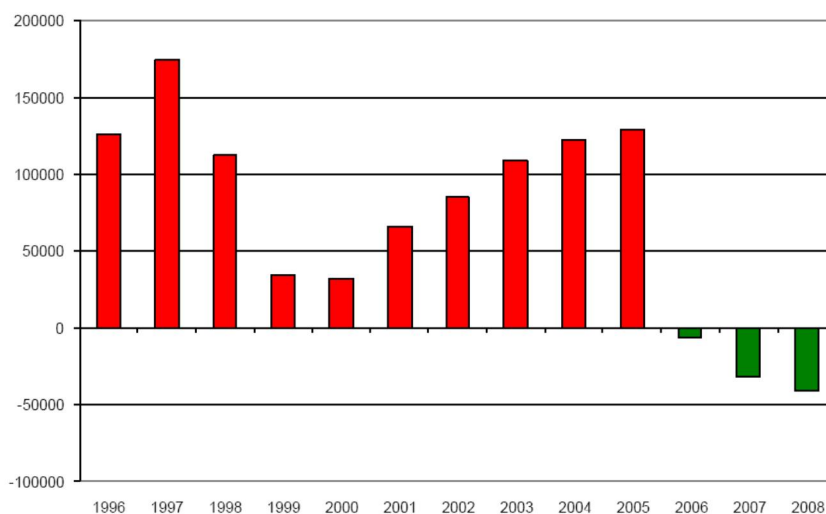
Statistical data provided by the Portuguese authorities

1) General statistical data on civil and criminal proceedings before the first instance courts

Procedural flow at the first instance courts 1996-2008

Considering the period 1996-2008, the year 2008 was the third consecutive year in which the number of pending cases at the first instance courts has registered a decrease (-2,7%). This decrease in case pendency is higher than the one registered in 2007. Such resulted from a decrease in the number of incoming cases (-2,5%) and from the fact that the number of completed cases has remained at the level of the year 2006, where an increase of 14,1% in relation to 2005, was verified.

Table 1 – Annual procedural balance (Incoming cases – Completed cases) 1996-2008



In 2008, for the third consecutive year, the number of completed cases was higher than the number of incoming cases. The positive balance of 41 531 cases justifies the decrease in the pendency of around 2,7%. Such represents an improvement in relation to the value registered in 2007 and contradicts the increasing trend verified until 2005. From 1996 to 2006 the procedural pendency had continually increased because the number of completed cases has been higher than the number of incoming cases.

Table 2 – Incoming and completed cases in 2008²

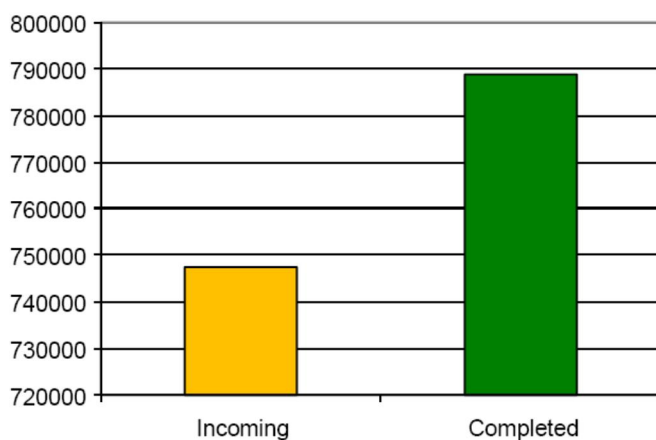


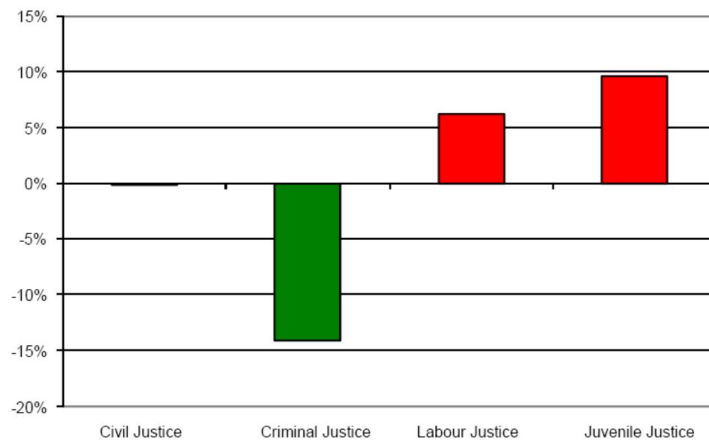
Table 3 – Clearance rate of the number of incoming cases 2007-2008³

Table 4 – Clearance rate of the number of completed cases 2007-2008



Pending cases¹ and clearance rate²

Table 7 – Pending cases as at 31 December 1996-2008

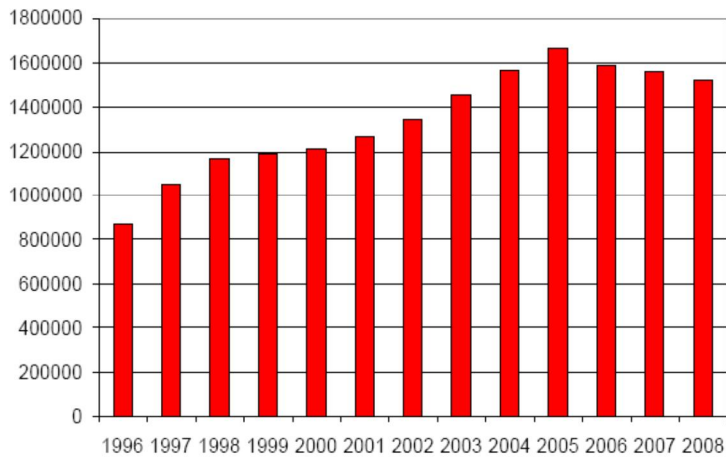
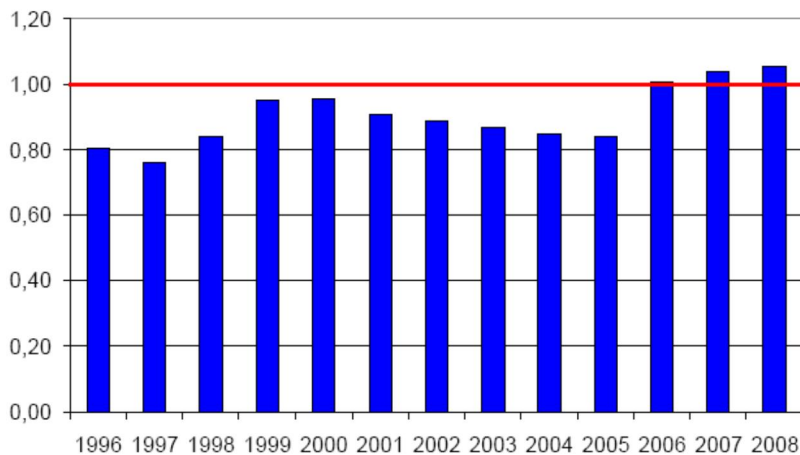


Table 8 – Clearance rate 1996-2008



¹ The pending cases correspond to incoming cases which have not yet had a decision, either in the form of a judgment, sentence or order, at the judicial instance, irrespective of whether or not a final decision has been delivered. As such, they are cases that are waiting for certain acts or diligences to be carried out by the court or by other entities. They can also, in certain kinds of procedures, be cases that are waiting for certain facts to take place or that are just waiting for certain timeframes to run out. A suspending case is, for example, a pending case, whatever the cause for suspension may be.

² The clearance rate corresponds to the ratio between the total of completed cases and the total of incoming cases. If it is equal to 1, it means that the volume of incoming cases is equal to the volume of completed cases and that the fluctuation of the pendency is null. If it is higher than 1, it means that the pendency has been recovered. The higher this indicator is, the bigger shall be the recovery of the pendency in that year. If it is lower than 1, it means that the number of incoming cases has been higher than the number of completed cases and that, as such, case pendency has been generated for the following year.

2) Statistical data on civil proceedings

Inf. N°166/DSEJI

30.04.2009

Treatment of civil cases brought before first instance jurisdictions during the years 2003 to 2007

Instance	First instance		
Domain of the proceedings	Civil cases		
Phase of the proceedings	New cases	Cases closed	Pending cases (at the end of the period)
Year	Number of cases	Number of cases	Number of cases
2007	512 797	541 072	1 250 549
2006	472 259	492 091	1 254 371
2005	534 497	427 014	1 311 778
2004	516 117	422 816	1 217 905
2003	517 458	442 086	1 123 994

(*) provisional data updated on 14-04-2009

Treatment of civil cases brought before higher jurisdictions during the years 2003 to 2007

Instance	Higher jurisdictions		
Domain of the proceedings	Civil cases		
Phase of the proceedings	New cases	Cases closed	Pending cases (at the end of the period)
Year	Number of cases	Number of cases	Number of cases
2007	19 781	19 971	5 751
2006	19 641	19 824	6 955
2005	19 552	19 530	7 138
2004	19 159	19 212	7 214
2003	19 293	20 121	7 267

(*) provisional data updated on 14-04-2009

Average length of closed civil cases brought before first instance jurisdictions during the years 2003 to 2007

Instance	First Instance	
Domain of the proceedings	Civil cases	
Year	Number of cases	Average length (in months)
2007	448 299	33
2006	438 425	30
2005	366 934	27
2004	344 223	25
2003	423 021	24

(*) provisional data updated on 14-04-2009

Average length of closed civil cases brought before higher jurisdictions during the years 2003 to 2007

Instance	Higher jurisdictions	
Domain of the proceedings	Civil cases	
Year	Number of cases	Average length (in months)
2007	18 781	4
2006	18 428	4
2005	18 614	4
2004	17 899	4
2003	18 224	4

(*) provisional data updated on 14-04-2009

Treatment of civil appeals, before the Supreme Court and the appeal courts, by type of case during the years 2003 to 2008 (*)

Year, phase of the procedure Type of case	2008			2007			2006			2005			2004			2003		
	Registered	Closed	Pending at the end of the period	Registered	Closed	Pending at the end of the period	Registered	Closed	Pending (at the end of the period)	Registered	Closed	Pending (at the end of the period)	Registered	Closed	Pending (at the end of the period)	Registered	Closed	Pending (at the end of the period)
TOTAL	18 274	18 503	5 674	19 781	19 971	5 751	19 641	19 824	6 955	19 552	19 530	7 138	19 159	19 212	7 214	19 292	20 120	7 266
appeal	9 243	8 964	3 034	8 633	8 622	2 684	8 968	8 861	3 065	8 621	8 433	2 958	8 863	8 953	2 710	8 995	9 461	2 800
"Agravo"	3 810	4 166	919	5 454	5 431	1 265	4 771	4 909	1 712	5 369	5 520	1 850	4 532	4 680	2 130	4 648	4 721	2 278
Others	2 127	2 174	533	2 406	2 362	578	2 474	2 531	534	2 161	2 243	591	1 493	2 320	699	2 285	2 329	525
Other cases	3 094	3 199	1 188	3 288	3 556	1 224	3 428	3 523	1 644	3 401	3 334	1 739	3 271	3 259	1 675	3 364	3 609	1 663

(*) provisional data of 17.02.09

Average length, in months, of appeals in civil matters before higher jurisdictions between the years 2003 and 2008 (*)

Year and average length		2008	2007	2006	2005	2004	2003
		Average length (months)	Average length (months)	Average length (months)	Average length (months)	Average length (months)	Average length (months)
"Area Processual" and type of case							
Justice in civil matters	Jurisdictional appeals	3	4	4	4	4	4

(*) Provisional data of 17.02.09

3) Statistical data on criminal proceedings

Treatment of criminal cases brought before first instance jurisdictions during the years 2003 to 2007

Instance	First instance		
Domain of the proceedings	Criminal cases		
Phase of the proceedings	New cases	Cases closed	Pending cases (at the end of the period)
Year	Number of cases	Number of cases	Number of cases
2007	203 573	210 137	208 104
2006	212 444	200 023	233 056
2005	184 180	168 674	246 378
2004	183 042	164 006	242 427
2003	191 219	167 660	230 710

(*) provisional data updated on 14-04-2009

Treatment of criminal cases brought before higher jurisdictions during the years 2003 to 2007

Instance	Higher jurisdictions		
Domain of the proceedings	Criminal cases		
Phase of the proceedings	New cases	Cases closed	Pending cases (at the end of the period)
Year	Number of cases	Number of cases	Number of cases
2007	12 429	12 632	3 623
2006	12 373	12 397	6 288
2005	11 742	10 626	6 498
2004	11 469	10 386	5 624
2003	10 765	10 191	4 541

(*) provisional data updated on 14-04-2009

Average length of closed civil cases brought before first instance jurisdictions during the years 2003 to 2007

Instance	First Instance	
Domain of the proceedings	Criminal cases	
Year	Number of cases	Average length (in months)
2007	187 360	14
2006	98 697	12
2005	95 404	11
2004	98 185	11
2003	99 039	12

(*) provisional data updated on 14-04-2009

Average length of closed criminal cases brought before higher jurisdictions during the years 2003 to 2007

Instance	Higher jurisdictions	
Domain of the proceedings	Criminal cases	
Year	Number of cases	Average length (in months)
2007	11 054	4
2006	11 238	5
2005	9 486	5
2004	9 193	5
2003	9 133	5

(*) provisional data updated on 14-04-2009

4) Statistical data on administrative proceedings

Average length of closed cases in administrative and fiscal cases, brought before first instance jurisdictions and before higher jurisdictions, by type of jurisdiction, during the years 2003 to 2007

Instance	First instance				Higher jurisdictions	
Domain of the proceedings	Administrative and tax cases				Administrative and fiscal cases	
Type of jurisdiction	Fiscal courts		Administrative tribunals			
Year	Number of cases	Average length (in months)	Number of cases	Average length (in months)	Number of cases	Average length (in months)
2007	nd	nd	7250	23	4372	13
2006	nd	nd	6273	16	4585	16
2005	nd	nd	5977	15	4529	13
2004	nd	nd	3822	15	4432	14
2003	nd	nd	3950	13	5024	11

5) Statistical data on enforcement proceedings

Average length of closed cases concerning enforcement proceedings before first instance jurisdictions during the years 2003 to 2007

Cases	2007(*)	2006	2005	2004	2003
Total	35	35	32	31	26
Enforcement proceedings relating to civil cases	35	36	32	31	27
Enforcement proceedings relating to labour cases	28	19	19	19	17

(*) Provisional data updated on 20/02/09

Treatment of cases concerning enforcement proceedings before first instance jurisdictions during the years 2003 to 2007(*)

Year		2007(*)	2006	2005	2004	2003
Domain of the proceedings	Phase of the proceedings	Number of cases	Number of cases	Number of cases	Number of cases	Number of cases
Total	New cases	313 207	292 735	348 275	320 773	304 315
	Closed cases	311 025	277 069	228 195	221 675	202 863
	Pending cases (at the end of the period)	987 249	968 155	957 392	838 807	736 238
civil justice	New cases	308 051	285 063	339 403	312 319	296 353
	Closed cases	306 071	269 668	220 988	215 936	195 317
	pending cases (at the end of the period)	976 222	952 206	942 025	824 638	724 874
Labour/employment justice	New cases	5 156	7 672	8 872	8 454	7 962
	Closed cases	4 954	7 401	7 207	5 739	7 546
	pending cases (at the end of the period)	11 027	15 949	15 367	14 169	11 364

(*)Provisional data updated on 20/02/09

Note: Up to the year 2006, all the enforcement proceedings ("execuções") brought before the labour courts ("tribunais do trabalho") or having competences in relation to labour law/disputes were considered as labour related enforcement proceedings. After 2007, with the changes to the "recolha" method, only the enforcement proceedings in labour cases are considered as enforcement proceedings in relation to work related disputes, whether they are exercised or not before labour courts or courts that are competent to hear work related disputes.

Number of "tribunais de execução" (enforcement courts)

Year	Court	Chamber
2008	"Juízos de Execução" - Lisboa	1.º Juízo de Execução
		2.º Juízo de Execução
		3.º Juízo de Execução
	"Juízos de Execução" - Porto	1.º Juízo de Execução
		2.º Juízo de Execução
	"Juízos de Execução" - Guimarães	Juízo Único
	"Juízos de Execução" - Oeiras	Juízo Único
"Juízos de Execução" - Maia	Juízo Único	
"Juízos de Execução" - V.N.Gaia	Juízo Único	
2007	"Juízos de Execução" - Lisboa	1.º Juízo de Execução
		2.º Juízo de Execução
		3.º Juízo de Execução
	"Juízos de Execução" - Porto	1.º Juízo de Execução
		2.º Juízo de Execução
	"Juízos de Execução" - Guimarães	Juízo Único
	"Juízos de Execução" - Oeiras	Juízo Único
"Juízos de Execução" - Maia	Juízo Único	
"Juízos de Execução" - V.N.Gaia	Juízo Único	
2006	"Juízos de Execução" - Lisboa	1.º Juízo de Execução
		2.º Juízo de Execução
		3.º Juízo de Execução
	"Juízos de Execução" - Porto	1.º Juízo de Execução
		2.º Juízo de Execução
	"Juízos de Execução" - Guimarães	Juízo Único
"Juízos de Execução" - Oeiras	Juízo Único	
2005	"Juízos de Execução" - Lisboa	1.º Juízo de Execução
		2.º Juízo de Execução
		3.º Juízo de Execução
	"Juízos de Execução" - Porto	1.º Juízo de Execução
		2.º Juízo de Execução
2004	"Juízos de Execução" - Lisboa	1.º Juízo de Execução
		2.º Juízo de Execução
	"Juízos de Execução" - Porto	1.º Juízo de Execução

6) Statistical data on measures to improve the efficiency of the judiciary**Treatment of cases brought before the justices of the peace during the years 2003 to 2008**

	2008	2007	2006	2005	2004	2003
New cases	6453	6003	5061	3541	2535	697
Total number of cases examined	8663	7463	6040	4155	2702	744
Total number of closed cases	5845	5254	4622	3147	2076	577
By Mediation	1460	1438	1143	898	694	224
By judgment	2578	2575	2255	1488	949	272
by transaction/friendly settlement	885	893	890	594	404	132
by judge's decision	1693	1682	1365	894	545	140
for another motive	1807	1241	1224	761	433	81
Total number of on-going cases	2818	2209	1418	1008	626	167
Initial phase/Pre-mediation	1681	1548	1012	629	384	118
Mediation phase	40	30	53	24	28	17
Judgment phase	1097	631	353	355	214	32

Number of judges of the peace sitting in district courts during the years 2005 to 2009

Years	Number of judges of the peace
2005	17
2006	17
2007	
Up to 14th April	17
From 14th April to 31 October	16
From 1st November to 31 December	15
2008	
From 1st January to 10 October	15
From 11 October to 31 December	24
2009	24

Treatment of cases brought before arbitration centers, during the years 2006 to 2007

Year, phase of proceedings	2006			2007		
	Registered during the period	Closed during the period	pending for the following period	Registered during the period	Closed during the period	pending for the following period
Arbitration center						
GENERAL TOTAL	8555	8462	1546	8706	9085	1152
Arbitral	3	3	..	..	..	..
Consumer Vale do Cávado	674	639	161	748	720	189
Commercial	20	12	27	16	22	21
Civil Commercial Administrative	6	10	10	9	5	14
Portuguese Catholic University	..	..	..	..	..	..
Consumer Coimbra	200	220	16	163	152	27
Consumer Lisboa	973	947	136	1472	1450	158
Consumer Vale do Ave	341	406	79	341	339	81
Automobile sector	425	434	188	518	510	196
Professional players	115	137	8	74	71	11
Loulé	31	37	..	21	21	..
Consumer Porto	491	500	52	582	575	59
Com.C Arb trab Ponta Delgada	561	534	55	542	560	37
Bâtiment Travaux Publics	5	6	5	..	5	..
Consummation do Algarve	198	216	54	131	165	20
Fédér. Portugaise de Basket-Ball	..	..	..	..	..	..
Assurance Automobiles	3220	3110	594	3758	4095	257
Commercial do Porto	3	..	9	10	6	13
Professional football league	..	..	..	3	..	..
Lisbonense de Proprietários	34	40	48	..	8	42
Real estate activities	10	8	..	5	6	..
Autonomous Region of Maderas	..	..	9	114	110	13
Judicial sciences	971	956	15	..	..	..
Com. Con. Arb. Trabalho Horta	93	82	21	70	90	..
Com. C Arb Angra Heroismo	180	161	57	126	173	10
(..) Resultat equal to zero/Protected by artistic confidentiality						
(-) the phenomenon does not exist						

Judges and prosecutors in fist instance or higher jurisdictions on 31 December, during the years 2003 to 2007

	2003	2004	2005	2006	2007
Judges	1.633	1.767	1.810	1.840	1.859
Men	957	963	956	950	936
Women	676	804	854	890	923
Prosecutors	1.204	1.265	1.277	1.336	1.349
Men	637	630	620	633	616
Women	567	635	657	703	733

RUSSIAN FEDERATION

Interim Resolution CM/ResDH(2015)157 Execution of the judgment of the European Court of Human Rights Catan and Others against Russian Federation

Application	Case	Judgment of	Final on
43370/04+	CATAN AND OTHERS ¹⁵	19/10/2012	Grand Chamber

*(Adopted by the Committee of Ministers on 24 September 2015
at the 1236th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 46 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provide that the Committee supervises the execution of final judgments of the European Court of Human Rights ("the Court" below);

Recalling that, in its judgment in the case of *Catan and Others*, final for almost three years, whilst observing that there was "no evidence of any direct participation by Russian agents in the measures taken against the applicants" nor "any evidence of Russian involvement in or approbation for the "MRT"'s language policy in general", the Court nonetheless found that "by virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia incurs responsibility under the Convention for the violation of the applicants' rights to education";

Recalling the different decisions adopted by the Committee in the course of the supervision of the execution of this judgment and in particular its two interim resolutions – CM/ResDH(2014)184 and CM/ResDH(2015)46;

Insisting anew on the unconditional nature of the obligation to pay just satisfaction and on the need for the Russian Federation to comply with this obligation;

Urged the Russian authorities to explore all appropriate avenues for the full and effective implementation of this judgment; noted that the High Level Conference which will take place in Saint Petersburg on 22-23 October 2015 could be an opportunity to make progress towards a common understanding as to the scope of the execution measures flowing from this judgment and their modalities;

Decided to resume consideration of this case at their DH meeting in March 2016.

