Council of Europe

Committee of Ministers

Supervision of the execution of judgments

of the European Court of Human Rights

2nd annual report

2008

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Supervision of the execution of judgments of the European Court of Human Rights

Annual report, 2008

Council of Europe
April 2009

Édition française : *Conseil de l'Europe : Comité des Ministres. Surveillance de l'exécution des arrêts de la Cour européenne des droits de l'homme. Rapport annuel, 2008*

Directorate General of Human Rights and Legal Affairs
Council of Europe
F-67075 Strasbourg Cedex

Printed at the Council of Europe

Contents

State-by-state index of cases

I. Foreword by the 2008 Chairs of the Human Rights meetings

1. In 1958 the Committee of Ministers (CM) was seized for the first time with a case under the European Convention on Human Rights (ECHR). In 2008, 50 years later, the capital importance of the ECHR for human rights, the rule of law and democracy in Europe has firmly established itself. It is, however, clear that the implementing machinery continues to be under great pressure notwithstanding the important efforts undertaken in recent years, in particular since the Ministerial Conference in Rome in 2000, to guarantee the long-term efficiency of the ECHR system.

2. The ever increasing growth of applications to the European Court of Human Rights (the ECtHR), in particular from a limited number of countries, is at the heart of the problem. This puts the ECtHR under great stress and, since many applications do result in violations, also the CM's supervision of execution.

3. As Chairs of the CMs' Human Rights meetings, we have tried in different ways to assist the CM in meeting these challenges. There are indeed very close links between good execution, the proper implementation of the ECHR at domestic level and the case-load of the ECtHR.

4. We have thus ensured that efficient execution is a regular part of the priorities of the Chairmanships of the Council of Europe as a whole. The priorities of the Spanish Chairmanship are a good example. Concrete expressions of these efforts are, for example, the organisation of colloquies and conferences on different ways to improve the process, *inter alia* the colloquy organised by the Slovak Chairmanship in Bratislava in April 2008 and the one organised by the Swedish Chairmanship in Stockholm in June 2008. As Chairs of the HR meetings we have also contributed to the CM's continued reflection on its working methods, in particular on the basis of a number of proposals submitted by the Swedish Chair. We trust that our successors will continue these efforts.

5. Of course, the CM's supervision of execution cannot prevent new, complex, human rights problems from being brought before the ECtHR. The CM is, however, eminently competent to supervise that respondent states do not take a minimalistic approach to the violations found, but on the contrary speedily take all necessary remedial action to effectively prevent further similar violations of the ECHR, thus preventing clone or repetitive cases from being brought before the ECtHR. In doing so, they should, of course, not introduce new ones: a violation of the right of access to court can, e.g., not be satisfactorily resolved by simply introducing a remedy before a court, without any right to a public hearing.

5. Notwithstanding all efforts carried out to ensure efficient execution, the situation continues to be grave as is apparent from the statistics, whether from the ECtHR or the CM. Clone or repetitive cases in particular continue to be a great and, most frequently, an unnecessary burden on the ECtHR.

7. The ECtHR also gave a new warning signal at the opening of the 2009 judicial year and President Costa launched an appeal for a reflection on the practical aspects of the protection of human rights and their implementation.

8. As suggested already in CM Recommendation (2004) 6, the solution lies to a great extent in states rapidly providing efficient domestic remedies, capable of taking care not only of new violations similar to those established, but also, where appropriate, of violations already committed. This analysis by the CM has been confirmed by the ECtHR, as it has subsequently developed what is known as the "pilot judgment procedure" to stress the need to rapidly adopt such remedies and,

indeed, even to order in the operative part of the judgment that remedies be adopted.

9. The pilot judgment procedure is, however, still exceptional and execution is therefore in general guided by CM's practice. As Chairs, we have therefore noted with great interest that the question of remedies is more and more frequently discussed as an integral part of general measures. We encourage this trend and hope our successors will continue to do so.

10. Providing remedies is of course not the main solution for the individuals. New similar violations should not occur in the first place, and the efficiency of the execution process thus also depends largely on the speed of legislative or regulatory changes, or changes of case law or administrative practices.

11. Against this background it is worth recalling that the CM has asked the governmental experts in the Steering Committee for Human Rights (CDDH) for proposals on how to deal with particularly slow execution. These proposals received a first examination at the Committee's HR meeting in March 2009. They will be further discussed at the forthcoming HR meeting.

12. The governmental experts *inter alia* stressed that in order to overcome or avoid such situations, it is essential to pursue efforts aimed at increasing the visibility and comprehensibility of the requirements for executing judgments of the ECtHR as well as the role and practice of the CM in the matter. In line with this, they underlined the importance of a good website, of effective dissemination of relevant CM documents, where necessary translated, of developing technical cooperation programmes, organising conferences, etc., as well as the capacity of the Execution Department to assist States through enhanced bilateral contacts.

13. Measures in these directions have already started to be taken. The annual report, with its thematic overview, is a telling example, and we have noted with satisfaction the very positive reception it has received in different circles. The CM also adopted in February 2008 a new recommendation, Recommendation (2008)2 on improved domestic capacity to implement the ECtHR's judgments (the text is reproduced in full in this report), the follow up of which will be of the greatest interest. The CM has also encouraged increased cooperation activities between the Secretariat, in particular the Department for the execution of the judgments of the ECtHR, and the competent domestic authorities and agreed to increase the resources available to the Execution Department for such activities. In the same vein, following a Norwegian initiative, a special Human Rights Trust Fund has also been set up, *inter alia*, to assist states in rapidly meeting the execution requirements. Indeed, two major projects have been launched early 2009 through the Fund in key areas: one relating to the non-execution of domestic judgments and one regarding human rights violations by security forces.

14. In addition to the above developments, 2008 has confirmed the important links between the execution of the ECtHR's judgments and the activities of other bodies which are active in areas covered by the CM's supervision, such as in particular, the Commissioner for Human Rights, the Venice Commission, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Commission for the Efficiency of Justice (CEPEJ). This interaction creates a great potential for synergies, but also requires adequate procedures for information exchange. In line with this, the Swedish Chair organised an exchange of views with the Commissioner for Human Rights at the June HR meeting.

15. The problem of guaranteeing the long-term effectiveness of the ECHR system cannot be left without something being said about the importance of ratification of Protocol No. 14 or at least the rapid implementation through other means of measures similar to those proposed therein. Considering the delays in the ratification process in the Russian Federation, we have thus noted with great satisfaction the ongoing reflections on different solutions and fully support these efforts.

16. In conclusion, our experience as Chairs of the HR meetings has underlined the importance and complexity of the execution process. A connecting thread has, however, always been the importance of rapidly disseminating adequate knowledge of the process and its requirements. We feel convinced that this annual report will be another very useful contribution to the achievement of this aim.

Presidents of Committee of Ministers human rights meetings in 2008

Sweden	Spain	Slovenia
Mr Per Sjögren	**Ms Marta Vilardell Coma**	**Ms Meta Bole**

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

Introduction

1. The 2007 Report was well received, not only by the addressees formally mentioned in the Committee of Ministers' Rules: the Secretary General, the European Court of Human Rights (ECtHR), the Parliamentary Assembly and the Commissioner for Human Rights, but also by much wider circles, in particular national administrations, NGOs and various legal practitioners. By increasing the visibility of the execution process and its requirements, it has obviously filled an important information gap.

2. The 2008 Report is a continuation of the 2007 Report and built largely along the same lines. Its main part, the thematic overview, thus contains a non-exhaustive overview of the kinds of cases examined by the Committee of Ministers (CM) in the course of the year. The principal aim is to present the different responses given to violations found, whether in respect of individual measures or general measures.

2008 tendencies

3. The 2008 tendency has been to increase the importance attached to co-operation activities. Such activities, involving permanent representations and national authorities on the one side and the Secretariat of the Council of Europe, in particular the Department for the execution of the judgments of the ECtHR, on the other have thus increased considerably. The aim is to catalyse the execution process so that fewer problems, requiring in depth CM attention arise. In addition, in case of problems, the improved preparation of cases which results from these co-operation activities facilitates the debates in the Committee and the adoption of adequate responses.

4. This new approach notably includes increased efforts to propose to states, wherever needed, different forms of assistance in defining and/or implementing the necessary execution measures, notably taking into account interesting practices of other states. Whereas such activities were previously only undertaken on an infrequent ad hoc basis, such activities have now become a more regular feature of the supervision of execution. Activities may be limited to the respondent state, but may also encompass groups of states with similar problems. The CM has allowed a special budget for this purpose starting in 2007, clearly signalling its increased importance: the 2007 expenses were just over 52 000 euros, the 2008 totalled almost 66 000. This increase is, of course, reflected in the number of activities, which also increased by over 20% from 2007 to 2008. The 2009 budget totals 90 000 euros. Activities include, in particular, high level discussions with competent authorities, expert opinions on legislation and training sessions either in the country concerned or in Strasbourg.

5. In addition, a most important development is the new Human Rights Trust Fund set up in 2008 whose mission, *inter alia*, is to assist in ensuring full and timely execution of judgments of the ECtHR. The Fund, a Norwegian initiative, has approved its first projects. The Assembly of the Fund's Contributors has recently allocated almost 785 000 euros to the financing of execution-related activities in certain key areas: the non-execution of domestic court judgments in six

countries and the responses to violations of the ECHR by security forces in Chechnyan Republic.

6. It should in this context be recalled that the Council of Europe, and in particular the Legal and Human Rights Capacity Building Division, has developed an impressive series of handbooks and other kinds of training materials, as well as a special training program, "HELP", covering most of the ECHR articles and certain transversal issues. These are available free of charge in a number of different languages and provide useful assistance for training activities. Despite these efforts, the wealth of case-law continuously developed by the ECtHR creates a constant call for updates of existing materials and for the creation of new, often more transversal, ones, to allow domestic authorities to adequately understand the different ECHR requirements linked to the performance of their duties.[1]

7. How to meet the information and training needs inherent in a certain execution situation may still be an important challenge. One response is the preparation of special studies and/or memoranda. In more complex violation situations such documents must frequently be developed on transversal lines in the sense of covering all the different ECHR obligations at issue and different remedial actions required (e.g. creation of adequate regulatory frameworks, issuing of detailed instructions, training activities and/or putting into place of remedies). A number of such memoranda have also been prepared by the Execution Department in different cases, e.g. in cases relating to conflicts of jurisdiction as regards child custody, abuses by security forces and non-execution of domestic court judgments. Such studies or memoranda are also prepared on more general issues such as payment of just satisfaction. In 2008 the Execution Department developed its memorandum on this latter issue by adding a new chapter dealing with, in particular, seizure and taxation (see CM/Inf/DH (2008) 7 final). Other such general memoranda are in preparation with, as already hinted in the 2007 Report, the aim of contributing to the elaboration of the vade mecum mentioned in Recommendation (2008) 2.

8. A further development of interest is the recent online presentation of the execution situation in all leading cases and other cases raising specific execution issues, mainly individual measures, on the Special website dedicated to the supervision of execution (see below in appendix 7). The ease of access to this information has been a valuable contribution to the successful co-operation with the national authorities. A certain amount of work remains, however, to be carried out before this online presentation can play its full role. One of the most important developments needed is the addition of more problem-oriented search capacities, irrespective of the state concerned. The Directorate General of Human Rights and Legal Affairs is very grateful to the voluntary contributions received thus far to assist in these developments.

9. Notwithstanding these efforts in Strasbourg, it must, however, be stressed that it is first of all for the domestic authorities to ensure that the relevant information about the ECHR's requirements is effectively brought to the attention of the relevant decision-makers after a violation has been found. This is the central point of a number of CM recommendations, in particular of the recent Recommendation (2008) 2, which will be presented in more detail below.

10. It may be hoped that this increased emphasis on execution-related assistance and co-operation activities will yield rapid and visible results in particular as far as the reduction in the number of clone or repetitive cases is concerned, whether by enhancing the speed of the structural reforms needed or by ensuring the rapid development of domestic remedies while awaiting the adoption of these structural reforms.

11. As was already indicated last year, the Annual Report falls within the scope of this logic of co-operation. Its purpose continues to be to enhance

1. The execution process not infrequently highlights the need for new practice-oriented, as opposed to article- or rights-oriented summaries of the ECtHR's case-law. A police search may, for example, affect a number of different ECHR rights: the right to privacy, the protection of the home, the right to property and the right not to incriminate oneself. It may also raise questions about existing guarantees to prevent any abuse of power and related questions of the consequences of disrespect for these guarantees, e.g. as concerns the admissibility of any evidence gathered. The same holds true for many other types of interferences e.g. the non-enforcement of domestic judgments which may raise questions of the right of access to court, the right to trial within a reasonable time, the right of property or the right to protection of the home and the right to an effective remedy. For reasons of procedural economy the ECtHR will usually not deal with all violations alleged. Remedying just the aspect(s) effectively dealt with by the ECtHR without taking into account the others may, however, well lead to new possibly unnecessary violations. It is in this light not surprising that the ECtHR when providing guidance as to the execution requirements clearly indicates that remedial action must also take into account the general principles and the ECtHR's case-law on the subject – see e.g. *Ramadhi v. Albania*, judgment of 13/11/2007.

the understanding of the execution requirements and the furnishing of interesting examples of state responses to violations found. It is also in this spirit that the presentation of the cases in the 2008 report is more detailed than in the 2007 report. It has been felt that some more detail would facilitate the understanding of the extent and scope of the execution measures taken, and in particular of the individual measures.

Individual measures

12. The CM's practice with respect to individual measures has continued to develop in 2008 as new cases, raising new questions, have been brought before the CM for the supervision of execution. The thematic overview clearly demonstrates this development and the real willingness to search for appropriate solutions shown by national courts and other authorities.

13. This is notably illustrated by the cases, alluded to already in last year's report, where domestic proceedings for damages, or even for the execution of final judgments, are pending when the ECtHR delivers its just satisfaction award. Such situations may pose a number of problems with regard to how the ECtHR's award is to be taken into account in the continued domestic proceedings. The small number of complaints relating to such situations suggests that domestic courts and authorities manage to solve any problems to the satisfaction of all parties involved.

14. The present report also provides a number of interesting examples of different responses by domestic authorities to violations of the right to fair trial in civil cases. This is a complex area as illustrated notably by the explanatory memorandum to Recommendation (2000) 2[2] prepared by the Steering Committee for Human Rights (the CDDH) which drafted the recommendation and by the CDDH's final activity report on the follow up to this recommendation (document CDDH (2008) 8 Addendum I). The report also describes a number of interesting responses to violations of Articles 2 and 3 caused by the absence of adequate investigation into relevant events, in particular, a number of decisions by prosecutors to re-examine, in the light of the ECtHR's judgment the well-foundedness of earlier decisions not to prosecute.

2. Recommendation (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the ECtHR.

General measures

15. The CM's practice in respect of general measures continued in 2008 along the lines developed during previous years, in particular as regards the more and more frequent inclusion of the question of effective remedies as an important part of the general examination of general measures

16. This latter development is most visible in length of proceedings cases under Article 6 of the ECHR. It is interesting to note that states today regularly provide information on the effectiveness of remedies in such cases (in line with CM Recommendation (2004) 6 on the improvement of domestic remedies) and that most states introduce both acceleratory and compensatory remedies. It is also interesting to note the efforts to ensure rapid reparation, e.g. by limiting the number of competent instances or creating fast-track proceedings for claims up to a certain amount.

17. The frequent reliance on publication and dissemination of the ECtHR's judgments as an adequate execution measure is also striking. It is interesting to note that such measures are frequently accompanied by guidelines and, not infrequently, training activities. In the light of the general remarks made above, it would appear that such practices could well be further encouraged.

18. As regards general measures, it is worth noting that 2008 saw the finalisation of the pilot judgment procedure in the *Broniowski* case. In July 2008 the ECtHR thus declared inadmissible for non-exhaustion of domestic remedies a number of test cases which had been unfrozen. 2008 also saw the Article 41 judgment in the *Hutten-Czapska* pilot case. The final phase of adaptation of domestic law has started also in this case. Although no new pilot judgment was rendered in 2008, the recent *Burdov 2* judgment of 15 January 2009, although not yet final at the time of the drafting of this report, hints once again at the important possibilities inherent in this procedure and the need for rapid CM action to assist in achieving its aims.

Other measures, in particular related to Recommendation (2008) 2

19. Besides the strengthening of the co-operation activities already mentioned, one of the major contributions to the execution process in 2008 is in all likelihood the adoption of Recommendation (2008) 2 to member states on efficient domestic capacity for rapid execution of judgments of the ECtHR. The full text is reproduced in appendix 8 of the report.

20. This new text, which supplements the five earlier Recommendations adopted by the CM,[3] recommends, *inter alia*, that member states designate a co-ordinator of the execution process and ensure appropriate mechanisms for effective dialogue between the co-ordinator and the CM.

21. It also recommends, in line with the new working methods of 2004, the adoption of action plans, where appropriate, and recommends that the states take the necessary steps to ensure that all relevant decisions and resolutions adopted by the CM during the execution process are duly and rapidly disseminated, where necessary in translation, to relevant actors.

22. Emphasis is furthermore placed on the importance of ensuring that relevant actors are sufficiently acquainted with the ECtHR's case-law as well as with the relevant CM recommendations and practice. It recommends, in particular, that states disseminate the vade mecum on different execution issues, which is under preparation, and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the CM.

23. The Recommendation finally underlines the need to keep national parliaments informed of the situation concerning execution of judgments and the execution measures being taken, and to ensure that, in case of a persistent problem in the execution process, all necessary remedial action be taken at high level. It may be recalled that the Parliamentary Assembly has already addressed, along the same lines, a recommendation to the parliaments of the member states in its Resolution 1516 (2006).

24. The domestic follow up of this recommendation at the national level is, naturally, of the greatest importance. The Bratislava conference organised by the Slovak Chair was a first and most valuable contribution.[4] The question of a specific follow up at Council of Europe level has not yet been decided.

25. Improving synergies with other bodies has also been an important leitmotiv in the efforts to guarantee the long-term effectiveness of the ECHR system. 2008 has seen a continuation of the CM's efforts in this direction, as noted by the Chairs in their introduction. In line herewith, the Directorate General is continuing its efforts to improve information exchanges, in particular with relevant advisory bodies within the Council of Europe, notably the Venice Commission, the European Commission for Efficiency of Justice (CEPEJ), the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE).

26. The discussions on further improvements of the CM's working methods have also continued, notably on the basis of a number of proposals submitted by the Swedish Chair. Further discussions may be expected in the light of the final activity report presented to the CM in February 2009 by the CDDH, containing a number of proposals to prevent delays in execution, mainly based, as indicated by the Chairs in their introduction, on the idea that many situations of delay may be overcome with better information and co-operation between all those involved.

3. See in particular chapter IV of the Annual Report 2007.

4. "The role of government agents in ensuring effective human rights protection".

Increase of workload

27. The workload has continued to increase. Basic figures are found in the statistical part of this report.

28. Even if the number of new cases has remained globally stable compared to last year, the work involved in supervising the progress of the reforms required in pending cases has increased once again as the number of such cases has continued to increase. Additional efforts have also had to be deployed to ensure the increased co-operation with domestic authorities expected by the CM.

29. It has from this perspective been a very welcome development that the Execution Department has been allowed to transform 10 time-limited "functions" into permanent posts. This is especially appreciated because of the considerable

length of time required to train new personnel so that they become effectively operational. The efficiency of the Department is to a considerable extent linked with its capacity to attract and keep highly qualified lawyers. In the same vein it would be highly appreciated that a further reinforcement be allowed in 2009 for 2010.

Conclusions

30. 2008 has also been a very work-laden year for all involved. It has, however, been a year rich in reflection on the future of the supervision of execution, notably through the colloquies organised in Bratislava and Stockholm and the different activity reports prepared by the CDDH.

31. It has also seen the beginning of a number of important developments as a result of the increased attention given to co-operation with the competent domestic authorities, the adoption of Recommendation (2008) 2 and the setting up of the new Human Rights Trust Fund.

32. The CM's execution practice has also continued to develop, in particular by further stressing the importance of ensuring the effectiveness of domestic remedies as part of the execution process.

33. The effects of these developments are difficult to evaluate at this time, but the experience shows that there is every reason to believe that the new directions taken will most probably yield important results over the next few years.

III. The Committee of Ministers' execution supervision

A. The implementation machinery of the ECHR

1. The machinery for the implementation of the ECHR has considerably developed over the years. The basic system set up in 1950 was based on interstate complaints before the Committee of Ministers (CM), whose task was to decide under former Article 32 of the ECHR whether or not the provisions of the ECHR had been violated. If a violation was established, the CM supervised the follow up given by the respondent state and, in this context, it could also decide what effect should be given to its decision. In performing these tasks, the CM was assisted by the European Commission of Human Rights.

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

3. In line with this development, the Council of Europe also required that new member states accept not only the basic ECHR guarantees but also the additional obligations. By 1990 all member states had recognised the ECHR, with the compulsory jurisdiction of the ECtHR and the right of individual petition.

4. Following the major European developments after 1989 which highlighted the importance of the ECHR system, the Council of Europe's first summit in 1994 set in motion a revision of the system, which led to the adoption of Protocol No. 11 (entered into force in November 1998). Procedures were simplified. Two institutions currently operate:

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

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

1. It is noteworthy that the CM still has on its lists a certain number of "old" Article 32 cases (1 366 at the end of 2008) in which the CM itself decided the issue of violation and of just satisfaction. Since the execution obligations are the same for these cases as for cases decided upon by the ECtHR, both types of cases are traditionally dealt with in the same manner in the context of the CM's execution supervision. Indeed, already in the first cases before the CM under old Article 32 of the ECHR, the *Pataki* and *Dunshirn* cases, the remedial action taken by the Austrian authorities covered both individual and general measures. The general shortcomings of Austrian criminal procedure identified by the Commission were rectified and all applicants with cases pending before the Commission were granted the right to retrial under new provisions in conformity with the ECHR, cf. Resolution DH (63) 2.

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

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

> *"The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*

The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

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

7. The content of this provision, the wording of which has remained the same since 1950, has become clearer over the years in particular through the general principles of international law, the practice of states in execution matters and the indications given by the CM and the ECtHR.

C. The obligation to abide by the judgments

8. The content of contracting states' undertaking "to abide by the final judgment of the Court in any case to which they are parties" is summarised in the CM's Rules of Procedure[3] – see Rule 6 (2). The measures to be taken are of two types.

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

10. The second type of measures – **general measures** – relate to the obligation to prevent similar violations similar to that or those found or putting an end to continuing violations. In certain circumstances they may also concern the setting up of remedies to deal with violations already committed.

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

12. The consequences of the violation for the applicants are, however, not always adequately remedied by the ECtHR's award of a sum of money or finding of a violation. It is here that a further aspect of individual measures intervenes. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions involving for example the reopening of unfair criminal proceedings, the destruction of information gathered in breach of the right to privacy, the enforcement of an unenforced domestic judgment or the revocation of a deportation order issued despite a real risk of torture or other forms of ill-treatment in the country of destination. The CM issued a specific recommendation to member states in 2000 inviting them "*to ensure that there exist at national level adequate possibilities to achieve, as far as possible, restitutio in integrum*" and, in particular, "*adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention*" (Recommendation (2000) 2).[4]

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

14. The CM also expects competent authorities to take interim measures to the extent possible both to limit the consequences of violations as regards individual applicants and, more generally, to prevent similar violations, pending adoption of more comprehensive or definitive measures. The CM also today pays particular attention to the efficiency of domestic remedies, in particular where the judgment reveals[5] important systemic or structural problems (see Recommendation (2004) 6 on the improvement of domestic remedies). The issue of effective remedies is today more and more addressed as an integral part of general measures.

15. The direct effect more and more frequently accorded the judgments of the ECtHR by domestic courts and authorities largely facilitates both providing adequate individual redress and the necessary development of domestic law and practices to prevent similar violations. Where execution through such direct effect is not possible,

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

4. Cf. Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum.

5. Whether as a result of the ECtHR's findings in the judgment itself or of other information brought forward during the CM's examination of the case, *inter alia* by the respondent state itself.

other avenues will have to be pursued, most frequently legislative or regulatory.

D. The scope of the execution measures required

16.The scope of the execution measures required is defined in each case primarily on the basis of the conclusions of the ECtHR in its judgment and relevant information about the domestic situation. In certain situations, it may be necessary to await further decisions by the ECtHR clarifying outstanding issues (e.g. decisions declaring new, similar complaints inadmissible as general reforms adopted are found to be effective or decisions concluding that the applicant continues to suffer the violation established or its consequences).

17.As regards the payment of just satisfaction, the execution conditions are usually laid down with considerable detail in the ECtHR's judgments (deadline, recipient, currency, default interest, etc.). Payment may nevertheless raise complex issues, e.g. as regards the validity of powers of attorney, the acceptability of the exchange rate used, the incidence of important devaluations of the currency of payment, the acceptability of seizure and taxation of the sums awarded etc. Existing CM practice on these and other frequent issues is detailed in a Secretariat memorandum (document CM/Inf/DH (2008) 7rev and CM/Inf/DH (2008) 7rev3add).

18.As regards the nature and scope of other execution measures, whether individual or general, the judgments usually remain silent. These measures have thus in principle, as has been stressed also by the ECtHR on numerous occasions, to be identified by the state itself under the supervision of the CM. Besides the different considerations enumerated in the preceding paragraph, national authorities may find additional guidance *inter alia* in the rich practice of other states as developed over the years, and in relevant CM recommendations (e.g. Recommendation (2000) 2 on the re-examination or reopening or (2004) 6 on the improvement of domestic remedies).

19. This situation is explained by the principle of subsidiarity, by virtue of which respondent states have freedom of choice as regards the means to be employed in order to meet their obligations under the ECHR. However this freedom goes hand-in-hand with the CM's control so that in the course of its supervision of execution the CM may also, where appropriate, adopt decisions or interim resolutions to express concern, encourage and/or make suggestions with respect to the execution.

20.In certain circumstances, however, it might happen that the ECtHR in its judgment provide itself guidance as to relevant execution measures. The ECtHR has thus recently provided recommendations as to individual or even general measures it considered as appropriate. Furthermore, sometimes the ECtHR directly orders the taking of the relevant measure. The first cases of this kind were decided by the ECtHR in 2004-2005: in both the ECtHR ordered the release of applicants who were being arbitrarily detained.[6] Moreover, in the context of the "pilot" judgment procedure the ECtHR examines more in detail the causes of certain systemic problems likely to lead to, or having already led to, a massive influx of new applications and provides certain recommendations as to general measures, most importantly as regards the necessity of setting up efficient domestic remedies. The ECtHR has in certain "pilot" judgments[7] also ordered that such remedies be set up and has "frozen" its examination of all pending applications while waiting that the remedies start to function.

21. When evaluating the need for specific execution measures and their scope, as well as the adequacy of execution measures adopted, the CM and the respondent state are assisted by the Directorate General of Human Rights and Legal Affairs, represented by the Department for the Execution of Judgments of the ECtHR.[8]

6. See *Assanidze v. Georgia*, judgment of 8 April 2004 and *Ilascu v. Moldova and the Russian Federation*, judgment of 13 May 2005. The Court had previously developed some practice in this direction in certain property cases by indicating in the operative provisions that states could choose between restitution and compensation – see e.g. the *Papamichalopoulos and Others* judgment of 31 October 1995 (Article 50).

7. See for instance *Broniowski v. Poland* (application no. 31443/96; Grand Chamber judgment of 22 June 2004 – pilot judgment procedure brought to an end on 6 October 2008); *Hutten-Czapska v. Poland* (application No. 35014/97, Grand Chamber judgment of 19 June 2006 and Grand Chamber friendly settlement of 28 April 2008).

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

E. The present arrangements for the Committee of Ministers' supervision of execution

i) The general framework

22. The practical arrangements for execution supervision are governed by the Rules adopted by the CM for the purpose (reproduced in Appendix 6).[9] Guidance is also given in the context of the development of the CM's working methods (see in particular CM/Inf (2004) 008final, available on the CM's website).

23. Accordingly, new judgments establishing violations or accepting friendly settlements are inscribed on the CM's agenda without delay once they become final. The examination takes place in principle at the CM's special HR meetings (Rules 2 and 3).

24. The examination is based primarily on the information submitted by the respondent government (Rule 6) The CM may also take into account communications made by the applicant as regards the question of individual measures and by non-governmental organisations and national institutions for the promotion and protection of human rights with respect to both individual and general measures (see Rule 9). Such communications should be addressed to the CM through the Department for the Execution of Judgments of the ECtHR.[10]

25. Information made available is circulated to the CM member states and is made public (*inter alia* on the CM's website) in accordance with the relevant Rules (see Rules 2 and 8).

26. For the purposes of examination cases are presented under different sections in the annotated agenda presented to the CM. These are described in the Appendices – Initial explanations.

9. The 2006 Rules were adopted on 10 May 2006 (964th meeting of the Ministers' Deputies). On this occasion the Deputies also decided "bearing in mind their wish that these Rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these Rules shall take effect as from the date of their adoption, as necessary by applying them *mutatis mutandis* to the existing provisions of the Convention, with the exception of Rules 10 and 11."