¹⁵ Case against the Republic of Moldova and the Russian Federation. The European Court found no violation in respect of the Republic of Moldova.

Interim Resolution CM/ResDH(2015)46
Execution of the judgment of the European Court of Human Rights
Catan and Others against Russian Federation

Application	Case	Judgment of	Final on
43370/04+	CATAN AND OTHERS ¹⁶	19/10/2012	Grand Chamber

*(Adopted by the Committee of Ministers on 12 March 2015
at the 1222nd meeting of 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"),

Recalling that, in its judgment in the case of *Catan and Others*, final for almost two and a half years, while observing that there was "no evidence of any direct participation by Russian agents in the measures taken against the applicants" nor "any evidence of Russian involvement in or approbation for the "MRT"'s language policy in general", the Court nonetheless found that "by virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia incurs responsibility under the Convention for the violation of the applicants' rights to education"; recalling further that the European Court awarded just satisfaction in respect of non-pecuniary damage and costs and expenses;

Reiterating its deep concern, already expressed in its Interim Resolution CM/ResDH(2014)184, in view of the reports of a continuous violation of the applicants' right to education, resulting from acts of intimidation and pressure affecting the functioning of the Latin script schools in the Transdnistrian region of the Republic of Moldova;

Deeply deploring that, notwithstanding the repeated calls for execution of this judgment by the Committee and Interim Resolution CM/ResDH(2014)184, as well as the reflections carried out so far at national level including a scientific and practical round table held in Moscow on 20-21 January 2015, the Committee still has not received any information on the measures taken or envisaged by the Russian Federation to comply with the judgment;

REAFFIRMS that, as for all Contracting Parties, the Russian Federation's obligation to abide by judgments of the Court is unconditional;

EXHORTS the Russian Federation to pay, without further delay, the sums awarded in respect of the just satisfaction in the Court's judgment, as well as the default interest due, and to inform the Committee of Ministers when this payment is made;

STRONGLY INVITED the Russian Federation to fully co-operate with the Committee of Ministers and the Secretariat with a view to executing this judgment, in compliance with Article 46 of the Convention, and consequently firmly reiterated its call to the Russian authorities to provide as soon as possible an action plan/report detailing its strategy for the implementation of the present judgment and indicating, more particularly the steps taken and/or to be taken, and within what framework, to ensure the proper functioning of the Latin script schools in the Transdnistrian region of the Republic of Moldova.

¹⁶ Case against the Republic of Moldova and the Russian Federation. The European Court found no violation in respect of the Republic of Moldova.

Interim Resolution CM/ResDH(2014)184
Execution of the judgment of the European Court of Human Rights
Catan and others against Russian Federation

Application	Case	Judgment of	Final on
43370/04+	CATAN AND OTHERS ¹⁷	19/10/2012	Grand Chamber

*(adopted by the Committee of Ministers on 25 September 2014
at the 1208th meeting of 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, as amended by Protocol No. 11 (hereinafter "the Convention" and "the Court"),

Underlining that, in its judgment in the case of *Catan and Others*, now final for almost two years, the Court found that "by virtue of its continued military, economic and political support for the "MRT", which could not otherwise survive, Russia incurs responsibility under the Convention for the violation of the applicants' rights to education";

Reiterating its deep concern in view of the reports of a continuous violation of the applicants' right to education, resulting from acts of intimidation and pressure affecting the functioning of the Latin script schools in the Transdnestrian region of the Republic of Moldova;

Recalling having firmly called upon the Russian authorities to take all possible measures to put an end to the violation of the applicants' right to education and to transmit:

- by 5 July 2014, information on how they intended to guarantee that the Latin script schools continue to function for the school year 2014/2015;
- as soon as possible, and at the latest by 1 September 2014, a global action plan or action report responding fully to the Court's judgment;

Deeply deploring that the Russian authorities have not provided any information either in this respect, or on the payment to the applicants of the just satisfaction awarded by the Court;

REITERATED WITH INSISTENCE the unconditional obligation of every respondent State, under Article 46, paragraph 1, of the Convention, to abide by final judgments in cases to which it is a party;

STRONGLY URGED the Russian Federation to take all possible measures to put an end to the violation of the applicants' right to education;

INSISTED that the Russian authorities inform the Committee of Ministers, without further delay, and in any event not later than 1 November 2014, that the measures requested by the Committee of Ministers have indeed been taken;

DECIDED to resume consideration of this case at its 1214th meeting (December 2014) (DH).

¹⁷ Case against the Republic of Moldova and the Russian Federation. The European Court found no violation in respect of the Republic of Moldova.

Interim Resolution CM/ResDH(2013)200
Execution of the judgments of the European Court of Human Rights
Garabayev [group of cases](#) against the Russian Federation

*(Adopted by the Committee of Ministers on 26 September 2013
at the 1179th 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 "the Convention"),

Considering the cases decided by the Court, in which the latter found violations by the Russian Federation due to the applicants' abductions and irregular transfers from the Russian Federation to States where the applicants face a real risk of torture and ill-treatment, and in breach of an interim measure indicated by the Court under Rule 39 of its Rules of Procedure;

Recalling that given the number of communications received, including from the Court, relating to alleged similar incidents that have been reported, revealing an alarming and unprecedented situation, the Committee has been calling upon the Russian authorities to adopt as a matter of urgency special protective measures for applicants exposed to a risk of kidnapping and irregular transfer;

Noting that the Russian authorities have taken a number of general measures to prevent abductions and illegal transfers from the Russian territory of persons in whose respect extradition requests were filed and the Court has indicated an interim measure under Rule 39 of its Rules;

Deeply regretting that these measures do not appear to have been sufficient to address the need for urgent adoption of special preventive and protective measures that are effective;

Deploring that to date, no reply has been received to the letter sent on 5 April 2013 by the Chairman of the Committee of Ministers to his Russian counterpart conveying the Committee's serious concerns in view of the persistence of this situation and its repeated calls for the urgent adoption of such protective measures;

Underlining that in its judgment in the Abdulkhakov case, the Court noted that "any extra-judicial transfer or extraordinary rendition, by its deliberate circumvention of due process, is an absolute negation of the rule of law and the values protected by the Convention" 18;

Stressing that this situation has the most serious implications for the Russian domestic legal order, the effectiveness of the Convention system and the authority of the Court,

CALLS UPON the Russian authorities to take further action to ensure compliance with the rule of law and with the obligations they have undertaken as a State party to the Convention,

EXHORTS accordingly the authorities to further develop without further delay an appropriate mechanism tasked with both preventive and protective functions to ensure that applicants, in particular in respect of whom the Court has indicated an interim measure, benefit (following their release from detention) from immediate and effective protection against unlawful or irregular removal from the territory of Russia and the jurisdiction of the Russian courts.

¹⁸ Abdulkhakov, § 156.

**Interim Resolution CM/ResDH(2010)35
Execution of the judgment of the European Court of Human Rights
in 31 cases against the Russian Federation mainly concerning conditions of
detention in remand prisons**

(See Appendix I for the list of cases in the Kalashnikov group)

(Adopted by the Committee of Ministers on 4 March 2010 at the 1078th 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 judgments in which the Court has found violations of Article 3 of the Convention in respect of the conditions under which the applicants were detained in remand prisons (SIZOs) which amounted to degrading treatment due, in particular, to the severe lack of personal space or to the combination of the space factor with other deficiencies of the physical detention conditions such as the impossibility of using the toilet in private, lack of ventilation, lack of access to natural light and fresh air, inadequate heating arrangements, and non-compliance with basic sanitary requirements;

Recalling further that in a number of judgments the Court found violations of Article 5 due to the unlawful detention of the applicants, its excessive length in the absence of relevant and sufficient grounds for prolonged detention and the lack of effective judicial review of the lawfulness of detention;

Recalling finally that the Court also found violations of Article 13 of the Convention due to the lack of an effective domestic remedy in respect of conditions of detention on remand;

Recalling that the existence of structural problems and the pressing need for comprehensive general measures were stressed by the Committee and acknowledged by the Russian authorities since the adoption by the Court of the judgment in the case of Kalashnikov against Russia in 2002;

Recalling furthermore that in its Interim Resolution ResDH(2003)123 adopted on 4 June 2003 in the Kalashnikov case, the Committee noted the progress in the adoption of general measures required by the Court's judgments and called upon the authorities to continue and enhance various reforms under way;

Having examined the information provided by the Russian authorities concerning the progress made in the implementation of the judgments mentioned above since the adoption of the first Interim Resolution (this information appears in the Appendix II to this resolution);

As regards material conditions of detention:

Noting with great interest that since the Kalashnikov judgment, the Federal Programme aimed at building new remand prisons and renovating a great number of existing ones, in particular to improve material conditions of detention, has been implemented and that a similar programme with the declared cost of 1 327 million euro was adopted for 2007-2016;

Noting further that according to the information provided by the Russian authorities, the implementation of these programmes resulted in the improvement of material conditions of detention and in particular the average increase of personal space to 4,85 m² per detainee;

Noting however that there are still remand prisons where the number of remand prisoners exceeds the design capacity of the facilities, and the requirement of Russian legislation concerning personal space is not complied with;

Noting in this respect additional targeted measures to improve the material conditions of detention in remand prisons posing problems;

Noting in particular the role of prosecutors in ensuring compliance of the conditions of detention with the requirements of domestic law;

Recalling that in any event the creation of new places of detention cannot in itself provide a lasting solution to the problem of prison overcrowding, and that this measure should be closely supported by others aimed at reducing the overall number of remand prisoners;

Noting with satisfaction in this respect the Russian authorities' position that there should be an integrated approach to finding solutions to the problem of overcrowding in remand prisons, including in particular changes to the legal framework, practices and attitudes;

As regards the number of remand prisoners:

Recalling the constant position of the Committee of Ministers that, in view both of presumption of innocence and the presumption in favour of liberty, remand in custody shall be the exception rather than the norm and only a measure of last resort, and that to avoid inappropriate use of remand in custody the widest possible range of alternative, less restrictive measures shall be made available;

Noting the repeated statements by the President of the Russian Federation and high-ranked officials, including the Prosecutor General and the Minister of Justice, that thousands of persons detained on remand – up to 30 % of those currently detained – should not have been deprived of their liberty, being suspected or accused of offences of low or medium gravity;

Welcoming the unambiguous commitment, renewed at the highest political level, to change this unacceptable situation and to adopt urgent legislative and other measures to that effect;

Taking note in this context of legislative initiatives to ensure effective use of alternative preventive measures provided by the Code of Criminal Procedure;

Noting further the rulings of the Supreme Court, namely the Ruling of 29 October 2009 reiterating that remand in custody should be a measure of last resort and providing guidelines on the application of alternative preventive measures,

Noting that the statistical data provided demonstrates a slight but constant decrease in the overall number of remand prisoners;

Further noting that the statistics nonetheless demonstrate wider yet still limited recourse to alternative preventive measures by the Russian courts, prosecutors and investigators;

Considering that efforts should be pursued effectively to induce judges, prosecutors and investigators to use detention on remand as a genuinely exceptional measure;

Recalling in this respect its Recommendations Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, R(99)22 concerning prison overcrowding and prison population inflation, and Rec(2006)2 on the European Prison Rules;

As regards remedies in respect of conditions of detention on remand:

Recalling the Court's consistent position that available remedies are considered effective if they could have prevented violations from occurring or continuing, or could have afforded the applicant appropriate redress;

Noting that the statistics and several cases presented to the Committee demonstrate a developing practice before domestic courts on compensation for non-pecuniary damage sustained in relation to poor conditions of detention in remand prisons;

Noting further that in view of the problems at issue, any compensatory remedy should as far as possible be supplemented by other remedies capable of preventing violations of Article 3 of the Convention;

Noting in this respect information on the avenues provided by Russian legislation to address the violations of Article 3 at issue;

Noting in particular the provisions of Chapter 25 of the Code of Civil Procedure and the Ruling of the Supreme Court of Russia of 10 February 2009 providing the possibility to challenge before courts acts or inaction of remand prison administrations concerning improper detention conditions;

Considering however that the effectiveness of this remedy in particular with regard to overcrowding, has not yet been demonstrated;

ENCOURAGES the Russian authorities to pursue the ongoing reforms with a view to aligning the conditions of detention in remand prisons with the requirements of the Convention, taking also into account the relevant standards and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

EXPRESS CONCERN that notwithstanding the measures adopted, a number of remand prisons in Russia still do not afford the personal space guaranteed by domestic legislation, and remain overpopulated;

STRONGLY ENCOURAGES the Russian authorities to give priority to reforms aiming at reducing the number of persons detained on remand and to other measures combating the overcrowding of remand facilities by

ensuring that judges, prosecutors and investigators consider and use detention on remand as a solution of last resort and make wider use of alternative preventive measures;

ensuring the availability at the national level of effective preventive and compensatory remedies allowing adequate and sufficient redress for any violation of Article 3 resulting from poor conditions of detention on remand;

INVITES the authorities to keep the Committee of Ministers informed of progress in the implementation of general measures to comply with their obligations under the Convention, notably by providing statistics regarding the number of remand prisoners and information on the conditions of their detention;

DECIDES to resume the examination of these cases at the latest at the first DH meeting in 2011.

Appendix I to Interim Resolution CM/ResDH(2010)35
Detention facilities and periods of the applicants' detention

Application	Period(s) of detention	Facility
47095/99 Kalashnikov	29/06/1995 to 20/10/1999, from 9/12/1999 to 26/06/2000	IZ/47-1 in Magadan
1750/03 Andreyevskiy	31/05/2002 to 28/03/2005	IZ-77/1 in Moscow
22107/03 Antropov	16/02/2001/ to 5/03/2003	IZ-25/2 in Ussuriysk
67253/01 Babushkin	11/02/2000 to 17/07/2000	SIZO 32/1 (later renamed SIZO 52/1) in Nizhny Novgorod
37810/03 Bagel	21/02/2000 to 23/05/2003	IZ-17/1 in Barnaul
28617/03 Belashev	19/04/2002 to 11/04/2003	IZ-77/3 in Moscow
106/02 Benediktov	19/12/1999 to 28/11/2000; November 2000 to November 2001	IZ-77/2 (first period), IZ-77/3 in Moscow
68337/01 Buzychkin	5/06/1998 to 16/03/1999; 17/03/1999 to 28/05/1999	IZ-32/1 in Nizhny Novgorod (first period); IZ-48/3 in Moscow
39420/03 Bychkov	5/06/2000 to 30/05/2002; 30/05/2002 to 28/10/2002; 28/10/2002 to 14/08/2003; 14/08/2003 to 9/09/2003	IZ-77/2 (first and third periods) IZ-77/3 in Moscow
66802/01 Dorokhov	2/10/1998 to 4/02/2000	IZ-48/1 in Moscow
205/02 Frolov Andrey	21/01/1999 to 16/02/2003	IZ-47/1 in St. Petersburg
22/03 Grigoryevskikh	27/08/2001 to 12/07/2002	IZ-36/2 in Borisoglebsk
30983/02 Grishin	12/05/2001 to 16/04/2002	IZ-24/1 in Krasnoyarsk
36941/02 Gubkin	15/06/1998 to 25/04/2005	IZ-61/1 in Rostov-on-Don
24650/02 Guliyev	4/02/2000 to 25/01/2002	IZ-7/2 in Sosnogorsk
34000/02 Ivanov Igor	29/12/2000 to 28/01/2002; 28/01/2002 to 28/06/2002	IZ-77/1 in Moscow (first period); IZ-77/3 in Moscow
67086/01 Korobov and others	First and second applicants: 4/02/1998 to 14/07/1998; 14/12/1999 to 23/05/2000; 3/04/2001 to 5/04/2001; third applicant: 4/02/1998 to 13/07/1998; 28/12/1999 to 23/05/2000	IZ-37/1 in Ivanovo
62208/00 Labzov	16/05/2000 to 1/08/2000	IZ-21/2 in Tsvil'sk
25664/05 Lind	16/12/2004 to 8/12/2005	IZ-77/2 in Moscow
6270/06 Lyubimenko	Since 25/07/2003 (proceedings were still pending when the Court delivered its judgment on 19/03/2009)	IZ-34/1 in Volgograd
15217/07 Makarov Aleksandr	6/12/2006 to 20/04/2009	Tomsk Town temporary detention facility
6954/02 Maltabar and Maltabar	16/12/2000 to 24/07/2001 (first applicant); 16/12/2000 to 31/07/2001 (second applicant)	IZ-69/1 in Tver
14850/03 Matyush	8/03/1999 to 21/04/2003	IZ-55/1 in Omsk
63378/00 Mayzit	26/07/2000 to 7/03/2001; 16/05/2001 to 18/07/2001	IZ-39/1 in Kaliningrad
22625/02 Mironov	27/05/2002 to 5/10/2002	IZ-50/9 Moscow region

Application	Period(s) of detention	Facility
11982/02 Novinskiy	11/06/2001 to 16/06/2001; 16/06/2001 to 12/11/2001; 13/11/2001 to 5/12/2001	IZ-63/1 in Samara (first and third periods); IZ-77/3 in Moscow
66460/01 Novoselov	27/10/1998 to 28/04/1999	IZ-18/3 (renamed IZ-23/3 on 13 June 2001) in Novorossiysk
1606/02 Popov and Vorobyov	24/01/2000 to 20/02/2001	IZ-25/1 in Vladivostok
15591/03 Seleznev	25/03/2001 to 25/02/2002; 30/05/2002 to 8/01/2003	IZ-47/1 in St. Petersburg
23691/06 Shteyn (Stein)	25/04/2005 to 30/07/2008	IZ-70/1 in Tomsk
42239/02 Starokadomskiy	May 1998 to 23/12/2005	IZ-77/1 in Moscow
3130/03 Sudarkov	22/05/2000 to 23/04/2002; 23/04/2002 to 6/09/2002;	IZ-77/2 (first period); IZ-77/3 in Moscow
63955/00 Sukhovoy	8/01/2000 to 2/08/2000	IZ-33/1 in Ivanovo
36898/03 Trepashkin	14 days (split into 3 periods) in November 2003	IZ-50/2 in Volokolamsk

Appendix II to Interim Resolution CM/ResDH(2010)35

Information provided by the Government of the Russian Federation during the examination of the Kalashnikov group of cases by the Committee of Ministers

I. General measures taken to improve material conditions of detention on remand

1. The Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006

The Programme, adopted by the Government's decision of 29 August 2001, was aimed at the building of new remand prisons (SIZOs) as well as the renovation and reconstruction of existing facilities with the view to increasing the number of places available. As a result of its implementation, the number of places in Russian SIZOs increased by 13 100.