10. Council of Europe, 67075 Strasbourg Cedex, France; Fax No.: (+33) (0)3.88.41.27.93
e-mail: DGHL.execution@coe.int

ii) Examination of cases with or without debate

27. Cases in which execution progresses in a satisfactory manner are normally examined without debate on the basis of the description of the situation as presented in the annotated agenda. Cases which appear to deserve a more thorough collective examination may, however, be proposed for debate. The main criteria governing the question of whether or not to hold a debate are set out in the 2004 guidelines proposed by the Chair,[11] namely:

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

28. As regards cases debated at the meeting, decisions are usually adopted at the meeting itself, while for the other cases a written procedure normally applies, whereby the decisions are formally adopted some 15 days after the meeting. After adoption, decisions are made available on the CM and on the Execution department websites

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

iii) Other practical aspects of the examination of cases

29. Before the first presentation of a case on the CM's agenda the authorities of the respondent state will usually have made an assessment of the execution measures required, in co-operation with the Department for the Execution of the Judgments of the ECtHR. Particular attention is

here given the question of whether or not the case reveals any systemic problems and whether a plan of action to secure execution is required and, if so, its scope. The aim is that the respondent state should be able to present such a plan in appropriate cases at the latest within six months from the date the judgment becomes final. Such plans of action are considered as information of intent to the CM and not as binding on relevant domestic authorities. Indeed, developments of legislation, of judicial practice or of other nature, frequently induce changes to action plans presented.

30. New cases will usually be placed on the CM's agenda some 3-6 months after the judgment has become final. The above-mentioned criteria (§27) for deciding whether or not a debate is necessary apply. As a practical matter possible debates during the first examination will often centre on urgent individual measures and possible more important systemic problems identified.

31. Execution supervision continues in the light of the requirements of each case and the information available. The standard intervals, applicable unless the CM decides otherwise, are laid down in the CM's Rules. However, certain cases should be given priority in accordance with Rule 4 – mainly cases where the violation has caused grave consequences for the injured party or which reveal systemic problems.

32. As long as the issues of payment and of individual measures remain unresolved, cases thus in principle come back before the CM at each HR meeting. Also, cases revealing systemic problems requiring an action plan will in principle be pursued at each meeting until such a plan has been presented.

33. The CM may intervene in the course of the execution supervision to express concern and/or to make suggestions with respect to the execution. Such interventions may, depending on the circumstances, take different forms, such as declarations by the Chair, press releases, decisions adopted as a result of a debate or interim resolutions (see e.g. Rule 16). To be effective such texts may require translation into the language(s) of the state concerned and adequate and sufficiently wide distribution (see Recommendation (2008) 2).

34. Once the CM has established that the state concerned has taken all the measures necessary to abide by the judgment, it closes its examination of the case by adopting a final resolution (see Rule 17). Cases proposed for closure are first presented in a special section of the agenda (section 6).

F. Friendly settlements

35. The supervision of the respect of undertakings made by states in friendly settlements accepted by the ECtHR in the form of a judgment[12] follows in principle the same procedure as the one outlined above.

12. Protocol No. 14 would extend the CM's supervision to all friendly settlements, also those accepted by the ECtHR before admissibility in decisions (see Article 15 of Protocol No. 14).

IV. Improving the execution procedure: a permanent reform work

A. Main trends

1. The main ECHR developments leading to the present system, in place since the entry into force of Protocol No. 11 in 1998, have been briefly described in the preceding section.

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

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

3. The importance of these three lines of action has been regularly emphasised at ministerial meetings and also at the Council of Europe's Third Summit in Warsaw in 2005 and in the ensuing plan of action. A big part of the implementing work was entrusted to the steering committee on Human Rights (CDDH). Since 2000 the CDDH has presented a number of different proposals. These in particular led the CM to adopt:

- 5 Recommendations to states on various measures to improve the national implementation of the ECHR, including in the context of execution of judgments of the ECtHR;[13]
- Protocol No. 14, both improving the procedures before the ECtHR and providing the CM with certain new powers for the supervision of execution (in particular the possibility to lodge with the ECtHR requests for the interpretation of judgments and to bring infringement proceedings in case of refusal to abide by a judgment),[14] and
- New Rules for the supervision of the execution of judgments and of friendly settlements' clauses in 2000, with further important amendments in 2006 and, in parallel, the development of new working methods.

4. In the course of the reform work the problem of slowness and negligence in execution has attracted special attention.[15] The CM has also developed its responses to such situations, in particular by developing its practices as regards interim res-

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

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

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

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

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

The status of implementation of these recommendations has been evaluated with the assistance of the CDDH. Civil society was invited to assist the governmental experts in this evaluation (see doc. CDDH (2008) 08 Add.1). A certain follow-up also takes place in the context of the supervision of the execution of the Court's judgments.

In addition to these recommendations to member states, the Committee of Ministers has also adopted a number of resolutions addressed to the ECtHR:

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

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

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

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

olutions, replaced, in less serious cases, by detailed decisions supporting the pursuit of reforms or setting out the CM's concerns. The CM has also, in line *inter alia* with a number of proposals from the CDDH, taken a number of preventive measures to ensure, to the extent possible, that such situations do not occur.

5. Among special measures that have been brought forward figure the improving of databases with information on the execution situation in different cases, accessible *inter alia* to national decision makers, and the drafting of a vade mecum on practice and procedure in execution matters. The first elements of such a vade mecum, concentrating on issues relating to the payment of just satisfaction were transmitted to the CDDH in March 2008.

6. In addition, the CM has, since 2006, encouraged the development of special targeted programmes for the execution of judgments of the ECtHR (comprising for example legal expertise, round tables and training programmes) to assist respondent states in their efforts to adopt rapidly the measures required by the Court's judgments. On a more general level, national officials from a number of countries regularly come to Strasbourg for study visits, seminars or other events where the work of the CM on execution supervision is presented and special execution problems are discussed.

15. In the context of this work the Secretariat has also presented two memoranda on the issue.

7. Mention should also be made of the new Human Rights Trust Fund set up in 2008 on a Norwegian initiative by the Council of Europe, the Council of Europe Development Bank and Norway, joined by Germany and the Netherlands. The Fund shall in particular contribute to activities that *inter alia* aim to contribute to strengthening the sustainability of the ECtHR in the different areas covered by the CM's five abovementioned recommendations to improve the national implementation of the ECHR and by ensuring the full and timely national execution of the judgments of the ECtHR. The first execution projects will start in 2009.

8. In order to further promote the improvement of national execution procedures, the CM adopted in February 2008 a special recommendation to the Member States on efficient domestic capacity for rapid execution of the ECtHR's judgments (reproduced in Appendix 8).

9. Reflections on further means to improve execution continue not least in the light of the developments of the "pilot judgment" procedure before the ECtHR, the Wise Persons report, recommendations from the Parliamentary Assembly, the results of the reflection in the CDDH (see *inter alia* CDDH's report from its 67th meeting from 25 to 28 November 2008) and the experiences gained from the important new assistance programs which are being implemented, in particular within the framework of the new abovementioned Human Rights Trust Fund.

B. Developments of the CM's Rules and working methods

10. The need to ensure the efficiency of execution has, as noted above, had important repercussions over the years on the rules adopted by the CM for execution supervision. The changes in 2000 broke with the tradition of confidentiality which had earlier surrounded the supervision process and introduced a new rule providing for the publicity of all execution information submitted by the respondent state. The 2006 amendments reinforced transparency and provided also for a clear right for civil society to make submissions on different execution issues.

11. In parallel to the reforms of the CM's Rules, the CM drew up new working methods in 2004 in order to improve the efficiency of its activity.[16] The new working methods among other things foresee that respondent states should submit, wherever needed, action plans (with timetables) with respect to outstanding execution measures at the latest within 6 months from the date a judgment becomes final. At the same time, the Chair of the CM presented a number of proposals to help the Deputies identify which cases merited a debate in the CM.

12. The results of the new working methods are regularly reviewed in order to identify further possible improvements. This process has already led to a number of additional changes. For example, the number of HR meetings was limited to 4 in 2008. The aim is, in particular, to allow more time to ensure the quality of the examination required in view of the ever-increasing number of judgments submitted to the CM's supervision, more bilateral contacts between the authorities of

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

the respondent state and the Department for the Execution of Judgments of the ECtHR and increased assistance to states in order to accelerate the execution process. This development is intimately linked with the increase of the co-operation programs, in particular those engaged under the new Human Rights Trust Fund mentioned above.

13. The preparation and adoption of Protocol No. 14 also made it necessary to include certain new provisions in the 2006 Rules. These regulate the use of the CM's new powers to request interpretations of judgments and lodge infringement proceedings before the ECtHR and also take into account the fact that the Protocol entrusts the CM with the new responsibility of supervising the respect of friendly settlements accepted by the ECtHR also before admissibility, in simple decisions (and not only settlements concluded after admissibility, by judgment). These provisions will enter into force at the same time as Protocol 14 and will be applicable to all cases pending before the CM at that time.

V. List of abbreviations

General Acronyms

AR 2007	Annual Report 2007
Art.	Article
CDDH	Steering Committee for Human Rights
CM	Committee of Ministers
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GM	General Measures
HR	"Human Rights" meeting of the Ministers' Deputies
IM.	Individual Measures
Prot.	Protocol
Sec.	Section
Secretariat	The Secretariat of the Department for the Execution of Judgments of the European Court of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Country Codes[1]

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MLT	Malta
AUT	Austria	MDA	Moldova
AZE	Azerbaijan	MCO	Monaco
BEL	Belgium	MON	Montenegro
BIH	Bosnia and Herzegovina	NLD	Netherlands
BGR	Bulgaria	NOR	Norway
CRO	Croatia	POL	Poland
CYP	Cyprus	PRT	Portugal
CZE	Czech Republic	ROM	Romania
DNK	Denmark	RUS	Russian Federation
EST	Estonia	SMR	San Marino
FIN	Finland	SER	Serbia
FRA	France	SVK	Slovak Republic
GEO	Georgia	SVN	Slovenia
GER	Germany	ESP	Spain
GRC	Greece	SWE	Sweden
HUN	Hungary	SUI	Switzerland
ISL	Iceland	MKD	"The former Yugoslav Republic of Macedonia"
IRL	Ireland	TUR	Turkey
ITA	Italy	UKR	Ukraine
LVA	Latvia	UK	United Kingdom
LIE	Liechtenstein		

1. These codes result from the CMIS database, used by the Registry of the European Court of Human Rights, and reproduce the ISO 3166 codes, with a few exceptions (namely: Croatia = HRV; Germany = DEU; Lithuania = LTU; Montenegro = MNE; Romania = ROU; Switzerland = CHE; United Kingdom = GBR).

Appendices

Initial explanations

The appendices below contain a number of overviews and statistics relating to the CM's supervision of execution in 2008.

Some initial explanations may be useful in order to explain the information provided in the thematic overview (appendix 10) and the statistical part (appendix 1), in particular the references to the CM's meetings and to the sections on the agenda under which cases have been examined.

A statement in the thematic overview, "Last examination at the 1020-6.1 meeting", means that the case was examined at the 1020th "Human Rights" meeting of the Deputies held on 4-6/03/2008 in section 6.1, i.e. the section where cases are placed with a view to a decision on the question whether or not it appears possible on the basis of available information to close the examination of the case' and request the Secretariat to present a draft final resolution.

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

1. CM's HR meetings in 2008

Meeting No.	Meeting Dates	Decisions Dates
1020	04-16/03/2008	27/03/2008
1028	03-05/06/2008	25/06/2008
1035	16-17/09/2008	08/10/2008
1043	02-04/12/2008	09/01/2009

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

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

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

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

Sub-section 1.2 – Cases concerning general problems already solved

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

Sub-section 1.4 – Friendly settlements

Section 2 – New cases examined for the first time.

Sub-section 2.1 – Cases raising new problems

Sub-section 2.2 – Cases raising issues already examined by the Committee of Ministers ("repetitive cases")

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

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

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

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

Sub-section 4.1 – Supervision of individual measures only

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

Sub-section 4.3 – Special problems

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

Sub-section 5.1 – Legislative and/or regulatory changes

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

Sub-section 5.3 – Publication / dissemination

5.3.a – Cases in which supervision of measures concerning publication and dissemination has been taking place for less than a year

5.3.b – Cases in which supervision of measures concerning publication and dissemination has been taking place for more than a year

Sub-section 5.4 – Other measures

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

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

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

Appendix 1

Statistical data

The data presented in this chapter are based on the internal database of the Department for the Execution of Judgments of the European Court of Human Rights. The ongoing work to improve the performance of the internal database should allow in future more precision in the data relating to the qualitative distinction between cases: leading; clone/ repetitive; isolated.

This presentation highlights "**leading cases**". By this term, reference is made to cases which reveal a possible new systemic/general problem in a respondent state and which thus require the adoption of new general measures (although these may already have been taken by the time the judgment is given), more or less important according to the case(s). Leading cases include *a fortiori* pilot judgments delivered by the European Court of Human Rights.

In particular, the identification of leading cases allows some qualitative insight into the workload related to the supervision of execution of judgments, insofar as their number reflects that of systemic problems dealt with by the Committee of Ministers, regardless of the number of single cases. Three elements should however be kept in mind:

- The distinction between leading and isolated cases can be difficult to establish when the case is examined for the first time, it can thus for example happen that a case initially qualified as "isolated" is subsequently re-qualified as "leading" in the light of new information attesting to the existence of a general problem;
- Leading cases have different levels of importance. While some of them imply complex reforms, others might refer to problems already solved or to specific sub-aspects of a problem already under consideration;
- Leading cases refer to the general measures and do not, in principle, take into account individual measures issues.

"**Other cases**" include:

- "**Clone**" or "**repetitive**" cases, i.e. those relating to a systemic or general problem already raised before the Committee of Ministers in one or several leading cases; these cases are usually grouped together (with the leading case as long as this is pending) for the purposes of the Committee of Ministers' examination.
- "**Isolated**" cases, i.e. cases which do not fall within any of the above categories. In particular, the violations found in these cases appear linked only to the specific circumstances of each case.

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

Reference to the sections used for the presentation of cases to the Committee of Ministers is made in several places. The sections are explained in the introduction to the appendices.

Due to changes in the database made after the publication of the *Annual report 2007*, some figures for 2007 presented in the tables and charts below are different from those appearing in the 2007 report. Furthermore, the data presented in the 2008 report reflect the situation of cases over the period 1 January to 31 December, while the 2007 report mostly reflected the situation of cases effectively examined by the Committee of Ministers at its different HR meetings of the year. This fact reflected the earlier practice of producing statistics mainly on a meeting basis. As from 2008, statistics are regularly produced on a yearly basis.

General statistics

In 2008, the number of cases pending before the Committee of Ministers (see Table 1, *Evolution of pending cases*, p. 33) has continued to increase, although the number of new cases has remained relatively stable and constant over the period 2006 to 2008, with a small peak in 2007 (see Table 2.b, *New cases having become final between 1 January and 31 December*, p. 35).

The percentage of growth of pending cases is higher if cases in principle closed but still formally pending (i.e. those in which a final resolution has not yet been presented) are excluded.

It is important to underline, however, that the number of cases closed or in principle closed, whether a final resolution has been adopted or not in 2008, has considerably increased in 2008 as compared to 2007 (see Table 3.b, *Cases in principle closed during the year (under section 6) whether they have led to the adoption of a final resolution or not during the same year*, p. 37).

A. Pending cases

The trend of an increasing number of pending cases is confirmed whether the basis is the cases pending at the last HR meeting of the year[1] the date of which may be slightly different every year) or the cases pending at the end of the year.

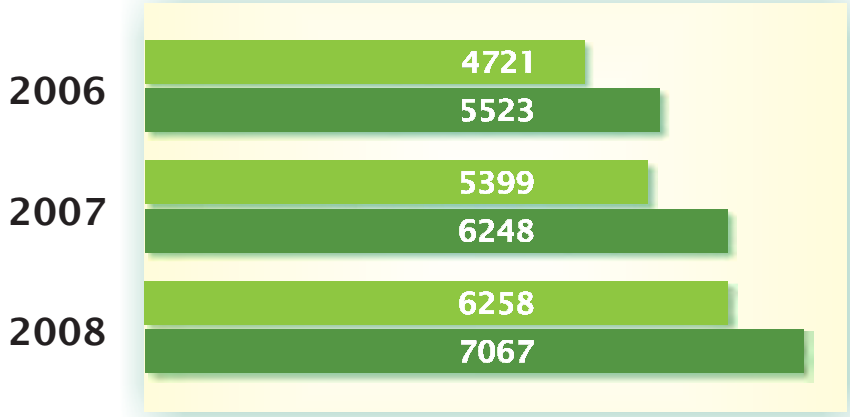
The cases pending at the last HR meeting of the year have increased by 13% both from 2006 to 2007 and from 2007 to 2008 (see Table 1.a on page 33, column 2). When excluding the cases in principle closed, under sections 1 and 6, the increase is respectively of 14% from 2006 to 2007 and of 16% from 2007 to 2008 (see Table 1.a on page 33, column 1).

If the basis of the number of cases pending at the end of the year is chosen, the figures are even more telling. The global number of such cases has increased by 17% from 2007 to 2008, against 11% from 2006 to 2007 (see Table 1.b on page 33, column 2). If the cases waiting for a final resolution under sections 1 and 6 are excluded, the increase is even bigger, respectively of 18% and 14% (see Table 1.b on page 33, column 1).

1. As in 2007, new cases are included as pending only if they have been registered on the agenda of the last HR meeting of the year.

Table 1: Evolution of pending cases

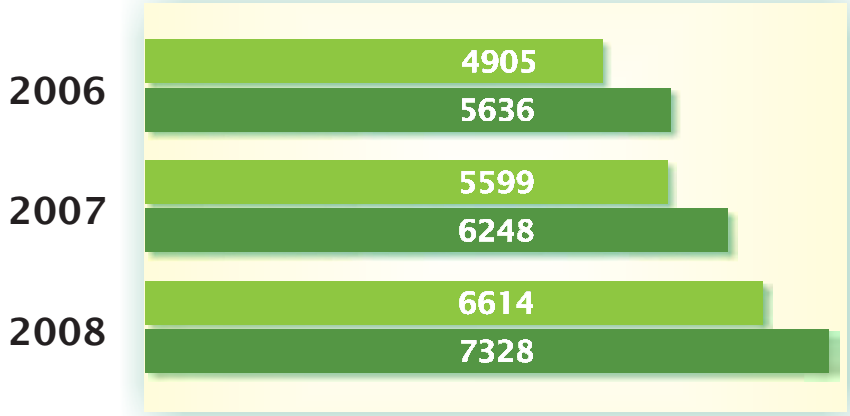
Table 1.a: Evolution of pending cases (on the basis of the cases pending at the last HR meeting of the year)



1 Cases pending at the last HR meeting of the year, except cases (under sections 1 and 6) whose examination is in principle closed.

2 Cases pending at the last HR meeting of the year, all sections

Table 1.b: Evolution of pending cases (on the basis of the cases pending at 31 December)



1 Cases pending at 31 December, except cases (under sections 1 and 6) whose examination is in principle closed.

2 Cases pending at 31 December, all sections

B. New cases

The input of new cases in which judgments became final during the calendar year (from 1 January to 31 December) was almost the same in 2008 as in 2006, with a small decrease by 2% from 2007 to 2008, i.e. from 1408 to 1384 (see Table 2.b on page 35). This decrease appears however temporary and explained by the delay between the date on which a new judgment is given and the date on which the Committee of Ministers is seized of its supervision: the decrease in the number of judgments (finding violations or accepting friendly settlements) given by the European Court of Human Rights in 2007 is thus reflected in the Committee of Ministers' figures for 2008, whereas the increase in such judgments in 2008 is likely to be reflected in the Committee of Ministers' 2009 statistics.[2]

The difference, between 2007 and 2008, in the number of cases examined by the Committee of Ministers at its HR meetings can be explained in the light of the fact that the scheduling of the meetings changed, with the effect that the deadlines for inscription of cases also changed.[3] That being said (see Table 2.b on page 35), the total number of new cases over the year has remained stable.

Tables 2.a and 2.b also include data on the number of new leading cases examined by the Committee of Ministers at its HR meetings: the proportion of such cases remains reasonably stable, with a slight increase from 15% in 2007 to 16% in 2008. This figure may be compared to the average for the period 2000-2005 which was approximately 12%.

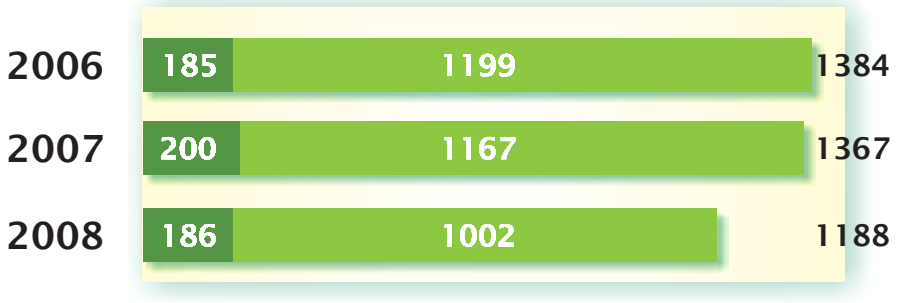
When considering cases which became final between 1 January and 31 December, the proportion of leading cases has not significantly changed over the last three years. The slight decrease in 2008 has purely technical reasons. New cases which became final after September 2008 had not yet been presented to the Committee of Ministers at the date the statistics were elaborated. They are by default registered as isolated cases. The process of establishing which of these cases may be leading has not yet been completed. As a result the number of leading cases for 2008 is likely to increase once this work has been concluded.

2. Source : Annual report 2007 of the European Court of Human Rights, Council of Europe; and Annual report 2008, provisional edition (January 2009).

3. Indeed, for administrative reasons linked to the preparation of HR meetings, the new judgments examined by the Committee of Ministers in 2007 were those which became final between 27 October 2006 and 22 October 2007, while those considered for 2008 were judgments which became final between 23 October 2007 and 10 September 2008. This also explains the increased difference which can be observed for 2008 between the total number of new cases examined by the Committee of Ministers and the number of judgments which became final by 31 December 2008 (see Table 2 on page 35).

Table 2: New cases

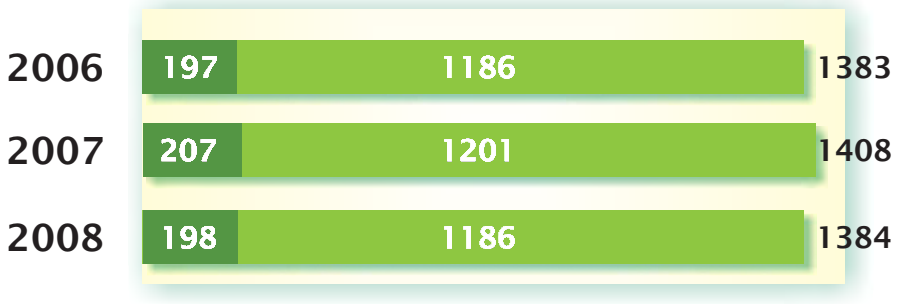
Table 2.a: New cases examined by the Committee of Ministers at its HR meetings of the year



1 New clone and isolated cases examined by the Committee of Ministers during the year (section 2).

2 New leading cases examined by the Committee of Ministers during the year (section 2).

Table 2.b: New cases having become final between 1 January and 31 December



1 New clone and isolated cases in which the judgments became final between 1 January and 31 December.

2 New leading cases in which the judgments became final between 1 January and 31 December (approx.).

C. Cases closed

The figure, in absolute terms, of leading cases closed by final resolution decreased slightly in 2008 as compared to 2007, i.e. by 10% (see Table 3.a on page 37). The number of leading cases closed by final resolution remains nonetheless in 2008 approximately three times as many as in 2006.

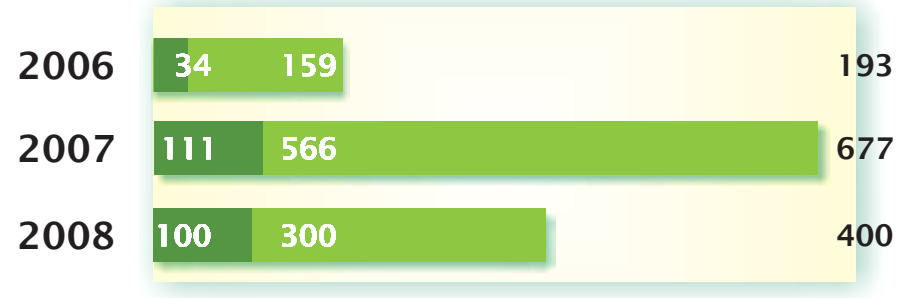
The substantial number of cases closed in 2007 (see Table 3.a on page 37), some 41% more than in 2008, is to a large extent explained by the large number of clone cases which were closed as a result of the adoption of the general measures required in the leading cases.

The number of cases in which the Committee of Ministers has taken a decision in principle to close its examination (and in which only the preparation of a final resolution is awaited) which had been decreasing from 2006 to 2007, more than doubled from 2007 to 2008, increasing by 120% (see Table 3.b on page 37).

It should be observed that the data for 2006 and 2007 do not include cases whose examination was closed during the year without requiring a detailed review under section 6.1 (usually for repetitive cases or friendly settlements) because such data were not available before 2008.

Table 3: Cases closed

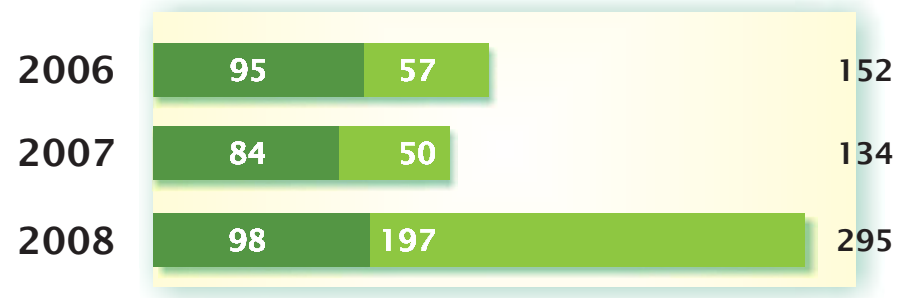
Table 3.a: Cases closed by the adoption of a final resolution



1 Clone or isolated cases closed by a final resolution (section 1) during the year.

2 Leading cases closed by a final resolution (section 1) during the year.

Table 3.b: Cases in principle closed during the year (under section 6) whether they have led to the adoption of a final resolution or not during the same year



1 Clone or isolated cases in which the examination was closed during the year (section 6), having led the same year to the adoption of a final resolution or not.

2 Leading cases in which the examination was closed during the year (section 6), having led the same year to the adoption of a final resolution or not.

Detailed statistics for 2008 (period 1 January-31 December 2008)

The data below present an overview of a number of execution issues related to the year 2008.[4]

- cases closed between 1 January 2008 and 31 December 2008 and cases awaiting a final resolution at 31 December 2008
- cases pending before the Committee of Ministers at 31 December 2008
- new cases which became final from 1 January 2008 to 31 December 2008
- respect of payment deadlines expiring in 2008
- just satisfaction awarded in new cases which became final between 1 January 2008 and 31 December 2008
- length[5] of execution of leading cases pending before the Committee of Ministers at 31 December 2008 (less than 2 years; between 2 and 5 years; more than 5 years)

4. The data for 2007 are on some points different from those appearing in the *Annual report* 2007. This latter report reflected in a number of instances the situation of cases effectively examined by the Committee of Ministers during its HR meetings of the year and not the situation during the calendar year. In order to make the data comparable, the basis of the 2007 statistics in this report has been modified and will henceforth cover the calendar year from 1 January to 31 December.

5. Calculated on the basis of the date at which the judgment became final.

A. Cases closed between 1 January 2008 and 31 December 2008 or awaiting a final resolution at 31 December 2008

When all the information which appears necessary for the closure of a case is available, the case is presented under section 6 of the agenda to the Committee of Ministers, which assesses whether a final resolution may be prepared. If the information is deemed satisfactory, the Committee of Ministers mandates the Secretariat to prepare a draft final resolution. At present, final resolutions adopted in a certain year may relate to cases in which the closure decision was taken before the year in question.

Table 4 on page 39 provides an overview of, respectively, all the cases and the leading cases in which the information received during the year led the Committee of Ministers to conclude that all execution measures had been taken and only the preparation and adoption of a final resolution was required. In certain of these cases, a final resolution has already been adopted before the end of the year.

Table 5 on page 40 presents, state by state, the number of:

a. All cases – whether leading or not – closed by a final resolution between 1 January and 31 December 2008 – irrespective of whether their examination was closed in 2008 or earlier.[6]

b. All cases – whether leading or not – in which examination was closed between 1 January and 31 December 2008 and the Committee of Ministers has requested the preparation of a final resolution. This list overlaps to a certain extent with the cases listed in column "a", insofar as cases whose examination has been closed in 2008 may also have been the subject of a final resolution adopted the same year.

c. All cases awaiting the adoption of a final resolution at 31 December 2008. This list includes some of the cases listed in column "b" as well as cases where the decision to close the examination was taken before 2008.

It should be noted that cases in principle closed, i.e. already examined under section 6 and awaiting only the presentation of a draft final resolution, are excluded from the statistics below relating to pending cases (Tables 6-8, page 43 *ff*) and to the length of execution of leading cases (Tables 20-23, page 62 *ff*).

6. Final resolutions for cases considered by the Committee of Ministers at the 1043rd HR meeting, in December 2008, appear with a "2009" reference number because, for administrative reasons, they were formally adopted on 9 January 2009.