2. The Federal Target Programme "Development of the penitentiary system for 2007-2016"

a) Rationale and objectives

The Programme, adopted by a decision of the Russian Government of 5 September 2006, is aimed at "aligning the conditions of pre-trial detention with the requirements of the Russian legislation with the view to complying with the international standards of detention of remand prisoners".

At the time of the programme's adoption, the requirement of the Russian legislation to provide remand prisoners with 4 sq. m of personal space was observed in only 40 regions of the Russian Federation. In 18 regions remand prisoners were provided with less than 3 sq. m of personal space. It was suggested that, by 1 January 2007, 100 remand prisons out of 209 (47,8%) would afford to remand prisoners personal space required by the domestic legislation.

The programme provides for the reconstruction and renovation of existing pre-trial detention facilities and the construction of 26 new detention facilities providing remand prisoners with 7 sq. meters of personal space. The declared cost of the programme is 54 588,2 million rubles (approximately 1 327 million euros).

By the end of each year of the programme's implementation the number of remand prisons (as a percentage of the total number of remand prisons) complying with the requirements of the domestic legislation should increase as indicated below:

2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
53,1	58,4	64,4	71,1	78,4	85,8	92,2	94,7	97	100

b) Implementation of the Programme

In 2007, the Government allotted 2 100 million rubles (51,5 million euros) for the building of new remand prisons and the reconstruction and renovation of existing ones. Due to the programme, 914 new places complying with the requirements of domestic legislation have been created. In a number of facilities the gas supply, heating and canalisation systems have been renovated. As a result, the number of remand prisons offering conditions of detention compatible with domestic standards reached 53,7%.

In 2008, the Government allotted 2 200 million rubles (54 million euros) to the Programme which allowed the creation of 1308 new places in remand prisons. In particular, a new building of the remand prison IZ-77/4 for 1200 places was constructed in Moscow, ahead the scheduled date. As a result, the number of remand prisons offering conditions of detention compatible with domestic standards reached 54%.

In 2009, the financing of the Programme was reduced by 30%. It is planned to reduce the financing of the Programme in 2010 by 45%.

c) Current situation

The total capacity of remand prisons has increased from 144901 places on 1 January 2007 up to 151161 places on 1 January 2010 (see below).

Year	Overall remand prison capacity in Russia	Total number of remand prisoners in Russia
2007	144901	144550

2008	148866	144306
2009	150485	133215
2010	151161	124611

The average personal space afforded to a remand prisoner in Russia has increased from 4,1 sq. m in 2007 to 4,85 sq. m in 2010.

According to the statistics, in several regions the total number of remand prisoners exceeds the capacity of the remand prisons and the average personal space afforded to remand prisoners is still below 4 sq. m, contrary to the domestic legislation.

The remand prisons are being renovated using the modern construction materials and technologies. Double-glazed windows, artificial ventilation systems and new sanitary equipments are being installed. The walls are being painted in light colours. In all remand prisons the metallic shutters have been removed from cell windows in order to ensure access to natural light and fresh air.

3. Mid-term programme "Remand Prison – 2006"

On 1 December 2004 the Federal Service for the Execution of Sentences adopted a mid-term programme "Remand Prison – 2006", with a declared cost of 1565,3 million rubles (384,7 million euros). The programme was aimed at improving the material conditions of detention and decreasing the number of remand prisoners.

In his decree of 31 January 2005 concerning the implementation of the programme, the Director of the Federal Service for the Execution of Sentences identified the regions and remand prisons where the overcrowding problem was acute.

In 12 (out of 77) regions, where 51 remand prisons were situated, the average personal space afforded to a remand prisoner varied between 3,1 and 3,5 sq. m and the design capacity of the facilities was exceeded by up to 30% (overcrowding rate). These were Rostov, Irkutsk, Novosibirsk, Kurgan, Sverdlov, Tver, Khabarovsk, St-Petersburg and Moscow regions, Republics of Tatarstan and Kabardino-Balkaria, City of Moscow.

In 7 regions, where 11 remand prisons were situated, the average personal space varied between 2,6 and 3 sq. m and the overcrowding rate was between 31 and 50% (Saratov, Kaliningrad, Kaluga, Yaroslavl and Nizhniy Novgorod regions, Republics of Chuvashyia and Tyva).

In 2 regions, where 3 remand prisons functioned, the average personal space was less than 2,5 sq. m and the overcrowding rate was more than 50% (Vladimir and Chita regions).

In his decree, the Director of Federal Service for the Execution of Sentences identified the 36 most problematic remand prisons and ordered specific measures such as reconstruction and renovation of the existing facilities and construction of new ones.

To implement the programme, several new remand prisons have been constructed. In addition to the construction of new remand prisons, the reconstruction and renovation of existing facilities allowed, only in the Moscow Region, an increase in the number of places by 156 in remand prison 10, 154 in remand prison 2, 72 in remand prison 7 and 174 in remand prison 12.

The authorities provided updated information on the situation in the remand prisons referred to as the most problematic in the decree of 31/01/2005 (see below) and indicated that in order to solve the overcrowding problem in the facilities where it still persists, a number of new remand prisons are being constructed. Thus, 2 new facilities are being constructed in the Moscow Region with a total capacity of 1040 places, a new remand prison with 551 places is being constructed in the Khabarovsk Region. New facilities are also being constructed in the Novosibirsk and Zabaykal Regions, Republics of Tatarstan and Chuvashyia.

Remand prison	Prison population rate (in percentage as compared to the facility's design capacity), as identified in the decree of 31/01/2005	Current population rate	Personal space (in sq. m) per detainee
IZ-65/1 (Rostov-on-Don)	145,3	69,3	5,8
IZ-77/1 (Moscow)	132,9	78,6	5,1

IZ-77/2 (Moscow)	128,1	97,3	4,1
IZ-77/3 (Moscow)	148,9	96,2	4,2
IZ-77/5 (Moscow)	133,8	76,6	5,2
IZ-38/1 (Irkutsk)	169,5	96,1	4,2
IZ-54/1 (Novosibirsk)	144,1	138,5	2,9
IZ-45/1 (Kurgan)	128,6	86,3	4,6
IZ-16/1 (Kazan)	140,5	109,1	3,7
IZ-16/3 (Bugulma)	140,7	65,1	6,1
IZ-66/1 (Yekaterinburg)	144,6	144,2	2,8
IZ-66/3 (Nizhniy Tagil)	123,8	147,2	2,7
IZ-27/1 (Khabarovsk)	146,9	105,3	3,8
IZ-69/1 (Tver)	136,8	67,8	5,9
IZ-47/1 (St-Petersburg)	152,4	98,0	4,1
IZ-47/4 (St-Petersburg)	131,9	96,9	4,1
IZ-47/6 (Gorelovo)	126,2	100,4	4,0
IZ-64/1 (Saratov)	135,3	58,9	6,8
IZ-39/1 (Kaliningrad)	158,3	76,4	5,2
IZ-40/1 (Kaluga)	144,4	90,3	4,4
IZ-76/1 (Yaroslavl)	147,0	59,0	6,8
IZ-21/1 (Cheboksary)	186,3	117,5	3,4
IZ-52/1 (Nizhniy Novgorod)	149,1	99,6	4,0
IZ-17/1 (Kyzyl)	150,0	100,3	4,0
IZ-33/1 (Vladimir)	199,0	88,6	4,5
IZ-75/1 (Chita)	237,6	110,6	3,6
IZ-50/1 (Noginsk)	142,8	110,6	3,6
IZ-50/2 (Volokolamsk)	136,0	88,0	4,5
IZ-50/3 (Serpuukhov)	71,9	84,5	4,7
IZ-50/4 (Mozhaysk)	148,9	95,9	4,2
IZ-50/5 (Kashira)	184,0	154,0	2,6
IZ-50/6 (Kolomna)	129,1	106,2	3,8
IZ-50/7 (Yegoryevsk)	137,8	101,9	3,9
IZ-50/8 (Sergiyev Posad)	170,8	110,2	3,6
IZ-50/9 renamed (Moscow, Kapotnya)	70/7 44,9	78,1	5,1
IZ-7/1 (Nalchik)	127,6	69,3	5,8

II. General measures taken to reduce the number of remand prisoners

According to the statistics provided, the total number of remand prisoners detained in SIZOs on 1 January 2010 was 124 611. On 1 January 2007 there were 144 550 remand prisoners.

According to the authorities, there is a decrease in a number of persons admitted into remand prisons. Thus, there were 386 900, 384 900 and 378 800 admissions in 2006, 2007 and 2008 respectively. During the first six months of 2009, there were 181 800 admissions.

1. Legislative amendments

The authorities informed the Committee that draft laws are being elaborated to ensure the effective application of the alternative measures provided by the Code of Criminal Procedure such as bail and house arrest.

2. Measures taken by the Supreme Court of Russia

a) Ruling of the Presidium of the Supreme Court of Russia of 27 September 2006 "On the results of the examining the judicial practice concerning detention on remand"

The Supreme Court, having summarised the judicial practice in the area, identified a number of shortcomings and announced a number of measures to remedy them. The main shortcomings were the following:

- courts' very formal approach in ordering detention, as they limit themselves to mentioning the grounds provided for by Article 97 of the Code of Criminal Procedure (CCP) without specifying facts justifying that such grounds are satisfied;
- detention of persons prosecuted for offences of minor and average importance in the absence of exceptional circumstances required by CCP;
- courts' failure to take into account the defendant's personal circumstances, contrary to the provisions of CCP;
- failure of cassation and nadzor courts to fully address the defendants' arguments given in their application for release.

The Supreme Court stressed the need for not accepting requests for detention which are not supported by detailed materials on the personal situation of the defendant. It also stressed the need for the presidents of regional courts to carry out regular monitoring of the judicial practice on detention on remand and to discuss the results of the monitoring with judges at least every three months. The Supreme Court organised conferences on detention on remand in the courts where the shortcomings of judicial practice have been identified.

b) Ruling of the Presidium of the Supreme Court N° 22 of 29 October 2009 "On the application of preventive measures such as remand, bail and house arrest".

The Supreme Court stressed that

- detention on remand can only be ordered when other preventive measures cannot be applied;
- while considering the grounds for detention on remand indicated in the CCP, judges should assure that these grounds are real and well-founded, that is supported by truthful information; judges should also take due account of the personal circumstances of defendants;
- the absence of a formal registration of a defendant on the Russian territory cannot be blankly considered as the absence of a permanent place of residence;
- provisions of the CCP establishing maximum periods of detention pending investigation and pending trial should be observed; all courts' decisions concerning the prolongation of detention on remand should clearly indicate the period for which the detention is extended and the end date of the detention order.

The Supreme Court further provided lower courts with explanations on the application of the CCP provisions concerning release on bail and house arrest.

The Supreme Court recommended that the lower courts monitor and regularly summarise the judicial practice concerning detention on remand.

3. Measures taken by the Public Prosecutor Office

In 2009, public prosecutors refused to support in court 5 697 investigators' applications for detention on remand or prolongation. This represents 1,6% of all applications.

4. Use of alternative measures

According to the statistics provided by the Supreme Court, in 2007 Russian courts received 244 846 applications for detention on remand of which 222 201 have been granted. In 2008 there were 230 269 applications and 207 465 remand orders. In 2009, 208 416 applications for detention on remand were submitted and 187 793 granted.

During the second half of the year 2008, bail was used in 407 cases. During the first half of 2009, there were 599 cases of release on bail.

It appears that in 2007 the investigators of the Investigating Committee requested the use of house arrest in 9 cases and of bail in 36 cases. In 2008, they submitted 28 applications for house arrest and 74 application for release on bail. In 2009, there were 74 applications for house arrest and 91 applications for release on bail.

III. Avenues to address the violations of Article 3

1. Court actions

a) Compensatory actions

The authorities have provided some examples from domestic judicial practice to show that, by virtue of Article 1069 of the Civil Code of the Russian Federation, it is possible for remand detainees to obtain compensation for damage sustained in relation to poor detention conditions. According to the statistics provided by the Supreme Court, between January 2006 and June 2009, 943 claims for damages were submitted to domestic courts. The courts granted 233 claims, refused 325 claims and suspended 376 actions for non-compliance with the requirements of the Code of Civil Procedure.

b) Complaints

The authorities indicated that Chapter 25 of the Code of Civil Procedure provides a procedure for challenging State authorities' acts or inaction in courts. If a court finds that the complaint is well-founded, it orders the State authority concerned to remedy the breach or unlawfulness found. In its Ruling of 10 February 2009, the Supreme Court of the Russian Federation confirmed that it was open to remand prisoners to "challenge acts of remand prisons' administration [...], concerning improper detention conditions (for example, failure to provide due medical care) or decisions concerning disciplinary sanctions" on the basis of the provisions of Chapter 25 of the Code of Civil Procedure. The Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides for the possibility to for remand prisoners to complain, including to a court, about violations of their rights.

2. Complaints to prison administrations

The Detention of Suspects Act also provides for the remand prisoners' right to request an appointment with the remand prisons' directors.

3. Actions of public prosecutors

In accordance with the Prosecution Authority Act (Federal Law no. 2202-1 of 17 January 1992), public prosecutors carried out 4 290 inspections of SIZOs in 2008 and 4 646 inspections in 2009. During these inspections 1 330 and 2 491 cases of inadequate detention conditions were identified in 2008 and 2009 respectively. As a result, on 1 998 and 1 335 occasions prosecutors ordered the administrations of remand prisons to comply with the domestic legislation within one month (predstavlenye prokurora). In 2008 and 2009 prosecutors brought respectively 52 and 168 court actions against the administrations of remand prisons to oblige them to comply with domestic legislation. Copies of the court decisions concerning actions brought by public prosecutors have been provided.

The Prosecutor General's Office also carries out regular inspections of remand prisons. When the problem of poor detention conditions in a remand prison appears to be of a systemic character and to require investment, the Prosecutor General submits an order to comply with the requirements of domestic legislation to the Minister of Justice of Russia and the Director of the Federal Service for Execution of Sentences. During 2007-2009, 23 such orders were submitted. In 2009, public prosecutors received 43 748 complaints from detainees. No information is available on the number of complaints concerning poor detention conditions in remand prisons.

IV. Publication and dissemination

All judgments of the group have been published, mainly in the Konsultant database, and disseminated to the Supreme and the Constitutional Courts of the Russian Federation, the Prosecutor General, the Federal Service for execution of sentences and the President's Representatives in federal districts.

The judgments were disseminated to the lower courts by the Supreme Court, to the Heads of territorial departments by the Prosecutor General and to all territorial departments of the Federal Service for execution of sentences.

V. Conclusions

The government believes that the measures set out above demonstrate its determination and the sustained efforts made to improve the conditions of detention in remand prisons. The government will continue to take further measures to that effect and will keep the Committee of Ministers informed of the new developments.

⇒ 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

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2011)293

Execution of the judgment of the European Court of Human Rights

Burdov No. 2 against the Russian Federation

regarding 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

(Application No. 33509/04, judgment of 15/01/2009, final on 04/05/2009)

(Adopted by the Committee of Ministers on 2 December 2011 at the 1128th 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 pilot judgment of the European Court of Human Rights ("the Court") of 15 January 2009 in the case of Burdov No. 2 against the Russian Federation;

Recalling that in this pilot judgment the Court found violations of the Convention on account of a practice resulting from the State's recurrent failure to comply with domestic judicial decisions awarding payments to the applicants and lack of an effective remedy in this respect;

Recalling further that, having regard to the Committee of Ministers' Resolution on judgments revealing an underlying systemic problem (Res(2004)3) and Recommendation on the improvement of domestic remedies (Rec(2004)6), both of 12 May 2004, the Court ordered the respondent state:

to set up, within six months, a domestic remedy or a combination of such remedies which secure adequate and sufficient redress for non-enforcement or delayed enforcement of domestic judicial decisions in line with the Convention principles as established in the Court's case-law, and

to grant, within one year, adequate and sufficient redress to all persons in the applicant's position in the cases lodged with the Court before the delivery of the pilot judgment;

Recalling in addition the Committee of Ministers' Interim Resolution [CM/ResDH\(2009\)43](#) concerning the execution of the Court's judgments in more than 200 similar cases, in which the Committee stressed the urgent need to set up effective domestic remedies in order to enhance the remedial capacity of the national judicial system in addressing repetitive violations of this kind;

Recalling that the Committee of Ministers gave priority to the examination of this case in accordance with Rule 4§1 of its [Rules](#) for the supervision of the execution of the European Court's judgments and of the terms of friendly settlements, with particular focus on the urgent requirements to introduce an effective domestic remedy and to ensure domestic settlement of similar cases;

Having satisfied itself that the respondent state paid the applicant the just satisfaction awarded in the judgment and that no individual measures was required in his case since all domestic judgments in his favour have been enforced;

Welcoming the adoption by the Russian Federation in response to the pilot judgment of two federal laws introducing a new domestic remedy in respect of excessive length of judicial proceedings and delayed enforcement of domestic judgments delivered against the State ("the Compensation Act");

Noting with satisfaction that the Russian authorities promptly reacted to the Committee's Interim Resolution [CM/ResDH\(2009\)158](#) and that the reform entered into force on 4 May 2010, namely on the date the Court was to resume the proceedings in similar cases;

Noting that the Court's assessment of the new domestic remedy led it to decide that all new cases introduced after the pilot judgment and falling under the Compensation Act should be submitted in the first place to the national courts¹⁹;

Welcoming that this remedy is already being actively implemented as demonstrated by the numerous examples of judicial practice provided by the Russian authorities and as acknowledged by the Court;

Taking note with interest of a wide set of measures adopted by the Russian authorities, in particular by the federal Supreme Court, by the Supreme Commercial Court, and by the Ministry of Finance and Federal Treasury, in order to guarantee the effectiveness of the new compensation remedy at domestic level (see Appendix);

Noting in this context with great satisfaction that appropriate budgetary arrangements have been made in order to guarantee effective and timely execution of judicial decisions delivered in accordance with the Compensation Act;

Welcoming moreover the comprehensive measures taken with a view to settling similar individual applications lodged prior to the pilot judgment, which resulted in the resolution of the issues raised by the great majority of such applications and that the Court subsequently struck out of its list more than 800 applicants;

Recalling that the respondent State remains under the obligation to adopt other general measures, bearing in mind the Court's findings as set out in the pilot judgment²⁰;

DECIDES to close the examination of the issue relating to the introduction of an effective domestic remedy in case of non-enforcement or lengthy enforcement of domestic judicial decisions providing for the State's payment obligations;

DECIDES to pursue the examination of the other general measures within the context of the Timofeyev group of cases²¹ and consequently to join the present case to this group.