Table 4: Cases whose examination was in principle closed in 2008, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2008[7]

Table 4.a: Total cases whose examination was in principle closed in 2008, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2008

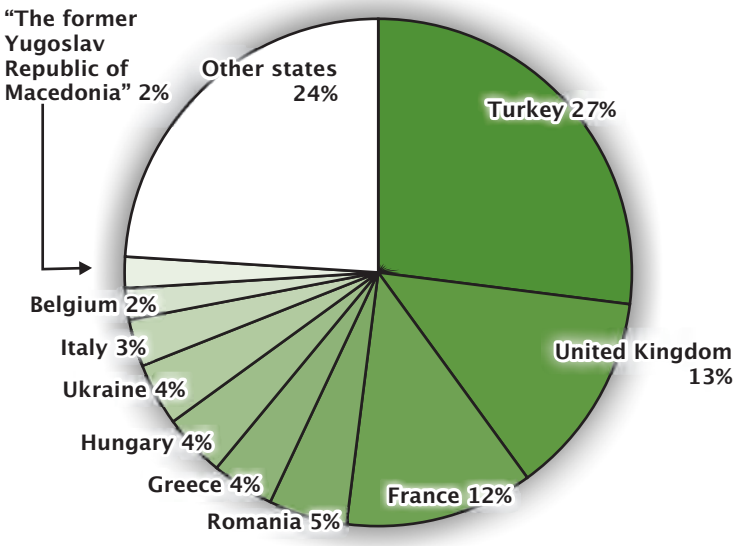
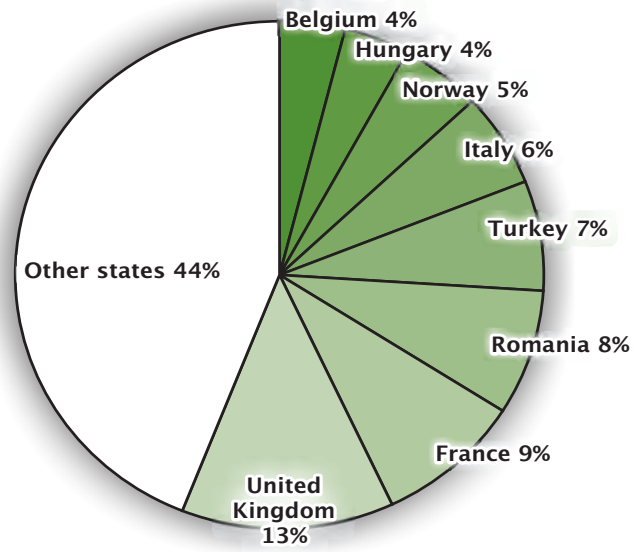


Table 4.b: Total leading cases in which examination was in principle closed in 2008, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2008



7. For data see Table 5, *Leading cases/other cases – by state (cases closed during the HR meetings in 2008 and total number of cases awaiting a final resolution at 31 December 2008)*, p. 40.

Table 5: Leading cases/other cases – by state (cases closed during the HR meetings in 2008 and total number of cases awaiting a final resolution at 31 December 2008)

State	A. Cases closed by a final resolution in 2008 (section 1)		B. Cases where examination ended in 2008 (sections 6.1 and 6.2)		C. Cases awaiting a final resolution at 31 December 2008 (examination closed in 2008 or earlier) (section 6.2)
	Leading cases	Other cases	Leading cases	Other cases	
Albania					
Andorra					
Armenia	1	0			
Austria	2	1			51
Azerbaijan					
Belgium	1		4	3	35
Bosnia and Herzegovina			1	1	1
Bulgaria	1	1	2	4	9
Croatia	1	8		5	7
Cyprus					1
Czech Republic		8	3	1	10
Denmark		1		1	4
Estonia			3	0	5
Finland		1	2	3	15
France	23	95	9	27	57
Georgia					
Germany	1		1		18
Greece	4	4	3	10	30
Hungary	2	1	4	7	10
Iceland	1				
Ireland					2
Italy	11	23	6	4	38
Latvia				1	8
Liechtenstein	1				
Lithuania			1	1	9
Luxembourg			1		7
Malta					
Moldova	1	3	1	2	3
Monaco					
Montenegro					
Netherlands	1		3	3	25
Norway	5	1	5		3
Poland	2		3	2	33
Portugal	1	3	3		11
Romania	4	2	8	6	17
Russian Federation	7	3	3	2	5
San Marino					
Serbia					
Slovak Republic	2		3		26
Slovenia			1		4
Spain	1	1	2		3
Sweden	2	4	1	1	3
Switzerland	6		2	2	11

Table 5: Leading cases/other cases – by state (cases closed during the HR meetings in 2008 and total number of cases awaiting a final resolution at 31 December 2008)

State	A. Cases closed by a final resolution in 2008 (section 1)		B. Cases where examination ended in 2008 (sections 6.1 and 6.2)		C. Cases awaiting a final resolution at 31 December 2008 (examination closed in 2008 or earlier) (section 6.2)
	Leading cases	Other cases	Leading cases	Other cases	
"The former Yugoslav Republic of Macedonia"	1	3	2	5	3
Turkey	12	112	7	72	130
Ukraine	3	4	1	10	8
United Kingdom	3	21	12	25	111
TOTAL	**100**	**300**	**97**	**198**	**713**

B. Cases pending before the Committee of Ministers at 31 December 2008

As long as a final resolution has not been adopted, a case remains formally pending before the Committee of Ministers. The tables in this chapter present however only the cases where execution measures are still required, according to the information available at 31 December, or in which the measures taken are still under assessment. These tables do not include therefore the cases in principle closed, awaiting a final resolution under sections 1 or 6.

The data for 2008 include all new judgments which became final by 31 December 2008.[8] However, as a number of these cases had not been examined yet by the Committee of Ministers at that time, not all leading cases have been identified.

The figures in Tables 6 to 8 (outer rings) refer to the data in Table 9 on page 46, i.e. the situation at 31 December 2008.[9] The figures presented in the inner rings in Tables 6 and 7 refer to the data in the *Annual report* 2007.

The proportions of leading cases pending for execution before the Committee of Ministers in respect of the different contracting states have not much changed from 2007 to 2008. The number of leading cases pending against Turkey, France and Italy has, however, slightly decreased; while Bulgaria, Ukraine and Moldova have seen their number of pending leading cases grow in 2008, compared to the previous year.

When considering the global number of leading, clone and isolated cases, some bigger difference can be noted. Cases against Italy represented 37% of the total number of pending cases in 2008, while they were 45% in 2007: this is due in particular to a decrease in the number of clone and isolated cases, which constituted nonetheless 98% of the Italian cases, as in 2007. Other states, on the contrary, have had a growing number of pending cases (Turkey, Poland, Russian Federation, Romania, Greece, Bulgaria), but the data concerning leading cases (in Table 6 on page 43) suggest that this growth is mostly related to clone and isolated cases, not raising new issues in respect of the adoption of general measures.

8. This type of case was not included in the data for 2007, but will henceforth be included in order to make the statistics fully comparable.

9. It should also be noted that the large number of cases concerning certain countries is mainly explained by the large number of clone cases. Thus, if Italy e.g. has a total of 2392 cases, representing some 37% of the total of cases pending for execution, it has to be borne in mind that more than 2000 of these cases relate to one single problem, the excessive length of judicial proceedings.

Table 6: Pending leading cases by state at 31 December 2008 and at 31 December 2007 in relation to the total number of pending cases

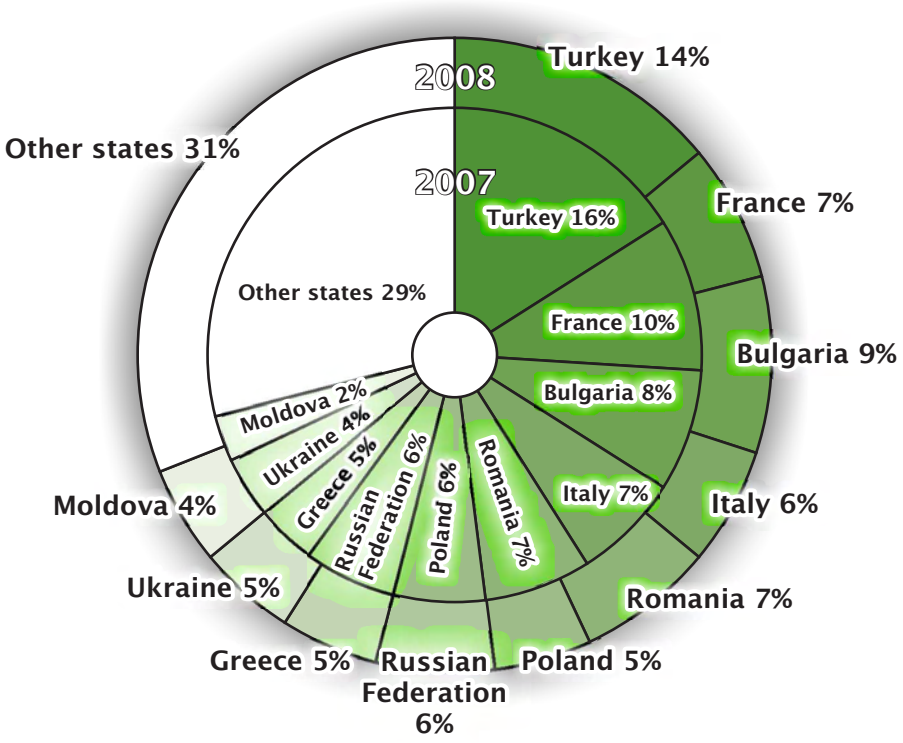


Table 7: Total cases by state at 31 December 2008 and at 31 December 2007 in relation to the total number of pending cases at the same dates

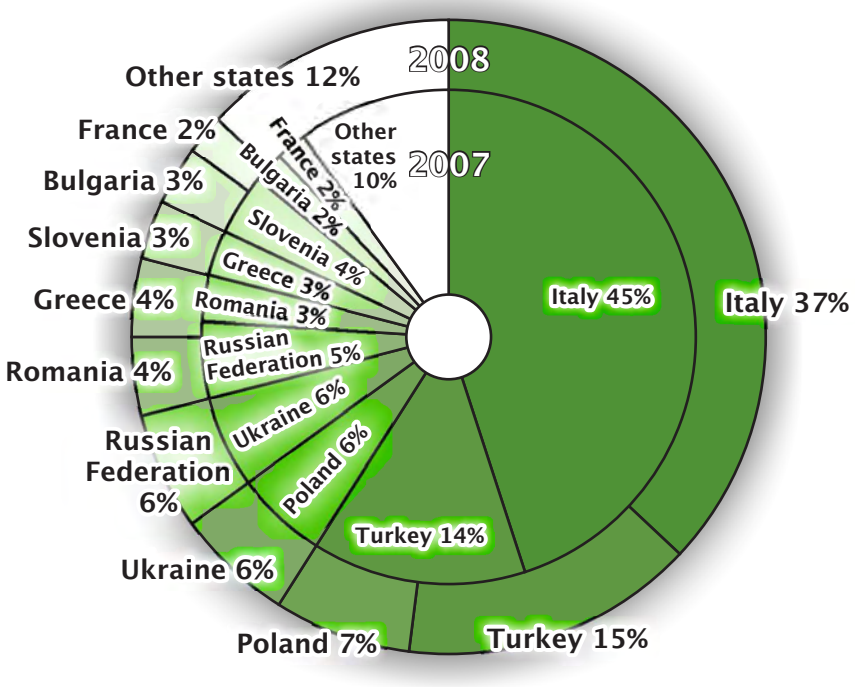


Table 8: Types of case pending before the Committee of Ministers at 31 December 2008 by state (in parentheses, the total number of cases)

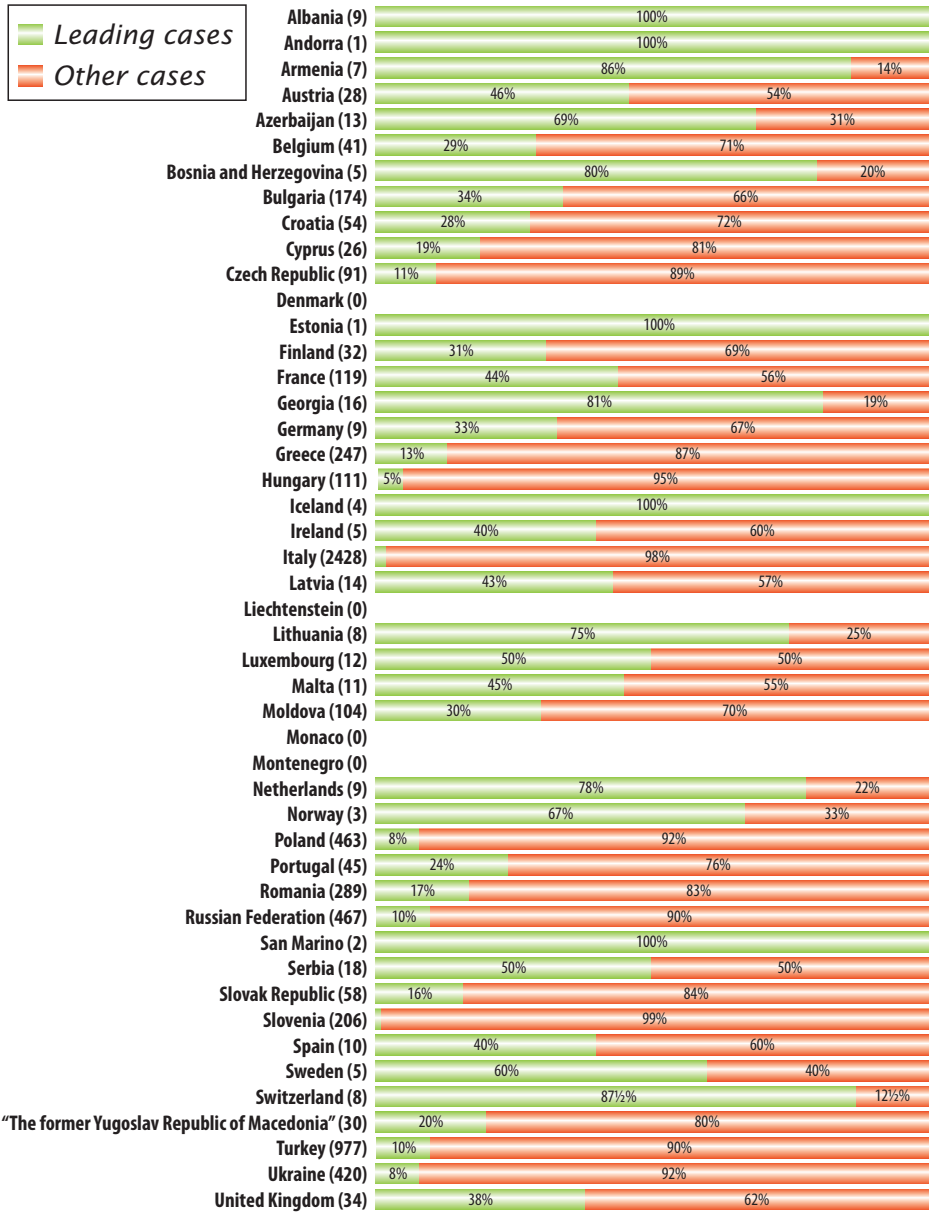


Table 9: Types of case pending before the Committee of Ministers at 31 December 2008 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6)

State	Leading cases		Clone/repetitive or isolated cases		Cases by state	
	Number	% of all cases	Number	% of all cases	Number	% of all cases against all states
Albania	9	100.00%	0		9	0.14%
Andorra	1	100.00%	0		1	0.02%
Armenia	6	85.71%	1	14.29%	7	0.11%
Austria	13	46.43%	15	53.57%	28	0.42%
Azerbaijan	9	69.23%	4	30.77%	13	0.20%
Belgium	12	29.27%	29	70.73%	41	0.62%
Bosnia and Herzegovina	4	80.00%	1	20.00%	5	0.08%
Bulgaria	60	34.48%	114	65.52%	174	2.63%
Croatia	15	27.78%	39	72.22%	54	0.82%
Cyprus	5	19.23%	21	80.77%	26	0.39%
Czech Republic	10	10.99%	81	89.01%	91	1.38%
Denmark	0		0		0	0.00%
Estonia	1	100.00%	0		1	0.02%
Finland	10	31.25%	22	68.75%	32	0.48%
France	52	43.70%	67	56.30%	119	1.80%
Georgia	13	81.25%	3	18.75%	16	0.24%
Germany	3	33.33%	6	66.67%	9	0.14%
Greece	33	13.36%	214	86.64%	247	3.74%
Hungary	5	4.50%	106	95.50%	111	1.68%
Iceland	4	100.00%	0		4	0.06%
Ireland	2	40.00%	3	60.00%	5	0.08%
Italy	39	1.61%	2389	98.39%	2428	36.72%
Latvia	6	42.86%	8	57.14%	14	0.21%
Liechtenstein	0		0		0	0.00%
Lithuania	6	75.00%	2	25.00%	8	0.12%
Luxembourg	6	50.00%	6	50.00%	12	0.18%
Malta	5	45.45%	6	54.55%	11	0.17%
Moldova	31	29.81%	73	70.19%	104	1.57%
Monaco	0		0		0	0.00%
Montenegro	0		0		0	0.00%
Netherlands	7	77.78%	2	22.22%	9	0.14%
Norway	2	66.67%	1	33.33%	3	0.05%
Poland	38	8.21%	425	91.79%	463	7.00%
Portugal	11	24.44%	34	75.56%	45	0.68%
Romania	50	17.30%	239	82.70%	289	4.37%
Russian Federation	46	9.85%	421	90.15%	467	7.06%
San Marino	2	100.00%	0		2	0.03%
Serbia	9	50.00%	9	50.00%	18	0.27%
Slovak Republic	9	15.52%	49	84.48%	58	0.88%
Slovenia	2	0.97%	204	99.03%	206	3.12%
Spain	4	40.00%	6	60.00%	10	0.15%
Sweden	3	60.00%	2	40.00%	5	0.08%
Switzerland	7	87.50%	1	12.50%	8	0.12%
"The former Yugoslav Republic of Macedonia"	6	20.00%	24	80.00%	30	0.45%
Turkey	98	10.03%	879	89.97%	977	14.77%
Ukraine	32	7.62%	388	92.38%	420	6.35%
United Kingdom	12	35.29%	22	64.71%	34	0.51%
TOTAL	**698**	**11%**	**5916**	**89%**	**6614**	**100%**

C. New cases which became final between 1 January and 31 December 2008

As indicated in the presentation of the general statistics, the process of identifying leading cases in 2008 has not yet been finalised for the most recent judgments (i.e. those which became final after September 2008), and the figures presented are thus likely to increase. The figures for 2007 are, on the other hand, definitive as this identification process has been completed for all 2007 judgments.

The figures in Tables 10 to 12 (outer rings) refer to the data in Table 13 on page 50. The figures in the inner rings of Tables 10 and 11 refer to 2007 data.

The proportion of new leading cases increased in 2008 for Romania, Bulgaria, Ukraine, United Kingdom, Italy and Moldova. It decreased for Turkey, France, Poland and the Russian Federation and has remained stable for Greece.

When considering all new cases which became final in 2008, without any distinction between leading and other types of cases, the states with an increased proportion of new cases, as compared to 2007, were in particular the Russian Federation, Romania, Moldova, Greece, Hungary, Italy and the United Kingdom. Bulgaria, France, Turkey and Ukraine had a reduced proportion of new cases, with Poland keeping in 2008 the same proportion of new cases as in 2007.

Table 10: New leading cases per state in 2008 and in 2007 in relation to the total number of new leading cases which became final between 1 January and 31 December

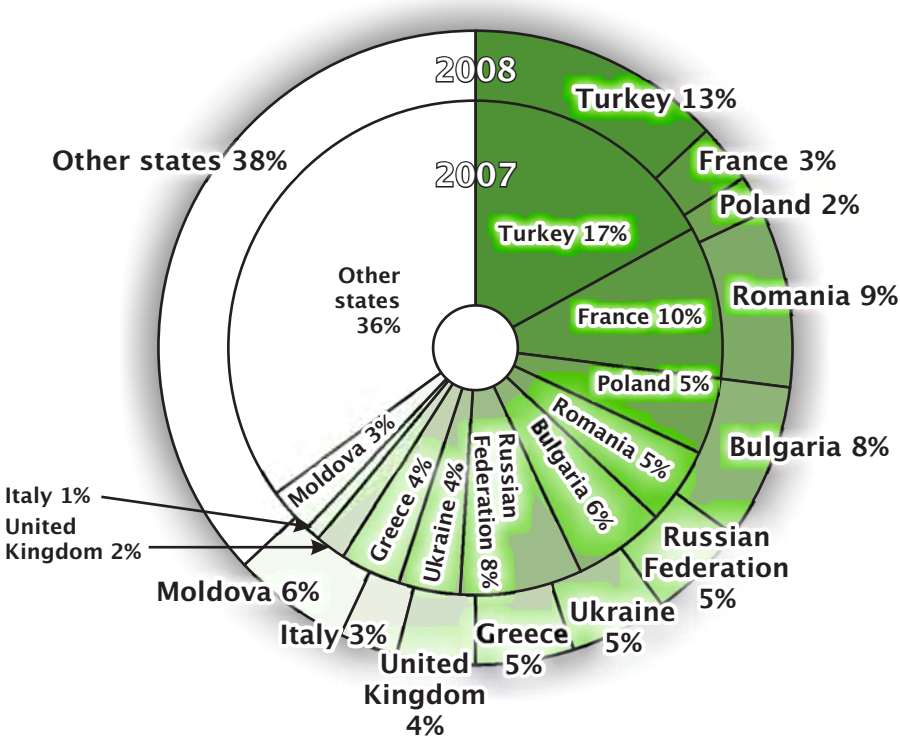


Table 11: Total of new cases per state which became final in 2008 and in 2007 in relation to the total number of new cases

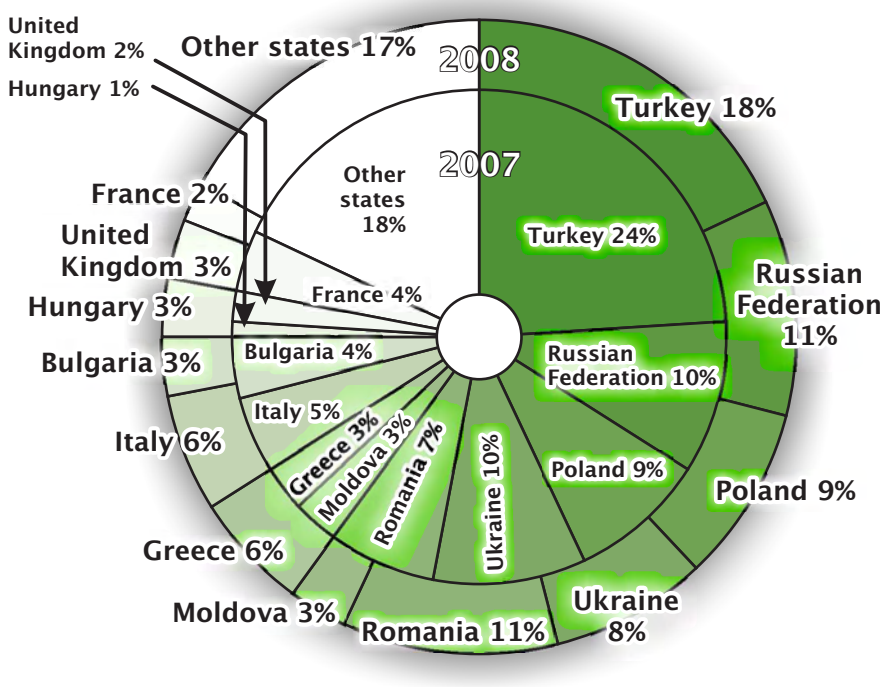


Table 12: Types of new case which became final in 2008 by state (leading, clone/repetitive, isolated cases) (in parentheses, the total number of cases)

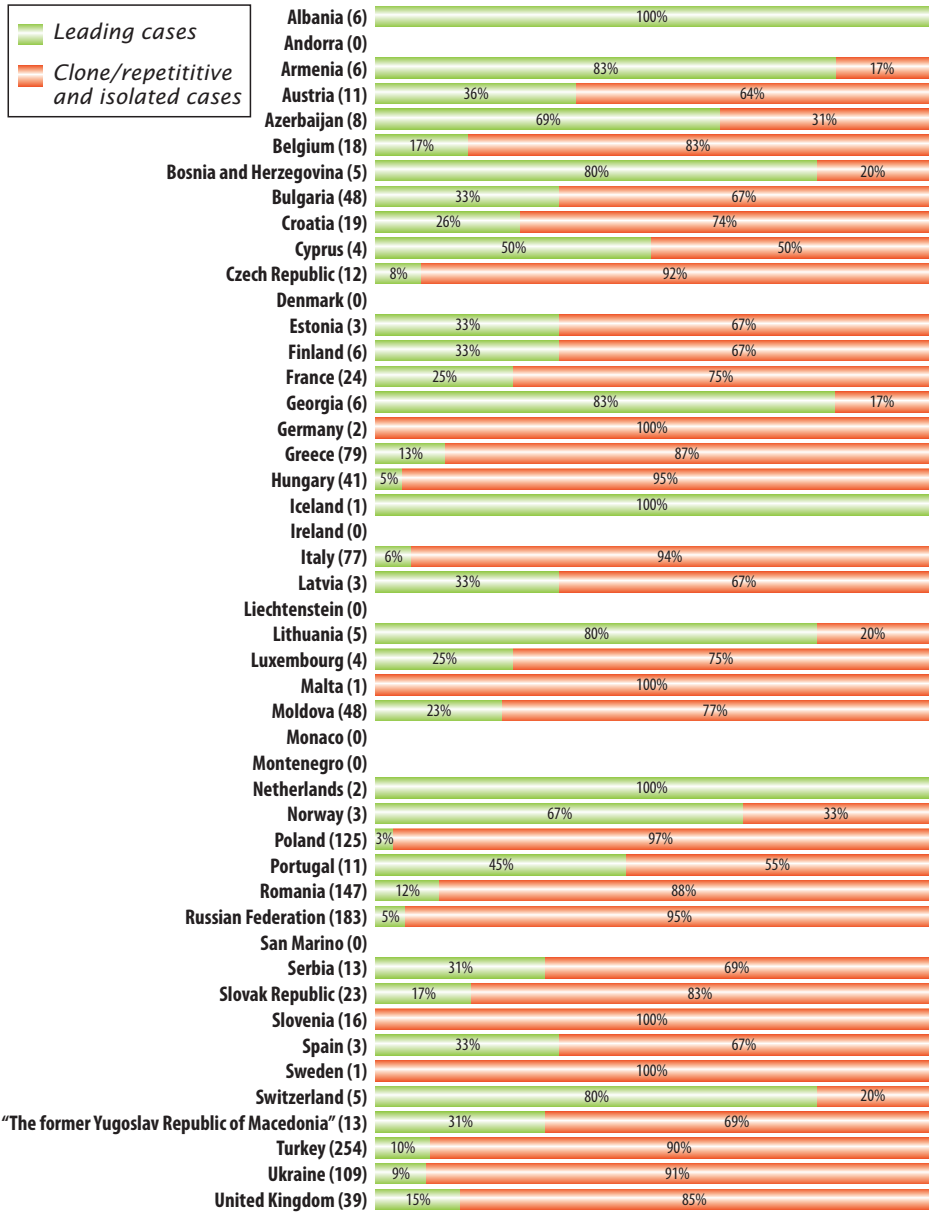


Table 13: Types of new case which became final in 2008 – by state – details

State	Leading cases		Clone/repetitive or isolated cases		Cases by state	
	Number	% of all cases	Number	% of all cases	Number	% of all cases against all states
Albania	6	100.00%	0	0.00%	6	0.43%
Andorra					0	0.00%
Armenia	5	83.33%	1	16.67%	6	0.43%
Austria	4	36.36%	7	63.64%	11	0.79%
Azerbaijan	5	62.50%	3	37.50%	8	0.58%
Belgium	3	16.67%	15	83.33%	18	1.30%
Bosnia and Herzegovina	4	80.00%	1	20.00%	5	0.36%
Bulgaria	16	33.33%	32	66.67%	48	3.47%
Croatia	5	26.32%	14	73.68%	19	1.37%
Cyprus	2	50.00%	2	50.00%	4	0.29%
Czech Republic	1	8.33%	11	91.67%	12	0.87%
Denmark					0	0.00%
Estonia	1	33.33%	2	66.67%	3	0.22%
Finland	2	33.33%	4	66.67%	6	0.43%
France	6	25.00%	18	75.00%	24	1.73%
Georgia	5	83.33%	1	16.67%	6	0.43%
Germany			2	100.00%	2	0.14%
Greece	10	12.66%	69	87.34%	79	5.71%
Hungary	2	4.88%	39	95.12%	41	2.96%
Iceland	1	100.00%			1	0.07%
Ireland					0	0.00%
Italy	5	6.49%	72	93.51%	77	5.56%
Latvia	1	33.33%	2	66.67%	3	0.22%
Liechtenstein					0	0.00%
Lithuania	4	80.00%	1	20.00%	5	0.36%
Luxembourg	1	25.00%	3	75.00%	4	0.29%
Malta			1	100.00%	1	0.07%
Moldova	11	22.92%	37	77.08%	48	3.47%
Monaco					0	0.00%
Montenegro					0	0.00%
Netherlands	2	100.00%			2	0.14%
Norway	2	66.67%	1	33.33%	3	0.22%
Poland	4	3.20%	121	96.80%	125	9.03%
Portugal	5	45.45%	6	54.55%	11	0.79%
Romania	17	11.56%	130	88.44%	147	10.62%
Russian Federation	10	5.46%	173	94.54%	183	13.22%
San Marino					0	0.00%
Serbia	4	30.77%	9	69.23%	13	0.94%
Slovak Republic	4	17.39%	19	82.61%	23	1.66%
Slovenia			16	100.00%	16	1.16%
Spain	1	33.33%	2	66.67%	3	0.22%
Sweden			1	100.00%	1	0.07%
Switzerland	4	80.00%	1	20.00%	5	0.36%
"The former Yugoslav Republic of Macedonia"	4	30.77%	9	69.23%	13	0.94%
Turkey	25	9.84%	229	90.16%	254	18.35%
Ukraine	10	9.17%	99	90.83%	109	7.88%
United Kingdom	6	15.38%	33	84.62%	39	2.82%
TOTAL	**198**	**14%**	**1186**	**86%**	**1384**	**100.00%**

D. Respect of payment deadlines expiring in 2008

If the European Court of Human Rights finds that there has been a violation of the European Convention on Human Rights, it can afford just satisfaction to the injured party. The payment of certain sums can also be provided for by a judgment taking note of a friendly settlement between the parties. In both cases, payment is usually expected within three months after the judgment has become final and default interest can be imposed in case of late payment.

In certain cases, the European Court of Human Rights reserves the issue of just satisfaction and delivers a judgment on this matter at a subsequent date. The statistics presented in this chapter include the judgments on just satisfaction which became final during the year.

The data on respect of payment deadlines concern all cases in respect of which just satisfaction awards became due for payment in 2008. Cases where no award was made, as well as cases where the deadline expired before 1 January 2008 or after 31 December 2008, are excluded. The figures in Tables 14 and 15 refer to the data in Table 16 on page 54, as regards 2008 (outer ring); for the data concerning 2007 (inner ring) see the *Annual report* 2007.

It should be noted that the data presented reflect only the information received and assessed up to 31 December.

Accordingly, where confirmation of payment has been received and the terms of the judgment regarding just satisfaction appear to have been respected, the case is identified as "paid within the deadlines".

Cases are classified as "paid after the deadline" where the confirmation of payment received shows that the payment was made by the end of the year, although not within the deadline for payment set by the judgment. It can be noted that the payments made after the deadlines are the exception: 7% in 2007 and 5% in 2008.

All other cases, where no information has been received, is incomplete or still under assessment are shown as "Pending for control of payment" according to the data available at 31 December. In particular, as payment confirmation may take some time, such confirmation remains expected in cases where the payment deadline expired toward the end of the year. This is particularly evident in Table 14 on page 52, where the difference, from 2007 to 2008, in the percentage of cases pending for control of payment results from the fact that a large number of payment confirmations remained to be assessed at the end of 2008, in particular because of the substantial number of new cases, which could not be examined at the last meeting of 2008 although their deadlines for payment expired before the end of 2008.

Table 14: Respect of payment deadlines: situation at 31 December 2008 and at 31 December 2007

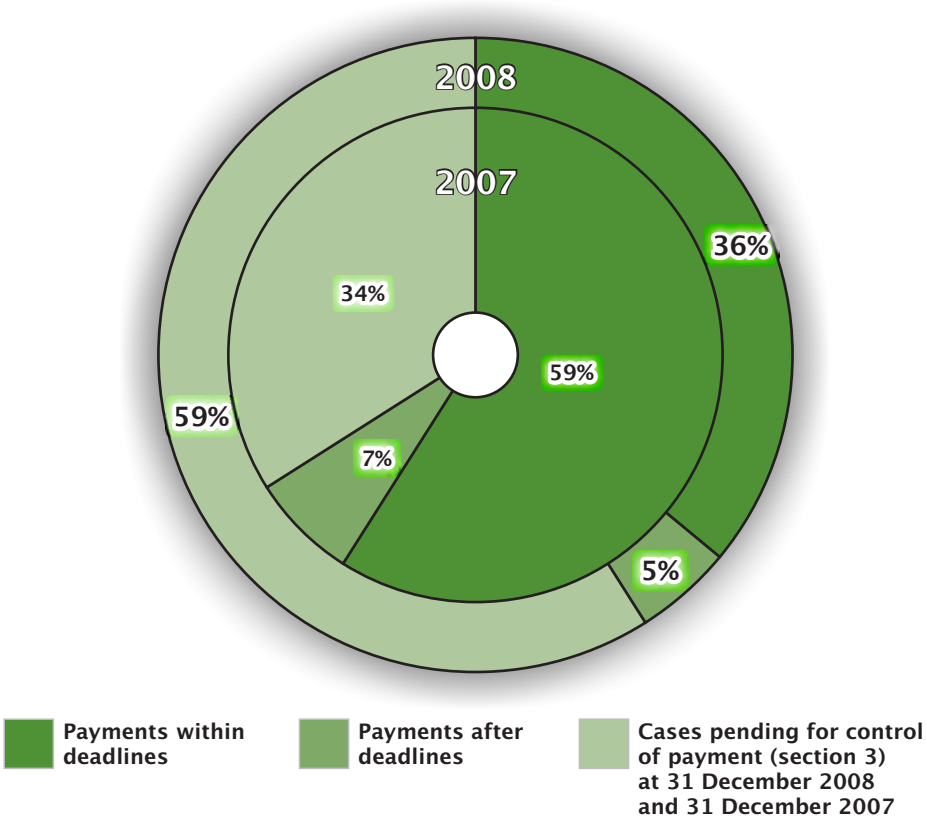


Table 15: Respect of payment deadlines by states: situation at 31 December 2008 (in parentheses, the total number of cases where the deadline for payment expired in 2008)

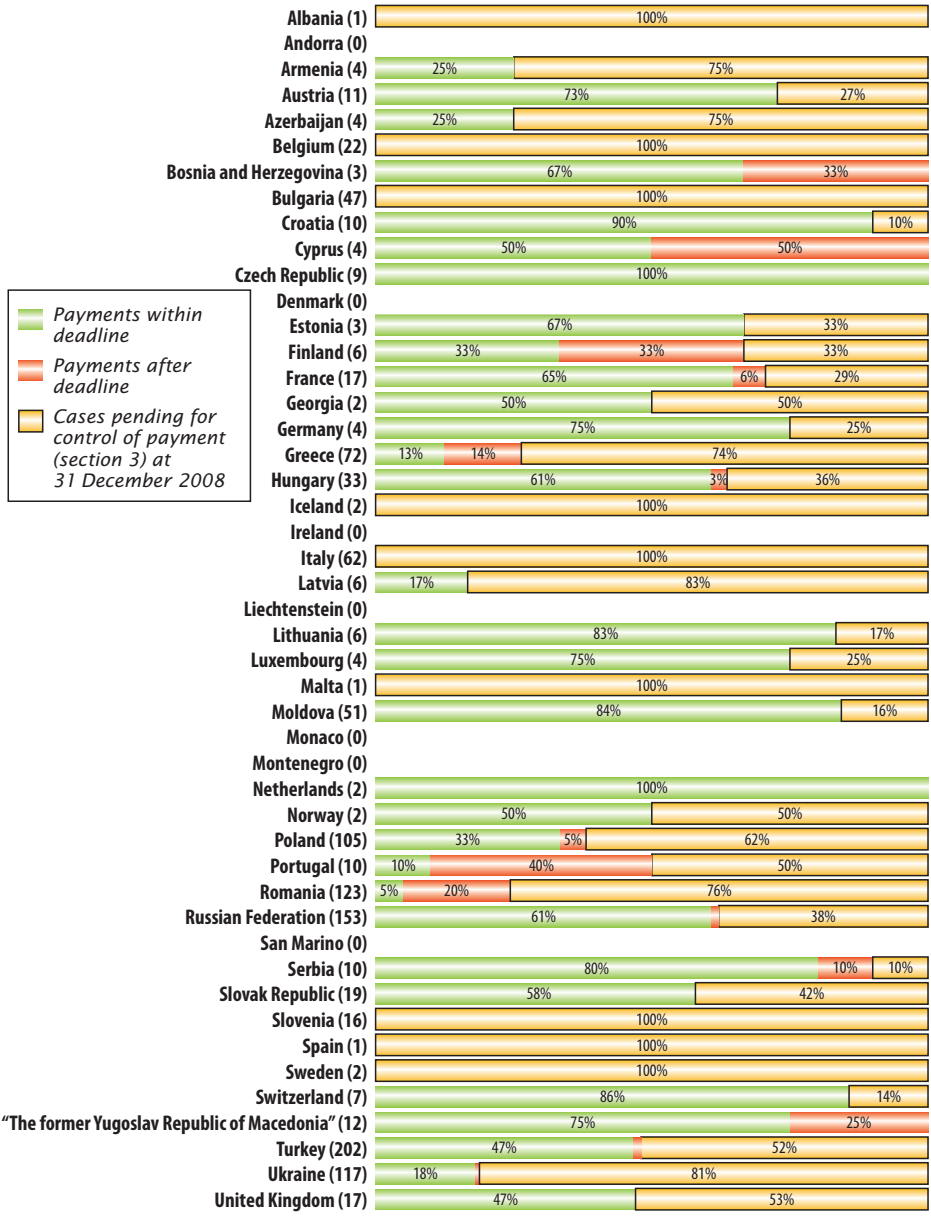


Table 16: Respect of payment deadlines by state – detail: situation at 31 December 2008 (on the basis of all cases in respect of which the deadline for payment expired in 2008)

State	Payments within deadline		Payments after deadline		Cases pending for control of payment (section 3) at 31 December 2008		Total
	Number	%	Number	%	Number	%	
Albania	0		0		1	100%	1
Andorra	0		0		0		0
Armenia	1	25%	0		3	75%	4
Austria	8	73%	0		3	27%	11
Azerbaijan	1	25%	0		3	75%	4
Belgium	0		0		22	100%	22
Bosnia and Herzegovina	2	67%	1		0		3
Bulgaria	0		0		47	100%	47
Croatia	9	90%	0		1	10%	10
Cyprus	2	50%	0		2	50%	4
Czech Republic	8	100%	0		0		8
Denmark	0		0		0		0
Estonia	2	67%	0		1	33%	3
Finland	2	33%	2	33%	2	33%	6
France	11	65%	1	6%	5	29%	17
Georgia	1	50%	0		1	50%	2
Germany	3	75%	0		1	25%	4
Greece	9	13%	10	14%	53	74%	72
Hungary	20	61%	1	3%	12	36%	33
Iceland	0		0		2	100%	2
Ireland	0		0		0		0
Italy	0		0		62	100%	62
Latvia	1	17%	0		5	83%	6
Liechtenstein	0		0		0		0
Lithuania	5	83%	0		1	17%	6
Luxembourg	3	75%	0		1	25%	4
Malta	0		0		1	100%	1
Moldova	43	84%	0		8	16%	51
Monaco	0		0		0		0
Montenegro	0		0		0		0
Netherlands	2	100%	0		0		2
Norway	1	50%	0		1	50%	2
Poland	35	33%	5	5%	65	62%	105
Portugal	1	10%	4	40%	5	50%	10
Romania	6	5%	24	20%	93	76%	123
Russian Federation	93	61%	2	1%	58	38%	153
San Marino	0		0		0		0
Serbia	8	80%	1	10%	1	10%	10
Slovak Republic	11	58%	0		8	42%	19
Slovenia	0		0		16	100%	16
Spain	0		0		1	100%	1
Sweden	0		0		2	100%	2
Switzerland	6	86%	0		1	14%	7
"The former Yugoslav Republic of Macedonia"	9	75%	3	25%	0		12
Turkey	94	47%	3	1%	105	52%	202
Ukraine	21	18%	1	1%	95	81%	117
United Kingdom	8	47%	0		9	53%	17
TOTAL	**426**	**36%**	**58**	**5%**	**697**	**59%**	**1181**

E. Just satisfaction awarded in cases which became final between 1 January and 31 December 2008

The data in this chapter take into account payment awards in all new judgments, including those on just satisfaction, which became final in 2008.[10] The figures in Tables 17 and 18 refer to the data in Table 19 on page 58.

It should be noted that the sums are those indicated in the judgment – usually in euros – and do not include default interest. In order to facilitate comparison, sums awarded in currencies other than the euro have also been converted into euros. For the purposes of these statistics the rate used was that applicable at 31 December 2008.

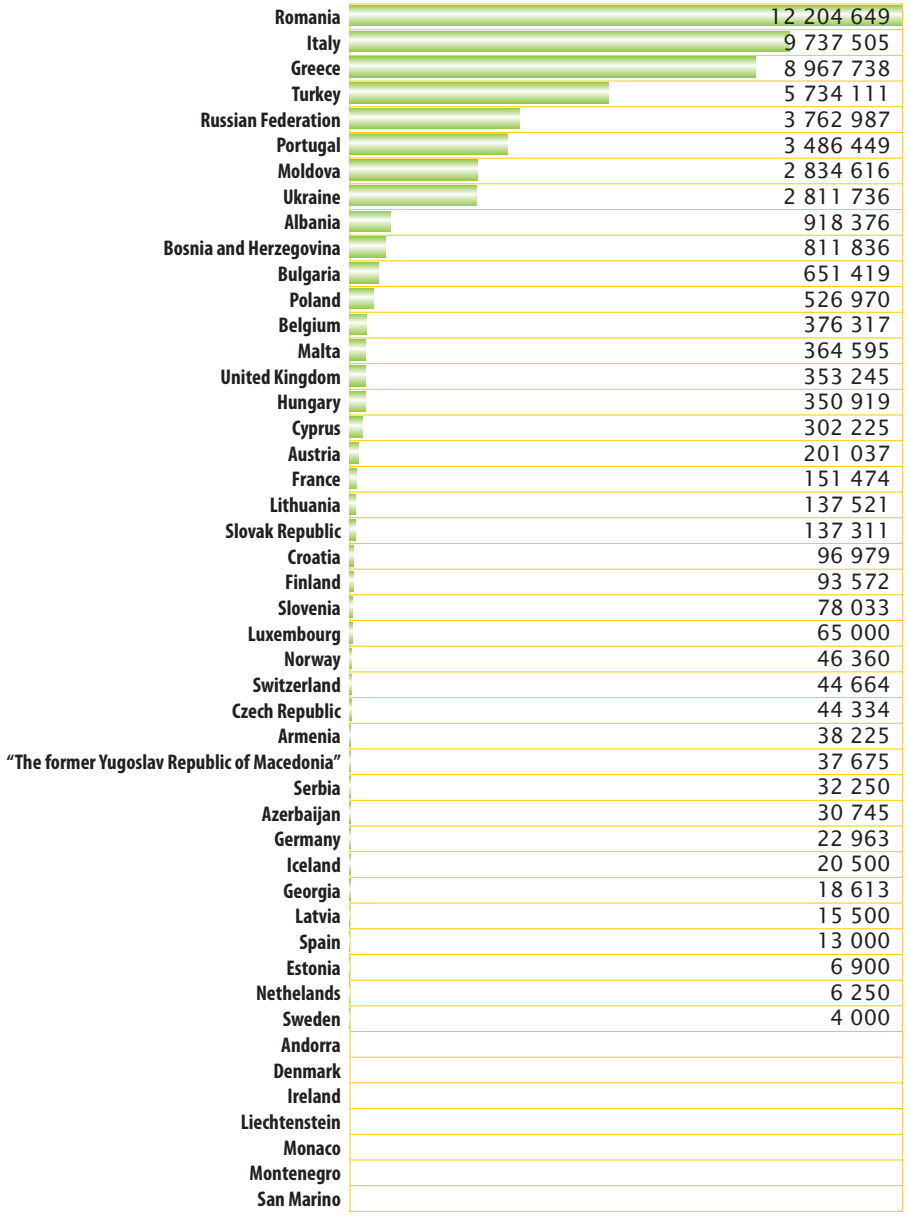
As regards cases where the European Court of Human Rights left the respondent state the choice between restitution of property and payment of its equivalent market value, as assessed by the European Court of Human Rights itself, the latter amount has been included in the data.

In 2008, the total amount awarded by the European Court of Human Rights was 55 538 601 euros.

10. The total number of new cases considered in this chapter does not correspond to that of new cases in Tables 10 to 13 because these tables only included final judgments on the merits and not those on just satisfaction.

The highest awards of just satisfaction concerned cases against Romania, Italy, Greece, Turkey, the Russian Federation and Portugal.

Table 17: Total just satisfaction (€) awarded in judgments which became final in 2008



Romania	12 204 649
Italy	9 737 505
Greece	8 967 738
Turkey	5 734 111
Russian Federation	3 762 987
Portugal	3 486 449
Moldova	2 834 616
Ukraine	2 811 736
Albania	918 376
Bosnia and Herzegovina	811 836
Bulgaria	651 419
Poland	526 970
Belgium	376 317
Malta	364 595
United Kingdom	353 245
Hungary	350 919
Cyprus	302 225
Austria	201 037
France	151 474
Lithuania	137 521
Slovak Republic	137 311
Croatia	96 979
Finland	93 572
Slovenia	78 033
Luxembourg	65 000
Norway	46 360
Switzerland	44 664
Czech Republic	44 334
Armenia	38 225
"The former Yugoslav Republic of Macedonia"	37 675
Serbia	32 250
Azerbaijan	30 745
Germany	22 963
Iceland	20 500
Georgia	18 613
Latvia	15 500
Spain	13 000
Estonia	6 900
Nethelands	6 250
Sweden	4 000
Andorra	
Denmark	
Ireland	
Liechtenstein	
Monaco	
Montenegro	
San Marino	

Table 18: Just satisfaction (€) awarded on average by case in judgments which became final in 2008

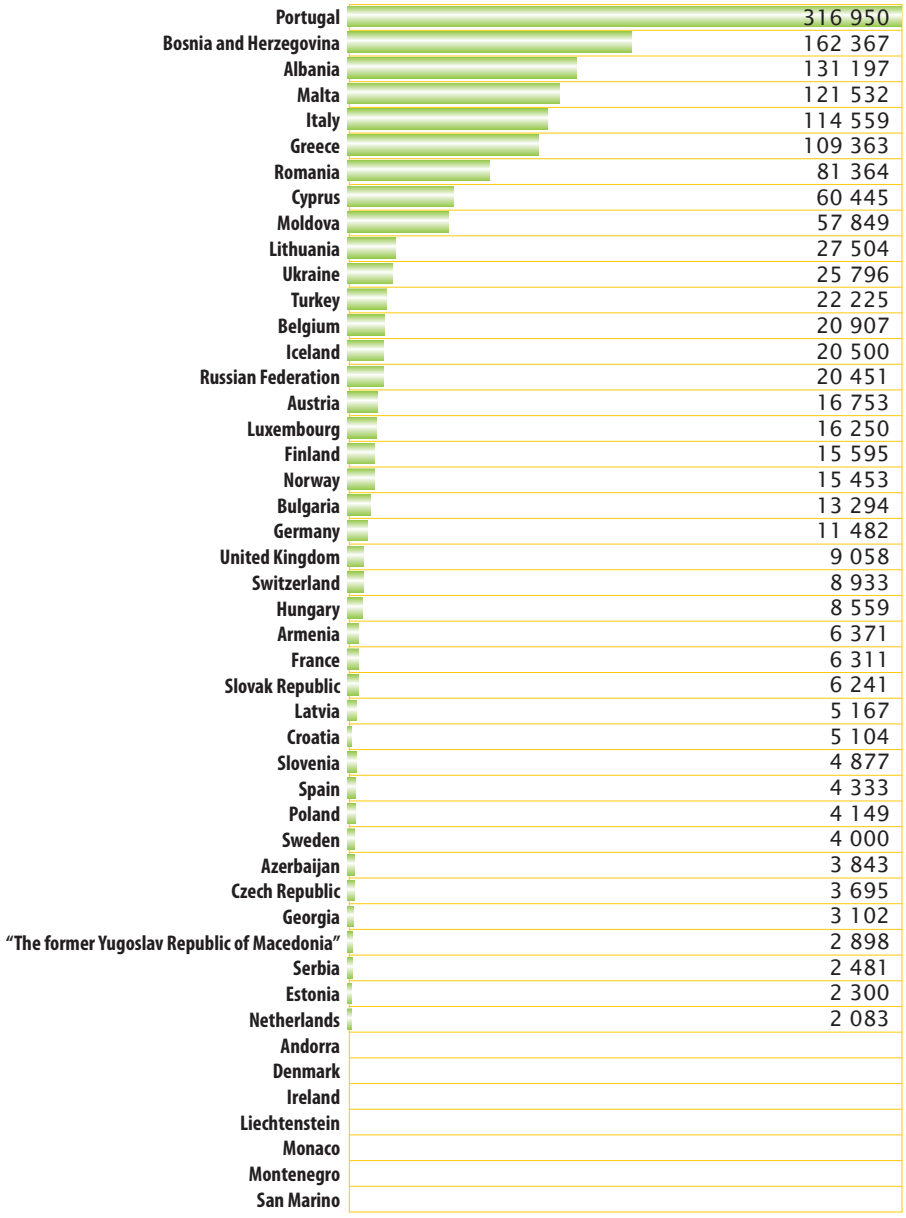


Table 19: Sums awarded as just satisfaction by state – details (in judgments which became final in 2008). Figures rounded to whole numbers of euros

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)*	Costs and expenses (€)	Global sum (€)†	Internal debts (€)‡	Total (€)
Albania	7	131 197		71 000	830 000	17 376			918 376
Andorra	0								
Armenia	6	6 371		27 200		11 025			38 225
Austria	12	16 753		33 600		92 377	75 061		201 037
Azerbaijan	8	3 843		18 500		3 389	8 856		30 745
Belgium	18	20 907		275 000		98 317	3 000		376 317
Bosnia and Herzegovina	5	162 367	696 836	103 800		11 200			811 836
Bulgaria	49	13 294	84 000	212 600		49 819	305 000		651 419
Croatia	19	5 104		87 900		9 079			96 979
Cyprus	5	60 445		22 000	218 326	30 261	31 638		302 225
Czech Republic	12	3 695		8 000		9 334	27 000		44 334
Denmark									
Estonia	3	2 300		5 400		1 500			6 900
Finland	6	15 595	5 772	45 500		42 300			93 572
France	24	6 311	7 650	60 000		80 324	3 500		151 474
Georgia	6	3 102		5 900		12 713			18 613
Germany	2	11 482		12 000		163	10 800		22 963
Greece	82	109 363	5 407 518	3 383 720	34 000	106 500	36 000		8 967 738
Hungary	41	8 559			341 403		9 516		350 919
Iceland	1	20 500			2 500		18 000		20 500
Ireland									
Italy	85	114 559	8 436 363	349 419		213 607	726 400	11 715	9 737 505
Latvia	3	5 167		10 500		5 000			15 500
Liechtenstein									
Lithuania	5	27 504	40 000	5 000	60 000	2 521	30 000		137 521
Luxembourg	4	16 250		33 000		12 000	20 000		65 000
Malta	3	121 532	307 245	56 150		1 200			364 595
Moldova	49	57 849	2 590 541	175 000		69 075			2 834 616
Monaco									
Montenegro									
Netherlands	3	2 083		1 000		5 250			6 250
Norway	3	15 453		37 000		9 360			46 360
Poland	127	4 149	59 721	412 850		54 400			526 970
Portugal	11	316 950	3 037 929	275 500	100 000	73 021			3 486 449
Romania	150	81 364	11 007 914	383 600	85 000	68 135	660 000		12 204 649
Russian Federation	184	20 451	700 415	2 770 071	4 000	265 759	6 195	16 547	3 762 987
San Marino									
Serbia	13	2 481		28 600		3 650			32 250
Slovak Republic	22	6 241	4 836	83 850		13 625	35 000		137 311
Slovenia	16	4 877		65 600		12 433			78 033
Spain	3	4 333		10 000		3 000			13 000
Sweden	1	4 000		4 000					4 000
Switzerland	5	8 933		16 000		25 650	3 014		44 664

Table 19: Sums awarded as just satisfaction by state – details (in judgments which became final in 2008). Figures rounded to whole numbers of euros

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)*	Costs and expenses (€)	Global sum (€)†	Internal debts (€)‡	Total (€)
"The former Yugoslav Republic of Macedonia"	13	2 898		27 000		3 635	7 040		37 675
Turkey	258	22 225	2 955 068	1 766 205	41 500	227 423	723 442	20 473	5 734 111
Ukraine	109	25 796	1 778 799	953 005		12 822	34 917	32 193	2 811 736
United Kingdom	39	9 058	79 785	51 500		200 329	21 631		353 245
TOTAL €	1 412	39 333	37 200 392	11 886 970	1 716 729	1 857 571	2 796 010	80 928	55 538 601

* The column "Pecuniary and non-pecuniary damages" covers sums awarded by the European Court of Human Rights for both pecuniary and non-pecuniary damages, without any distinction being made between the two.

† The column "Global sum" refers to sums awarded by the European Court of Human Rights (often in friendly settlements) without any further detail. The sums can therefore cover all kinds of damages as well as costs and expenses.

‡ The column "Internal debts" covers those sums which the European Court of Human Rights has awarded under this specific heading in its judgment. Normally such sums cover "internal debt" due under a domestic judgment which has not been executed.

Table 19.a: Sums awarded in national currency (see below) have been converted into euros in the above table at the rate applicable at 31 December 2008, in order to allow the presentation of the total amount in euros. An exact calculation would take into account the rate applicable at the date of payment. Figures rounded as appropriate for the currency

State	Number of new cases	Average just satisfaction by case	Pecuniary damages	Non-pecuniary damages	Pecuniary and non-pecuniary damages together	Costs and expenses	Global sum	Internal debts	Total
Azerbaijan (manat, AZM)							10 000		10 000
Poland (zloty, PLN)			240 000			22 500			262 500
Romania (lei, RON)			50 888						50 888
Slovak Republic (Slovakian crowns, SKK)		145.7 million							145.7 million
Russian Federation (rouble, RUR)			1.35 million			2 976		685 724	2.04 million
Russian Federation (dollar, USD)			42 134						42 134
Russian Federation (pound sterling, GBP)						16 617			16 617
Turkey (Turkish lira, TRL)								11 982 million	11 982 million
Turkey (dollar, USD)			150				1 million		1.00015 million
Ukraine (hryvna, UAH)								316 612	316 612
Ukraine (dollar, USD)			2.47 million						2.47 million
United Kingdom (pound sterling, GBP)							20 604		20 604

F. Length of execution of leading cases pending before the Committee of Ministers at 31 December 2008

European Court of Human Rights judgments in general do not set an express deadline for the adoption of execution measures, other than the payment of just satisfaction. It is thus difficult to assess in absolute terms the acceptable length of execution of a judgment. Such assessment forms one of the main parts of the supervision by the Committee of Ministers and takes into account *inter alia* the type of measures required, any action plan and the obstacles, if any, encountered by states. Because of the great variety of situations, the time needed for execution can be very different from case to case.

In 2008, as in 2007, 11% of the leading cases had been pending for more than five years, 35% of cases had been pending between two and five years and 54% of the cases had been pending for less than two years.

Note that the tables do not include cases where only the formal adoption of a final resolution is awaited (under section 6).

Furthermore, these data only reflect the information received and assessed up to 31 December 2008.

Accordingly, where no information concerning the execution measures has been received, is incomplete or still under assessment, the cases are shown as still pending, according to the data available at 31 December, although the relevant measures might have been taken.[11] Only when the information is received and the Committee of Ministers has concluded that the measures taken are sufficient for the purposes of Article 46 is the examination in principle closed and a final resolution prepared and adopted.

Moreover, it should be borne in mind that in many cases appearing as "pending", important interim measures have been taken to limit the possibilities of new violations awaiting the entry into force of more permanent measures, whether legislative or not.

The figures in Tables 20 to 22 (outer rings) refer to the data in Table 23 on page 65. The figures in the inner rings of tables 20 and 21 refer to the *Annual report* 2007.[12]

11. For instance, a number of cases appear as "pending" due to outstanding problems with payment of just satisfaction, while all other execution measures have been taken.

12. The data for 2007 did not take into account the new judgments which became final by the end of the year but not examined by the Committee of Ministers during the same year. As of 2008, these judgments will be taken into account, although a number of leading cases among them might not have been identified yet.