¹⁹ Nagovitsyn and Nalguyev v. Russia (dec.), nos. 27451/09 and 60650/09, 23 September 2010.

²⁰ In particular, §§ 136-137 of the pilot judgment.

²¹ This group of cases concerns non-enforcement or delayed enforcement of domestic judicial decisions and lack of an effective remedy in this respect.

Appendix to Resolution CM/ResDH(2011)293

Information about the measures to comply with the judgment in the case of Burdov No. 2 against the Russian Federation

1) The new domestic remedy

a) Legislative reform

On 4 May 2010 the Federal Law no. 68-FZ “On Compensation for a Violation of the Right to a Trial within a Reasonable Time or the Right to the Enforcement of a Judgment within a Reasonable Time” entered into force²². This law was accompanied by a Federal Law amending certain legislative acts of the Russian Federation²³.

The Compensation Act provides the possibility to claim compensation for lengthy non-enforcement of a judgment establishing a debt to be recovered from the State budgets. Such compensation is awarded if the alleged violation was not dependent on the fault of a person applying for it. A compensation award is not dependent on the competent authorities’ fault.

The amount of compensation should be determined by the courts according to the applicant’s claims, the circumstances of the case, the length of the period during which the violation took place, the importance of its consequences for the applicant; the principles of reasonableness and fairness, and the practice of the European Court of Human Rights.

A claim for compensation on account of lengthy enforcement of a judgment may be lodged while enforcement proceedings are still pending or not later than six months after the termination of enforcement proceedings. A court decision granting compensation should be enforced immediately. It may however be subject to appeal according to the procedural legislation in force. The Compensation Act provides that appropriate budgetary arrangements should be made in the federal budget, in the budgets of federal entities and in local budgets.

b) Measures aimed at ensuring the implementation of the new remedy

Measures aimed at ensuring effective and coherent application of the Compensation Act by domestic courts

In order to ensure uniform implementation of the Compensation Act, the federal Supreme Court and the Supreme Commercial Court issued on 23 December 2010 a Joint Ruling on certain issues that might arise during the consideration of cases regarding applications for compensation for violations of the right to trial within a reasonable time or the right to enforcement of a judicial decision within a reasonable time²⁴.

On 25 June 2010 the Presidium of the Supreme Commercial Court sent to the lower courts Information Letter No. 140 on certain issues in relation to the enactment of the Federal Law on amendments to certain legislative acts of the Russian Federation adopted together with the Compensation Act²⁵.

On 18 May 2011 the Presidium of the Federal Supreme Court issued a review of the practice of examination by courts of general jurisdiction in cases regarding applications for compensation made in accordance with the Compensation Act²⁶. This review was based on the analysis of the most frequent grounds on which the

²² Original text: <http://www.rg.ru/printable/2010/05/04/razumnisrok-dok.html> ; for the English translation see the website of the Department of Execution of Judgments of the European Court (Additional Information/Russian Federation/Case Burdov – appendix 1): http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Russie/Burdov10082011%20Annexe1.pdf

²³ Original text: <http://www.rg.ru/2010/05/04/volokita-dok.html> ; for the English translation see the website of the Department of Execution of Judgments of the European Court (Additional Information/Russian Federation/Case Burdov – appendix 2): http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Russie/Burdov10082011%20Annexe2.pdf

²⁴ Original text: http://www.supcourt.ru/Show_pdf.php?id=6968 or http://www.arbitr.ru/as/pract/post_plenum/32236.html ; for the English translation see the website of the Department of Execution of Judgments of the European Court (Additional Information/Russian Federation/Case Burdov – appendix 3):

http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Russie/Burdov10082011%20Annexe3.pdf

²⁵ Original text: http://www.arbitr.ru/as/pract/vas_info_letter/29867.html ; for the English translation see the website of the Department of Execution of Judgments of the European Court (Additional Information/Russian Federation/Case Burdov – appendix 4): http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Russie/Burdov10082011%20Annexe4.pdf

²⁶ Original text: http://www.vsr.ru/vscourt_detale.php?id=7418 ; for the English translation see the website of the Department of Execution of Judgments of the European Court (Additional Information/Russian Federation/Case Burdov – appendix 5): http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Russie/Burdov10082011%20Annexe5.pdf

Supreme Court quashed, amended or confirmed the lower courts' decisions awarding compensation for the period between the entry into force of the Compensation Act and April 2011.

In March 2011 an overview of the European Court's judgments delivered in 2009 and 2010 in respect of the Russian Federation finding a violation of the right to judicial and enforcement proceedings within a reasonable time was published in the Bulletin of the Federal Supreme Court (Bulletin No. 3).

Administrative measures

On 7 July 2010 the Ministry of Finance of the Russian Federation issued Letter no 08-06-06/582 explaining the procedure for the implementation of particular provisions of the Compensation Act.

On 21 September 2010 the Federal Treasury issued Letter no 42-7.4-05/9-607 to the heads of its territorial departments providing guidelines on the implementation of the Compensation Act, notably with regard to the representation of the interests of the Russian Federation in commercial courts in this kind of disputes.

Budgetary arrangements

In order to ensure speedy and effective execution of judicial decisions issued under the Compensation Act, appropriate funds were allocated to the federal budget, budgets of the subdivisions of the Russian Federation and local budgets.

Awareness raising measures

The pilot judgment was disseminated to all authorities concerned. Information about pilot judgment was published in the Bulletin of the Supreme Court of the Russian Federation in 2009 No. 11.

On 1 November 2010 a parliamentary session on the implementation of the provisions of the Compensation Act took place in the State Duma of the Federal Assembly of the Russian Federation.

Issues related to the Compensation Act were introduced in the curricula of in-service training for judges concerning the case-law of the European Court.

In July 2010 and September 2011, interagencies' meetings were held on the basis of the Federal Treasury with the participation of the representatives of the Ministry of Finance, Supreme Commercial Court, Federal Bailiff's Service, Supreme Court of the Russian Federation, the State Scientific Research Institute of Systematic Analysis of the Accounting Chamber of the Russian Federation and Government Agent's office.

In May 2011 the issues related to the Compensation Act were discussed at a conference on the problems of legislation and practice organised in Saint Petersburg.

Statistics

Between 4 May 2010 and 30 June 2011, the Russian courts (courts of general and commercial jurisdiction) examined 287 complaints concerning excessive length of enforcement procedures. In particular, courts of general jurisdiction examined 186 of such complaints. Compensation was awarded in 100 cases. Commercial courts examined 101 complaints. Compensation was granted in 45 cases. The examples of the domestic courts' practice show that the Russian courts, while granting compensation, take into accounts the practice of the European Court²⁷.

According to the Ministry of Finance of the Russian Federation, from 4 May to 13 October 2011 the Ministry received 97 court orders for the total amount of RUB 3,940,555 (i.e. about EUR^o86 000). Only 19 court orders were returned to the claimants due to mistakes in bank details or to the quashing of judicial decisions by higher courts. All other court orders were enforced within the established time-limits.

2) *Ad hoc settlement of similar applications frozen by the Court*

²⁷ For some examples of the judgments taken by the domestic courts and translated into English, translation see the website of the Department of Execution of Judgments of the European Court (Additional Information/Russian Federation/Case Burdov – appendix 6): http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Russie/Burdov10082011%20Annexe6.pdf

As regards ad hoc settlement of similar cases which examination was suspended by the European Court, the Russian authorities examined all applications within the time-limits set by Court. They adopted measures with a view to restoring the applicants' rights in respect of 861 applications²⁸.

For instance, several applicants made use of the new remedy²⁹. Consequently, the European Court struck one of these applications out of the list on the ground that the applicants were awarded compensation by domestic courts of an amount comparable to that granted by the European Court in similar cases. The Court also noted that the judicial decisions awarding compensation were executed within the time-limits set.

In total, following the measures taken, the European Court already decided to strike out cases in respect of 785 applicants. 656 of these applicants have already received compensation in full. The remaining applicants will be paid within the time-limits set.

In addition, the Russian authorities requested that the Court strike 297 applications out of the list due to the absence of grounds for the restoration of the applicants' rights and to continue its examination in respect of 33 applications.

3) The Court's assessment of the measures adopted in the framework of the "pilot judgment procedure"

On 23 September 2010, the European Court delivered the decisions in the cases Nagovitsyn and Nalgiyev against the Russian Federation³⁰ and Fakhretdinov and others against the Russian Federation³¹. In these decisions, the European Court ruled that all new cases introduced after the pilot judgment and falling under the Compensation Act be submitted in the first place to the national courts. Consequently, the Court declared these applications inadmissible.

In doing so, the European Court found it "significant that Russia had passed the legal reform introducing the new domestic remedy in response to the Burdov No. 2 pilot judgment under the supervision of the Committee of Ministers". The Court also noted that the new remedy became operational on 4 May 2010, namely on the date the Court was to resume proceedings in similar cases. The Court finally recalled that "one of the aims of the pilot judgment procedure was precisely to allow the speediest possible redress to be granted at the domestic level to the large numbers of people suffering from the structural problem of non-enforcement"³².

28 These measures include the execution of the domestic judicial decisions delivered in the applicants' favour, conclusion of friendly settlements, and submission to the Court of unilateral declarations indicating that the Russian authorities were ready to pay to the victims compensation in respect of the damages sustained. In a number of cases, the applicants successfully used the new remedy and obtained compensation at the domestic level in accordance with the Compensation Act.

²⁹ Balagurov v. Russia (dec.), no. 9610/05, 2 December 2010; Zavyalov v. Russia, no. 45236/04 (the case is pending).

³⁰ Nagovitsyn and Nalgiyev, cited above.

³¹ Fakhretdinov, Kuzovlev and Sergejev v. the Russia (dec.), nos. 26716/09, 67576/09 and 7698/10, 23 September 2010.

³² Nagovitsyn and Nalgiyev, cited above.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2009)158

Execution of the pilot judgement of the European Court of Human Rights in the case Burdov No. 2 against the Russian Federation 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 (Application No. 33509/04, judgment of 15/01/2009, final on 04/05/2009)

(Adopted by the Committee of Ministers on 3 December 2009, at the 1072nd 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 pilot judgment of the European Court of Human Rights ("the Court") of 15 January 2009 in the case of Burdov No. 2 against the Russian Federation transmitted to the Committee for supervision of its execution under Article 46 of the Convention;

Recalling that in this judgment the Court unanimously

found violations arising from a practice incompatible with the Convention which consists in the state's recurrent failure to honour judgment debts and in respect of which aggrieved parties have no effective domestic remedy;

ordered the respondent state to set up such a remedy within six months from the date on which the judgment became final, i.e. by 4 November 2009, and to grant adequate and sufficient redress by 4 May 2010 to all persons in the applicant's position in the cases lodged with the Court before the delivery of the pilot judgment;

decided to adjourn the Court proceedings in all similar cases for one year, i.e. until 4 May 2010;

Recalling further the Committee of Ministers' Interim Resolution CM/ResDH(2009)43 concerning the execution of the Court's judgments in more than 200 similar cases, in which the Committee stressed the urgent need to set up effective domestic remedies in order to enhance the remedial capacity of the national judicial system in addressing repetitive violations of this kind;

Recalling that the Committee of Ministers gave priority to the examination of this case in accordance with Rule 4 § 1 of its Rules for the supervision of the execution of the European Court's judgments, with particular focus on the urgent requirement to introduce an effective domestic remedy and to settle similar cases lodged with the Court before the delivery of the pilot judgment;

Noting with satisfaction the Russian authorities' prompt and constructive response to the Court's pilot judgment and to the Committee of Ministers' Interim Resolution;

Noting with interest that the Russian authorities have engaged without delay in the *ad hoc* settlement of numerous individual cases pending before the Court and offered redress to the first group of applicants in line with the requirements of the pilot judgment (see the Court's decision in the case of Uskov and others against Russia (dec.), No. 6394/05 et al., 12 November 2009);

Noting further the efforts deployed within the special inter-ministerial commission set up with the participation of the Presidential Administration, which resulted in the preparation of draft laws setting up a domestic remedy;

Noting with satisfaction that these draft laws were subject to consultations with the Council of Europe's Department for the execution of the judgments of the European Court;

Recalling that the need to set up such a remedy is widely acknowledged at the domestic level and was underlined in the strong political message delivered by the President of the Russian Federation in his address to the Federal Assembly on 5 November 2008;

Regretting, however, that the deadline set by the Court for the introduction of an effective domestic remedy expired on 4 November 2009 without these draft laws having even been submitted to Parliament;

Considering in this respect that the positive developments of the case-law presented by the Russian authorities, tending to offer redress in certain circumstances, do not obviate the urgent need for the adoption of a law securing the availability and effectiveness of a domestic remedy against the state's recurrent failure to honour judgment debts, as required by the pilot judgment and the Committee's Interim Resolution CM/ResDH(2009)43;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Recalling with concern that large categories of persons, including vulnerable groups, continue to be deprived of an effective domestic remedy against violations by the state of its obligation to honour judgment debts, including those in the social domain;

STRONGLY URGES the Russian authorities to adopt without further delay the legislative reform required by the pilot judgment;

ENCOURAGES the Russian authorities to continue to resolve the similar individual cases lodged with the Court before the delivery of the pilot judgment and to keep the Committee regularly informed of the solutions reached and of their subsequent implementation;

DECIDES to resume consideration of the progress in the legislative reform at their 1078th meeting (March 2010) (DH).

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2009)43 **Execution of the judgements of the European Court of Human Rights** **in 145 cases against the Russian Federation 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 Timofeyev group)

CM/Inf/DH(2006)19 revised 2 and CM/Inf/DH(2006)45, CM/Inf/DH(2006)19 revised 3

*(Adopted by the Committee of Ministers on 19 March 2009,
 9 at the 1051st 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 continuous flow of judgments in which the Court has found violations of Article 6, paragraph 1, of the Convention and of Article 1 of Protocol No. 1 to the Convention due to the non-enforcement or belated enforcement by the state and by state entities of final domestic judicial decisions in the applicants' favour and of Article 13 of the Convention on account of the lack of an effective domestic remedy in this respect;

Recalling that the Committee of Ministers has been supervising the adoption by the Russian Federation of general measures to prevent new similar violations of the Convention since the first Burdov judgment of 7 May 2002;

Noting that some two hundred judgments delivered since that date highlighted the existence of serious structural problems related to the non-enforcement of domestic judicial decisions delivered against the state and its entities;

Recalling the consistent position of the Committee of Ministers, shared by the Russian authorities, as demonstrated in the Committee's previous decisions, that the problems at the basis of the violations found by the Court in these judgments were large-scale and complex in nature and that their resolution required the implementation of comprehensive and complex measures at both federal and local level;

Considering the Memorandum (CM/Inf/DH(2006)19rev3) presenting the measures taken by the authorities and the outstanding issues and the Conclusions of two high-level Round Tables on non-enforcement of court decisions by the state and its entities respectively of October 2006 (CM/Inf/DH(2006)45) and of June 2007 (CM/Inf/DH(2007)33);

As regards prevention of non-execution or delayed execution

Noting in particular the progress made by the competent Russian authorities in resolving the main structural problems underlying the violations, through:

continuous improvement of the legislative and regulatory framework which resulted particularly in the setting up of execution and enforcement mechanisms;
 adoption of a number of organisational measures, thus ensuring better monitoring of the execution by the state and its entities of court decisions;
 reform of the budgetary regulations with a view to guaranteeing additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations;

Noting with satisfaction that these measures are, to a certain extent, based on the proposals made in the Committee of Ministers' documents (see in particular CM/Inf/DH(2006)19 rev 3 and CM/Inf/DH(2006)45) and welcoming the authorities' coordinated and interdisciplinary approach to their implementation;

Considering that despite the positive developments mentioned above, the major effects of these reforms, not least in preventing new applications before the Court, remain to be demonstrated and that further action is still needed to ensure full compliance by the Russian Federation with its obligations resulting from the Court's judgments;

Noting with great interest in this respect that in his Address to the Parliament of 5 November 2008, the President of the Russian Federation stressed that the execution of court decisions was still a huge problem and stated in particular that it was necessary to establish a mechanism to compensate damages caused by violations of citizens' right to trial within a reasonable time and to the full and timely execution of court decisions;

Stressing that the situation continues to give rise to serious concerns in a number of problematic areas and/or in respect of certain defendant state authorities, in particular judicial awards in favour of most vulnerable groups of people: social benefits for Chernobyl victims, compensation for damage sustained during military service and the provision of social housing; execution of judicial decisions by the Ministry of the Interior, the Ministry of Defence and certain other agencies;

Stressing therefore the need for the competent Russian authorities to enhance their efforts to make rapid and visible progress in the areas concerned, thus effectively ensuring at domestic level appropriate redress for violations of the Convention and preventing the risk of a further influx of applications before the Court;

As regards domestic remedies

Recalling that the primary responsibility for implementing the Convention rights lies with member states, which have thus an obligation to provide effective domestic remedies in case of violations of the Convention;

Recalling the consistent position of the Convention organs that the setting up of domestic remedies, however important, does not relieve states from their general obligation to solve the structural problems underlying violations and further 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;

Stressing that the provision of such remedies is all the more pressing in case of repetitive violations, so as to enhance the remedial capacity of the national judicial system, pending the implementation of more comprehensive and time-consuming reforms;

Recalling that in order for such remedy to be effective in cases of non-enforcement or delayed enforcement of domestic judicial decisions, the following core requirements of the Convention should be met: a person should not be required to prove the existence of non-pecuniary damage as the latter is strongly presumed to be the direct consequence of the violation itself;

compensation should not be conditional on the establishment of fault on the part of officials or the authority concerned as the state is objectively liable under the Convention for its authorities' failure to enforce court decisions delivered against them within a reasonable time;

the level of compensation must not be unreasonable in comparison with the awards made by the Court in similar cases;

adequate budgetary allocations should be foreseen so as to ensure that compensation is paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable;

Stressing that the need for ensuring the execution of such awards by budgetary arrangements is all the greater in countries facing frequent delays in enforcement of judicial decisions;

Noting with interest the draft federal constitutional law submitted by the Supreme Court of the Russian Federation to Parliament on 30 September 2008, which takes account of these requirements of the Convention;

Noting further that a special working group involving the representatives of the main State agencies has been set up upon the President's mandate rapidly to find an appropriate solution with a view to introducing a remedy required by the Convention in the Russian legal system;

Recalling in this respect that Contracting States are afforded some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their obligation under that provision of the Convention;

Noting in addition that the provision 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, provided that their accessibility, sufficiency and effectiveness in practice are convincingly established;

Considering in this respect that a number of remedies already exist in the Russian legislation and have already been used in cases of non-enforcement or lengthy enforcement of domestic judicial decisions (e.g. Chapter 25 and Section 208 of the Code of Civil Procedure, Chapter 59§4 of the Civil Code, Article 315 of the Criminal Code) but that these remedies have so far not been found by the Court to provide adequate and sufficient redress;

CALLS UPON the Russian authorities to rapidly translate into concrete actions the will expressed at the highest political level to combat non-enforcement and delayed enforcement of domestic judicial decisions and to set up to that end effective domestic remedies either through rapid adoption of the constitutional law mentioned above or through amendment of the existing legislation in line with the Convention's requirements;

URGES the Russian authorities to give priority to resolving outstanding non-enforcement issues in the problem areas identified above so as rapidly to achieve concrete and visible results, thus limiting the risk of new violations of the Convention and of further applications before the Court;

ENCOURAGES the Russian authorities to continue their efforts in the implementation of the initiated reforms so as to ensure full and timely execution of domestic courts decisions, in particular through:

ensuring better coordination between different authorities responsible for the execution of domestic judicial decisions so as to avoid the risk that claimants are caught in a vicious circle in which different authorities send them back and forth;

further improving the rules governing all execution procedures, including appropriate role for bailiffs and judicial review;

ensuring the existence of appropriate general regulations and procedures at federal and local level for the implementation of the authorities' financial obligations;

further developing recourse to different remedies already provided by Russian legislation so as to ensure their implementation in case of non-enforcement or belated enforcement of judicial decisions with sufficient certainty as required by the Convention;

strengthening state liability for non-execution as well as the individual responsibility (disciplinary, administrative and criminal where appropriate) of civil servants;

DECIDES to resume consideration of these issues in the context of the Court's judgments concerned at their 1059th Human Rights meeting (2-4 June 2009), in particular in the light of the information to be provided by the respondent state on progress in the provision of a domestic remedy.