Table 20: Leading cases, by state, pending for more than 2 years at 31 December 2008 and at 31 December 2007

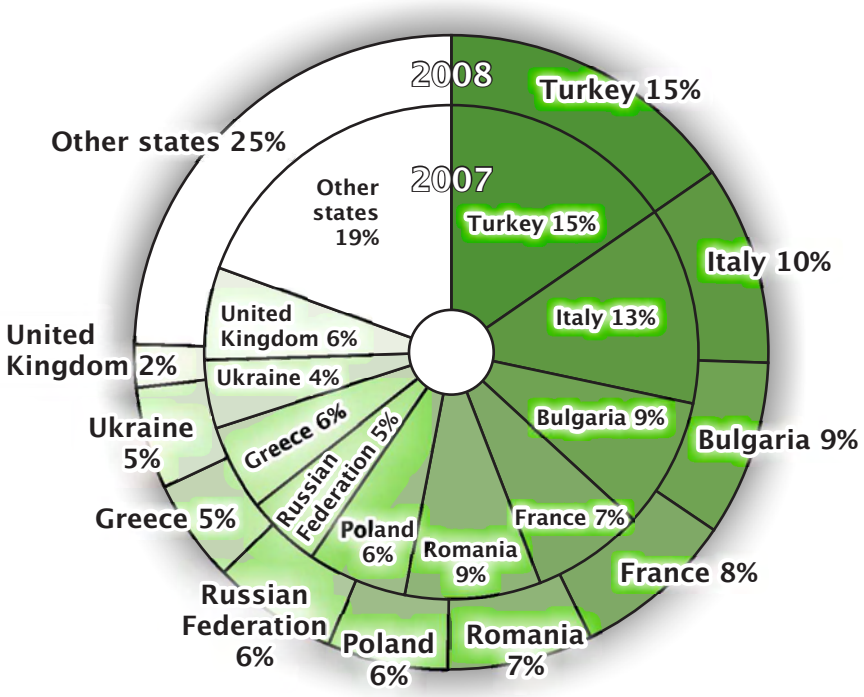


Table 21: Length of leading cases pending before the Committee of Ministers – global situation at 31 December 2008 and at 31 December 2007

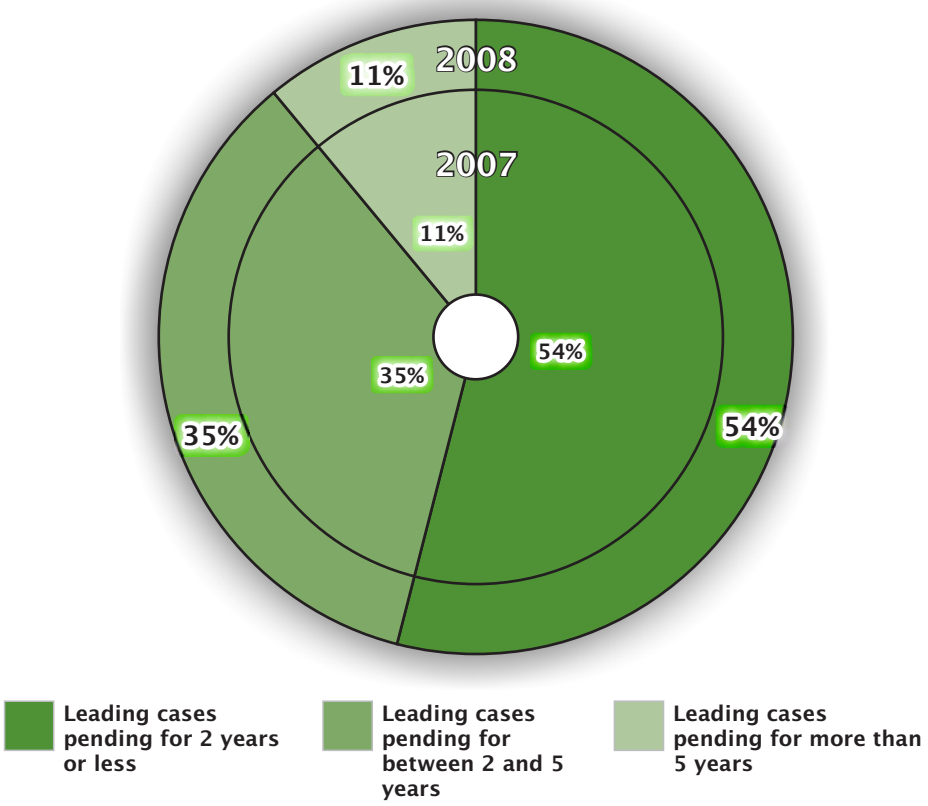


Table 22: Leading cases pending before the Committee of Ministers at 31 December 2008 by state (in parentheses the total number of cases)

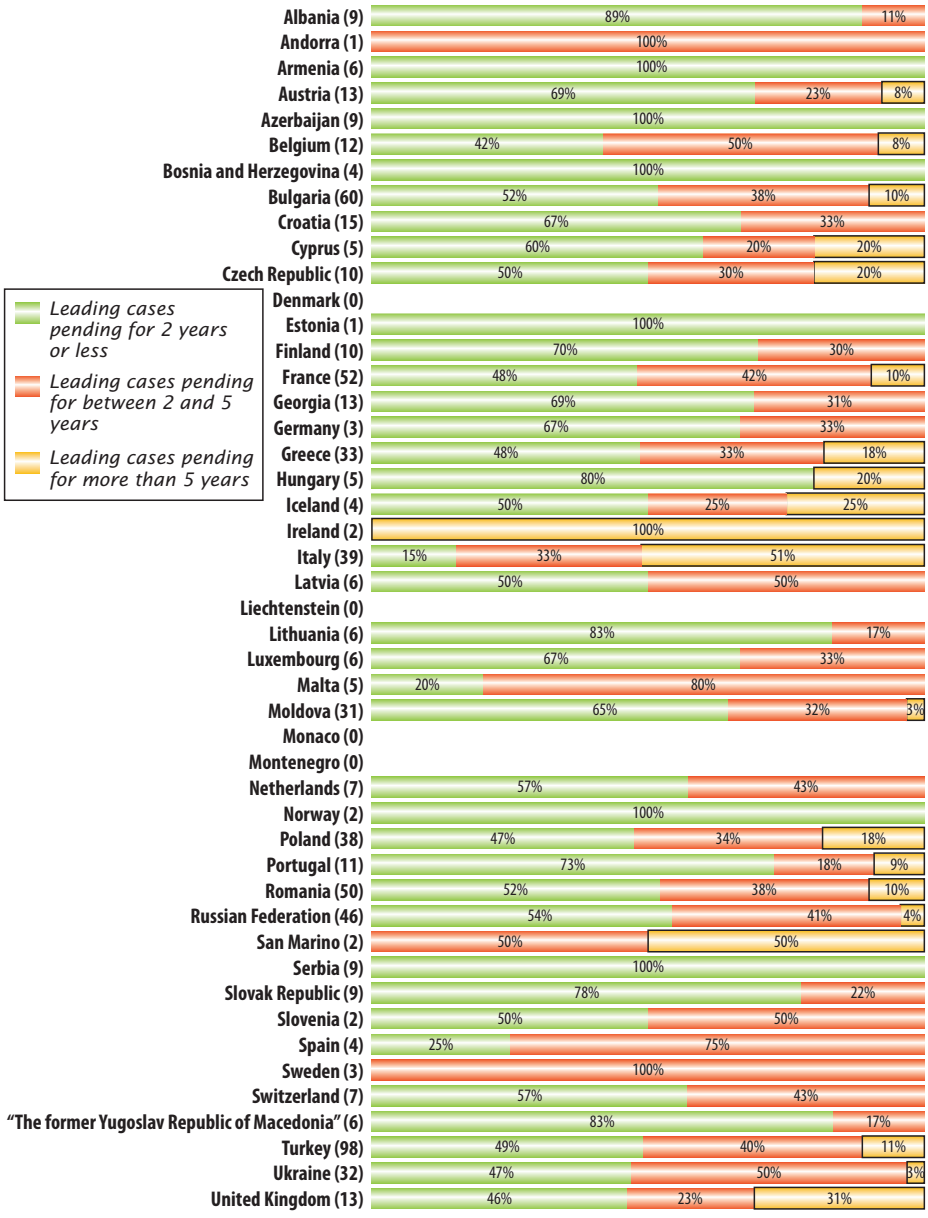


Table 23: Leading cases* pending before the Committee of Ministers at 31 December 2008 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6)

State	Leading cases pending for 2 years or less		Leading cases pending for between 2 and 5 years		Leading cases pending for more than 5 years	
	Number	%	Number	%	Number	%
Albania	8	89%	1	11%	0	
Andorra	0		1	100%	0	
Armenia	6	100%	0		0	
Austria	9	69%	3	23%	1	8%
Azerbaijan	9	100%	0		0	
Belgium	5	42%	6	50%	1	8%
Bosnia and Herzegovina	4	100%	0		0	
Bulgaria	31	52%	23	38%	6	10%
Croatia	10	67%	5	33%	0	
Cyprus	3	60%	1	20%	1	20%
Czech Republic	5	50%	3	30%	2	20%
Denmark	0		0		0	
Estonia	1	100%	0		0	
Finland	7	70%	3	30%	0	
France	25	48%	22	42%	5	10%
Georgia	9	69%	4	31%	0	
Germany	2	67%	1	33%	0	
Greece	16	48%	11	33%	6	18%
Hungary	4	80%	0	0%	1	20%
Iceland	2	50%	1	25%	1	25%
Ireland	0		0		2	100%
Italy	6	15%	13	33%	20	51%
Latvia	3	50%	3	50%	0	
Liechtenstein	0		0		0	
Lithuania	5	83%	1	17%	0	
Luxembourg	4	67%	2	33%	0	
Malta	1	20%	4	80%	0	
Moldova	20	65%	10	32%	1	3%
Monaco	0		0		0	
Montenegro	0		0		0	
Netherlands	4	57%	3	43%	0	
Norway	2	100%	0		0	
Poland	18	47%	13	34%	7	18%
Portugal	8	73%	2	18%	1	9%
Romania	26	52%	19	38%	5	10%
Russian Federation	25	54%	19	41%	2	4%
San Marino	0		1	50%	1	50%
Serbia	9	100%	0		0	
Slovak Republic	7	78%	2	22%	0	
Slovenia	1	50%	1	50%	0	
Spain	1		3	75%	0	
Sweden	0		3	100%	0	
Switzerland	4	57%	3	43%	0	
"The former Yugoslav Republic of Macedonia"	5	83%	1	17%		
Turkey	48	49%	39	40%	11	11%
Ukraine	15	47%	16	50%	1	3%
United Kingdom	6	46%	3	23%	4	31%
TOTAL	**374**	**54%**	**246**	**35%**	**79**	**11%**

* The length of execution is calculated as from the date at which the judgment became final.

Appendix 2

List of final resolutions adopted in 2008

Final Resolutions adopted at the 1043rd HR meeting, in December 2008, are referenced as adopted in 2009 because their formal date of adoption was 2009.

Resolution CM/ResDH No.	Application No.	Title of the leading case	Country	Meeting	See, for further details, Annual Report (AR)
(2008) 2	6562/03	Mkrtchyan	ARM	1020	AR 2007, p. 169; AR 2008
(2008) 36	37950/97+	Fischer and 2 other cases	AUT	1028	/
(2008) 37	41872/98	Van Rossem	BEL	1028	AR 2007, p. 246; AR 2008
(2008) 70	24379/02	Kounov	BGR	1035	AR 2008
(2009) 30	54784/00	Padalov	BGR	1043	AR 2007, p. 117; AR 2008
(2009) 31	15733/02	Camasso	CRO	1043	/
(2009) 21	11044/03+	Dražić and 6 other cases	CRO	1043	/
(2009) 32	13587/03	Podoreški	CRO	1043	/
(2008) 93	35098/03	Dymacek and Dymackova	CZE	1035	/
(2008) 27	73577/01+	Vodárenská Akciová Společnost, A.S. and 6 other cases	CZE	1020	/
(2009) 33	21846/04	Brøsted	DNK	1043	/
(2008) 57	4143/02	Moreno Gómez	ESP	1028	AR 2007, p. 155
(2008) 81	58496/00	Prado Bugallo	ESP	1035	AR 2008
(2009) 22	36065/97	H.K.	FIN	1043	/
(2008) 85	63313/00+	Andre and 15 other cases	FRA	1035	AR 2007, p. 243
(2008) 33	53951/00	Ardex S.A.	FRA	1020	/
(2008) 3	39288/98	Association Ekin	FRA	1020	AR 2008
(2008) 4	33592/96	Baumann	FRA	1020	/
(2008) 5	45840/99 and 59765/00	Bayle and Carabasse	FRA	1020	AR 2007, p. 99
(2008) 6	36378/97	Bertuzzi	FRA	1020	/
(2008) 39	42407/98+	C.R. and 9 other cases	FRA	1028	AR 2008
(2008) 7	33951/96	Caloc	FRA	1020	/
(2008) 38	56243/00+	Chaineux and 2 other cases	FRA	1028	AR 2008
(2008) 8	51279/99	Colombani and Others	FRA	1020	AR 2008
(2008) 9	34000/96	Du Roy and Malaurie	FRA	1020	AR 2008
(2009) 23	47160/99	Ezzouhdi	FRA	1043	/

(2008) 40	36515/97	Frette	FRA	1028	AR 2008
(2008) 41	44069/98	G.B. II	FRA	1028	/
(2008) 10	48215/99	Lutz	FRA	1020	AR 2008
(2008) 34	51294/99	Madi	FRA	1020	/
(2008) 11	59335/00	Makhfi	FRA	1020	/
(2008) 71	32911/66+	Meftah and Others and 25 other cases	FRA	1035	AR 2008
(2009) 1	25017/94	Mehemi	FRA	1043	/
(2009) 3	36436/97 and 42928/02	Piron and Epoux Machard	FRA	1043	AR 2008
(2008) 31	69258/01+	Quemar and 5 other cases	FRA	1020	/
(2008) 12	11760/02+	Raffi and 30 other cases	FRA	1020	AR 2007, p. 246
(2009) 2	33834/03	Riviere	FRA	1043	AR 2007, p. 49
(2008) 13	29507/95+	Slimane-Kaïd and 5 other cases	FRA	1020	/
(2008) 14	35683/97	Vaudelle	FRA	1020	AR 2007, p. 121
(2009) 4	74969/01	Görgülü	GER	1043	AR 2007, p. 148
(2008) 66	46352/99 and 47541/99	Logothetis and Vasilopoulou	GRC	1028	/
(2008) 42	63000/00+	Skondrianos and 2 other cases	GRC	1028	AR 2008
(2008) 86	46356/99	Smokovitis and Others	GRC	1035	/
(2009) 34	71511/01	Theodorakis and Teodorakis – Tourism and Hôtels S.A.	GRC	1043	/
(2008) 43	44584/98	Tsironis	GRC	1028	AR 2008
(2008) 72	37251/04	Csikós	HUN	1035	/
(2008) 73	34503/03	Gajcsi	HUN	1035	/
(2008) 74	20723/02	Osváth	HUN	1035	/
(2008) 44	40905/98	Hafsteinsdóttir	ISL	1028	AR 2008
(2008) 75	39638/04+	Abbatiello and 3 other cases	ITA	1035	/
(2008) 45	77924/01+	Albanese and 2 other cases	ITA	1028	AR 2007, p. 242; AR 2008
(2008) 76	33202/96	Beyeler	ITA	1035	/
(2009) 24	25513/02+	Bova and 12 other cases	ITA	1043	/
(2009) 35	68344/01 and 15491/02	Cecere Paolo and Comellini	ITA	1043	/
(2009) 25	314/04 and 43466/04	Ciccolella and Lepore	ITA	1043	/
(2008) 46	38805/97	K.	ITA	1028	AR 2008
(2008) 47	39748/98	Maestri	ITA	1028	AR 2007, p. 170 and p. 242; AR 2008
(2008) 48	37119/97	N.F.	ITA	1028	AR 2007, p. 171; AR 2008
(2008) 49	36534/97	Osu	ITA	1028	/
(2008) 50	76024/01	Rapacciuolo	ITA	1028	/
(2008) 51	39676/98	Rojas Morales	ITA	1028	AR 2007, p. 125 and p. 246
(2008) 52	41879/98	Saggio	ITA	1028	AR 2008

(2008) 53	39221/98	Scozzari and Giunta	ITA	1028	AR 2007, p. 150
(2008) 67	41221/98	Troiani	ITA	1028	/
(2008) 54	5010/04	Von Hoffen	LIE	1028	AR 2007, p. 245
(2009) 5	60115/00	Amihalachioaie	MDA	1043	AR 2008
(2008) 28	37511/02+	Mihalachi and 2 other cases	MDA	1020	/
(2008) 92	46447/99 and 45658/99	Djidrovski and Veselinski	MKD	1035	/
(2008) 82	21510/03 and 33046/02	Grozdanoski and Mitrevski	MKD	1035	/
(2009) 6	32605/96	Rutten	NLD	1043	/
(2009) 9	11106/04+	Ekeberg and Others	NOR	1043	AR 2008
(2009) 8	29327/95 and 56568/00	O. and Y.	NOR	1043	AR 2008
(2009) 10	9042/04	Riis A. and E.	NOR	1043	AR 2008
(2009) 7	510/04	Tønsbergs Blad AS and Haukom	NOR	1043	/
(2008) 55	37372/97	Walston (No. 1)	NOR	1028	AR 2008
(2008) 56	27715/95	Berliński	POL	1028	AR 2007, p. 246; AR 2008
(2008) 15	45355/99	Shamsa	POL	1020	AR 2008
(2009) 36	18065/02	Carvalho	PRT	1043	/
(2009) 37	48752/99 and 49020/99	Coelho and F. Santos Lda.	PRT	1043	/
(2008) 77	43924/02	De Almeida Azevedo	PRT	1035	AR 2008
(2008) 78	61302/00	Buzescu	ROM	1035	AR 2007, p. 126 and p. 244
(2008) 79	32926/96, and 33176/96	Canciovici and Others and Moşteanu and Others	ROM	1035	AR 2007, p. 104 and p. 244
(2008) 17	4856/03+	Dubinskaya and 4 other cases	ROM	1020	AR 2007, p. 244
(2008) 16	46626/99	Partidul Comuniştilor (Nepecerişti) andUngureanu	ROM	1020	AR 2007, p. 166
(2008) 80	78028/01	Pini and Bertani and Manera and Atripaldi	ROM	1035	AR 2007, p. 113 and p. 244
(2008) 87	22687/03	SC Maşinexportimport Industrial Group SA	ROM	1035	AR 2007, p. 243
(2008) 18	23472/03 and 14881/03	Grinberg and Zakharov	RUS	1020	AR 2008
(2008) 20	65659/01	Parti Présidentiel de Mordovie	RUS	1020	AR 2008
(2008) 19	60776/00	Poleshchuk	RUS	1020	AR 2007, p. 192; AR 2008
(2008) 21	77785/01	Znamenskaya	RUS	1020	AR 2007, p. 244; AR 2008
(2008) 22	46845/99	Indra	SKV	1020	AR 2008
(2008) 58	7548/04	Bianchi	SUI	1028	AR 2007, p. 154; AR 2008

(2009) 15	54273/00	Boultif	SUI	1043	AR 2008
(2008) 23	27426/95 and 28256/95	G.B. and M.B.	SUI	1020	/
(2008) 24	73604/01	Monnat	SUI	1020	AR 2007, p. 245; AR 2008
(2009) 14	33958/96	Wettstein	SUI	1043	AR 2008
(2009) 11	74400/01	Berecová	SVK	1043	AR 2007, p. 154
(2009) 12	75252/01	Evaldsson and Others	SWE	1043	AR 2008
(2009) 26	36689/02 and 36619/03	Lilja and Wassdahl	SWE	1043	/
(2009) 27	55853/00	Miller	SWE	1043	/
(2009) 13	38993/97	Stockholms Försakrings- och Skadestandsjuridik Ab	SWE	1043	/
(2009) 38	61390/00	Valin	SWE	1043	/
(2008) 89	71868/01+	Akıllı and 5 other cases	TUR	1035	/
(2008) 90	69913/01+	Akkılıç and 5 other cases	TUR	1035	/
(2008) 88	1854/02+	Alay and 5 other cases	TUR	1035	/
(2009) 28	23903/02+	Arslaner and 19 other cases	TUR	1043	/
(2008) 29	11804/02+	Ayaz and Others and 2 other cases	TUR	1020	/
(2009) 40	53909/00	Aydın Abdulkadir and Others	TUR	1043	/
(2008) 91	25182/94+	Cankoçak and 7 other cases	TUR	1035	/
(2008) 94	31879/96 and 40156/98	Değirmenci and Others and Keskin	TUR	1035	/
(2008) 59	20652/92	Djavit An	TUR	1028	AR 2008
(2008) 60	8803/02	Doğan and Others	TUR	1028	AR 2008
(2008) 95	57908/00	Dürdane and Selvihan Aslan	TUR	1035	/
(2009) 17	10054/03	Emir	TUR	1043	AR 2008
(2009) 16	70830/01	Ern Makina Sanayi ve Ticaret A.Ş.	TUR	1043	/
(2008) 96	57175/00	İmrek	TUR	1035	/
(2009) 39	28294/95	Karakoç Erdal	TUR	1043	/
(2008) 97	24669/94+	Karataş and Boğa and 2 other cases	TUR	1035	/
(2008) 83	77113/01+	Sertkaya and 9 other cases	TUR	1035	/
(2008) 61	36141/97	Sophia Guðrún Hansen	TUR	1028	AR 2008
(2008) 68	56493/00+	Turhan Atay and Others and 9 other cases	TUR	1028	/
(2009) 29	7144/02+	Tuş and Others and 4 other cases	TUR	1043	/
(2008) 62	24209/94	Y.F	TUR	1028	AR 2008
(2008) 98	40533/98+	Yalım and 2 other cases	TUR	1035	/
(2009) 18	30502/96	Yıltaş Yıldız Turistik Tesisler A.Ş.	TUR	1043	AR 2007, p. 182 and p. 245
(2009) 19	32457/04+	Brecknell and 4 other cases	UK.	1043	/
(2009) 41	45773/99+	Cairney and 16 other cases	UK.	1043	/
(2009) 20	32555/96	Roche	UK.	1043	AR 2007, p. 142; AR 2008
(2008) 84	28945/95	T.P. and K.M.	UK.	1035	AR 2008

(2008) 25	25921/02	Fedorenko	UKR	1020	AR 2007, p. 245; AR 2008
(2008) 63	8599/02	Grabchuk	UKR	1028	AR 2008
(2008) 64	31111/04	Hunt	UKR	1028	/
(2008) 30	21040/02	Lyashko	UKR	1020	AR 2007, p. 245
(2008) 26	23436/03	Melnyk	UKR	1020	AR 2007, p. 245
(2008) 32	63566/00	Pronina	UKR	1020	AR 2007, p. 245
(2008) 65	72269/01	Strizhak	UKR	1028	AR 2008

Appendix 3

Cases the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution (section 6.1)

As far as groups of cases are concerned, only the references of the leading case are given.

Application No.	Case(s)	Country	Meeting	See, for further details, Annual Report (AR)
50049/99	Da Luz Domingues Ferreira	BEL	1035	AR 2008
50372/99	Göktepe	BEL	1028	AR 2007, p.115
26103/95+	Van Geyseghem and 4 other cases	BEL	1028	AR 2007, p.116
24379/02	Kounov	BGR	1020	AR 2008
39271/98 and 68177/01	Kuibishev and Yambolov	BGR	1028	/
54784/00	Padalov	BGR	1028	AR 2007, p.117; AR 2008
27966/06	Sobota-Gajic	BIH	1043	/
38355/05	Biondic	CRO	1043	/
503/05	Kovač	CRO	1028	/
64935/01	Chmelir	CZE	1043	AR 2007, p.117
10504/03	Linkov	CZE	1020	AR 2007, p.165
1414/03	MARES	CZE	1043	AR 2007, p.117
75615/01	Štefanec	CZE	1035	AR 2007, p.118
21846/04	Brosted	DNK	1020	/
69966/01	Dacosta Silva	ESP	1035	AR 2008
24668/03	Olaechea Cahuas	ESP	1043	AR 2007, p.191
2192/03	Harkmann	EST	1028	/
11423/03	Pello	EST	1035	/
36065/97	H.K.	FIN	1028	/
18358/02	Muttilainen	FIN	1043	/
14151/02	W.	FIN	1043	/
71665/01	Augusto	FRA	1043	AR 2007, p.119; AR 2008
62118/00+	Brenière and 4 other cases	FRA	1028	/
37876/02	Clément	FRA	1028	/

57547/00	Dumont-Maliverg	FRA	1020	/
27678/02	Gerard Bernard	FRA	1020	/
16846/02	Labergere	FRA	1020	/
17997/02	Le Stum	FRA	1035	/
57752/00	Matheron	FRA	1035	/
2021/03	Nicolas	FRA	1028	/
36436/97 and 42928/02	Piron and Epoux Machard	FRA	1028	AR 2008
33834/03	Riviere	FRA	1028	AR 2007, p.49
35109/02	Schmidt	FRA	1043	/
66053/01	Simon	FRA	1020	/
74969/01	Görgülü	GER	1035	AR 2007, p.148
36998/02	Efstathiou and Others	GRC	1020	/
10162/02	Eko-Elda Avee	GRC	1028	AR 2008
20627/04	Liakopoulou	GRC	1020	AR 2008
1131/05	Lionarakis	GRC	1020	/
33554/03	Lykourezos	GRC	1020	AR 2008
35533/04	Mamidakis	GRC	1043	/
77574/01	Zouboulidis	GRC	1020	/
47940/99	Balogh	HUN	1043	/
37251/04	Csikos	HUN	1020	/
41463/02	Földes and Földesné Hajlik	HUN	1035	AR 2007, p.188; AR 2008
34503/03	Gajcsi	HUN	1020	/
30103/02 and 32768/03	Maglódi and Csáky	HUN	1028	/
20723/02	Osváth	HUN	1028	/
33202/96	Beyeler	ITA	1028	/
25639/94	F.L.	ITA	1020	AR 2007, p. 174
70148/01	Fodale	ITA	1043	/
38805/97	K.	ITA	1020	AR 2008
76024/01	Rapacciuolo	ITA	1020	/
36681/97	Santoro	ITA	1028	/
4902/02	Ciapas	LIT	1043	AR 2007, p.65
37415/02	Simonavicius	LIT	1043	/
15048/03	Mathony	LUX	1028	/
36455/02	Gurov	MDA	1028	AR 2008
32268/02	Malahov	MDA	1035	/
13898/02 and 66907/01	Dumanovski and Docevski	MKD	1043	/
21510/03	Grozdanoski	MKD	1028	/
33046/02	Mitrevski	MKD	1028	/
17995/02	Stoimenov	MKD	1035	AR 2008

1948/04	Salah Sheekh	NLD	1043	AR 2007, p.71
50252/99	Sezen	NLD	1020	AR 2008
10807/04	Veraart	NLD	1035	AR 2007, p.160
11106/04	Ekeberg and Others	NOR	1035	AR 2008
18885/04	Kaste and Mathisen	NOR	1035	/
9042/04	Riis A. and E.	NOR	1035	AR 2008
12148/03	Sanchez Cardenas	NOR	1043	/
510/04	Tonsbergs Blad As and Haukom	NOR	1020	/
39510/98	A.S.	POL	1028	/
31443/96	Broniowski	POL	1020	AR 2007, p.180; AR 2008
39199/98	Podbielski and ppu Polpure	POL	1035	AR 2008
48542/99	Zawadka	POL	1020	AR 2007, p.160
43924/02	Almeida Azevedo	PRT	1028	AR 2008
41537/02	Gregório de Andrade	PRT	1035	AR 2008
15996/02	Magalhães Pereira No. 2	PRT	1035	AR 2007, p. 60
57808/00	Albina	ROM	1028	/
19997/02	Boldea	ROM	1035	/
28871/95, 53897/00 and 41250/02	Constantinescu, Dănilă and Mircea	ROM	1035	/
38565/97	Cotlet	ROM	1020	AR 2008
28114/95 33348/96 and 46572/99	Dalban, Cumpănă and Mazăre and Sabou and Pîrcălab	ROM	1035	AR 2008
58472/00	Dima	ROM	1028	/
53037/99	Ionescu Virgil	ROM	1028	/
65402/01	Radu	ROM	1043	/
68443/01	Baklanov	RUS	1028	/
58254/00	Frizen	RUS	1028	/
58255/00	Prokopovich	RUS	1028	AR 2008
74826/01	Shofman	RUS	1028	AR 200/7, p. 143
7548/04	Bianchi	SUI	1020	AR 2007, p. 154; AR 2008
17073/04	Kaiser	SUI	1043	/
3688/04	Weber	SUI	1035	AR 2008
74400/01	Berecová	SVK	1028	AR 2007, p. 154
65559/01	Nestak	SVK	1043	/
74827/01	Pavlík	SVK	1035	/
47825/99	Krisper	SVN	1035	/
75252/01	Evaldsson and Others	SWE	1028	AR 2008
73841/01	Klemeco Nord Ab	SWE	1043	/
10054/03	Emir	TUR	1035	AR 2008

70830/01	Ern Makina Sanayi ve Ticaret A.Ş	TUR	1035	/
71907/01	Kavakci	TUR	1020	AR 2008
51358/99	Paşa and Erkan Erol	TUR	1028	AR 2007, p. 44; AR 2008
21768/02	Selçuk Vehbi	TUR	1028	/
8691/02	Silay	TUR	1020	AR 2008
54461/00+	Soysal and 3 other cases	TUR	1035	/
24632/02	Ûnsal	TUR	1043	/
50147/99	Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı	TUR	1028	/
28212/95	Benjamin and Wilson	UK.	1043	AR 2007, p. 63
32457/04+	Brecknell and 4 other cases	UK.	1035	/
62617/00	Copland	UK.	1020	AR 2008
39482/98	Dowsett	UK.	1020	/
39647/98	Edwards	UK.	1020	AR 2007, p. 131
46477/99	Edwards Paul and Audrey	UK.	1043	/
1271/05	Gault	UK.	1043	/
57067/00, 34155/96 and 35574/97	Grieves, G.W. and Le Petit	UK.	1028	AR 2008
27229/95	Keenan	UK.	1043	/
40426/98	Martin	UK.	1028	/
32555/96	Roche	UK.	1028	AR 2007, p. 142; AR 2008
13229/03	Saadi	UK.	1043	/
36256/97 and 41534/98	Thompson and Bell	UK.	1035	/
60860/00	Tsfayo	UK.	1028	AR 2008
30668/96	Wilson, National Union of Journalists and Others	UK.	1020	AR 2007, p. 169
8599/02	Grabchuk	UKR	1020	AR 2008
31111/04	Hunt	UKR	1020	/
72269/01	Strizhak	UKR	1020	AR 2008

Appendix 4

List of interim resolutions adopted in 2008

As far as groups of cases are concerned, only the references of the leading case are given.