Appendix to Interim Resolution CM/ResDH(2009)43

Information provided by the Russian authorities in the context of the examination by the Committee of Ministers of 145 cases against the Russian Federation (Timofeyev group of cases)

A number of important measures taken by the Russian authorities has already been analysed in the Memorandum [CM/Inf/DH\(2006\)19 revised 3](#). The most important measures which have been taken and are being taken by the Russian authorities in particular since the declassification of this memorandum on 4 June 2007 are summarised below.

I - Measures aimed at the resolution of the general problems underlying non-execution or belated execution of domestic judicial decisions

A. Legislative measures

The main efforts of the Russian authorities are directed at the continuous improvement of the legislative framework governing execution of judicial decisions delivered against the state and state entities, in particular through:

the introduction in 2005 in the Budgetary Code of the specific procedure for execution of judicial decisions delivered against the state and its entities (for more details about this procedure see the Memorandum CM/Inf/DH(2006)19 revised);
 the adoption on 5 October 2007 of the new Federal Law on enforcement proceedings;
 the adoption in April 2007 of further amendments to the Budgetary Code in order to extend the Federal Treasury's power to freeze the operations on the accounts of a budgetary institution to its branches, thus increasing its deterrent effect;
 drafting of the Execution Code aimed at establishing a common set of rules governing the execution and enforcement proceedings.

B. Regulatory measures

1) Ministry of Finance

The following measures have been taken by the Ministry of finance in order to increase the effectiveness of the execution procedure provided by the Budgetary Code:

the adoption on 15 August 2006 by the Ministry of Finance of Order No. 271 on the execution by the Ministry of Finance of court decisions delivered against the state, which not least introduces daily monitoring;
 the adoption on 31 July 2008 by the Government of the Russian Federation of Resolution No 579 on the form of the writ of execution, which should decrease the risk of execution documents being returned to the claimants without execution;
 the adoption on 20 January 2009 by the Ministry of Finance and Prosecutor General's Office of Joint Order No 12/3H on the interaction between prosecutors' offices and the Ministry of Finance in the framework of citizens' complaints concerning wrongful criminal prosecution;

2) Federal Treasury

In order to explain in a more detailed and accessible manner, particularly to individual claimants, the procedure of execution of court decisions delivered against budgetary institutions provided by the Budgetary Code, the Federal Treasury prepared the Administrative Rules on the execution by the Federal Treasury of the execution of court decisions delivered against budgetary institutions.

The draft Rules were subject to public discussion and thus took account of the difficulties faced by individuals while submitting writs of execution. These Rules entered into force on 29 January 2009.

The Administrative Rules provide
 uniform procedures of execution of court decisions for all territorial departments of the Federal Treasury;
 the exhaustive list of documents to be submitted by claimants and debtors in the framework of the execution of a court decision;
 personal liability of the servants of the Federal Treasury for improper implementation of the procedures provided by the Rules;
 the way of challenging by individuals of actions or omissions to acts of servants or organs of the Federal Treasury.

A monitoring procedure set up by Order No 103 of 24 April 2008 within the Federal Treasury made it possible to identify the authorities mainly facing difficulties with timely execution of court and the most problematic regions. A report in this respect was sent to the Ministry of finance for so that appropriate measures might be taken.

3) *Federal Bailiffs Service*

Although Russian legislation does not directly provide bailiffs' jurisdiction to enforce court decisions delivered against public entities, the Supreme Commercial Court, in its Ruling No 23 of 22 June 2006, held that bailiffs have competence to initiate enforcement proceedings in respect of the public authorities' assets where they fail to comply with judicial decisions after the expiry of the 3-month period provided by the Budgetary Code.

After the adoption of this Ruling and of the new Federal Law on enforcement proceedings, the Federal Bailiffs Service has taken the following measures:

the adoption on 9 November 2007 of Order No 585 approving methodical recommendations on the enforcement of court decisions delivered against the state and its entities which provide among other things the seizure and sale of the assets of public entities;

dissemination to all territorial departments of a circular letter on the practice of enforcement of court decisions at the expense of the debtor's assets, in particular of the debts owed to third parties in relation to rent;

dissemination in 2008 of more than 140 instructions and information letters to its territorial departments, including the analysis of the judgments of the European Court;

dissemination on 30 January 2009 to all territorial departments of recommendations on the examination of complaints lodged against bailiffs with their hierarchical superiors;

elaboration of the Rules on the reinforcement of the personal control by the heads of the territorial departments and of the Head of the Service of enforcement proceedings.

On 21 April 2008 the President of the Russian Federation issued an Order entrusting the bailiffs with a coordination role with regard to the execution of court decisions. Numerous meetings were organised in 2008 with different authorities, such as the Ministry of the Interior, the Ministry of Defence, the Ministry of Emergency Situations, the Ministry of Health, the Pension Fund, etc.

4) *Prosecutor General's Office*

In 2007-2008 the Prosecutor General's Office and the Military Prosecutors' Office controlled the authorities' compliance with the legislation governing the execution of domestic judicial decisions delivered against the state and its entities. As a result, the relevant authorities, including the Minister of finance and the Minister of Defence, were summoned to remedy the violations found rapidly. The appropriate measures were taken and the civil servants responsible disciplinary sanctioned.

5) *Other authorities*

In order to improve the execution of court decisions in certain particular areas, a number of measures have been adopted by other authorities:

the Pension Fund issued to its territorial departments Recommendations on the execution of court decisions concerning pensions which take into account the requirements of the Convention and the judgments of the European Court;

the Ministry of Defence adopted on 4 October 2008 an instruction which also covers the execution of courts decisions delivered against the Armed forces' entities;

dissemination on 20 December 2007 to all commanders of the Armed forces of a letter of the Vice-Minister of Defence drawing their attention to the negative situation regarding the execution of domestic judicial decisions delivered in favour of servicemen and emphasising the obligation strictly to comply with these decisions in a timely manner.

II - Measures aimed at the resolution of the problem in specific sectors

1) As regards Chernobyl victims

In order to establish clear procedures in this area, the Russian authorities have taken or are taking the following measures aimed at:

determining the organs responsible for the execution of court decisions, which are now the organs of social protection of the subdivisions of the Russian Federation (municipalities);
 ensuring the consistency of domestic courts' case-law through the dissemination of the appropriate guidelines by the Supreme Court of the Russian Federation (letter No OSP-2008 of 25 November 2008);
 -reflecting on the possibilities of concentrating the powers concerning these payments in the hands of a unique superintendent of budgetary funds.

2) As regards social housing

In order to improve the situation with regard to social housing, the following measures are taken or are under way:

on 29 December 2004 and 21 March 2006 the government adopted Rulings, according to which accommodation for Chernobyl victims and servicemen, including former servicemen, shall be granted either through financial aid or through a state housing certificate in the framework of the state federal housing sub-programmes (for details see the Annotated Agenda [CM/Del/OJ/DH\(2008\)1020](#));

on 3 October 2008 the government adopted the Ruling on the reinforcement of the social protection of members of the armed forces in order to increase the amounts of compensation paid to these persons so that they may rent houses while waiting for the provision of housing;
 the First Deputy Prosecutor General entrusted on 22 January 2009 the regional prosecutors to ensure that regional budgetary laws provide for the necessary funding for purchase of housing according to housing programs as well as for the execution of judicial decisions in this respect;
 the Federal Bailiffs Service is drawing up, in co-operation with the Ministry of the Interior, the Ministry of Defence, the Ministry of the Emergency Situations, the Federal Security Service and the Ministry of Finance, an interagency instruction providing a uniform mechanism of the enforcement of court decisions concerning housing.

III – Measures aimed at improvement of domestic remedies in cases of non-enforcement of domestic judicial decisions

1) *Constitutional Court of the Russian Federation*

By its Ruling no. 734-OP of 3 July 2008, the Constitutional Court held that the courts may apply Article 151 of the Civil Code “Compensation of non-pecuniary damage” in case of non-enforcement of domestic judicial decisions delivered against the state and its entities. The Constitutional Court further held that it did not absolve the legislator from rapidly setting up a special procedure to compensate damage sustained as a result of non-enforcement of domestic judicial decisions by the state and its entities.

2) *Supreme Court of the Russian Federation*

A draft constitutional law setting up a remedy before the domestic courts in case of excessive length of judicial and execution proceedings was submitted by the Supreme Court of the Russian Federation to Parliament on 30 September 2008.

3) *Supreme Commercial Court of the Russian Federation*

The Supreme Commercial Court is preparing a draft Plenum Decision to provide lower courts with guidelines on the implementation of already existing legislation in order to compensate damages resulting from non-enforcement of domestic judicial decisions (e.g. indexation, challenging actions or omissions to act of bailiffs, etc).

A working group was set up within the Supreme Commercial Court to draft amendments to the Code of Commercial Procedure with a view to introducing a mechanism compensate damages caused by civil servants at national level.

CONSEIL DE L'EUROPE
COMITÉ DES MINISTRES

⇒ **Actions of the security forces in the Chechen Republic**

**Interim Resolution CM/ResDH(2015)45
Execution of the judgments of the European Court of Human Rights
in 221 cases against the Russian Federation concerning actions of the security
forces in the Chechen Republic of the Russian Federation**

(see the [list of cases](#) in the *Khashiyev and Akayeva* group)

(Adopted by the Committee of Ministers on 12 March 2015
at the 1222nd 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 numerous judgments of the European Court finding grave violations of the Convention resulting from and/or related to actions of the security forces during anti-terrorist operations which took place in the North Caucasus, mainly in the Chechen Republic between 1999 and 2006, the great majority of which concern enforced disappearances;

Stressing the continuous suffering of the relatives of those missing persons, who remain in uncertainty as to the fate and the circumstances of the presumed death of their family members;

Recalling its Interim Resolution CM/ResDH(2011)292, in which the Committee, *inter alia*, strongly urged the Russian authorities to take rapidly the necessary measures to intensify the search for missing persons;

Noting that, in response, the Russian authorities adopted a number of general measures to improve the effectiveness of investigations and the search for missing persons;

Deeply regretting that the measures taken did not bring any significant results in the establishment of the fate of the applicants' missing relatives;

Underlining that, in the face of this situation, the Court recommended under Article 46 of the Convention in its *Aslakhanova and Others* judgment a number of measures to be taken as a matter of urgency by the Russian authorities, notably as regards the creation of a single and high-level body in charge of solving cases of disappearances in the region;

STRONGLY URGES the Russian authorities to take the measures necessary to create a single and high-level body mandated with the search for persons reported as missing as a result of counterterrorist operations in the North Caucasus.

Interim Resolution CM/ResDH(2011)291 in in 154 cases against the Russian Federation concerning actions of the security forces in the Chechen Republic of the Russian Federation - adopted by the Committee of Ministers on 2 December 2011 at the 1128th meeting of the Ministers' Deputies

(see Appendix for the [list of cases in the Khashiyev group](#))

(Adopted by the Committee of Ministers on 2 December 2011 at the 1128th 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 154 judgments of the European Court of Human Rights (“the Court”) finding grave violations of the Convention resulting from and/or related to actions of the security forces during anti-terrorist operations which took place mainly between 1999 and 2004 in the Chechen Republic of the Russian Federation concerning unlawful killings, unacknowledged detention, disappearances, torture, destruction of property, lack of effective investigations and of effective domestic remedies in this respect;

Recalling that, since 2005, when the Court rendered the first judgments in this group, the Committee has consistently emphasised that the execution of these judgments requires the adoption of comprehensive measures in particular aimed at:

improving the legal and regulatory framework governing anti-terrorist activities of security forces, including the use of force and the existence of safeguards to prevent ill-treatment and disappearances;
ensuring effective accountability of members of the security forces for abuses committed during antiterrorist operations, including effective domestic investigations;
developing domestic remedies available to victims of such abuses, including compensation;
enhancing awareness-raising and training of members of security forces;

Recalling that, as a matter of priority, the Committee’s current assessment focuses on the effectiveness of domestic investigations as this issue is closely connected to the individual measures required by these judgments and relates to:

the general framework governing domestic investigations carried out in the cases which gave rise to judgments of the Court or applications before the Court;
the rights of victims during the pre-trial stage of criminal proceedings;
the remedies available to victims to complain against the ineffectiveness of domestic investigations;

Having assessed the extensive information provided by the Russian authorities on the measures taken or envisaged following the judgments of the Court, which is summarised in various public memoranda³³ and information recently provided by the Russian authorities to the Committee³⁴ and having regard to the meetings held with the Secretariat and with judges, prosecutors, investigators and victims and their representatives during the visit to the Chechen Republic in June 2011;

Considering in the light of the above, that the progress achieved and the outstanding issues need to be presented in the present Interim Resolution;

1. General framework for domestic investigations carried out in cases which gave rise to a judgment of the Court or to an application before the Court

Considering the important changes introduced after the events described in the Court’s judgments in the general framework governing domestic investigations and in particular those conducted in cases which gave rise to a judgment of the Court or an application before the Court;

³³ CM/Inf/DH(2008)33, CM/Inf/DH(2008)33 addendum, CM/Inf/DH(2010)26.

³⁴ DH-DD(2011)130.

Observing that in the setting-up of appropriate regulatory framework governing activities of prosecutors and investigators, due regard was paid to the Convention requirements and the Court's judgments;

Acknowledging that the violations found in these judgments took place in the difficult context of the fight against terrorism as well as the practical difficulties arising out of conducting investigations into past events, which inevitably limit the possibilities open to the investigators;

Noting with interest the efforts reported by the Russian authorities with a view to remedying the shortcomings of the initial investigations, establishing the facts as well as the identities of those responsible, including servicemen and other representatives of federal forces who might have been involved in the events described in the judgments;

Noting further that these efforts have resulted in the identification of particular servicemen in a number of cases and in the arrest of one of the perpetrators in the Sadykov case;

Noting however with concern that despite the efforts made by the Investigative Committee and by other competent authorities, more than six years after the first judgments of the Court, in the vast majority of cases, it has not yet been possible to achieve conclusive results and to identify and to ensure the accountability of those responsible, even in cases where key elements have been established with sufficient clarity in the course of domestic investigations, including evidence implicating particular servicemen or military units in the events³⁵ ;

Underlining therefore the need to ensure that the investigating authorities make full and effective use of all means and powers at their disposal as well as to reflect on whether any other additional measures are still required, bearing in mind the difficulties inherent in investigations conducted into the consequences of a large-scale antiterrorist operation such as that at issue;

Stressing in addition that the necessary action in this respect should be taken as a matter of priority since with the passage of time, the risk of loss of evidence increases and even if they are eventually identified, the prosecution of those responsible may become impossible given the expiry of the time-limits in the statutes of limitation;

2. Search for disappeared persons

Considering that, in all judgments concerning disappearances, the Court also found a violation of Article 3 of the Convention on account of the applicants' suffering as a result of the disappearance of their relatives and of their inability to find out what had happened to them;

Taking note of measures aimed at improving the regulatory framework governing the search for disappeared persons in general³⁶ and at enhancing the search for such persons in the Chechen Republic in particular, through the developments in use of DNA tests of relatives of disappeared persons;

Noting however with particular concern that little progress has been made so far in this respect and that fresh applications concerning disappearances are being lodged with the Court;

Considering that the numerous disappearances which took place in the Chechen Republic constitute a specific situation which calls for additional tools and means;

Stressing in this respect the need to intensify further the search for disappeared persons, in particular through better co-ordination between the different agencies involved, collection, centralisation and sharing of all information and data relevant to the disappearances among different authorities concerned, strengthening local forensic institutions, enhanced cooperation with the relatives of disappeared persons, identification of possible burial sites and other relevant practical measures;

Emphasising that the need for such measures is all the more pressing in cases where the continued failure to account for the whereabouts and fate of the missing persons gives rise to a continuing violation of the Convention;

³⁵ See for instance, Isaeyva, Abuyeva, Musaev and others, Bazorkina, Khadisov and Tsechoyev judgments.

³⁶ Lastly, a Joint Order of the Prosecutor General and of the Ministry of the Interior of 27 February 2010 n°70/122 approving the Instruction on the procedure of examination of complaints and other information on incidents related to disappearance of persons.

3. Involvement of victims in domestic investigations

Noting the continuous efforts made by the Investigative Committee to improve the regulatory framework governing the participation of victims in domestic investigations, bearing in mind the experience of other countries;

Noting further with satisfaction that the adoption of these measures was already resulted in development in practice of regular meetings with victims' families; reports to the families on progress of domestic investigations and granting greater access to the material in investigative files;

Emphasising the need for continuous efforts aimed at ensuring close co-operation with victims' families and for further improvement of the legal and regulatory framework governing the participation of victims in domestic investigations;

4. Remedies available to the victims

a. Possibility to challenge investigators' actions or omissions before the domestic courts in accordance with Article 125 of the Code of Criminal Procedure

Noting with particular interest the recently adopted measures to guarantee that this remedy is used in line with the requirements of the Convention and taking note of the examples of domestic courts' practice demonstrating positive developments in the application of this remedy as well as of the statistics showing the increasing use of the remedy, in particular by victims;

Recalling that the potential effectiveness of this remedy has not yet been fully demonstrated and accordingly has not yet been recognised by the Court;

Stressing in this respect that the successful exercise of this remedy by victim is not yet sufficient to ascertain its effectiveness; this effectiveness remains closely contingent on whether the investigating authorities acted on the shortcomings identified in the court's decision effectively and promptly;

Underlining in this context the possible role for prosecutors in ensuring that such a follow-up is given by the investigators to the court's decisions and noting with satisfaction the recent measures taken in this direction³⁷;

b. Compensatory and acceleratory remedies in case of excessive length of the investigation

Noting the information provided by the Russian authorities that two Federal Laws providing the right to compensation for a violation of the right to judicial and enforcement proceedings within a reasonable time, adopted in response to the pilot judgment of the Court delivered in the Burdov (No. 2) case, also apply to the investigation stage of criminal proceedings;

Noting further that in addition to compensation, the Laws mentioned above provide for a possibility to complain of excessive delays in the investigation, to the head of the investigating body or to the prosecutor, who should indicate specific procedural steps to be taken and set the deadlines for their implementation if the complaint is justified;

Considering that it remains to be seen how this remedy will work in practice in the case of domestic investigations,

NOTES WITH SATISFACTION the continuous improvement of the institutional, legal and regulatory framework for domestic investigations in order to bring it in line with the requirements of the Convention and the Russian authorities' efforts aimed at remedying the shortcomings of initial investigations and ensuring their effectiveness;

EXPRESS HOWEVER DEEP CONCERN that notwithstanding the measures adopted, no decisive progress has been made in domestic investigations carried out in respect of the grave human rights' violations identified in the judgments in the vast majority of cases;

³⁷ Since the last examination of these cases, the Prosecutor General of the Russian Federation adopted on 2 June 2011 an Order n°162 on the organisation of prosecutors' supervision over procedural activities of the investigative bodies.