Application No.	Case(s)	Country	Meeting	See, for further details, Annual Report (AR)	Resolution CM/ ResDH No.
46347/99	**Xenides-Arestis** (judgment of 7/12/2006, final on 23/05/2007)	TUR	1043	AR 2007, p. 185; AR 2008	(2008) 99
21987/93	**Aksoy (**judgment of 18/12/1996, and other similar cases) – Actions of the security forces in Turkey – Progress achieved and outstanding issues (General measures to ensure compliance with the judgments of the European Court of Human Rights in the cases against Turkey concerning actions of members of the security forces) (listed in Appendix II) (Follow-up to Interim Resolutions DH (99)434, DH (2002) 98 and ResDH (2005) 43)	TUR	1035	AR 2007, p. 38; AR 2008	(2008) 69
34056/02	**Gongadze** (judgment of 08/11/2005, final on 08/02/2006)	UKR	1028	AR 2007, p. 41; AR 2008	(2008) 35
56848/00	**Zhovner** (judgment of 29/06/2004, final on 29/09/2004) **and 231 cases** related 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	UKR	1020	AR 2007, p. 110; AR 2008	(2008) 1

Appendix 5

List of memoranda and other relevant public documents prepared by the Department for the Execution of Judgments of the ECtHR

As far as groups of cases are concerned, only the references of the leading case are given.

Memoranda examined and declassified at the last HR meeting of December 2008 have been formally adopted on 9 January 2009.

Title of the document	Reference of the document	Date of the document	Case(s) (appl. No.)	Country	Theme
Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice	CM/Inf/DH (2008) 7final	09/01/2009	/	/	Just satisfaction
Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice (Addendum)	CM/Inf/DH (2008) 7rev3add	09/01/2009	/	/	Just satisfaction
Metropolitan Church of Bessarabia and Others against Moldova - Judgment of 13 December 2001: Examination of the state of execution of general measures	CM/Inf/DH (2008) 47rev	09/01/2009	Metropolitan Church of Bessarabia and Others (No. 45701/99)	MDA	Freedom of religion
Stock-taking of the measures adopted by the Italian authorities in 2006-08 on the excessive length of judicial proceedings	CM/Inf/DH (2008) 42	28/11/2008	Ceteroni and 2 182 other cases (No. 22461/93)	ITA	Length of proceedings
Actions of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights (Addendum)	CM/Inf/DH (2008) 33add	28/11/2008	Khashiyev (No. 57942/00)	RUS	Actions of security forces
Cases concerning the action of security forces in Northern Ireland (revised)	CM/Inf/DH (2008) 2rev	27/11/2008	McKerr (No. 28883/95)	UK	Actions of security forces

Title of the document	Reference of the document	Date of the document	Case(s) (appl. No.)	Country	Theme
Actions of the security forces in the Chechen Republic of the Russian Federation: general measures to comply with the judgments of the European Court of Human Rights	CM/Inf/DH (2008) 33	11/09/2008	Khashiyev (No. 57942/00)	RUS	Actions of security forces
A. against the United Kingdom Judgment of 23 September 1998	CM/Inf/DH (2008) 34	28/08/2008	A. (No 25599/94)	UK	Ill-treatment
Freedom of expression in Turkey: Progress achieved – Outstanding issues	CM/Inf/DH (2008) 26	23/05/2008	Inçal (No. 22678/93)	TUR	Freedom of expression
Monitoring of the payment of sums awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice	CM/Inf/DH (2008) 7rev	11/03/2008	/	/	Just satisfaction
Cases concerning the action of security forces in Northern Ireland	CM/Inf/DH (2008) 2	27/02/2008	McKerr (n° 28883/95)	UK	Actions of security forces

Appendix 6

Rules adopted by the Committee of Ministers for the suspension of the execution of judgments and of the terms of the friendly settlements

(Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies)

I.I. General Provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.

2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.

2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph 4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

II. Supervision of the execution of judgments

Rule 6
Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

i. individual measures[13] have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;

ii. general measures[14] have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

13. For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the reopening of impugned domestic proceedings (see on this latter point Recommendation Rec (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

14. For instance, legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.

Rule 7
Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

Rule 8
Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.

2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:

a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;

b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:

a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;

b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5.In all cases, where an injured party has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 9
Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

Rule 10
Referral to the Court for interpretation of a judgment

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.

3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.

4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

Rule 11
Infringement Proceedings

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.

2. Infringement proceedings should be brought only in exceptional circumstances. They shall not be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the

Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

III. Supervision of the Execution of the Terms of Friendly Settlements

Rule 12
Information to the Committee of Ministers on the execution of the terms of the friendly settlement

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.
2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

Rule 13
Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,[15] on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

Rule 14
Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;
b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;
b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;
c. the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.
4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.
5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

Rule 15
Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of

15. In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.

human rights, with regard to the execution of the terms of friendly settlements.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

IV. Resolutions

Rule 16
Interim resolutions

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Rule 17
Final Resolution

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.

Decision adopted at the 964th meeting of the Committee of Ministers – 10 May 2006

The Deputies

1. adopted the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements as they appear at Appendix 4 to the present volume of Decisions and agreed to reflect this decision in the report "Ensuring the continued effectiveness of the European Convention on Human Rights – The implementation of the reform measures adopted by the Committee of Ministers at its 114th Session (12 May 2004)" and in the draft Declaration on "Sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels";

2. decided, bearing in mind their wish that these Rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these Rules shall take effect as from the date of their adoption, as necessary by applying them *mutatis mutandis* to the existing provisions of the Convention, with the exception of Rules 10 and 11.

Appendix 7

Where to find further information on execution of ECtHR judgments

Internet

Further information on the cases mentioned in this report as well as on all other cases is available on:

- the CM website: **http://www.coe.int/cm/** and also from
- the special Council of Europe website dedicated to the execution of the ECtHR's judgments, kept by the Directorate General of Human Rights and Legal Affairs, Department for the Execution of Judgments of the ECtHR, at the following address: **http://www.coe.int/Human_Rights/execution**;

The text of resolutions adopted by the CM can also be found through the HUDOC database on **www.echr.coe.int**.

As a general rule, information concerning the state of progress of the adoption of the execution measures required is published some fifteen days after each HR meeting, in the document called "annotated agenda and order of business" available on the CM website: **www.coe.int/t/CM/home_en.asp** (see Article 14 of the new Rules for the application of Article 46, § 2, of the Convention adopted in 2006).

How to search information through the CM website

Click on the link to "Human Rights (DH) meetings".

From there, the "Links" section gives access the special Council of Europe website dedicated to the execution of the ECtHR's judgments as well as the HUDOC database.

The CM website gives access to the relevant meeting documents either grouped by their respective meeting (click on Human Rights (DH) meetings since January 2003) or by type of document: agendas, orders of business, memoranda

and information documents, information communicated to the CM, decisions, resolutions, interim resolutions, declarations, replies to the Parliamentary Assembly, recommendations, press releases. Further information on where to find different documents relating to the CM's execution supervision is found in the table below.

To find and consult the latest public information on the state of execution of a pending case and the decisions adopted

On the CM website, **http://www.coe.int/t/cm/humanRights_en.asp**	Consult the **Preliminary list of items for consideration** of the latest "CMDH" meetings and search for the case (Ctrl+F): this will allow you to identify the latest meeting at which the case was examined and the section under which the case was examined.[1] You can then consult the **agenda** of the relevant meeting, where you will also find the **decision** adopted at the meeting (these can also be found separately under "Decisions").
On the Execution website, **http://www.coe.int/T/E/Human_Rights/execution**	Consult under **Cases** the country by country **state of execution** or **measures adopted** where you'll find also the **decisions** and summary indications about *recent information* received since the last examination and not yet reflected in the notes, nor examined by the CM. Pending cases not appearing in the above-mentioned document (clone cases or cases whose examination has in principle ended) can be found in the **simplified global database**, which indicates, *inter alia*, at what meeting and under what section the case is examined as well as, where relevant, the name of the leading case. Consult **Control of payment**, listing the cases for which the Secretariat has not received the written confirmation of payment of just satisfaction and/or default interest or for which the transmitted confirmation is still under examination.
On the Hudoc database, **http://www.echr.coe.int/echr/**	Not available.

[1] See, as regards the description of sections, the introduction to the appendices of this document.

To find and consult Final and Interim (execution) resolutions

On the CM website, **http://www.coe.int/t/cm/humanRights_en.asp**	All **Resolutions** can be consulted in their *chronological order* of adoption under **Meetings of the CM** and then, for each meeting, **Resolutions**. **Interim resolutions** are also specially presented under **Adopted texts**. A link to the Hudoc database is also available.
On the Execution website, **http://www.coe.int/T/E/Human_Rights/execution**	Click on **Documents**. Under **Information on cases**, consult **Collection of Interim Resolutions** adopted by the CM 1988-2007 (regularly updated). *Extracts from the final resolutions*, i.e. the descriptions of significant individual and general measures taken in the context of the execution of ECHR cases, can also be found in the **Lists of General measures adopted…** and **List of Individual measures adopted…** These documents (regularly updated) are accessible from the Execution portal, under the "where to find…" menu. Links to the Hudoc database and to the relevant pages of the CM website are also available.
On the Hudoc database, **http://www.echr.coe.int/echr/**	Click on **Resolutions**, on the left of the screen, and search the database by the application number and/or by the name of the case. *For grouped cases*, resolutions can more easily be found by their number: type in the "text" search field, the reference year and serial number of the resolution. Example: "(2007) 75" (do not forget the quotation marks). The same search is possible by indicating the Resolution number– preferably preceded by the year of adoption between brackets – in the field **Resolution number**. For more precision in the search, click on the "+" next to "Resolutions" to expand the list and select "Execution": this will exclude the resolutions on the merits adopted under former Article 32 ECHR, in which the CM itself decided whether or not there was a violation of the ECHR.

To find and consult information documents, memoranda etc.

On the CM website, **http://www.coe.int/t/cm/humanRights_en.asp**	Consult, under **meeting documents** the type of documents you are looking for: • CM information documents; • Documents communicated by applicants, governments or others; • Information made available under Rule 8.2.a, 9.1 and 9.2 of the CM Rules; • Correspondence of the ECtHR.
On the Execution website, **http://www.coe.int/T/E/Human_Rights/execution**	Click on **Documents** then under **Committee of Ministers' Human Rights meetings** consult the type of document you are looking for: • CM information documents; • Documents communicated by applicants, governments or others.
On the Hudoc database, **http://www.echr.coe.int/echr/**	Not available.

To find and consult Parliamentary Assembly positions on execution and CM replies

On the CM website, **http://www.coe.int/t/cm/humanRights_en.asp**	Under **Adopted texts**, consult **Committee of Ministers replies to the Parliamentary Assembly.**
On the Execution website, **http://www.coe.int/T/E/Human_Rights/execution**	Click on **Documents**, then **Parliamentary Assembly**.
On the Hudoc database, **http://www.echr.coe.int**	Not available.

To find and consult press releases

On the CM website, **http://www.coe.int/t/cm/humanRights_en.asp**	Consult **Press releases**.
On the Execution website, **http://www.coe.int/T/E/Human_Rights/execution**	Click on **Documents**, then **Press releases**.
On the Hudoc database, **http://www.echr.coe.int/echr/**	Not available, except for ECtHR's Press releases.

To find and consult reference documents

On the CM website, **http://www.coe.int/t/cm/humanRights_en.asp**	The site gives you, *inter alia,* access to: • the **CM Rules** for the supervision of the execution of judgments and of the terms of friendly settlements (Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights); • **CM recommendations**.
On the Execution website, **http://www.coe.int/T/E/Human_Rights/execution**	The site contains most of the reference documents, including (under **Documents** and **Reference Documents**): • the **CM Rules** for the supervision of the execution of judgments and of the terms of friendly settlements; • the **Working methods** for supervision of the execution of the ECtHR's judgments; • documents concerning the **reopening** of judicial proceedings; • documents adopted at the **European Ministerial Conference** on Human Rights in 2000; • CM **Recommendations, Resolutions** and **Declarations**. Furthermore, a comprehensive overview of individual and general measures adopted in the context of execution is also available directly from the Execution portal, under **List of Individual measures…** and **List of General measures…**
On the Hudoc database, **http://www.echr.coe.int/echr/**	Not available

Appendix 8

Recommendation CM/Rec (2008) 2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the ECtHR

(Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

a. Emphasising High Contracting Parties' legal obligation under Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") to abide by all final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in cases to which they are parties;

b. Reiterating that judgments in which the Court finds a violation impose on the High Contracting Parties an obligation to:

- pay any sums awarded by the Court by way of just satisfaction;
- adopt, where appropriate, individual measures to put an end to the violation found by the Court and to redress, as far as possible, its effects;
- adopt, where appropriate, the general measures needed to put an end to similar violations or prevent them.

c. Recalling also that, under the Committee of Ministers' supervision, the respondent state remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention to abide by the final judgments of the Court;

d. Convinced that rapid and effective execution of the Court's judgments contributes to enhancing the protection of human rights in member states and to the long-term effectiveness of the European human rights protection system;

e. Noting that the full implementation of the comprehensive package of coherent measures referred to in the Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels", adopted by the Committee of Ministers at its 114th Session (12 May 2004), is, *inter alia*, intended to facilitate compliance with the legal obligation to execute the Court's judgments;

f. Recalling also that the Heads of State and Government of the member states of the Council of Europe in May 2005 in Warsaw underlined the need for an accelerated and full execution of the judgments of the Court;

g. Noting therefore that there is a need to reinforce domestic capacity to execute the Court's judgments;

h. Underlining the importance of early information and effective co-ordination of all state actors involved in the execution process and noting also the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process;

i. Noting that the Parliamentary Assembly recommended that the Committee of Ministers induce member states to improve or, where necessary, to set up domestic mechanisms and procedures – both at the level of governments and of parliaments – to secure timely and effective implementation of the Court's judgments, through co-ordinated action of all national actors concerned and with the necessary support at the highest political level;[16]

j. Noting that the provisions of this recommendation are applicable, *mutatis mutandis*, to the execution of any decision[17] or judgment of the Court recording the terms of any friendly settlement or closing a case on the basis of a unilateral declaration by the state;

RECOMMENDS that member states:

1. designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process. This co-ordinator should have the necessary powers and authority to:

- acquire relevant information;
- liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment; and
- if need be, take or initiate relevant measures to accelerate the execution process;

2. ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;

3. take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;

4. identify as early as possible the measures which may be required in order to ensure rapid execution;

5. facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competencies;

6. rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;

7. take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case-law as well as with the relevant Committee of Ministers' recommendations and practice;

8. disseminate the vade mecum prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;

9. as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;

10. where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.

16. Parliamentary Assembly Recommendation 1764 (2006) – "Implementation of the judgments of the European Court of Human Rights".

17. When Protocol No. 14 to the ECHR has entered into force.

Appendix 9

The Committee of Ministers

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg. It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings.

47 Member states

Albania
Andorra
Armenia
Austria
Azerbaijan
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Moldova
Monaco
Montenegro
Netherlands
Norway
Poland
Portugal
Romania
Russian Federation
San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
"The former Yugoslav Republic of Macedonia"
Turkey
Ukraine
United Kingdom

The Secretariat of the Committee of Ministers

Postal address

Council of Europe
Secretariat of the Committee of Ministers
F-67075 Strasbourg Cedex
FRANCE

Telephone

+33 (0)3 88 41 20 00

Fax

+33 (0)3 88 41 37 77

E-mail address

cm@coe.int

Website

`http://www.coe.int/T/CM`

Appendix 10

The Department for the Execution of Judgments of the European Court of Human Rights (March 2009)

Central Section

Geneviève MAYER, Head of Department
Secretariat: Nathalie SCHELL

Fredrik SUNDBERG, Deputy to the Head of Department

Backlog case management

Charlotte de BROUTELLES
Elena MALAGONI

Translation

Philippe FRISON

Information, research and publications Division

Fredrik SUNDBERG, Head of Division
Elena MALAGONI

Secretariat: Despina TRAMOUNTANI

Legal Division I

Corinne AMAT, Head of Division a.i.

Section 1	*Section 2*
…, Head of Section	Dimitrina LILOVSKA, Head of Section
Agnieszka SZKLANNA	Gisella GORI
Frédéric DOLT	Zoë BRYANSTON-CROSS
Sandra MATRUNDOLA-SCHIRMER	Kyriaki GRIGORIOU
Odeta KUMBARO-BIANKU	Irena MARKOVA
Petra WINTER	Jan SOBCZAK

Secretariat: Stéphanie FLECKINGER

Legal Division II

Özgür DERMAN, Head of Division a.i.

Section 1	*Section 2*
…, Head of Section	Ekaterina ZAKOVRYASHINA, Head of Section
Katarina NEDELJKOVIC	Anna STEPANOVA
Vedia SIRMEN	Cipriana MORARU
Ziya TANYAR	Yulia GENDLINA

Secretariat: Nadiejda NIKITINA

Central Office

Christian ROOS, Head of Office

Administrative and budgetary questions

Virginie LHOSTE
Cindy FERREIRA

Follow-up of payment of sums awarded as just satisfaction

Virginie LHOSTE
Catherine GUERRERO

Archives, documentation

Delphine LELEU

Postal address:	Council of Europe Department for the Execution of Judgments of the European Court of Human Rights – DG-HL F-67075 Strasbourg Cedex
Telephone:	+33 (0)3 88 41 20 00
Fax:	+33 (0)3 88 41 27 93
E-mail address:	DGHL.Execution@coe.int
Website:	http://www.coe.int/Human_Rights/execution

Appendix 11

Thematic overview of issues examined in 2008

Introduction

The overview below presents the execution situation in a selection of ECtHR judgments examined by the CM in the course of 2008, in particular as regards cases (or groups of cases), which are particularly interesting in respect of the individual measures and/or general measures involved.

The presentation in the overview is thematic, based on the different rights and freedoms protected by the ECHR.

An index by state of major cases examined in the course of 2008 is presented at the end of the thematic overview. Cases in principle closed or already closed by final resolution in 2008 are highlighted. Furthermore, lists of cases closed by final resolution in 2008 and of those in principle closed in 2008 and awaiting the drafting of such a resolution are found in Appendices 2 and 3.

Cases contained in the AR 2007 are presented anew if there have been major developments in 2008 which have been presented to the CM. In principle, the presentation is limited to new developments.

Full descriptions by state of all major pending cases can be found on the special Council of Europe website dedicated to the supervision of the execution of the judgments of the ECtHR[18] under the heading "cases".

The information in the thematic overview is presented as follows:

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

Indication of whether the case was included in the 2007 Annual Report (AR 2007) and of whether it has been closed or in principle closed;

Application No., date of leading judgment; Meeting No. and Section of last examination; Summary of violation(s) found;

Individual (IM) and General (GM) measures taken or outstanding (see for fuller information the case descriptions in the notes on the agenda available on the above-mentioned special Council of Europe website dedicated to the execution of the judgments of the ECtHR).

18. **http://www.coe.int/T/E/Human_rights/execution/03_Cases/**, (accessible in particular over the CM website "http://www.coe.int/cm", heading "Human Rights Meetings": link to the Council of Europe's website dedicated to the execution of judgments of the European Court of Human Rights, "Cases".

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

A.1. Actions of security forces

1. AZE / Mammadov (Jalaloglu) (See also AR 2007, p. 27)

Application No. 34445/04
Judgment of 11/01/2007, final on 11/04/2007
Last examination: 1043-4.2

Torture inflicted on the applicant, Secretary General of the Democratic Party of Azerbaijan at the time, while he was in police custody in October 2003 (violation of Art. 3); lack of an effective investigation into the applicant's complaints in this respect (violation of Art. 3) and lack of an effective domestic remedy, because the domestic courts simply endorsed the criminal investigation, without independently assessing the facts of the case (violation of Art. 13).

IM As regards the continuing obligation to conduct an effective investigation, the government has indicated that, on 11 January 2008, the Plenum of the Supreme Court quashed the earlier decisions which had upheld as lawful the Chief Prosecutor's refusal to institute criminal proceedings. In the wake of this decision the First Deputy Prosecutor General quashed the decision not to institute criminal proceedings. The Investigation Department is currently investigating anew the applicant's complaints. Information is awaited on the developments of the new investigation.

GM As indicated in the 2007 AR, a number of awareness raising measures have been taken to prevent similar violations.

In 2008 the CM has been presented statistics concerning the investigation of allegations of ill-treatment and information about the Action Plan for Human Rights set up by the Ministry of the Interior and about the Human Rights Commission established in 2007 in particular to guarantee proper and prompt investigations of all allegations of torture and ill-treatment.
The CM has requested information on the current legislative and regulatory provisions on police custody and those applicable in case of allegations of torture and ill-treatment. Examples of the application of the latter provisions are also awaited. Furthermore, the CM has requested information on the concrete measures planned and undertaken to fight torture and to guarantee effective and prompt investigation.

2. BGR / Nachova and Others (See also AR 2007, p. 28)

Application No. 43577/98
Judgment final on 06/07/2005 – Grand Chamber
Last examination: 1007-4.2

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

IM Following the ECtHR's judgment, the Military Prosecutor's Office reopened the investigation into the killing of the applicants' relatives. Most of the concrete investigative steps omitted during the initial investigation, but pointed out by the ECtHR in its judgment as having been necessary, have been taken. Further to this new investigation the competent prosecutor concluded that the officer who shot had acted in compliance with the regulations governing, at the relevant time, the use of firearms. Clarifications have been sought as to whether this decision is final.

GM The measures taken and envisaged have been presented in the AR 2007. Following the ECtHR's judgment, the Ministry of Defence adopted a regulation defining the circumstances in which military police may use force and firearms. As regards the obligation to investigate possible racist motives in similar cases, the authorities indicated that Bulgaria's obligations

under the ECHR could be fulfilled in an appropriate manner by drawing up concrete instructions for the attention of prosecution authorities.

3. FRA / Taïs (See also AR 2007, p. 30)

Application No. 39922/03 *Last examination: 1043-4.2*
Judgment of 01/06/2006, final on 01/09/2006

Violation of positive obligation to protect the lives of persons in police custody: absence of a plausible explanation as to the cause of the serious injuries suffered by the applicants' son in 1993 while he was detained and absence of any effective police and medical supervision of the applicants' son despite his critical state (substantive violation of Art. 2); lack of a quick and effective investigation into the circumstances surrounding the death (procedural violation of Art. 2).

IM In its judgment, the ECtHR itself noted that the violation was irreversible and, given that it is impossible for the applicants to obtain an effective enquiry or adequate compensation, granted them 50 000 euros as just satisfaction for the non-pecuniary damage sustained.

Following this judgment, the Public Prosecutor, in accordance with his competence under Article 190 of the Code of Criminal Procedure, examined and on 12 January 2007 rejected the applicants' request for a new investigation. The Public Prosecutor held that he did not have enough new grounds to change the initial conclusion of the investigation, i.e. that there were no sufficient charges against anyone.

Several other elements make it objectively impossible to rectify the shortcomings of the original investigation. By definition, it is not possible to change the fact that the investigation has been too long, nor that the investigating judge went too late to the scene to examine it (he went there but, even at that time, it did not help in understanding the reasons for the victim's death), nor finally that the post-mortem psychological inquiry had been carried out. Furthermore, a reconstitution of the events would be objectively impossible, as the cell in which the events occurred does no longer exists as it was at the material time, works having been carried out between 1997 and 1998, i.e. since the material time. As to Mr Pascal Taïs' girlfriend, she has no known address.

GM The judgment has been brought to the attention of competent judges and prosecutors. The attention of the police as also been drawn to the judgment, which is commented upon during police officers' training in order to highlight its consequences for their work and prevent similar violations The judgment has also been published and commented in the Legal Bulletin of the Ministry of Interior, to which all the Ministry (including police) and *Préfecture* officials have access.

More generally, the French Government has maintained important efforts for several years, taking into account the CPT's recommendations, to improve conditions of police custody, *inter alia* through the implementation of the Circular on the dignity of persons in police custody issued on 11 March 2003.

In addition, in 2000 the National Commission for Policing Ethics was created, an independent authority entrusted with the mission of supervising respect of ethics by all those working in the field of security within the French republic, including the police.

Finally, it may be noted that the Director General of the Police requested the Police General Inspectorate in December 2006, together with the ministries concerned and the medical doctors' professional body, to carry out a study on placement in cells for sobering up. It was requested that this study "evaluate how the police take account of the rules on handling persons in a state of inebriation, to analyse the shortcomings and the difficulties encountered and to make proposals for reform. No further measure appears necessary.

4. GRC / Makaratzis and other similar cases (See also AR 2007, p. 31)

Application No. 50385/99
Judgment of 20/12/2004 (final)
Last examination: 1035-4.2

Use of potentially lethal force by the police in the absence of an adequate legislative and administrative framework governing the use of firearms (violation of positive obligation pursuant to Art. 2 to protect life); ill-treatment of victims while under police responsibility (violation of Art. 3); absence of effective investigations (procedural violations of Art. 2 and 3); failure to investigate whether or not racist motives on the side of the police may have played a role in some cases (violation of Art. 14 combined with Art. 3).

IM The ECtHR has awarded all applicants, as appropriate, compensation for non-pecuniary and/or pecuniary damage.

As regards the authorities continuing obligation, following the violations found, to ensure an investigation into the events, as Art. 2 or 3 compliant as possible, the Greek authorities have in particular indicated that either the police or the public prosecutor have examined the possibility of carrying out new investigations but found that this was not feasible because it was no longer possible to mend the investigative errors or to remedy them by other measures, *inter alia* on account of the passage of time. For example this was the situation in the *Celniku* case where a major shortcoming was that the scene of the crime was not preserved and in *Karagiannopoulos* case where the hands of the protagonists in the incident were not tested for the presence of pyrite or the policemen's clothing analysed. In some cases, new administrative investigations were furthermore legally impossible in so far as the disciplinary misconducts happened to be prescribed.

As regards the civil proceedings for damages lodged by the applicant against the police on account of the events in the *Alsayed Allaham* case, the Greek authorities have indicated that in a judgment of 2008, the Council of State granted the applicant's appeal against the rejection of his claims and sent the case back to the Athens Administrative Appeal Court.

Clarifications have been submitted regarding the procedure followed at domestic level to assess the possibility of carrying out new investigations. The Greek authorities undertook to establish an independent Committee competent to assess the need of new disciplinary investigations in case where the ECtHR has found a violation of the ECHR due to shortcomings observed in the conduction of such investigations. Information was submitted also concerning the cases of *Bekos* and *Koutropoulos*, *Petropoulou-Tsakiris*, as well as regarding the limitation periods applicable in the different type of situations that are at issue.
The information submitted is being examined. Additional information is expected on the result of the civil proceedings for damages in the case of *Alsayed Allaham*.

GM The developments as regards the different GM required in response to the different violations established have been described in AR 2007. In September 2008 a new disciplinary code for policemen was adopted. A number of meetings between the Secretariat and competent Greek authorities were held in October 2008 to discuss outstanding issues. Following these meetings, additional information was submitted with respect to the integration of the principles of protection of Human Rights in the initial and continuing training of the members of the police forces and concerning the practical impact of the measures taken, in particular as regards statistical data. The information provided is under examination.

5. RUS / Khashiyev and other similar cases (See also AR 2007, p. 33)

Application No. 57942/00
Judgment of 24/02/2005, final on 06/07/2005
Last examination: 1043-4.3
CM/Inf/DH (2006) 32 revised 2, CM/Inf/DH (2008) 33

Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2002: State responsibility established for deaths, disappearances, ill-treatment, unlawful searches and destruction of property; failure to take measures to protect the right to life; lack of effective investigations into abuses and absence of effective remedies; ill-treatment of the appli-

cants' relatives due to the attitude of the investigating authorities (violation of Art. 2, 3, 5, 8, 13 and of Art. 1 Prot. No. 1). Failure to co-operate with the ECHR organs contrary to Art. 38 of the ECHR in several cases.

IM Domestic investigations into the circumstances at the basis of the violations have been either resumed or reopened in order to give effect to the ECtHR's judgments. In particular, since the setting up in 2007 of the Investigating Committee within the Prosecutor General's Office, these investigations fall within the competence of this new authority and a special group of investigators within the Investigating Committee deals with these cases. The CM is monitoring the progress of the investigation in the light of the advancement of general measures.

GM The earlier developments in this group of cases is described in AR 2007.The last analysis of the execution situation is to be found in Memorandum CM/Inf/DH (2008) 33 and its Addendum, which contains the assessment of the information provided and identifies a non-exhaustive list of outstanding issues in the following areas:

- Rules governing the use of force in the context of anti-terrorist operations;
- Prevention of torture, ill-treatment and disappearances, in particular safeguards in police custody and supervision of compliance by members of the security forces with them;
- Measures to ensure effective investigations into alleged abuses, particularly public scrutiny and access of victims to the investigative procedure;
- Supervision of compliance with these rules and sanctions for abuses;
- Measures to ensure compliance with the obligation to co-operate with the ECtHR;
- Measures related to initial and in-service training of members of the security forces;
- Measures to ensure appropriate compensation to the victims of abuses.

In December 2008, the CM:

- noted with satisfaction the information provided on the time-frame for bilateral consultations between the Secretariat and the competent Russian authorities to examine the issues raised in the Memorandum CM/Inf/DH (2008) 33;
- took note with interest of the positive case-law developments concerning compensation of victims of violations related to or resulting from anti-terrorist operations, as well as of the existence of administrative procedures for compensation of lost property;
- encouraged the competent Russian authorities to further develop these practices and to regularly provide the CM with the relevant examples.