URGES the Russian authorities to enhance their efforts so that independent and thorough investigations into all abuses found in the Court's judgments are conducted, in particular by ensuring that the investigating authorities use all means and powers at their disposal to the fullest extent possible and by guaranteeing effective and unconditional co-operation of all law-enforcement and military bodies in such investigations;

STRONGLY URGES the Russian authorities to take rapidly the necessary measures aimed at intensifying the search for disappeared persons;

ENCOURAGES the Russian authorities to continue their efforts to secure participation of victims in investigations and at increasing the effectiveness of the remedies available to them under the domestic legislation;

ENCOURAGES the Russian authorities to take all necessary measures to ensure that the statutes of limitation do not negatively impact on the full implementation of the court's judgments.

INVITES the authorities to keep the Committee of Ministers informed of the progress made in the domestic investigations in particular in individual cases identified by the Committee³⁸ as well as in the implementation of the necessary general measures required by these judgments.

³⁸ See the Committee of Ministers' decision adopted at the 1120th DH meeting (September 2011).

SLOVAK REPUBLIC

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)225 on the judgments of the Court of Human Rights in 78 cases against the Slovak Republic concerning excessive length of civil proceedings

(See Appendix for the list of cases in the Jakub group)

*(adopted by the Committee of Ministers on 2 December 2010,
at the 1100th 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"),

Considering the number of judgments of the European Court of Human Rights (hereinafter "the Court") finding violations by the Slovak Republic of Article 6, paragraph 1, of the Convention, due to excessive length of civil proceedings (see [Appendix for the list of cases in the Jakub group](#));

Considering that in some of these judgments the Court moreover found a violation of Article 13 of the Convention due to the lack of an effective domestic remedy against excessive length of proceedings (Dobál, Dudičová, Komanický No. 2, Múčková, Preložník, Šidlová);

Recalling that delays in the administration of justice constitute a grave danger to the respect for the rule of law and access to justice;

Recalling furthermore Recommendation [Rec\(2004\)6](#) of the Committee of Ministers to member states on the improvement of domestic remedies;

Having examined the information regularly supplied by the Slovak authorities concerning the measures taken or envisaged in response to these judgments (see Appendix);

Individual measures

Having noted the individual measures taken by the authorities to afford the applicants redress of the violations found (*restitutio in integrum*), in particular the due payment of the amounts which the Court awarded by way of just satisfaction and all possible steps to expedite the proceedings that were still pending after the Court's finding of violations;

Welcoming the conclusion of the domestic proceedings at issue in 63 of the 78 cases concerned;

Noting with concern, however, that 15 cases are still pending before the national courts (Hrobová, Lubina, Orel, Rišková, Softel No. 1, Softel No. 2, Dudičová, Komanický No. 2, Rapoš, Španír, Chrapková, Keszeli, Kučera, Majeríková, Sika No. 6);

General measures

Measures to remedy the problem of excessive length of court proceedings

Welcoming the many organisational reforms adopted between 2007 and 2010 by the authorities to remedy these problems, and in particular:

increase in the number of judges,

creation of new courts,
development of the data processing system and of court management;

Noting with interest the additional measures envisaged by the authorities, such as the Bill assigning judicial groundwork to auxiliary judges and registrars, enabling the judges to concentrate exclusively on court decisions, and encouraging the authorities to implement these schemes;

Also welcoming the two reforms to the Code of Civil Procedure (“little” and “big” amendment of the Code) and of the law on court costs, which came into force in 2007 and 2008, with the following results in particular:
simplification of procedures for service of documents,
reduction of court costs,
introduction, in proceedings brought against the administrative authorities, of the possibility for the public prosecutor to lodge with the court an application to compel the administration concerned to act,
harmonisation of the procedure for challenging judges,
extension of the possibility for courts to determine a case without a hearing,
simplification of the inheritance procedure,
introduction of a simplified procedure for settlement of minor litigation,
broadening of the scope of the legal rules governing court orders,
introduction of the possibility for courts to appoint joint counsel for several parties to the one set of proceedings,
limitation of the possibility for courts of appeal and cassation to challenge or quash rulings delivered by a lower court and to refer them back for review;

Noting that, having undergone constant increase, particularly between 2002 and 2004, the average length of civil proceedings now appears to be decreasing regularly, having dropped from 17.56 months in 2004 to 13 months in 2009;

Considering nonetheless that the impact of the reforms adopted and envisaged concerning the length of civil proceedings and their real capacity to prevent similar violations will be fully ascertainable only on the basis of statistical data gathered over a longer period;

Measures to provide an effective remedy

Noting that a reform to the Constitution which came into force in 2002 introduced a constitutional petition for complaints of violations of human rights protected by international treaties and that the Court has already found, in particular in the decision on admissibility in the case of *Andrášik and others* of 22/10/2002, that the new procedure represented an effective remedy within the meaning of Article 13 of the Convention;

Recalling that in several cases the Court has nevertheless observed certain difficulties with the application of this remedy:

a) difficulties linked with dismissal of the petition when a case is no longer pending before the court responsible for alleged delays

Noting with satisfaction in this matter that examples of Constitutional Court judgments in 2003 and 2005 were supplied by the authorities, bearing witness to that court’s new practice, in accordance with European Court case-law (*Jakubička and Magyaricsová*), of taking into account the length of the proceedings before several degrees of instance when it entertains petitions against the length of proceedings;

b) difficulties linked with the amounts awarded in compensation by the Constitutional Court

Recalling also that the Court noted in several cases (in particular *Magura, Rišková, Šidlová*) the manifest inadequacy of the compensation awarded by the Slovak Constitutional Court for excessive length of civil proceedings, amounting to sums from under 5 % to 25% of what the Court itself would have awarded under Article 41 of the Convention in respect of these delays;

Noting with interest in this context that in twelve decisions on petitions against the length of civil proceedings, delivered in 2009, the Constitutional Court awarded compensation ranging from 25% to more than 100 % of the amounts that could be awarded by the Court for these delays;

c) difficulties linked with the ineffectiveness of the Constitutional Court’s injunctions to expedite proceedings

Recalling furthermore that in some cases (Vičanová, Komanický No. 2) the Court criticised the ineffectiveness of the Constitutional Court's injunction to expedite proceedings;

Noting with interest in this connection that a system to follow up Constitutional Court decisions finding the length of proceedings excessive and ordering that they be expedited was introduced in 2010, but noting that confirmation of the expeditive effect of the Constitutional Court's injunctions is still awaited;

d) difficulties linked with the criteria applied by the Constitutional Court to determine the length of proceedings, including that of suspended proceedings

Recalling, finally, that in its judgments the Court held that the applicants did not have an effective remedy because of the Constitutional Court's practice of dismissing petitions concerning cases where the length of the proceedings had not been considered great enough to justify the complaint (Dudičová) or cases where the domestic proceedings were suspended (Dobál);

Noting in this connection that examples of decisions testifying to the Constitutional Court's present practice are still awaited;

INVITES the Slovak authorities to do their utmost to expedite the proceedings still pending before the Slovak courts, so that they may be concluded rapidly, and to keep the Committee informed of their progress;

ENCOURAGES the Slovak authorities to persevere in their efforts to solve the general problem of excessive length of civil proceedings and to consolidate the promising downward trend currently observed in the average length of proceedings;

INVITES the authorities to continue keeping the Committee informed of developments in the matter, especially as regards the impact of the measures and the trend in the average length of proceedings;

INVITES the authorities furthermore to provide the Committee with additional information enabling it to satisfy itself that the domestic remedy against length of proceedings functions in accordance with the criteria laid down by the Court;

DECIDES to resume consideration of these cases at its 1108th DH meeting (March 2011).

Appendix to Interim Resolution CM/ResDH(2010)225

Information provided by the Government of the Slovak Republic for the Committee of Ministers' examination of the cases concerning excessive length of civil proceedings

I. Individual measures

The Slovak authorities are regularly supplying information on the progress of the proceedings which are the subject of the Court's judgments. According to the latest information, the following 15 cases are still pending before the national courts: Hrobová, Lubina, Orel, Rišková, Softel No. 1, Softel No. 2, Dudičová, Komanický No. 2, Rapoš, Španír, Chrapková, Keszeli, Kučera, Majeríková, Sika No. 6.

II. General measures

A) Measures to reduce the length of proceedings

1) Organisational measures

The following measures have been adopted by the authorities:

The Government increased the number of judges by 50 during the first quarter of 2008. In 2009 and 2010, the number of judges was increased by more than 10%.

Following the enactment of Law No. 511/2007 amending Law No. 371/2004, nine local courts have been set up and brought into service since 01/01/08.

The Minister of Justice has invited all judges to adopt a proactive and responsible approach to the fulfilment of their judicial obligations, and visits courts unannounced to verify judges' state of readiness for hearings.

Certain technical changes have been made to the management of the judicial system including creation of new electronic databases and a central database for the judicial system as an efficient means for users to ascertain the existence of parallel proceedings; judges can monitor the progress of the cases before the courts and check up on the situation of the prisoners serving their sentences.

The Ministry of Justice is currently working on a Bill for assigning the judicial groundwork to principal auxiliary judges and court registry staff enabling judges to concentrate exclusively on the court decisions.

2) Procedural changes

Two legislative amendments have been made in the last few years:

1) A set of amendments adopted as Law No. 273/2007, which came into force on 01/07/07 ("little" amendment of the Code of Civil Procedure), amended Law No. 99/1963 of the Code of Civil Procedure. It also amended Law No. 71/1992 on court costs. The "little" amendment was intended to introduce eight changes in civil procedure so as to improve the functioning of the courts. These changes comprise four administrative measures on allocation of powers, procedures for the service of documents, management of case files in courts of appeal and simplification/reduction of court costs.

There have also been four substantive changes in the Code as regards judicial procedure:

- Article 16: harmonisation of the time-limits for challenging judges with those for bringing appeals. Allegations of bias will no longer be examined under a separate procedure but among the principal grounds of appeal;
- Article 214: courts of appeal can rule on a larger number of issues without holding a hearing, in restricted circumstances which include the parties' consent not to hold a hearing and subject to a verification of the considerations of public interest which arise;
- Articles 250f(3) and 250ja(3): amplification of the class of cases that may be determined without a hearing by administrative courts, when the decision of an administrative authority should manifestly be set aside;
- Article 250t(2): in proceedings brought against the administrative authorities, the public prosecutor may lodge with the court an application to compel the administration concerned to act and to take a decision.

2) An amendment to the Code of Civil Procedure (No. 384/2008), which came into force on 15/10/2008 ("big" amendment of the Code of Civil Procedure) introduced changes including:

- Articles 15 (1) and (2) and 16 (3): harmonisation of the procedure for challenging judges so as to obviate the referral of the case to another judge who might also be concerned by allegations of bias, and enable the court to continue dealing with the case (though without deciding on the merits), on condition that the allegations of bias are ill-founded;
- Article 29a (1) and (2): possibility for courts to appoint joint counsel for several parties to the proceedings in cases with over twenty plaintiffs or respondents, making it possible in particular to expedite proceedings when a party has died and has no known heirs; if a party objects to the appointment of the joint counsel, the dispute in that regard can be disjoined and determined under a separate procedure;
- Articles 38 (1), (2) and (5) and 175cza (7): simplification of the procedure on inheritance which a notary conducts by permission of the court, being able to issue certificates of succession;
- Article 45 (3) to (6): possibility for the parties to proceedings to serve and to be served documents electronically;
- Articles 114 (1) and (3) to (6) and 115a (2): extension of the possibility for the court to determine a case without a hearing, and introduction of a simplified procedure for the settlement of minor litigation; the first amendment provides scope for frustrating dilatory tactics by parties to proceedings failing to make their submissions or to take delivery of their mail (a judgment by default is nevertheless hedged with guarantees of due process: it is delivered publicly and may be set aside at appeal);
- Articles 172 (5) and (6) and 174b (1): extension of the scope of the legal rules governing court orders, so that courts are authorised to issue not only an order to pay but also an injunction to take or refrain from action;
- Article 221 (1) (h): limitation of the possibility for courts of appeal to challenge the decisions delivered at first instance and to refer them back for review; such referral is henceforth possible only where the court of first instance has both wrongly established the facts and misapplied the law;
- Article 243b (1) to (4) and (6): introduction of the principle of review in proceedings before the Court of Cassation, enabling it to rectify certain decisions which are appealed on points of law instead of overturning them and referring them to a court below for review.

3) Publication and dissemination of the Court's judgments

The judgments of the Court against the Slovak Republic are regularly published in the journal *Justičná revue*.

4) Effectiveness of the measures adopted

According to the statistics provided by the Slovak authorities, the average length of civil proceedings in the last few years is as follows:

2002	15.18 months
2003	16.56 months
2004	17.56 months
2005	16.86 months
2006	15.40 months
2007	15.06 months
2008	14.07 months
2009	13.00 months

B) Measures for bringing an effective domestic appeal in the event of excessively protracted civil proceedings

A reform to the Constitution in 2002 introduced a constitutional petition for complaints of violations of human rights protected by international treaties. The Court has already observed on various occasions that this new procedure represents an effective remedy within the meaning of Article 13 of the Convention (see in particular the decision on admissibility in the case of *Andrášik and others* of 22/10/2002).

1) Constitutional Court practice of dismissing appeals where the case is no longer pending before the court responsible for alleged delays

Examples of Constitutional Court judgments in 2003 and 2005³⁹ have been supplied by the authorities in order to illustrate another practice of this court, which is to have regard to the length of the proceedings before several courts in examining the appeal. According to the Slovak authorities, the practice of the Constitutional Court which the European Court criticised (see in particular *Jakubička and Magyaricsová*) was followed sporadically during the first five years of operation of the new remedy and was due to the legislative changes. The present tendency is to align it with the requirements deriving from the case-law of the Court.

In addition, the *Jakub and Malejčík* judgments were circulated to the Constitutional Court. The *Malejčík* judgment was published in *Justičná revue*, No. 6-7/2006.

2) Inadequacy of the amounts awarded in compensation by the Constitutional Court

On 07/11/2008, the Agent of the Slovak Republic before the Court organised a seminar in conjunction with the EUROIURIS Centre for European law. The seminar took place in the Constitutional Court of the Slovak Republic with the participation of the Constitutional Court's legal advisers. During the seminar, emphasis was placed on the inadequacy of the compensation awarded by the Constitutional Court in cases concerning excessive length of proceedings. Participants' attention was drawn to the relevant case-law of the Court and to an analysis of the individual Slovak cases concerned.

On 08/01/2010, the authorities forwarded twelve examples of decisions delivered by the Constitutional Court between 17 February and 10 September 2009⁴⁰, concerning appeals against the length of civil proceedings. Compared to what may be awarded by the Court in this type of case, the amounts awarded by the Constitutional Court are as follows: in five cases they vary from 25% to 42%, in five more from 46% to 74%, and in two they remain above 100%.

3) Constitutional Court practice regarding dismissal of appeals concerning suspended proceedings

On 02/09/2008, the Slovak authorities confirmed that the judgment in the *Dobál* case had been transmitted to the Constitutional Court in a circular of the Agent of the Government of the Slovak Republic. The President of the Constitutional Court was asked to inform all this court's judges of the decision in order to avert similar violations.

4) Ineffectiveness of the Constitutional Court's orders to courts to expedite proceedings which have incurred significant delays

Among the decisions submitted on 08/01/2010 (see below), the Constitutional Court directed the trial courts - in all cases still pending (ten) - to proceed without delay.

In April 2010 a system was established for following up Constitutional Court decisions finding excessive length of proceedings and ordering that they be expedited. Under this program, the Constitutional Court and several other authorities (Ministries of Justice and the Interior, Supreme Court, State Counsel General, bar association and Mediator) have committed themselves to joint action to eliminate the delays in civil proceedings. The Constitutional Court keeps a register of the cases which disclose excessive length of proceedings and are still pending before the courts. These cases are then closely monitored by the Ministry of Justice and the presiding judges of the courts. Disciplinary penalties may be imposed on judges and lawyers. The Constitutional Court is informed at regular intervals of the state of the proceedings in question.

³⁹ especially decisions nos. I ÚS 53/02, I ÚS 56/02, I ÚS 123/02, III ÚS 15/03, III ÚS 173/03

⁴⁰ especially decisions nos. III ÚS 1/09, IV ÚS 59/09, II ÚS 36/09, III ÚS 44/09, II ÚS 55/09, I ÚS 257/08

SERBIA

Interim Resolution CM/ResDH(2013)259 Sejdić and Finci against Bosnia and Herzegovina

Application n°	Case	Judgment of	Final on
27996/06	SEJDIĆ AND FINCI	22/12/2009	Grand Chamber

*(Adopted by the Committee of Ministers on 5 December 2013
at the 1186th 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") and having regard to the Grand Chamber judgment of the European Court of Human Rights ("the Court") of 22 December 2009 in the case of Sejdić and Finci against Bosnia and Herzegovina transmitted to the Committee for supervision of its execution,

Recalling the Committee's repeated calls on the authorities and political leaders of Bosnia and Herzegovina to reach a consensus and to amend the Constitution of Bosnia and Herzegovina and its electoral legislation to comply with this judgment and that these calls have been echoed notably by the Parliamentary Assembly of the Council of Europe (including most recently in its Recommendation 2025(2013)), as well as different bodies of the European Union and the United Nations;

Recalling the assurances given on numerous occasions by the representatives of the executive and the main political parties of Bosnia and Herzegovina that all political stakeholders are fully committed to finding an appropriate solution for the execution of this judgment;

Recalling also that the Constitution of Bosnia and Herzegovina provides that "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law";

Expressing the gravest concern that, despite the repeated assurances, including at its last human rights meeting in September 2013, the necessary constitutional and legislative amendments have still not been made and that time is running out for the 2014 elections to be held in compliance with the Convention requirements;

Reiterating that failure to do so would not only amount to a manifest breach of obligations under Article 46, paragraph 1, of the Convention but could also potentially undermine the legitimacy and the credibility of the country's future elected bodies;

Regretting that the important declaration signed by all political leaders on 1 October 2013 was not followed, despite the commitment expressed, by a detailed agreement on key principles of the electoral system, including the necessity of providing every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples of Bosnia and Herzegovina;

Noting that political leaders of Bosnia and Herzegovina are presently investing intensive efforts to negotiate rapidly a consensus on the content of the constitutional and legislative amendments aimed at eliminating discrimination based on ethnic affiliation in elections for the Presidency and the House of Peoples of Bosnia and Herzegovina,

FIRMLY CALLS UPON all authorities and political leaders of Bosnia and Herzegovina to ensure that the constitutional and legislative framework is immediately brought in line with the Convention requirements so that the elections in October 2014 are held without any discrimination against those citizens who are not affiliated with any of the "constituent peoples".

TURKEY

Interim resolution CM/ResDH(2014)185 Execution of the judgments of the European Court of Human Rights in the cases Varnava, Xenides-Arestis and 32 other cases against Turkey

(see the list of cases in the appendix)

*(Adopted by the Committee of Ministers on 25 September 2014
at the 1208th 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") ;

Deeply deploring that to date, despite the interim resolutions adopted in the cases of *Xenides-Arestis* and *Varnava*⁴¹, the Turkish authorities have not complied with their obligation to pay the amounts awarded by the Court to the applicants in those cases, as well as in 32 other cases in the *Xenides-Arestis* group, on the grounds that this payment cannot be dissociated from the measures of substance in these cases;

Recalling in this respect that in two letters addressed to their Turkish counterpart⁴², the then Chairmen of the Committee of Ministers stressed on behalf of the Committee that the obligation to comply with the judgments of the Court is unconditional;

Found that the continued refusal to pay the sums awarded to the applicants amounts to a manifest breach of the obligation assumed by Turkey under Article 46, paragraph 1, of the Convention to abide by the judgments of the Court;

DECLARES that this continued refusal by Turkey is in flagrant conflict with its international obligations, both as a High Contracting Party to the Convention and as a member State of the Council of Europe;

EXHORTS Turkey to review its position and to pay without any further delay the just satisfaction awarded to the applicants by the Court, as well as the default interest due.

⁴¹ Interim Resolutions CM/ResDH(2008)99 and CM/ResDH(2010)33, adopted respectively in 2008 and 2010 in the case of *Xenides-Arestis* and Interim Resolution CM/ResDH(2013)201, adopted in 2013 in the *Varnava* case.

⁴² Letters sent respectively in October 2009, in the case of *Xenides-Arestis*, and in April 2014, for all these cases.

Appendix
List of cases

- *One case against Turkey concerning missing Greek Cypriots*

Application	Case	Judgment of	Final on
16064/90+	VARNAVA AND OTHERS	18/09/2009	Grand Chamber

- *33 cases against Turkey concerning interference in property rights and/or respect for home (properties in the northern part of Cyprus)*

Application	Case	Judgment of	Final on
46347/99	XENIDES-ARESTIS	22/12/2005 07/12/2006	22/03/2006 23/05/2007
16094/90	ANDREOU PAPI	22/09/2009 26/10/2010	01/03/2010 11/04/2011
18360/91	ANDREOU SOPHIA	27/01/2009 22/06/2010	06/07/2009 22/11/2010
16085/90	CHRISTODOULIDOU	22/09/2009 26/10/2010	01/03/2010 11/04/2011
16219/90	DEMADES	31/07/2003 22/04/2008	31/10/2003 01/12/2008
16259/90	DIOGENOUS AND TSERIoTIS	22/09/2009 26/10/2010	01/03/2010 11/04/2011
18405/91	ECONOMOU	27/01/2009 22/06/2010	06/07/2009 22/11/2010
19900/92	EPIPHANIOU AND OTHERS	22/09/2009 26/10/2010	01/03/2010 11/04/2011
18403/91	EVAGOROU CHRISTOU	27/01/2009 22/06/2010	06/07/2009 22/11/2010
41355/98	GAVRIEL	20/01/2009 22/06/2010	06/07/2009 22/11/2010
37395/97	HADJIPROCOPIOU AND OTHERS	22/09/2009 26/10/2010	01/03/2010 11/04/2011
39970/98	HADJITHOMAS AND OTHERS	22/09/2009 26/10/2010	01/03/2010 11/04/2011
35214/97	HAPESHIS AND HAPESHI-MICHAELIDOU	22/09/2009 26/10/2010	01/03/2010 11/04/2011
38179/97	HAPESHIS AND OTHERS	22/09/2009 26/10/2010	01/03/2010 11/04/2011
18364/91	IOANNOU	27/01/2009 22/06/2010	06/07/2009 22/11/2010
43685/98	IORDANIS IORDANOU	22/09/2009 26/10/2010	01/03/2010 11/04/2011
46755/99	IORDANOU ANTHOUSA	24/11/2009 11/01/2011	10/05/2010 20/06/2011
21887/93	JOSEPHIDES	22/09/2009 26/10/2010	01/03/2010 11/04/2011
18407/91	KYRIAKOU	27/01/2009 22/06/2010	06/07/2009 22/11/2010
16682/90	LOIZOU AND OTHERS	22/09/2009 26/10/2010 24/05/2011	01/03/2010 11/04/2011 28/11/2011
15973/90	LORDOS AND OTHERS	02/11/2010 10/01/2012	11/04/2011 09/07/2012
18361/91	MICHAEL	27/01/2009 22/06/2010	06/07/2009 22/11/2010
18406/91	NICOLAIDES	27/01/2009 22/06/2010	06/07/2009 22/11/2010
16091/90	OLYMBIOU	27/10/2009 26/10/2010	01/03/2010 11/04/2011
36705/97	ORPHANIDES	20/01/2009	06/07/2009

Application	Case	Judgment of	Final on
		22/06/2010	22/11/2010
29092/95	RAMON	22/09/2009 26/10/2010	01/03/2010 11/04/2011
46159/99	ROCK RUBY HOTELS LTD	22/09/2009 26/10/2010	01/03/2010 11/04/2011
16160/90	SAVERIADES	22/09/2009 26/10/2010	01/03/2010 11/04/2011
47884/99	SKYROPIIA YIALIS LTD	22/09/2009 26/10/2010	01/03/2010 11/04/2011
16161/90	SOLOMONIDES	20/01/2009 27/07/2010	06/07/2009 22/11/2010
16082/90	STRATI	22/09/2009 26/10/2010	01/03/2010 11/04/2011
16078/90	VRAHIMI	22/09/2009 26/10/2010	01/03/2010 11/04/2011
16654/90	ZAVOU AND OTHERS	22/09/2009 26/10/2010	01/03/2010 11/04/2011

**Interim Resolution CM/ResDH(2013)201
Execution of the judgment of the European Court of Human Rights
Varnava against Turkey
(judgment of 18 September 2009 – Grand Chamber)**

*(Adopted by the Committee of Ministers on 26 September 2013
at the 1179th 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");

Recalling that in its judgment of 18 September 2009 the European Court of Human Rights held that Turkey was to pay before 18 December 2009, 12 000 euros per application in respect of non-pecuniary damage and 8 000 euros per application in respect of costs and expenses;

Deeply deploring that Turkey has still not complied with its unconditional obligation to pay these amounts,

EXHORTS Turkey to pay, without further delay, the sums awarded in respect of just satisfaction in the Court's judgment of 18 September 2009, as well as the default interest due.

Interim Resolution CM/ResDH(2010)33

Execution of the judgment of the European Court of Human Rights in the case of Xenides-Arestis against Turkey

(Application No. 46347/99, judgment of 7 December 2006, final on 23 May 2007)

(Adopted by the Committee of Ministers on 4 March 2010, at the 1078th 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");

Deeply deploring the fact that, to date, Turkey has still not complied with its obligations to pay to the applicant the sums awarded in respect of just satisfaction in the Court's judgment of 7 December 2006;

Recalling its Interim Resolution CM/ResDH(2008)99 of 4 December 2008, in which, *inter alia*, the Committee of Ministers strongly insisted that Turkey pay the sums awarded in the Court's judgment of 7 December 2006, as well as the default interest due;

Recalling that, subsequently, the Chairman of the Committee of Ministers wrote to his Turkish counterpart underlining once again Turkey's obligation to pay these sums;

Declares that Turkey's continuing refusal to comply with the judgment of the Court is in flagrant conflict with 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 this situation which gives serious cause for concern, strongly urges Turkey to review its position and to pay without any further delay the just satisfaction awarded to the applicant by the Court, as well as the default interest due.

CONSEIL DE L'EUROPE

COMITÉ DES MINISTRES

Interim Resolution CM/ResDH(2009)45 **Execution of the judgment of the European Court of Human Rights** **in the case *Ülke* against Turkey**

(Application No. 39437/98, judgment of 24 January 2006, final on 24 April 2006 –Interim Resolution CM/ResDH(2007)109)

*(Adopted by the Committee of Ministers on 19 March 2009,
at the 1051st 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 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;

Recalling 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;

Emphasising that, according to the Court, the numerous prosecutions already brought against the applicant and the possibility that he is liable to prosecution for the rest of his life amounted almost to "civil death" which was incompatible with the punishment regime of a democratic society within the meaning of Article 3;

Recalling that the Court further 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;

Noting with grave concern that, despite the Court's judgment, the applicant was summonsed on 09 July 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 27 July 2007;

Recalling the Committee's first interim resolution adopted at the 1007th meeting (October 2007) in which it urged "the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the Convention and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention";

Strongly regretting that, despite the Committee's interim resolution, no concrete steps have been taken by the Turkish authorities to bring to a close the continuing effects of the violation;

Noting with concern that, in the absence of any measures taken by the Turkish authorities, the applicant's situation remains unchanged in that he is at present in hiding and is wanted by the security forces for execution of his sentence;

FIRMLY RECALLS 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 to prevent similar violations;

STRONGLY URGES 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 make the legislative changes necessary to prevent similar violations of the Convention;

DECIDES to continue examining the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.

UNITED KINGDOM

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2009)160

Execution of the judgment of the European Court of Human Rights in the case *Hirst against the United Kingdom No. 2*

(Application No. 74025/01, Grand Chamber judgment of 06/10/2005)

(Adopted by the Committee of Ministers on 3 December 2009 at the 1072nd 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");

Recalling that, in the present judgment, the Court found that the general, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote, fell outside any acceptable margin of appreciation and was incompatible with Article 3 of Protocol No. 1 to the Convention;

Recalling that the Court, while acknowledging that the rights bestowed by Article 3 of Protocol 1 are not absolute, expressly noted that in the present case the blanket restriction applied automatically to all prisoners, irrespective of the length of their sentence, the nature or gravity of their offence and their individual circumstances;

Recalling further that the Court found "no evidence that Parliament has ever sought to weigh the competing interests or to assess the proportionality of a blanket ban on the right of a convicted prisoner to vote";

Noting that the blanket restriction imposed by Section 3 of the Representation of the People Act 1983 remains in full force and effect;

Recalling that the United Kingdom authorities, in a revised Action Plan submitted in December 2006, committed to undertaking a two-stage consultation process to determine the measures necessary to implement the judgment of the Court, with a view to introducing the necessary draft legislation before Parliament in May 2008;

Noting that the United Kingdom authorities have provided detailed information as regards the consultation process, and that they are committed to continuing to do so;

Noting however that the second consultation stage ended on 29 September 2009, and the United Kingdom authorities are now undertaking a detailed analysis of the responses thereto, in order to determine how best to implement a system of prisoner enfranchisement based on the length of custodial sentence handed down to prisoners,

EXPRESSES SERIOUS CONCERN that the substantial delay in implementing the judgment has given rise to a significant risk that the next United Kingdom general election, which must take place by June 2010, will be performed in a way that fails to comply with the Convention;

URGES the respondent state, following the end of the second stage consultation period, to rapidly adopt the measures necessary to implement the judgment of the Court;

DECIDES to resume consideration of this case at their 1078th meeting (March 2010) (DH), in the light of further information to be provided by the authorities on general measures.

⇒ Action of the Security Forces in Northern Ireland

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2009)44

Action of the Security Forces in Northern Ireland (Case of McKerr against the United Kingdom and five similar cases)

*(Adopted by the Committee of Ministers on 19 March 2009,
at the 1051st meeting of the Ministers' Deputies)*

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 II

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 "the Convention");

Having regard to the judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in the cases against the United Kingdom listed in Appendix II, 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;

Recalling the first Interim Resolution on these cases (ResDH(2005)20), adopted on 23 February 2005 at the 914th meeting of the Ministers' Deputies, which took stock of the general and individual measures taken or envisaged by the United Kingdom authorities;

Noting that, on the basis of the developments which had taken place and the clarifications given, the Committee decided, at the 948th meeting (November 2005), to close the examination of the general measures adopted to remedy the following problems revealed by the judgments:

- the inquest procedure did not allow any verdict or findings which might play an effective role in securing a prosecution in respect of any criminal offence;
- the scope of the examination for the inquest was too restricted;
- the persons who shot the deceased could not be required to attend the inquest as witnesses;
- the 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 absence of legal aid for the representation of the victims' families;

Recalling that, having evaluated anew the measures taken by the United Kingdom authorities, the Committee adopted Interim Resolution CM/ResDH(2007)73 at the 997th meeting (June 2007) and decided also to close the examination of the general measures adopted to remedy the following problems:

- 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;
- 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;
- the application of the package of measures to the armed forces;

Recalling further that, having evaluated the measures taken by the United Kingdom authorities, the Committee, at the 1020th meeting (March 2008), decided to close the examination of the general measures

adopted to remedy the fact that the inquest proceedings did not commence promptly and were not pursued with reasonable expedition;

Noting that, in Interim Resolution CM/ResDH(2007)73, the Committee, in particular:

“INVITE[D] 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”;

“INVITE[D] 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 [Historical Enquiries Team] and by the Police Ombudsman”;

General measures

Having assessed the additional information provided by the government of the respondent state regarding the general measures taken or envisaged since the adoption of the second Interim Resolution (see the presentation of the measures taken in the following information documents: CM/Inf/DH(2008)2, declassified at the 1020th meeting (March 2008); CM/Inf/DH(2008)2 revised, declassified at the 1043rd meeting (December 2008) and Appendix I);

The Police Ombudsman’s report of the five-yearly review of his powers and the response of the authorities to its content

Noting the publication of the Police Ombudsman’s Five Year Review report containing a number of recommendations while recognising that this is not a general review of the Ombudsman’s powers but a review of the workings of Part VII of the Police (Northern Ireland) Act 1998, by which the Office of the Police Ombudsman for Northern Ireland was established and which concerns police complaints and disciplinary proceedings;

Noting that the Government of the United Kingdom commenced a twelve-week consultation exercise on the Police Ombudsman’s Five Year Review on 11 December 2008 which ended on 5 March 2009;

INVITES the government of the respondent state to provide information to the Committee on their reaction to the Five Year Review report, in particular to Recommendation 13, which gives power to the Ombudsman to compel retired police officers to appear as witnesses;

Concrete results obtained in the investigation of historical cases by the Historical Enquiries Team (HET) and the Police Ombudsman of Northern Ireland

Recalling the establishment of the Historical Enquiries Team (HET) in late 2005 as the successor to the Serious Crime 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 that the HET process is taking longer than originally anticipated as a result of its high caseload and that 63% of the cases before it still remain open;

Acknowledging that, despite these setbacks, the HET can be viewed as a useful model for bringing a “measure of resolution” to those affected in long-lasting conflicts;

Taking note of the structural arrangements and organisation of the HET which is staffed by retired police officers from Scotland, Wales and England; serving police officers seconded from police forces across the United Kingdom and a number of retired Royal Ulster Constabulary;

Noting that the HET funding cannot be used for other policing work and is allocated to each of the organisations involved in the HET project;

Welcoming that the HET’s well-structured organisational scheme allows its different teams to concentrate on different aspects of a case depending on its complexity and the engagement of the family concerned;

Noting that the HET meets with the families, informs them of its findings and provides a copy of the Summary Report and that the families can seek further clarifications of any outstanding issues after receiving the Summary Report;

Welcoming the good working relations established between the HET and the Police Ombudsman of Northern Ireland and noting with satisfaction that these institutions have adopted a Memorandum of Understanding in relation to the investigation of historical cases;

Noting in this context that the HET has transferred a total of 87 cases to the Police Ombudsman for its examination and that the Police Ombudsman may decide to publish the results of the investigations into these cases when his investigations have concluded, if he considers this appropriate;

DECIDES to close its examination of this issue as the HET has the structure and capacities to allow it to finalise its work;

- Failure by the respondent state to comply with its obligation under Article 34 of the Convention

Recalling that the Court found in the McShane case a failure by the respondent state to comply with its obligation under Article 34 of the Convention in that the police had, albeit unsuccessfully, brought disciplinary proceedings against the solicitor who represented the applicant in domestic proceedings for having disclosed certain witness statements to the applicant's legal representatives before the Court;

Noting that the Government of the United Kingdom is fully committed to ensuring that its obligation under Article 34 is respected;

Noting also that the Government of the United Kingdom 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;

DECIDES to close its examination of this issue in the light of the assurances given by the United Kingdom authorities to prevent interference with the right of individual petition;

Individual measures

Recalling 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 was or was not justified in the circumstances and to the identification and punishment of those responsible";

Noting that this obligation "is not an obligation of result, but of means";

Recalling further that the Committee has consistently noted that there is a continuing obligation to conduct effective investigations inasmuch as procedural violations of Article 2 were found by the Court;

Noting in this respect that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation;

Recalling that, in Interim Resolution CM/ResDH(2007)73, the Committee:

"URGE[D] 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;

"INVITE[D] the government of the respondent state to keep the Committee regularly informed thereof";

In the cases of Jordan, Kelly and Others, McKerr and Shanaghan

Noting with concern that progress with regard to the individual measures in these cases has been limited, in particular in the case of Jordan where the inquest will not start before June 2009 although it was announced previously that it would begin in April 2008;

STRONGLY URGES the authorities of the respondent state to take all necessary measures with a view to bringing to an end, without further delay, the ongoing investigations while bearing in mind the findings of the Court in these cases;

In the case of McShane

Noting that a verdict was given in the inquest proceedings concerning the death of Mr McShane on 4 July 2008 establishing the circumstances in which his death took place;

Noting further that a number of key police and military witnesses attended and gave evidence during the inquest proceedings;

Taking note of the fact that, although the Coroner made every effort to secure his attendance, the driver of the vehicle which hit Mr McShane did not attend the inquest as he resides outside the United Kingdom;

Noting with satisfaction that, following the coming into force of the Justice (Northern Ireland) Act 2002 (section 35), the Coroner is now under a duty to write to the Director of Public Prosecutions for Northern Ireland (DPP(NI)), if it appears to the Coroner that a criminal offence may have been committed in the light of the findings of the inquest;

Noting in this context that the Coroner wrote to the DPP(NI) on 30 January 2009 under section 35 of the Justice (Northern Ireland) Act and the DPP(NI) responded on 5 February 2009 to say that he would give consideration to the evidence provided by the Coroner and on 23 February 2009 requested further information from the Coroner;

Noting that the applicant has been informed that the DPP(NI) is considering the matter;

Noting further that it is open to the applicant to bring a judicial review should the DPP(NI) decide that no further prosecution should be brought;

DECIDES to close the examination of this case with respect to individual measures;

In the case of Finucane

Noting that, within the context of the execution of the Finucane judgment, the United Kingdom authorities have provided information to the Committee on the Stevens III investigation and on the possibility of holding a statutory inquiry into the death of the applicant's husband;

Taking note of the fact that, since the judgment of the Court in this case became final, no new information has been made public with regard to the contents of the Stevens III investigation, which, as acknowledged by the Court, was squarely concerned with the Finucane murder;

Recalling the Court's well-established case-law that "disclosure or publication of police reports and investigative materials [...] cannot be regarded as an automatic requirement under Article 2" and that "the requisite access of the public or the victim's relatives may be provided for in other stages of the available procedures";

Noting in this context that the evidence and information gathered in the course of the Stevens III investigation has been the subject of an examination by the Public Prosecution Service of Northern Ireland who concluded in June 2007 that no further prosecutions should be brought against any individual because the test for prosecution as set out in the Code of Prosecutors was not met;

Noting with satisfaction that the DPP(NI) issued a public statement giving reasons for the abovementioned decision in compliance with the general measures taken by the United Kingdom in this respect;

Noting that no application for a judicial review was made on the basis of a failure to give detailed reasons for the decision not to prosecute although Northern Ireland law now allows for such review following the measures taken by the United Kingdom authorities;

Noting with satisfaction that, as to the possibility of holding a statutory inquiry, the United Kingdom authorities are currently in correspondence with the Finucane family on the basis on which any inquiry would be established;

Strongly encouraging the United Kingdom authorities to continue discussions with the applicant on the terms of a possible statutory inquiry;

DECIDES to close the examination of this case with respect to individual measures;

Conclusion

DECIDES to pursue the supervision of the execution of the present judgments until the Committee has satisfied itself that the outstanding general measure as well as all necessary individual measures in the cases of Jordan, Kelly and Others, McKerr and Shanaghan have been taken;

DECIDES to resume consideration of the abovementioned four cases, as regards outstanding individual measures at each of its meetings dedicated to the supervision of the execution of the judgments of the Court and of all these cases, as regards general measures at intervals not longer than six months.

Appendix I to Interim Resolution CM/ResDH(2009)44

Information provided by the Government of the United Kingdom to the Committee of Ministers on individual and general measures taken since the adoption of Interim Resolution CM/ResDH(2007)73 at the 997th meeting of the Ministers' Deputies on 6 June 2007 can be found in the following information documents: CM/Inf/DH(2008)2, declassified at the 1020th meeting (March 2008) and CM/Inf/DH(2008)2 revised, declassified at the 1043rd meeting (December 2008).