6. RUS / Mikheyev and other similar cases (See also AR 2007, p. 34)

Application No. 77617/01
Judgment of 26/01/2006, final on 26/04/2006

Last examination: 1035-4.2

Torture inflicted on the applicants while in police custody in 1998 and 1999, and subsequent failure by the police and prosecutors to conduct adequate and sufficiently effective investigations of the events (violation of Art. 3); lack of an effective remedy to secure, on the one hand, the effectiveness of the criminal investigations and, on the other hand, to obtain compensation through a civil action because of the courts' general deference to the prosecutors' conclusions (violation of Art. 13); in one case unfairness of compensation proceedings engaged as courts refused to order the applicant's attendance (violation of Art. 6§1).

IM In the *Mikheyev* case the authorities indicated that, in 2002, the Deputy Public prosecutor of the region allegedly involved in the events had been discharged. In 2005, two police officers accused by the applicant were sentenced to 4 years of imprisonment for abuse of powers associated with the use of violence. These developments had taken place before the ECtHR's judgment became final.

The ECtHR considered that the fact that the applicant might still receive an award in respect of pecuniary damage for his permanent disability in domestic proceedings did not deprive him of his right to compensation under Art. 41 of the ECHR and awarded him a sum to cover his loss of income and present level of medical expenses. The applicant's claim for additional compensation under Russian law was subsequently rejected in

2006 on the ground that the applicant had already been compensated by the ECtHR. Assurances have been sought that the proceedings conducted so far do not preclude additional assistance in case the applicant's health condition should further aggravate.
Information is awaited as to the measures taken, or available to the applicants, in the other two cases of the group, *Sheydayev* and *Kovalev*.

GM The issues of:
- prohibition of torture,
- safeguards in police custody,
- use of confessions in criminal proceedings,
- the effectiveness of investigations into alleged abuses,
- the role of domestic courts in combating ill-treatment
- ensuring compensation of victims

are now mainly examined in the context of the *Khashyev* group of cases, in particular in the light of Memorandum CM/Inf/DH (2008) 33. This Memorandum analyses the current legal and regulatory framework of the Russian Federation and identifies outstanding measures aiming at combating ill-treatment and impunity, and securing compensation of victims. In this context a submission by an Interregional NGO "Committee against Torture" in August 2008 was taken into account.

The question of what general measures will continue to be addressed within the *Mikheyev* group of cases is presently under consideration in co-operation with the Russian authorities. Such measures could e.g. include awareness raising and training, in particular in the use of modern investigations methods and techniques.

The judgments have been published in Russian and widely disseminated to police, prosecutors and courts.

7. MKD / Jasar (See also AR 2007, p. 37)

Application No. 69908/01 *Last examination: 1035-4.2*
Judgment of 15/02/2007, final on 15/05/2007

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

IM As regards the continuing obligation to carry out an effective investigation the prosecutor's decision on the allegations of ill-treatment was rendered in 2006 and concluded that the prosecution of any crime committed had become time barred in 2003. As the applicant's right to engage private prosecution only started after the prosecutor's decision had been rendered, the applicant was thus also prevented from availing himself usefully of this right. The ECtHR awarded him just satisfaction in respect of non-pecuniary damage. In view of the circumstances, no other individual measure appears necessary.

GM According to the new Public Prosecution Act adopted at the end of 2007, when a complaint is filed, the public prosecutor is obliged to take action as soon as possible, but not later than 30 days after the complaint has been filed. Further amendments were planned in the short term in the light of the ECtHR's findings in other relevant cases. These amendments aim *inter alia* at introducing in the Code of Criminal Procedure a deadline within which public prosecutors will be obliged to decide on complaints and notify the applicants. The CM is expecting information on the progress made in amending the relevant legislation.

The judgment has been translated, published and forwarded, with a special note on the violation found, to the Court of First Instance of Štip, Court of Appeals in Štip, Bitola and Skopje, the Supreme Court, the Basic Public Prosecutor of Štip, Higher Public Prosecutors of Štip, Bitola and Skopje and to the Prosecutor General. A letter was also sent to the Ministry of the Interior regarding the case.

8. TUR / Adalı (See also AR 2007, p. 38)

Application No. 38187/97 *Last examination: 1043-4.2*
Judgment of 31/03/2005, final on 12/10/2005

Lack of an effective investigation into the death of the applicant's husband, who was shot in 1996 (violation of Art. 2 and 13) and interference with the applicant's freedom of association on account

of a refusal of permission to cross from northern part of Cyprus to the southern part to attend a bi-communal meeting in 1997 (violation of Art. 11).

IM A 2006 amendment to the Act on the Law Office was introduced whereby the Attorney General can supervise or direct an investigation being carried out by the police. The amendment also provides for the Attorney General to request the reopening of a criminal investigation. In 2006, the Attorney General ordered the police authorities to initiate an additional investigation into the death of Mr Adalı, taking into account the shortcomings identified in the ECtHR's judgment. It appears that collecting new fingerprints turned out to be objectively impossible, given the long period elapsed since the events, the environmental changes and the fact that external persons have been at the crime scene. During the initial investigation, the ballistics report had already been checked against data in the police archives in Turkey and the results taken in consideration, even if the corresponding report could not be found subsequently. The victim's mobile telephone was sought but not found. As regards the investigation of the motives of the killing of the applicant's husband, the competent authorities have examined all allegations advanced without obtaining conclusive results.

The documents and results of all investigations carried out in connection with this case have been submitted to the Prosecutor General; the applicant never requested either the autopsy or the ballistics reports. It should be noted that two of the key witnesses not questioned at the time of the facts have been heard during the additional investigation opened in 2002. The third important witness was heard by the ECtHR.

Having carried out the additional investigative acts the authorities concluded that it had not been possible to obtain new documents, information or testimony on the basis of which criminal charges could be brought against any person. On the other hand, they underline that as no period of limitation applies in this case, any new element could at any moment give rise to an appropriate follow-up.

The CM has invited the Turkish authorities to provide clarification as to whether the applicant has been informed of the results of the additional inquiry carried out after the ECtHR's judgment.

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

The judgment has been translated into Turkish, published and disseminated to all jurisdictions via the channels of the Prosecutor General's Office. In addition, an article has been published in the Lefkoşa Bar Journal in order to raise awareness of the requirements of the ECHR as regards effective investigations of the authorities entrusted with applying the law.

Breach of freedom of association: the necessary measures have been taken and examined in the framework of the case of *Djavit An*, see Final Resolution (2008) 59.

9. TUR / Aksoy and other similar cases (See also AR 2007, p. 38)

Application No. 21897/93
Judgment of 18/12/1996 (final), Interim Resolutions (99) 434; (2002) 98; (2005) 43; (2008) 69;
Memorandum CM/Inf/DH (2006) 24 revised 2, CM/Inf/DH(2006)20 revised.
Last examination: 1035-4.3

Violations resulting from actions of the security forces, in particular in the southeast of Turkey, mainly in the 1990s (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of the security forces); subsequent lack of effective investigations into the alleged abuses (violations of Art. 2, 3, 5, 8 and 13 and of Art. 1 of Prot. No. 1). In several cases, failure to co-operate with the ECHR organs as required under Art. 38 ECHR.

IM In the light of the violations found and the ECtHR's decisions on just satisfaction, the main issue has been the possible resumption of criminal investigations. However, in view of the need for general measures to improve investigations, this issue is largely integrated to that of general measures. Cases in which criminal proceedings are currently pending are being followed sepa-

rately in specific groups of cases (see, in particular, the *Bati* group of cases).

GM Since 1996 Turkey has adopted a large number of general measures with a view to complying with these judgments, including comprehensive changes to the Constitution, legislation, regulations and practice (see IR (99) 434, (2002) 98, (2005) 43 and (2008) 69 as well as memorandum CM/Inf/DH (2006) 24 revised 2 for details).

In its IR(2008) 69 adopted in September 2008, the CM examined the measures taken by Turkey since the last IR in 2005 and decided to close the examination of a number of issues, in particular:

- the improvement of procedural safeguards in police custody, as the necessary legislative and regulatory framework is now in place;
- the improvement of professional training of members of the security forces, as human rights are now a part of the curriculum in the initial training of members of the security forces, in particular the gendarmerie;
- the development of the legal framework and practices, in particular, regarding the proportionate use of force, as a result of the improved direct effect of the ECHR following the 2004 amendment to the Turkish Constitution, the new law introduced in 2007 on the "Duties and Legal Powers of the Police" and a number of circulars issued by the Minister of Justice;
- the compensation to victims for the period of 1987-2006 through the effective implementation of the "*Law on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism*" and the availability of a wide range of remedies for situations falling outside this Law, in particular the continuing practice of the administrative courts of ensuring reparation by the state for damages caused as a consequence of actions of the security forces and
- the training of judges and prosecutors in the ECHR and the ECtHR's case-law, which is today part of the initial training of judges and prosecutors in the Academy of Justice and other ongoing training activities for those professionals in the form of seminars, conferences and study visits.

The CM decided not to close its examination of the issue of enhanced criminal responsibility of members of the security forces, as questions remained as to whether or not administrative authorisation was required under Turkish law to prosecute members of the security forces for allegations of serious crimes other than torture and ill-treatment. The CM urged the Turkish authorities to remove this ambiguity so that members of the security forces of all ranks could be prosecuted without administrative authorisation.

The CM also decided to keep under examination the question of the impact of the measures taken in practice. It noted with interest indications that the number of investigations into accusations of torture and ill-treatment had slightly decreased, but regretted the absence of statistics with respect to other serious offences. It also noted the examples of prosecutions commenced and of judicial decisions establishing criminal responsibility.

The CM thus strongly encouraged the Turkish authorities to actively pursue their "zero tolerance" policy aimed at total eradication of torture and other forms of ill-treatment, as well as their efforts to ensure that the domestic authorities carry out effective investigations into alleged abuses by members of the security forces. The CM therefore urged the Turkish authorities to provide detailed statistics with respect to the number of investigations into, acquittals of and convictions for alleged abuses with a view to demonstrating the positive impact of the measures taken so far.

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

10. TUR / Kakoulli (See also AR 2007, p. 40)

Application No. 38595/97
Judgment of 22/11/2005, final on 22/02/2006

Last examination: 1043-4.1

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

IM A 2006 amendment to the Act on the Law Office was introduced whereby the Attorney General can supervise or direct an investigation being carried out by the police. The amendment

also provides for the Attorney General to request the reopening of a criminal investigation. Following the ECtHR's judgment, the question of a potential reopening of the investigation was examined promptly, in the light of the deficiencies identified by the ECtHR. On the basis of this examination, the Prosecutor General, in a decision of 2007, found that a new investigation was impossible *inter alia* because of the time elapsed and the impossibility of carrying out an autopsy. This decision not to reopen the investigation contains a detailed and thorough examination of all the main elements pointed out by the ECtHR as deficient in the initial investigation. It was, however, based on the same investigation acts as those criticised by the ECtHR. However, from the information provided by the Turkish authorities it seems that the authorities are not in a position to carry out an exhumation of, and perform an autopsy on, the body of Mr Kakoulli, as it is buried in the southern part of Cyprus. Now, performing another autopsy is crucial for determining the position of Mr Kakoulli's body in relation to the soldiers on guard duty when the shots were fired, and ultimately for determining whether the soldier who shot could have avoided using excessive lethal force, and also if the rules of engagement laid down in the military instructions concerning the Guard Post had been respected. Consequently, in the absence of a new autopsy, it would seem impossible at present to take action for effectively remedying the deficiencies of the initial investigation as concluded by the ECtHR.

The CM is assessing the situation in the light of the information provided respectively by the Turkish and the Cypriot authorities.

GM The legal framework regarding the use of firearms by soldiers on guard duty at the post at issue in this case does not seem explicitly to provide that arms should be used strictly proportionately to the situation and that lethal force may be used only in cases of imminent risk of death or serious harm to human beings and as a last resort. The authorities' views in this respect are awaited. Information is also awaited on the dates of entry into force of certain new laws and instructions referred to by the Turkish authorities as well as further concrete information on the training given to security forces to prevent excessive recourse to firearms.

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

11. UK / McKerr and other similar cases (See also AR 2007, p. 40)

Application No. 28883/95
Judgment of 04/05/2001, final on 04/08/2001
IR (2005) 20 and (2007) 73, Memoranda CM/Inf/DH (2006) 4 revised 2, CM/Inf/DH (2006) 4 Addendum revised 3 and CM/Inf/DH (2008) 2 revised

Last examination: 1043-4.3

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

An overview of the situation as of 15 October 2008 is presented in the updated memorandum CM/Inf (2008) 2rev dated 19 November 2008. At its 1043rd HR meeting (December 2008) the CM noted the progress achieved and the outstanding issues in the light of the Secretariat's Memorandum CM/Inf/DH (2008) 2. It decided to resume consideration of the cases in the light of a draft Interim resolution taking stock of the measures taken so far with a view to closing some of the issues raised in IR (2007) 73, on the basis of the Secretariat's memorandum, and other outstanding measures to be taken. The United Kingdom authorities have since provided information on IMs (including their view that the investigation has been concluded in the case of *McShane*) and GMs.

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

12. TUR / Paşa and Erkan Erol (see also AR 2007, p. 44) (examination in principle closed at the 1028th meeting in June 2008)

Application No. 51358/99
Judgment of 12/12/2006, final on 23/05/2007

Last examination: 1028-6.1

Authorities' failure to take all safety measures around a mined military zone in May 1995, thereby causing severe injury to a 9-year old child and exposing him to risk of death (substantial violation of Art. 2).

IM The ECtHR awarded a global sum as just satisfaction in respect of pecuniary and non-pecuniary damages. No additional measure seems to be required.

GM Following the violation found in this case, the government indicated that safety measures were enhanced, and, in particular, that clear and adequate signs were placed around mined zones in line with international standards. In addition, local authorities continuously issue warnings to inhabitants near such zones. An awareness raising project is also under way in co-ordination with the Ministry of Education aimed at training teachers, students and inhabitants of districts regarding the risks of mines.

The government previously also stressed the scope and importance of its obligations under the Ottawa Convention, which Turkey ratified into domestic law in 2004 (i.e. after the facts arose in this case) (see also AR 2007).

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

13. UKR / Gongadze (See also AR 2007, p. 41)

Application No. 34056/02
Judgment of 08/11/2005, final on 08/02/2006

IR (2008) 35
Last examination: 1043-4.1

Authorities' failure, in 2000, to meet their obligation to take adequate measures to protect the life of a journalist threatened by unknown persons, possibly including police officers; inefficient investigation into the journalist's subsequent death; degrading treatment of the journalist's wife on account of the attitude of the investigating authorities; lack of an effective remedy in respect of the inefficient investigation and in order to obtain compensation (violation of Art. 2, 3 and 13).

IM In February 2005, the Office of the Prosecutor General identified four former officers of the Ministry of Internal affairs who allegedly perpetrated Mr Gongadze kidnap and murder.

The criminal proceedings against three of them were subsequently divided into separate proceedings and were brought to court. The criminal investigation against the fourth officer, (who absconded from investigation and has been put on the wanted list), and against the unidentified persons who had allegedly ordered the kidnap and murder of Mr Gongadze is being carried out by the Office of the Prosecutor General.

In March 2008, the three former officers of the Ministry of Internal Affairs were found guilty of premeditated murder and sentenced to 12 (two of the accused) and 13 year imprisonment.

Operational search activities aimed at identification of persons who had ordered the kidnapping and murder of Mr Gongadze are still being carried out. Following an offer of assistance from Parliamentary Assembly of the Council of Europe, the Prosecutor General had asked the Assembly to select a group of experts to help with the analysis of certain audio recordings.

In its IR (2008) 35, adopted in June 2008, the CM *inter alia* regretted that no international experts had yet been appointed to make a technical examination of the original tape recordings, which might contribute to identification of the instigators and organisers of the murder of the applicant's husband. The CM urged the Ukrainian authorities to take all necessary investigative steps to achieve concrete and visible results in the investigation aimed at the identification of the instigators and organisers of the murder and invited the authorities to provide information on the progress in the investigation including, in an appropriate form, on the outcome of the technical expert examination.

At its HR meeting in December 2008, the CM, recalling its IR, took note of the information provided by the Ukrainian authorities concerning the organisation of the technical expert examination by an international group of experts and strongly invited the Ukrainian authorities to provide information on the progress in the investigation including, in an appropriate form, on its outcome.

GM **Independence of investigation**: The background to the ongoing legislative work to ensure that the functioning of the prosecutor's office fully complies with the role of prosecution in a democratic society and in particular to the requirements of the ECHR has been described in AR 2007.

Remedies against the excessive length of investigations: See also the *Merit* case. A draft law is being examined, which provides for the possibility to complain before the administrative courts of a violation of the right to proceedings, including pre-trial investigation, within reasonable time. It includes compensation for delays and sanctions against those responsible but it is unclear whether it provides for the acceleration of proceedings. Pending the adoption of the draft law, the judicial authorities are invited to award compensation for delays in enforcing decisions directly on the basis of the provisions of the ECHR and the ECtHR's case-law as provided by the Ukrainian Law. Guidance to this effect from the Supreme Court to lower courts is expected. The CM has requested information on the text and time-table for the adoption of the draft law.

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

A.3. Ill-treatment – special situations

14. BGR / M.C.

Application No. 39272/98
Judgment of 04/12/2003, final on 04/03/2004

Last examination: 1043-5.3a

Failure in the state's positive obligations to provide effective protection of women against rape: excessive burden of proof on victim; inadequate account taken of special vulnerability of young persons and the special psychological factors involved in rape cases; delays in investigation (violation of Art. 3 and 8).

IM The applicant indicated that she did not wish to have the domestic proceedings in her case reopened. No further individual measure appears therefore necessary.

GM Following the ECtHR's judgment, the Legislation Council at the Ministry of Justice was asked to examine the need to amend the provisions of the Criminal Code concerning rape. It found, however, that this was not necessary as the desired results could be obtained by drawing up instructions for investigatory bodies.

The Ministry of the Interior, the National Investigation Office and the General Prosecutor's Office were also invited to prepare specific instructions for the competent investigatory bodies, indicating that they must also collect evidence concerning the psychological conditions surrounding rape, in particular, when the victims are minors.

The National Investigation Office prepared an instruction on the issue in 2005, which was widely disseminated to all regional investigating services. In 2007, the Director of the National Police in the Ministry of Interior sent a circular letter on the matter to the directors of all police services. The full text of the judgment of the ECtHR in Bulgarian was also sent to all investigating judges. It has been suggested that it would be useful to ensure that these instructions are also made available to the Prosecutor General's Office for further dissemination to prosecution offices in the country.

15. ROM / Pantea

Application No. 33343/96
Judgment of 03/06/2003, final on 03/09/2003

Last examination: 1035-4.2

Prison authorities' failure to meet their positive obligation to protect the applicant, detained on remand, from ill-treatment in 1995 by in-mates and to conduct an effective investigation into the

facts (substantive and procedural violations of Art. 3); detention on remand continued without detention order (violation of Art. 5§1); applicant not brought promptly before a judge after arrest (violation of Art. 5§3); subsequent requests for release not examined speedily by a court (violation of Art. 5§4); lack of compensation for unlawful detention (violation of Art. 5§5); excessive length of criminal proceedings, engaged in 1994 (violation of Art. 6§1).

IM **Ill-treatment**: Although an internal report following the ECtHR's judgment confirmed the shortcomings in the conduct of the prison warders and of the deputy commander of the prison, new investigations into the applicant's ill-treatment seem without purpose, since the statutory five-year limitation period for the relevant criminal offences expired in 2000. None of the prison officials involved in the events is, however, serving today in the National Penitentiary Administration.

Length of proceedings: In spite of the efforts of the authorities to accelerate the pending criminal proceedings, they are currently suspended (since November 2007) due to the applicant's constitutional complaint. Clarifications are awaited on the present situation.

GM **Ill-treatment**: The National Penitentiary Administration informed its staff of the findings of the ECtHR. It issued instructions stressing the need to give particular protection to more vulnerable prisoners and providing that staff should immediately inform the competent authorities of any physical aggression against prisoners. Furthermore, it emphasised the obligation of medical staff to note any finding concerning ill-treatment inflicted on prisoners in their medical records, along with the prisoners' statements.

Violations related to the lawfulness of the detention and the issue of compensation: Important amendments incorporating the ECHR requirements were introduced following the constitutional and legislative changes adopted in 2003, in particular to the Code of Criminal Procedure. The amendments include a possibility to obtain compensation for illegal detention in situations similar to that of the applicant.

Excessive length of proceedings: See the *Stoianova* and *Nedelcu* group of cases.

16. UK / A. (See also AR 2007, p. 46)

Application No. 25599/94
Judgment of 23/09/1998 (final), IR (2004) 39, (2005) 8, (2006) 29

Memorandum (CM/Inf/DH (2008) 34)

Last examination: 1035-4.3

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

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

GM The main developments of general measures are summarised in AR 2007. A more detailed presentation of these developments, together with an evaluation by the Secretariat, updated until the CM's HR meeting in September 2008 (1035th), can be found in memorandum CM/Inf/DH (2008) 34.

At that meeting the CM, having examined the memorandum, noted with satisfaction the changes in the legislative framework made following the judgment of the ECtHR in the *A* case and the wide range of accompanying awareness-raising measures. It also noted that a judicial review in Northern Ireland was still pending concerning the compatibility of the new provisions adopted there with the ECHR and invited the United Kingdom authorities to keep it informed on its progress.

The CM decided to resume consideration of the case in the light of the results of the ongoing judicial review and at the latest at its 2nd DH meeting of 2009.

B. Prohibition of slavery and forced labour

C. Protection of rights in detention

C.1. Poor detention conditions

17. AZE / Hummatov

Application No. 9852/03
Judgment of 29/11/2007, final on 29/02/2008
Last examination: 1043-4.2

Degrading treatment suffered by the applicant in prison due to the failure of the authorities, between 1997 and 2004, to provide adequate medical treatment (violation of Art. 3), absence of an effective remedy to complain of this lack of medical treatment (violation of Art. 13); unfairness of the proceedings engaged in to review his criminal conviction, on account of the lack of an effective public hearing as a result of the authorities' failure to take the necessary measures to facilitate the public access to the trial, which was held in an isolated prison (violation of Art. 6§1).

IM The applicant, who was anew convicted to life imprisonment after the new trial, was given a presidential pardon in September 2004 and the ECtHR awarded him just satisfaction in respect of non-pecuniary damage.
The issue was raised as to whether the Azerbaijani authorities envisaged any further measure following the ECtHR's judgment.

GM **Inappropriate detention conditions**: The prison at issue in this case is being demolished and rebuilt with all necessary medical facilities. A special programme is under way since 1995 to eradicate the propagation of tuberculosis in detention. Since the implementation of this programme, 8982 prisoners received medical treatment. Regular updates of this information are awaited.
Lack of effective remedy: Detailed information is awaited on remedies available to prisoners wishing to complain of the absence or inadequate character of the medical treatment together with concrete examples of the successful application of such remedies. So far the authorities have indicated that the Code on Execution of Punishments lays down that every convict is entitled to medical treatment and that it is prohibited and punishable to deprive a person of medical treatment. They have also highlighted the existing forms of supervision of prison conditions, for example the right of any prisoner to file a complaint with the Ombudsman which must be sent within 24 hours and not be subject to censure.

Unfair proceedings: The ECtHR's judgment was published and sent to prisons and courts. Furthermore a range of seminars on the standards of the ECHR as they emerge in the case-law of the ECtHR were organised for prosecutors, investigators, police officers and judges.

The CM is assessing whether further measures are needed.

18. BGR / Kehayov and other similar cases (See also AR 2007, p. 48)

Application No. 41035/98
Judgment of 18/01/2005, final on 18/04/2005
Last examination: 1043-4.2

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

IM The non-pecuniary damage suffered by the applicants was compensated by the ECtHR. The applicants have been released or are no longer detained under the conditions criticised in these judgments. The criminal proceedings that were pending in one case were closed in 2003.
Information is awaited on the state of the criminal proceedings in the *Gavazov* case and, if possible,

on their acceleration. Clarification is awaited about the items seized when the apartments of some applicants were searched.

GM **Inadequate detention conditions**: In response to the request for information on measures planned to improve detention conditions in the investigation services (see AR 2007), the Bulgarian authorities have indicated that the General Directorate "Execution of Sentences" within the Ministry of Justice has drawn up and is successfully implementing a long-term investment programme to bring detention centres for the investigation services in conformity with international standards. In addition the *Kehayov*, *I.I.*, *Dobrev* and *Yordanov* judgments have been published on the Internet site of the Ministry of Justice and sent out in May 2007 to the competent authorities with circulars drawing attention to what actions of the authorities had caused the violations found by the ECtHR.
Furthermore, several seminars on the ECHR and the ECtHR's case-law were organised by the National Institute of Justice in the period 2001-2007, including as regards the requirements concerning detention conditions.

Lack of effective remedy with respect to detention conditions: it appears from the information provided that the courts practice is today compatible with the requirements of the ECHR.

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

Searches of homes in contravention of domestic law: in view of the direct effect increasingly given by Bulgarian courts to the ECHR and to the ECtHR's case-law, the dissemination of the present judgments to the competent authorities appear to be a sufficient execution measure.

19. CRO / Cenbauer and other similar cases

Application No. 73786/01
Judgment of 09/03/2006, final on 13/09/2006

Last examination: 1043-4.2

Inhuman and/or degrading treatment inflicted on the applicants due to the absence of medical care during their different detentions (2001-2007) or the poor conditions of detention (violations of Art. 3); lack of an effective remedy to complain about the prison conditions (violation of Art. 13).

IM In the *Pilčić* case, in October 2008 the applicant underwent the required operation for kidney-stones that he had been waiting since 2003 (the authorities' failure to treat him was at the origin of the violation found). In the other cases, the applicants were released or moved to another prison. The ECtHR awarded them just satisfaction in respect of non-pecuniary damage, where appropriate. No further individual measure seems required.

GM **Poor detention conditions**: since 2005-2006 the authorities undertook a number of measures including the renovation of Lepoglava State Prison (see Final Resolution (2005) 49 in the *Benzan* case) and the increase of the capacity of existing prison facilities. Further projects related to construction of new accommodation capacities and to the adaptation and conversion of existing facilities within the prison system are under way. With a view to improving prison conditions in general, total amounts of 12 650 000 HKR in 2006 and 17 711 000 HKR in 2007 were spent on the needs of persons deprived of their liberty (clothes, blankets, items for personal hygiene, books, furniture, etc.).

Medical treatment of prisoners: as part of a special project, the total number of prisoners infected with hepatitis and HIV has been determined. In order to improve medical treatment, a number of measures have taken place, including interferon therapies, organisation of counselling for prisoners infected with different types of hepatitis in the Zagreb Prison Hospital, organisation of therapy groups for prisoners infected with different types of hepatitis in prisons and detention facilities.

The assessment of the measures adopted is under way, in the light also of the conclusions and the recommendations of the Report on the visit to Croatia in 2007, carried out by the CPT.

Lack of effective remedy: the violation found in one case does not have a systemic nature and the ECtHR has acknowledged that the existing domestic legislation satisfies the requirements of ef-

fective remedies. Taking into account the direct effect of the ECHR in Croatia and the existence of appropriate legal framework, publication of the ECtHR's judgment and dissemination to the relevant courts and authorities seem to be sufficient.

Publication and dissemination: In order to make the competent authorities aware of their obligations under the ECHR, the judgments of the ECtHR in the *Cenbauer* and *Pilčić* cases were translated, published and sent out to the them.

20. MDA / Becciev and other similar cases (See also AR 2007 p. 50 and cases Ciorap p. 51 and Ostrovar p. 66)

Application No. 9190/03 *Last examination: 1043-4.2*
Judgment of 04/10/2005, final on 04/01/2006

Degrading treatment on account of the poor conditions of the applicants' detention on remand between 2001 and 2005, including the lack of adequate medical assistance, and force-feeding of an applicant in detention, amounting to torture (substantive violations of Art. 3); lack of an effective remedy into the allegations of poor conditions of detention (violation of Art. 13 taken together with Art. 3); interference with the applicants' right to respect correspondence and to meet their relatives in privacy while detention (violations of Art. 8); lack of sufficient and relevant grounds for detention (violation of Art. 5§3) and domestic courts' refusal to hear a witness for the defence when deciding lawfulness of detention (violation of Art. 5§4); refusal by the Supreme Court to examine the applicant's complaint regarding the force-feeding, on the ground that he had not paid court fees, in breach of his right to access to court (violation of Art. 6§1); detention after the expiry of the detention warrant (violation of Art. 5§1) and excessive length of criminal proceedings (violation of Art. 6§1).

IM In the *Ciorap* case, the applicant's hunger strike against his poor detention conditions ended on 4 October 2001. However, he is still detained and information is awaited on his current situation. The ECtHR awarded him just satisfaction in respect of non-pecuniary damage. In all the other cases, the applicants are no longer in detention and the consequences of the violations found have been redressed by the ECtHR through the award of just satisfaction.