Information provided since the 1043rd meeting or not otherwise contained in the above documents is summarised below:

General measure A - The Police Ombudsman's report of the five-yearly review of his powers and the response of the authorities to its content

The Government of the United Kingdom commenced a twelve-week consultation exercise on the Police Ombudsman's Five Year Review on 11 December 2008. This consultation exercise includes the current Police Ombudsman and ended on 5 March 2009.

Failure by the respondent state to comply with its obligation under Article 34 of the Convention

As to the violation of Article 34, the government's firm policy is to ensure that its obligations under this Article are respected. In particular the Chief Constable has confirmed that he would never wish to do anything which would hinder any applicant from exercising his or her right of individual petition.

Furthermore, 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 one 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 of Human Rights would not constitute a breach of that undertaking, and thus the solicitor from whom the undertaking was sought would not commit a disciplinary offence if the documents were to be disclosed to that Court.

Individual measures

In the case of Jordan, the Coroner gave a provisional ruling on 13 January 2009 on applications by the Police Service of Northern Ireland (PSNI) for screening/anonymity in the inquest proceedings for some witnesses; the parties have 7 days from that date to submit written representations. Following a further preliminary hearing on 22 January, the Coroner indicated that the inquest would not start before June 2009. On 24 February 2009 the applicant brought judicial review challenges of the Coroner's decision to grant anonymity and screening for all police witnesses, and his stance on his ability to compel witnesses residing outside the UK. These challenges are likely to delay inquest proceedings until at least June 2009.

As a result of the work undertaken by HET in the case of Kelly and Others, further enquiries will be carried out before the Review Summary Report is delivered to the families. The HET will continue to liaise with the families who have engaged with the process and update them accordingly.

Following the preliminary hearing on 29 October 2008 in the case of McKerr, the matter of the disclosure of the Stalker/Sampson papers remains under consideration.

In the case of Shanaghan, the HET have completed all enquiries and are now preparing the final Review Summary Report. They continue to liaise with the family through an NGO (the Committee on the Administration of Justice (CAJ)). The investigation by the Police Ombudsman is almost complete and they are moving to the report-writing phase, which it is estimated will take approximately two months.

In the case of McShane, a verdict was given on 4 July 2008 in the inquest proceedings which commenced on 27 May 2008. The inquest established the facts concerning the incident in which Mr McShane died. A number of key police and military witnesses attended and gave evidence during the inquest proceedings. The driver of vehicle concerned in the collision resides in the European Union but outside the United Kingdom and therefore outside the jurisdiction of both the Coroner's court and the High Court. Although the Coroner made every effort to secure his attendance including having a letter delivered to him by the police in

his country of residence, the driver did not attend the inquest. There are no legally enforceable measures available to the Coroner to secure the driver's attendance.

As to the question whether it was possible for the jury to give any conclusions as to whether Mr McShane was killed unlawfully, it is noted that a verdict of unlawful killing is not open to a jury in Northern Ireland (Rule 16 of the Coroners (Practice and Procedure) Rules Northern Ireland) 1963. However, as confirmed by the House of Lords' judgment in *Jordan v Lord Chancellor* [2007] UKHL 14, there is nothing in the Coroners Act 1959 or in the Coroners (Practice and Procedure) (Northern Ireland) Rules which prevents a jury finding facts directly relevant to the cause of death which may point very strongly towards a conclusion that criminal liability exists or does not exist. In the McShane case the jurors were invited to consider what role, if any, those concerned had played in Mr McShane's death. It was open to the jury to reach conclusions which might suggest that an offence had been committed.

If it appears to the coroner, following the verdict, that a criminal offence may have been committed he is under a duty to write to the Director of Public Prosecutions for Northern Ireland (DPP(NI)) under section 35 of the Justice (Northern Ireland) Act 2002. The Coroner wrote to the DPP(NI) on 30 January 2009. The DPP(NI) responded on 5 February 2009 to say that he would give consideration to the evidence provided by the Coroner and on 23 February 2009 requested further information from the Coroner. "No prosecution" decisions by the DPP(NI) are open to judicial review.

Appendix II to Interim Resolution CM/ResDH(2009)44

Cases concerning the action of security forces in Northern Ireland

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

UKRAINE

Interim Resolution CM/ResDH(2014)275 Execution of the judgment of the European Court of Human Rights Oleksandr Volkov against Ukraine

Application	Case	Judgment of	Final on
21722/11	OLEKSANDR VOLKOV	09/01/2013	27/05/2013

*(adopted by the Committee of Ministers on 4 December 2014
at the 1214th 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 "the Convention"),

Recalling that the violations established in the present case stem from the applicant's dismissal as a judge of the Supreme Court in violation of the fundamental principles of procedural fairness enshrined in Article 6 of the Convention and in a manner incompatible with the requirements of lawfulness under Article 8 of the Convention;

Recalling also the urgency of adopting individual measures and that the Court held in its judgment that Ukraine should secure the applicant's reinstatement in the post of judge of the Supreme Court at the earliest possible date;

Expressing grave concern that despite the efforts deployed by the Ukrainian authorities to ensure, by way of a parliamentary resolution, the applicant's reinstatement as required by the Convention, such a resolution has still not been adopted;

Recalling in this context that the Committee of Ministers has called upon the Ukrainian authorities also to explore all reinstatement options available, other than the parliamentary options, and that this call has not yielded any results;

Faced with this situation, underlining the obligation of every State, under the terms of Article 46, paragraph 1, of the Convention to abide by the final judgments of the European Court in any case to which they are a party,

CALLS UPON the Ukrainian authorities to take without any further delay all necessary measures to secure the applicant's reinstatement as a judge of the Supreme Court.

⇒ Failure or serious delay in abiding by final decisions

Interim Resolution CM/ResDH(2012)234

Execution of the judgments of the European Court of Human Rights

Yuriy Nikolayevich Ivanov against Ukraine and the Zhovner group of 389 cases

against Ukraine concerning the non-enforcement or delayed enforcement of domestic judicial decisions and the lack of an effective remedy in respect thereof

(Application No. 40450/04, judgment of 15/10/2009, final on 15/01/2010)

(Adopted by the Committee of Ministers on 6 December 2012
at the 1157th 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 pilot judgment of the European Court of Human Rights ("the Court") of 15 October 2009 in the case of Yuriy Nikolayevich Ivanov against Ukraine and 389 cases in the Zhovner group transmitted to the Committee for supervision of its execution under Article 46 of the Convention;

Recalling that since 2004, the Committee of Ministers has repeatedly called upon the Ukrainian authorities to adopt, as a matter of priority, the necessary measures in its domestic legal system (CM/ResDH(2008)1, CM/ResDH(2009)159, CM/ResDH(2010)222, and CM/ResDH(2011)184);

Recalling in this context that the new law of 5 June 2012 "on State guarantees concerning execution of judicial decisions" concerns, notwithstanding the pilot judgment, only future judicial decisions and, therefore, does not permit the repatriation of repetitive applications already pending before the Court, nor to stop the influx of new repetitive applications;

Recalling further its latest decision adopted in September 2012, in which the Committee urged the Ukrainian authorities once again to take the necessary measures in order to resolve this problem as a matter of utmost urgency, as well as to address the concerns set out in the memorandum CM/Inf/DH(2012)29 regarding the provisions of the new law;

Noting that in response to the Committee's aforementioned decision, the Ukrainian authorities indicated that they have drafted the law *On amendments to the Law of Ukraine On guarantees of the State concerning the execution of the court decisions* aimed at resolving the problem of outstanding debts and which is currently under consideration by the Cabinet of Ministers of Ukraine;

Deeply regretting however that this draft law has not been introduced yet, and urging therefore the Ukrainian authorities to increase their efforts to swiftly bring the legislative process to an end;

Profoundly deploring that the pilot judgment therefore still remains to be fully executed and that this situation poses a serious threat to the respect of the rule of law and to the effectiveness of the Convention system;

Reaffirming most firmly that the High Contracting Parties to the Convention have undertaken to abide by the final judgment of the Court in any case to which they are parties and that this obligation is unconditional,

URGES the Ukrainian authorities to adopt as a matter of utmost priority the necessary measures in order to resolve the problem of non-enforcement of domestic judicial decisions and to fully comply with the pilot judgment with no further delay;

ENCOURAGES the Ukrainian authorities in particular to make increasingly use of unilateral declarations and friendly settlements in order to resolve the problem of cases pending before the Court.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2011)184

Execution of the pilot judgment of the European Court of Human Rights

Yuriy Nikolayevich Ivanov against Ukraine and of

386 cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities as well as the absence of an effective remedy

(Requête n° 40450/04, arrêt du 15/10/2009, définitif le 15/01/2010)

(Adopted by the Committee of Ministers on 14 September 2011 at the 1120th 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 pilot judgment of the European Court of Human Rights ("the Court") of 15 October 2009 in the case of Yuriy Nikolayevich Ivanov against Ukraine transmitted to the Committee for supervision of its execution under Article 46 of the Convention;

Recalling that in this judgment the Court unanimously:

found violations arising from a practice incompatible with the Convention which consists in the state's recurrent failure in its obligation to honour judgment debts and in respect of which aggrieved parties have no effective domestic remedy;

ordered the respondent state to set up such a remedy within one year from the date on which the judgment became final, i.e. by 15 January 2011, and by the same date to grant adequate and sufficient redress to all persons in the applicant's position in the cases lodged with the Court before the delivery of the pilot judgment;

decided to adjourn examination of all similar cases for one year, i.e. until 15 January 2011;

Recalling further that this deadline was extended by the Court at the request of the Ukrainian authorities until 15 July 2011;

Noting that in response to the Committee's Interim Resolutions ([CM/ResDH\(2008\)1](#), [CM/ResDH\(2009\)159](#) and CM/ResDH(2010)222) a draft law addressing the problems identified by the Court and providing a domestic remedy was prepared;

Noting that this draft law was adopted at the first reading by the Ukrainian Parliament on 9 September 2011;

Regretting however that the Court's extended deadline for ad hoc settlement of all individual applications lodged with the Court before the delivery of the pilot judgment has not been complied with although certain progress has been achieved in this respect;

Recalling that since 2004, the Committee of Ministers has repeatedly called upon the Ukrainian authorities to set up, as a matter of priority, a domestic remedy against excessive delays in enforcement of domestic courts' decisions which would secure adequate and sufficient redress in line with the Convention's requirements (CM/ResDH(2008)1 and CM/ResDH(2009)159);

Having regard to the obligation undertaken by the Ukrainian authorities under Article 46 of the Convention to abide by the judgments of the Court;

WELCOMES the adoption of the draft law (on guarantees of the State concerning the execution of court decisions) at the first reading in the Ukrainian Parliament;

STRONGLY ENCOURAGES Ukraine to bring the legislative process to an end without any further delay given that the deadline set by the Court has expired;

CALLS UPON the Ukrainian authorities to ensure that the draft law in question meets the principles of the Convention as set out in the Court's case-law in order to constitute an appropriate response to the pilot judgment in the case of Yuriy Nikolayevich Ivanov including the allocation of appropriate budgetary means;

URGES the Ukrainian authorities to redouble their efforts to resolve without further delay the similar individual cases lodged with the Court prior to the delivery of the pilot judgment and to keep the Committee regularly informed of the solutions reached and of their implementation.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2010)222

Execution of the pilot judgment of the European Court of Human Rights in the case Yuriy Nikolayevich Ivanov against Ukraine and of 386 cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities as well as the absence of an effective remedy

(Requête n° 40450/04 Yuriy Nikolayevich Ivanov, arrêt du 15/10/2009, définitif le 15/01/2010)
([Voir l'annexe pour la liste des affaires du groupe Zhovner](#))

(Adopted by the Committee of Ministers on 30 November 2010 at the 1100th 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 almost 400 judgments of the Court in which it found violations of the Convention on account of non-execution or delayed execution by the state authorities of final domestic judicial decisions delivered in the applicants' favour and the lack of an effective remedy in this respect;

Recalling the Committee of Ministers' decisions and Interim Resolutions ([CM/ResDH\(2008\)1](#) and [CM/ResDH\(2009\)159](#)) in which the Committee noted with concern the lack of progress in taking general measures to resolve the structural problems underlying the repetitive violations of the Convention;

Noting with deep concern that notwithstanding the Committee's repeated calls, the Ukrainian authorities failed since 2004 to give priority to devising a comprehensive strategy to bring their legislation and administrative practice in line with the Convention requirements, thus generating new massive applications before the Court;

Recalling that in these circumstances the Court delivered on 15 October 2009 a pilot judgment in the case of Yuriy Nikolayevich Ivanov in which:

stressed that specific reforms in Ukraine's legislation and administrative practice should be implemented without delay in order to bring it into line with the Court's conclusions in the present judgment and to comply with the requirements of Article 46 of the Convention;

held that in any event the respondent state must introduce without delay, and at the latest within one year from the date on which the judgment becomes final, i.e. by 15 January 2011, a remedy or a combination of remedies capable of securing adequate and sufficient redress for the non-enforcement or delayed enforcement of domestic decisions;

ordered the respondent state by the same date to grant such a redress to all persons in the applicant's position in the cases lodged with the Court before the delivery of the pilot judgment and decided to adjourn the Court proceedings in all similar cases for one year;

Taking note of the information provided by the Ukrainian authorities during the meeting that a draft law has been prepared "on enforcement of the court decisions for which the state is responsible";

Noting however that no details have been provided concerning the precise content of the draft law as well as on the timetable envisaged for its adoption;

Noting in addition with regret that only little progress has been made in ad hoc settlement of individual applications lodged with the Court before the delivery of the pilot judgment;

Recalling the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

STRONGLY URGES once again the Ukrainian authorities at the highest political level to hold to their commitment to resolving the problem of non-enforcement of domestic judicial decisions and to adopt as a matter of priority the specific reforms in Ukraine's legislation and administrative practice required by the pilot judgment;

FIRMLY INVITES the Ukrainian authorities to enhance their efforts in resolving the similar individual cases lodged with the Court before the delivery of the pilot judgment and to keep the Committee regularly informed of the solutions reached and of their subsequent implementation.

DECIDES to resume consideration of these cases at their 1108th meeting (March 2011) (DH), in the light of information to be provided by the authorities on the measures taken to comply with the judgments.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2009)159

Execution of the judgments of the European Court of Human Rights in 324 cases against Ukraine concerning the failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities as well as the absence of an effective remedy

[\(See Appendix for the list of cases in the Zhovner group\)](#)

(Adopted by the Committee of Ministers on 3 December 2009 at the 1072nd 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 continuous flow 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 courts' decisions delivered in the applicants' favour;

Having regard to the fact that in a number of cases the Court has also found a violation of Article 13 of the Convention in that the applicants had no effective domestic remedy whereby they might have 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 that the Committee of Ministers has been supervising the adoption by Ukraine of general measures to prevent new similar violations of the Convention for more than five years;

Stressing that more than three hundred judgments delivered within this period highlights the existence of complex structural problems at domestic level affecting large categories of persons;

Recalling the consistent position of the Committee of Ministers, shared by the Ukrainian authorities, that the resolution of these problems requires the implementation of comprehensive and complex measures;

Noting that, notwithstanding a number of initiatives reported by the Ukrainian authorities to the Committee since the beginning of its supervision, no satisfactory results have been achieved in their implementation;

Noting further that these initiatives, which are summarized in the Committee's first Interim Resolution ([CM/ResDH\(2008\)1](#) adopted on 6 March 2008), addressed only certain specific aspects of the complex problem of non-enforcement of domestic courts' decisions;

Recalling that in its first Interim Resolution the Committee therefore strongly encouraged the Ukrainian authorities to enhance their efforts in tackling the problem of non-enforcement of domestic courts' decisions by setting up an overall effective strategy, coordinated at the highest political level;

Recalling, in particular, that the Committee requested the Ukrainian authorities to take urgent measures to resolve the structural problems underlying the repetitive violations found by the Court, as well as to set up a domestic remedy against the excessive length of enforcement of domestic courts' decisions;

Noting with grave concern that no concrete or visible progress has been made in this field since the adoption by the Committee of Ministers of its first Interim Resolution;

Recalling that the dysfunction of the justice system, as a consequence of the non-enforcement of the domestic courts' decision, represents an important danger, not least for the respect of the Rule of Law, frustrates citizens' confidence in the judicial system and questions the credibility of the State;

DEPLORES that, despite the urgency of the situation and the Committee's repeated calls to that effect, the Ukrainian authorities have continuously failed to give priority to finding effective solutions to the important problem of non-enforcement of domestic courts' decisions;

REITERATES its call to the Ukrainian authorities at the highest level to adhere to their political commitment to resolving the problem of non-enforcement of domestic courts' decisions and thus complying with Ukraine's obligation under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

STRONGLY URGES the Ukrainian authorities:

to rapidly adopt general measures, including legislative initiatives previously reported to the Committee of Ministers, to solve structural problems at the origin of these persistent violations of the Convention;

to set up as a matter of priority a domestic remedy against excessive delays of enforcement of domestic courts' decisions which would secure adequate and sufficient redress in line with the Convention requirements;

DECIDES to resume consideration of the present issues in the context of the Court's judgments concerned at the 1078th meeting (March 2010) (DH) in the light of the information to be submitted by the Ukrainian authorities on outstanding individual and general measures.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Interim Resolution CM/ResDH(2009)74
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 16 September at the 1065th 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");

Recalling that, in the present judgment, the Court unanimously found a violation of Article 2 of the Convention on account of the authorities' failure to protect the life of the applicant's husband;

Recalling further that the Court also found a violation of Articles 2 and 13 of the Convention on account of the failure for more than 4 years to conduct an effective investigation into the disappearance and death of the applicant's husband and the lack of an effective remedy in this respect, as well as a violation of Article 3 of the Convention on account of the investigatory authorities' attitude towards the applicant and her family, amounting to inhuman and degrading treatment;

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court;

Recalling that the Committee has been supervising the execution of the present judgment since 2006 and that the investigation into the circumstances of the applicant's husband's abduction and murder has been pending since 2001;

Recalling that on 15 March 2008 three former police officers were convicted for G. Gongadze's murder;

Recalling that, in its first Interim Resolution CM/ResDH(2008)35 adopted on 5 June 2008, the Committee urged the authorities of the respondent state to take all necessary investigative steps aimed at identifying and bringing to justice the instigators and organisers of the crime with reasonable expedition;

Noting with satisfaction the developments that have taken place since the adoption of the Committee of Ministers' Interim Resolution;

Taking note in this respect that the phonoscopic examination of the so-called Melnychenko recordings by the joint group of Ukrainian and foreign experts is under way and planned to be completed by November 2009;

Noting further the re-arrest of the immediate superior of the convicted former police officers, O. Pukach, who has been wanted for four years;

Noting with satisfaction that a number of investigative measures have been promptly taken following the arrest of O. Pukach;

Noting in this context that remains of a human skull were found and rapidly submitted to a forensic medical examination, which concluded that the remains belonged to G. Gongadze;

Welcoming the attitude of the investigating authorities towards the applicant, in particular, the rapid actions taken to respond to the applicant's request for an additional DNA test of the remains of the skull by international experts;

Recalling in this respect the Ukrainian authorities' position that the results of the recent investigative actions may be decisive for the identification of instigators and organisers of the murder of the applicant's husband,

STRONGLY ENCOURAGES the Ukrainian authorities, in the light of the recent developments, to enhance their efforts with a view to bringing to an end the ongoing investigation while bearing in mind the findings of the Court in this case;

INVITES the respondent state to continue keeping the Committee regularly informed of the measures taken, and the results achieved, to ensure full execution of the judgment;

DECIDES to resume consideration of this case, at the latest, at its first Human Rights meeting in 2010.