GM **Poor conditions of detention**: most of the legislative framework governing the prison system, including conditions of detention, has been changed (see AR 2007). In addition the Department of Penitentiary Institutions of the Republic of Moldova signed contracts for 2004-2007 with specialised medical health institutions to improve the quality of medical care given to detainees.
Force-feeding of detainees is now expressly prohibited (see AR 2007).
Lack of an effective remedy: a Supreme Court of Justice decision of 2000 laid down that where domestic law does not provide a right to an effective remedy in case of breach of a right safeguarded in the ECHR, the competent court shall directly apply the provisions of the ECHR, whether in civil or criminal proceedings. Furthermore, the Moldovan Constitution and the Civil Code provide that the state is responsible for damage resulting from judicial errors in criminal and civil proceedings and a concrete mechanism for reparation is provided. In order to ensure respect for the right to an effective remedy, a Complaints Committee has been set up as an independent body with the mandate to deal with prisoners' complaints at any time during their sentence. The CM has requested further details on the composition, functioning and powers of the Complaints Committee, as well as relevant examples of case-law demonstrating the effectiveness of this remedy with regard to poor conditions of detention.

Censorship of correspondence and interferences with private and family life, resulting from the conditions in which the meetings with relatives took place: the new Enforcement Code has repealed in 2005 the provisions at the origin of the violation. The Code prohibits the censorship of the correspondence of persons detained with their lawyer, the Complaints Committee, the prosecution authorities, courts, the central public administration authorities and international, intergovernmental organisations protecting human rights and fundamental freedoms. The Statute on the Enforcement of Sentences, adopted

in 2006, provides that detainees' correspondence with their relatives or with other physical or legal persons may not be subject to censorship except under the conditions set out in the Code of Criminal Procedure or in the Act on Operational Search Activities.
Information is awaited on the existence of possible instructions concerning the implementation of these Articles and on how the control over the compliance with these obligations by the penitentiary authorities is ensured and on the current situation regarding the conditions in which detainees meet their relatives in prison No. 3 (now No. 13) in Chişinău.
Different violations related to the lawfulness of the detention (insufficient grounds for detention; prolongation of detention beyond the expiry of the mandate; court's refusal to hear a witness for the defence; lack of confidentiality of lawyer-client communications): see *Sarban* group.
Lack of access to a court: under the domestic law, the applicant should have been exempted from paying court fees. The ECtHR's judgment was published and sent to the Supreme Court of Justice and relevant authorities.
Excessive length of proceedings: Information is awaited on the publication and dissemination of the judgment to all courts together with a circular letter of the Supreme Court of Justice drawing their attention to their obligations with regard to the reasonable length of the proceedings.
All judgments of the ECtHR have been translated, published and sent out to all appropriate authorities.

21. RUS / Popov (See also AR 2007, p. 52)

Application No. 26853/04
Judgment of 13/07/2006, final on 11/12/2006

Last examination: 1043-4.2

Poor conditions of pre-trial detention in the remand centre and in prison disciplinary cells, combined with the lack of adequate medical care, amounting to inhuman and degrading treatment; restrictions of defence rights due to the authorities' refusal to hear the defence witnesses (violation of Art. 3, 6§§ 1 and 3 (d)); Illicit pressure from the prison administration amounting to undue interference with the applicant's right of individual petition (violation of Art. 34).

IM No further individual measure is required as the applicant was released as a result of his new trial. The CM has however noted that the applicant was detained pending his new trial in violation of the requirements of Art. 5 of the ECHR. It would appear that the applicant lodged a new application before the ECtHR in respect of these new proceedings.

GM **Refusal to examine witnesses for the defence**: given the recognised direct effect of the judgments of the ECtHR, publication and wide dissemination of the judgment were considered sufficient (see AR 2007).
Lack of access to requisite medical care: the authorities have provided information on the current legal framework, ensuring to persons in the applicant's situation the access to required medical assistance (see also CM Recommendation Rec (2006) 13 on detention on remand and Rec (2006) 2 on the European Prison Rules). This information is being assessed.
The other problems regarding poor conditions of pre-trial detention are examined in the *Kalashnikov* group.
Interference with the right of individual petition: the Head of the Federal Service for execution of sentences sent the judgment of the ECtHR out to all heads of its territorial departments together with a circular letter, drawing their attention in particular to the findings concerning the right of individual petition and underlining the obligation of all penitentiary authorities to ensure the unhindered and unlimited correspondence of detainees with the ECtHR. All complaints in this respect shall now give rise to an internal inquiry, as a result of which disciplinary sanctions may be imposed on those responsible. Clarification is awaited as to the authority in charge of such inquiry, in particular as to its independence as compared to the personnel of the penitentiary institution concerned. Information is also awaited as to whether other measures are envisaged to ensure full compliance by all penitentiary authorities with these instructions. The results of the internal monitoring introduced would also be useful (see also the case of *Poleshuk*).

C.2. Unjustified detention and related issues

22. BGR/ Varbanov and other similar cases

Application No. 31365/96
Judgment of 05/10/2000 (final)
Last examination: 1043-5.3b

Excessive powers of prosecutors to order, without prior medical advice, the applicants' compulsory confinement in a psychiatric clinic for short periods of time (15-30 days in the cases at issue) with a view to assessing the need to seek a judicial order for their placement in a mental hospital (resulting in unlawful detentions in violation of Art. 5§1); Lack of judicial review of the lawfulness of the confinement decisions taken by the prosecutors (violation of Art. 5§4).

IM No issue of individual measures arose, as the applicants had all been released well before the ECtHR's judgments and received compensation, either by the ECtHR under Art. 41, or by virtue of a friendly settlement.

GM The *Varbanov* judgment was published, translated and communicated to the Ministry of Health and the Congress of Bulgarian Psychiatrists in November 2000. The violations found were subsequently remedied by new provisions in the new Health Act 2004, and the ensuing delegated legislation, which entered into force in 2005. Under the new provisions confinement, with a view to obtaining a psychiatric examination, may only be requested by a court after a hearing at which both the person concerned, assisted by a lawyer, and a psychiatrist must be heard. Such confinement may last for a maximum of 14 days. The court's decision can be appealed. In case of emergency a person may be committed to a psychiatric hospital for 24 hours on the basis of a decision by the director of the hospital. The new system is not seen as requiring any additional judicial review of the lawfulness of such confinements.

23. FRA / R.L. and M.-J.D.

Application No. 44568/98
Judgment of 19/05/2004, final on 10/11/2004
Last examination: 1043-5.3b

Ill-treatment inflicted on the applicants in 1993 in the course of an intervention by the police, culminating in the arrest of one of them (violation of Art. 3), this arrest being unlawful as it was justified neither by the acts which could be held against the applicant, nor any risk of evasion or of commission of a new offence (violation of Art. 5§1c), continuation of detention in a psychiatric infirmary of the police for more than six hours for merely administrative reasons (absence of a doctor empowered to order his release) (violation of Art. 5§1e) and lack of compensation for the applicant's unlawful deprivation of liberty (violation of Art. 5§5).

IM The ECtHR awarded just satisfaction in respect of the physical and mental hardship suffered by each of the applicants.

GM **Ill-treatment by the police**: following the *Selmouni* case (application No. 25803/94, judgment of 28 July 1999) a National Commission on Security Ethics (*Commission nationale de déontologie de la sécurité*) was created, with the task of "making sure that the deontology is respected by those working in the security field", including police officers. This Commission has been informed of this judgment, which has also been presented at meetings with officials from the Central Directorate for Public Security. Furthermore, the *R.L. and M.-J.D.* judgment was studied, commented and integrated to the police training on human rights, in particular with regard to its practical consequences.

Unlawful detention in a psychiatric infirmary: according to the new system, which was put in place as of 12 January 2005, the doctor on duty at the infirmary can at any moment reach by telephone a colleague who, on the basis of the diagnosis established by the doctor on duty, can authorise release. The CM has requested confirmation that the requirements flowing from this judgment have been brought to the attention of national courts, prosecutors and doctors responsible for

ensuring the lawfulness of detention in psychiatric infirmaries.

Right to compensation: the compensation remedies referred to in this case – an appeal to the administrative courts or a criminal complaint joined as a civil party – ought to provide now adequate possibilities of compensation to the extent that domestic practice has now been brought into line with the ECHR requirements.

The information provided by the authorities is being assessed.

24. HUN / Maglódi and other similar cases (examination in principle closed at the 1028th meeting in June 2008)

Application No. 30103/02
Judgment of 09/11/2004, final on 09/02/2005

Last examination: 1028-6.1

Excessive length of detention on remand (different lengths of detention between 1999 and 2005), as the domestic courts accepted its prolongation without advancing convincing reasons (violations of Art. 5§3).

IM The applicant in the *Maglodi* case was still in detention on remand at the time of the ECtHR's judgment. The attention of the authorities was rapidly drawn to this situation. In response, the CM was informed that the applicant had applied for release in May 2005, but that release had been refused, partly on grounds similar to those impugned by the ECtHR, partly because of fresh accusations of involvement in a new murder. The applicant did not appeal against this decision and did not complain to the CM about the situation. The ensuing issues relating to the upholding, in these new proceedings, of the reasons impugned by the ECtHR have thus been raised in the context of the examination of the efficiency of the general measures adopted. In December 2005, the applicant's detention on remand ended, when he was sentenced to life imprisonment for murder. In these circumstances, no further measures are needed.

The applicants in the *Csaky* and *Imre* cases were released before the delivery of the ECtHR's judgments and no additional individual measure appears necessary. In all three cases, the ECtHR awarded only non-pecuniary damages.

GM A new Code of Criminal Procedure entered into force on 1 July 2003, according to which domestic courts are under an obligation to evaluate more diligently the facts on which decisions to prolong pre-trial detention are based and to give detailed reasoning for their decisions. Moreover, the risk that an accused might abscond may no longer be deduced from the mere gravity of the offence and must be established on the basis of concrete evidence. A procedure for release on bail has also been put into place. Nevertheless, in view of the fact that the old impugned standards for detention on remand were upheld in the new proceedings in the *Maglodi* case (see IM above), the requirements of the *Maglódi* judgment were discussed at the annual meeting of the heads of criminal divisions in regional courts, courts of appeal and the Supreme Court, which took place on 27 October 2005. The attention of the heads of criminal divisions was drawn in particular to the need for direct application of the ECHR by domestic courts, and to issues concerning criminal proceedings, such as the excessive length of detention on remand and the grounds for such detention.

Further amendments to the Code of Criminal Proceedings in 2006 emphasised the accused's right to liberty (Article 5§2) of accused persons and also the use of detention on remand as a last resort, with due regard to the requirements of proportionality and the possibilities of using other alternative security measures. Further training for judges and prosecutors was organised following the new amendment of the Code of Criminal Procedure.

In order to make the ECtHR's conclusions easily accessible to the competent authorities, the judgment in *Csáky* was made available in Hungarian on the website of the Ministry of Justice and Law Enforcement and was sent to the National Council of Justice and to Hungarian courts. The ECtHR's judgment in the *Imre* case was also published in Hungarian.

25. ISL / Hafsteinsdóttir (Final Resolution (2008) 44)

Application No. 40905/98 *Last examination: 1028-1.1*
Judgment of 08/06/2004, final on 08/09/2004

Unlawful detention of the applicant (arrested on several occasions between 1988 and 1997 for drunkenness and disorderly conduct) on the basis of rules which were not sufficiently precise and accessible as regards the duration of the detention and the scope and the manner of exercise of the police's discretion (violation of Art. 5§1).

IM No individual measures are required since the applicant is no longer detained. Moreover, the finding of a violation in itself constituted sufficient just satisfaction.

GM New rules concerning arrest in the interests of public peace and order have, since the facts of the case, been included in the new Police Act which entered into force in 1997. This Act provides better safeguards to ensure that detention on account of drunkenness or disorderly conduct is resorted to only in so far as strictly necessary. In addition, the judgment of the ECtHR was published and sent out to the various authorities concerned.

26. MDA / Sarban and other similar cases (See also AR 2007, p. 50)

Application No. 3456/05 *Last examination: 1035-4.2*
Judgment of 4/10/2005, final on 04/01/2006

Violations related to pre-trial investigations in 2002-2006: arrest not based on reasonable suspicion that the applicants had committed an offence and unlawful detention on remand (violation of Art. 5§1 and 5§1c); detention on remand or its extension without sufficient and relevant grounds, violation of the right to be released pending trial (violation of Art. 5§3); lack of speedy examination of request for release (violation of Art. 5§4); breach of principle of the equality of arms (violation of Art. 5§4). Other violations: poor detention conditions, lack of medical assistance during detention and lack of effective investigation into allegations of intimidation whilst on remand (violation of Art. 3).

IM None of the applicants was still detained on remand at the time of the ECtHR judgments and they were awarded just satisfaction in respect of non-pecuniary damage. Information is awaited on measures taken concerning the allegations of intimidation.

GM The CM has noted the systemic character of a number of the violations found and has invited the authorities to provide information on the measures envisaged to prevent new similar violations.

In response the authorities have *inter alia* indicated:

- That the judgments have been rapidly translated and disseminated to the relevant authorities with a view to bringing their practices in line with the ECHR requirements;
- That the need to ensure that arrest and detention on remand be based on proper motives has been emphasised in the new training programs for judges and prosecutors (both initial and continuing training) provided by the National Institute of Justice set up in 2007. A number of seminars on Art. 5 of the ECtHR took place in 2008, as well as some other related activities for judges, prosecutors and police in order to prevent violations of this Article;
- That, as regards equality of arms and possibilities of contacting the ECtHR, the conditions for private contacts between detained persons and their counsels at the Centre for Fighting Economic Crime and Corruption – the CFECC – have improved and that other more general measures have also been taken, in particular to ensure adequate access to the case file;
- That, as regards the speed of release proceedings, Moldovan law already provides that cases concerning prisoners on remand must be examined urgently and preferentially.

Further information on the implications of the new 2006 amendments has been requested, in particular as certain persons appear excluded from their field of application and as it is not obvious that these amendments have also made unlawful the earlier practice of allowing the continuation of detention on remand without a new

court order once the case file has been sent to the trial court. The question of the necessity of further reforms has been raised.
Additional information is also awaited as regards content, nature and evaluation of the initial and continuous training of judges and prosecutors, provided by the National Institute of Justice and on possible other measures taken to prevent these kinds of violations.
The information provided as regards the measures taken to improve equality of arms, e.g. as regards improved conditions at the CFECC centre, access to the case file and the right to question witnesses is being assessed. This is also the case with the measures aimed at improving the speed of release proceedings.

The problems relating to detention conditions are dealt with in the context of the *Becciev* group of cases (see AR 2007).

The specific violation related to the engagement of criminal proceedings to deter an applicant from pursuing his complaints to ECtHR, on the basis of an interpretation of certain facts by the prosecutor disrespecting the findings made by civil courts in final judicial proceedings, is dealt with in the context of the case of *Oferta Plus v. Moldova*.

27. POL / Trzaska and other similar cases (See also AR 2007, p. 60)

Application No. 25792/94+
Judgment of 11/07/2000 (final), IR (2007) 75

Last examination: 1035-4.2

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

IM The impugned detention on remand ceased at the time of the ECtHR's judgments or shortly afterwards.

GM **Excessive length of pre-trial detention**: In response to the IR (2007) 75 adopted by the CM in June 2007 (see AR 2007 for details) the government informed the CM that a number of measures had already been taken or were under way. New amendments to the Code of Criminal Procedure are being drafted in order to clearly define and restrict the grounds for extension of detention on remand. In addition, the Constitutional Court clarified on 10 June 2008 that it was unconstitutional not to take into account the periods during which a suspect/accused remains in prison following a final conviction in different proceedings, when counting the two-year limit for the detention on remand.
Several awareness-raising measures have been taken to draw the attention of the judicial authorities and the prosecutors to the ECHR requirements regarding detention on remand: for example, in addition to the publication and dissemination of the judgment, the Ministry of Justice thus sent letters on this issue to all the Presidents of the Courts of Appeal and circulars to courts and public prosecutors. Examples of case-law have been provided, referring to the ECHR and the ECtHR's case-law and showing "good practice" in the use of preventive measures.

A working group has been created within the Ministry of Justice to assess the trend concerning the length of detention on remand and statistical data have been provided, which need however further clarification. The CM encouraged the authorities to intensify their efforts to reduce the excessive length of detention on remand.

Other deficiencies of the procedure for review of the lawfulness of pre-trial detention: the new Code of Criminal Procedure, entered into force in 1998, seems to have solved the problems criticised by the ECtHR (see *inter alia* Final Resolution (2002) 124 in the case of *Niedbała*).

28. RUS / Rakevich

Application No. 58973/00
Judgment of 28/10/2003, final on 24/03/2004

Last examination: 1043-5.1

Unlawful confinement of the applicant in a psychiatric hospital in 1999, the judicial detention order having been issued 39 days after the confinement, instead than within the 5-days time-limit prescribed by the domestic law (violation of Art. 5§1); impossibility for the applicant, under the domestic law, to challenge the lawfulness of the psychiatric detention (violation of Art. 5§4).

IM The applicant was released from the hospital on 12 November 1999 and was awarded just satisfaction in respect of the non-pecuniary damage. No further measure seems necessary.

GM **Unlawful detention**: In 2004, the Vice-Chairman of the Supreme Court addressed a circular letter to the lower courts, drawing their attention to the ECHR requirements as set out in the present judgment, and in particular to the obligation of stricter compliance with the legal time-limits for judicial review of the lawfulness of compulsory psychiatric confinement. The judgment was translated and published.

Absence of an individual right challenge lawfulness of detention: The Code of Civil Procedure and the Federal Law on Psychiatric Treatment and Associated Civil Rights Guarantees are being amended, *inter alia* in order to provide for the right of a person of unsound mind, compulsorily confined in a psychiatric institution, to challenge before a court the lawfulness of his/her detention, in accordance with the ECHR. The government has furthermore mandated the state agencies involved in the development of the draft law to take note of relevant practice in other countries. In view of the time passed, the CM has requested information on the time-table for the adoption of the law.

The government is also examining the possibility of setting up a special service, independent of medical care bodies, for the protection of patients placed in mental hospitals. Further information is awaited in this respect.

29. ESP / Dacosta Silva (examination in principle closed at the 1035th meeting in September 2008)

Application No. 69966/01 *Last examination: 1035-6.1*
Judgment of 02/11/2006, final on 02/02/2007

Unlawful disciplinary punishment in the form of house arrest imposed in 1998 on a member of the Civil Guard by his superior, i.e. not by an independent body, nor as a result of proceedings fulfilling the requisite legal guarantees (violation of Art. 5§1 a).

IM The applicant is no longer deprived of his liberty and he did not claim any compensation as just satisfaction.

GM A new Law of 2007 removed the disciplinary sanction at issue. The judgment has been translated and published in the Ministry of Justice's information bulletin.

30. SUI / Weber (examination in principle closed at the 1035th meeting in September 2008)

Application No. 3688/04 *Last examination: 1035-6.1*
Judgment of 26/07/2007, final on 26/10/2007

Lack of adequate legal basis (whether in law or in constant case-law) for ordering the applicant's detention between September 2003 and January 2004, after a judgment suspending his prison sentence in favour of out-patient medical and social treatment, the conditions of which had not been respected (violation of Art. 5§1).

IM The detention at issue ended in 2004, i.e. already before the judgment of the ECtHR. The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damages. No other individual measure seems necessary.

GM With a view to ordering the applicant's detention, after a judgment had suspended his prison sentence, the national authorities relied on the provisions relating to detention on remand. Under national law, it was not clear enough that a detention after the judgment could be based on these provisions. At that time, there was only one judgment of the Federal Court, dating from 2002, (concerning another Canton that in the *Weber* case) that had ruled in that sense and, according to the ECtHR, this judgment was not a sufficiently precise legal basis. The case-law of the Federal Court has, however, been confirmed after the material time in two other judgments of 2005 and 2006, concerning other Cantons, and has not changed since then.

Furthermore, the ECtHR judgment has been published and immediately communicated to the Federal Court, as well as to the Justice Directorate

of the Vaud Canton, which sent it out to all Canton authorities concerned.

31. UKR / Gorshkov

Application No. 67531/01
Judgment of 08/11/2003, final on 08/02/2006

Last examination: 1043-5.1

Absence of an independent right for a person in detention in a mental hospital (1997-2001) to challenge before the courts the lawfulness of his/her detention such appeal being open, according to the legislation in force, only to the doctors or the psychiatric institution concerned (violation of Art. 5§4).

IM The applicant was released from the hospital on 8 November 2001.

GM A draft law is being drafted, giving persons under compulsory medical treatment in a mental hospital the right to challenge the lawfulness of the measures applied. More detailed information is awaited on the content of the draft law and the timetable for its adoption, as well as on the interim measures taken, if any, to ensure compliance with the ECtHR's judgment pending the adoption of the legislative reform.

The ECtHR judgment has been translated, published and placed on the Ministry of Justice's official website. Furthermore, the attention of the Supreme Court of Ukraine and the Office of the Prosecutor General was drawn to the ECtHR's conclusions.

C.3. Detention and the right to privacy

32. POL / Klamecki No. 2 and other similar cases (See also AR 2007, p. 67)

Application No. 31583/96
Judgment of 03/04/2003, final on 03/07/2003

Last examination: 1043-4.2

Violation of detainees' right to correspondence on account of the insufficient clarity of the law before 1/09/98 and of the unlawful monitoring of correspondence with the Constitutional Court, the ECHR organs, the Chancellery of Senate and the applicant's lawyers (violation of Art. 8); interference with the right of application due to the significant delay in posting the applicants' letters to the ECtHR (violation of Art. 34); excessive restrictions of family contacts in 1996-1997(violation of Art. 8); various violations of procedural guarantees in detention of remand (violations of Art. 5§3 and 5§4) excessive length of criminal and civil proceedings (violations of Art. 6§1).

IM No question of IM is pending any longer – see AR 2007.

GM **Failure to respect detainees' correspondence and right to address the ECHR organs and respect for family life**: the new regulations introduced with the entry into force of the amendments to the Code of Execution of Criminal Sanctions in 2003 have been described in the AR 2007, as have the further amendments proposed. A recent development is a new instruction from 2008 by the Director General of the Prison Service providing, *inter alia*, for the installation of special letter boxes specifically for prisoners' correspondence with the ECtHR and other international bodies in all detention centres in Poland. Moreover, in February 2008 the Secretariat had high-level meetings with the Polish authorities to discuss the execution measures in these cases.

Right to be brought promptly before a judge and to challenge the lawfulness of detention: see case *Niedbała*, closed by Resolution (2002) 124.

Excessive length of detention on remand: see case *Trzaska* (IR (2007) 75).

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

33. ROM / Cotleț (examination in principle closed at the 1020th meeting in March 2008)

Application No. 38565/97 *Last examination: 1020-6.1*
Judgment of 03/06/2003, final on 03/09/2003

Interference with the correspondence of the applicant, detained, with the former Commission of Human Rights and EctHR. The interference was not foreseen by law, *inter alia* because of the absence of evidence of publication of a governmental decree on secrecy of correspondence, allegedly adopted in 1997, and because of the authorities' failure to respect their positive obligation to ensure the applicant access to the material necessary for correspondence with the ECtHR (paper, envelopes and stamps) (violations of Art. 8); unlawful and unacceptable pressure, up to 2000, to prevent the applicant from pursuing his application before the ECtHR (violation of Art. 34).

IM The ECtHR awarded the applicant just satisfaction in respect of both pecuniary and non-pecuniary damage. In the light of the impact of the GM (see below) no further measure appears necessary.

GM **Interference with detainees' correspondence**: An "Emergency ordinance" was adopted by the government in June 2003 and ratified by Parliament in October 2003. It provides that petitions sent by detainees to public institutions, judicial organs or international organisations are confidential and may not be opened or retained. The same provisions are reiterated in the new law on execution of criminal sentences published in the Official Gazette on 1 July 2004 (see also Resolution (2007) 92 in the case of *Petra v. Romania*). In 2003, pursuant to these provisions, the National Prisons Administration ordered prison staff on several occasions to respect the principle of confidentiality and set up rules for the organisation of the exercise of detainees' right to confidentiality of their correspondence (e.g. postboxes have been installed, to which detainees have been granted daily access).

Positive obligation to ensure access to the material necessary for correspondence with the ECtHR: The "Emergency ordinance" of 2003 also provides that even if the costs of correspondence are in principle borne by the detainee, those who do not have the necessary means will have their costs for correspondence with the ECHR institutions covered by the prison administration.

The ECtHR's judgment in the *Cotleț* case was published in the Official Gazette and was sent out to all prisons in June 2003. In addition, two circular letters were sent to the competent authorities, the first following the ECtHR's judgment of 23 September 1998 in the *Petra* case and the second following this case.

34. UK / Dickson

Application No. 44362/04 *Last examination: 1043-4.2*
Judgment of 4/12/2007 Grand Chamber

Violation of the right to respect for the family life of the applicant – a prisoner serving a life sentence – and his wife due to the Home Secretary's refusal to grant their request for access to artificial insemination facilities (violation of Art. 8).

IM In 2006 the applicant was transferred to an open prison and had periods of unescorted home leave in 2007 and 2008. He will continue to be eligible for periods of release on temporary licence as long as he keeps to the conditions of the licence and there is no change to the risk assessment in his case. In the light of this situation, the applicant's lawyer confirmed on 19 August 2008 that the Dicksons no longer require access to assisted conception. No further individual measures seem necessary.

GM The UK has amended the policy on assessing applications for permission to access assisted conception facilities by prisoners. The amended policy is less restrictive than the old one and takes the form of a non-exhaustive list of criteria. In compliance with the judgment, the Secretary of State will apply a proportionality test when taking a decision and balance the individual circumstances of the applicant against the criteria in the policy and the public interest. Decisions made under the policy may be challenged in judicial review proceedings. The United Kingdom au-

thorities confirmed that the policy would not be put on a legislative basis. The new policy has been scrutinised by the Joint Committee on Human Rights, a cross-party Parliamentary Committee of both Houses. In its report "Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008" (HL Paper 173 HC 1078 published on 31 October 2008) the Committee set out their detailed concerns about whether the changes to the policy are sufficient to execute the ECtHR's judgment. The United Kingdom's comments on the conclusions of the Joint Committee would be very useful.

The ECtHR judgment was published and sent out to Ministers and senior officials in December 2007, as well as to all prison governors, directors of private prisons and area managers and to the Northern Ireland Prison Service and Scottish Prison Service in February 2008.

D. Issues related to aliens

D.1. Unjustified expulsion

35. BGR / Al-Nashif and Others and other similar cases (See also AR 2007, p. 69)

Application No. 50963/99 *Last examination: 1043-4.2*
Judgment of 20/06/2002, final on 20/09/2002

Violations of the applicants' right to respect for their family life due to their expulsion on national security grounds in 1999 and 2000 (*Al-Nashif, Bashir and Others*) or the withdrawal of residence permits as a consequence of an obligation to leave the territory (*Musa* and *Hasan*) (violations of Art. 8); lack of effective remedies in that respect (violations of Art. 13); impossibility, under the applicable law, to challenge the lawfulness of detention pending deportation or expulsion (violations of Art. 5§4); failure to inform the applicants promptly of the reasons for arrest (violation of Art. 5§2).

IM *Al-Nashif*: In 2004 and 2006, following the judgment of the ECtHR, the order revoking the applicant's residence permit was quashed, as well as that ordering his detention and expulsion. The ban for Mr Al-Nashif's re-entry on the Bulgarian territory was lifted in October 2007. Clarifications are under way on the current situation of the applicant, in the light of his recent complaints that he continues to be refused entry.

Musa: Following the judgment of the ECtHR, Mr Musa appealed against the order prohibiting him from entering the territory of Bulgaria (which expires in May 2010), but the ban was kept in force by the Supreme Administrative Court.

Appeals against the withdrawal of his residence permit and against the obligation to leave the territory are currently pending and information is awaited on the outcome of the pending proceedings.

Hasan and *Bashir and Others*: As of 20 March 2008 the applicants in the *Bashir* case had lodged no application with the Supreme Administrative Court to have the exclusion order revoked. The ban on entering the territory has been lifted only in respect of Mr Hasan. Information is expected on the withdrawal of the measures taken in respect of the applicants in the *Bashir and Others* case, as well as on the question of the withdrawal of the residence permit of Mr Hasan.

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

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

Judicial review of detention pending expulsion: the CM is assessing the measures taken to ensure

such review also in case of detention in specialised centres on the grounds of national security.
Failure to inform the applicants promptly of the reasons for arrest: information has been requested on the measures envisaged or already adopted.

The judgments of the ECtHR were published on the Internet.

36. NLD / Sezen (examination in principle closed at the 1020th meeting in March 2008)

Application No. 50252/99
Judgment of 31/01/2006, final on 03/07/2006

Last examination: 1020-6.1

Violation of the applicants' right to family life: refusal to prolong the residence permit of the first applicant, the husband of the second applicant, in May 1996 on the ground that a short, temporary, interruption of their marital cohabitation was deemed to have broken the family unit, with the consequence that the first applicant's legal right to permanent residence was lost (violation of Art. 8).

IM The first applicant received a residence permit with retroactive effect as from 20 May 1996; it has been extended until 19 January 2013. It is in principle renewable. Moreover, the applicant can obtain a permanent residence permit if he is sufficiently capable of earning a living.

GM Given the direct effect of ECtHR's judgments in the Netherlands, all authorities concerned are expected to align their practice to the present judgment. With this aim, the judgment has been published in several legal journals in the Netherlands.

37. RUS / Liu & Liu

Application No. 42086/05
Judgment of 06/12/2007, final on 02/06/2008

Last examination: 1043-4.1

Violation of the applicants' right to respect for their private and family life in case of execution of a deportation order issued in 2005 against the first applicant for national security reasons as the order was issued under a procedure contained in legal provisions which did not contain a sufficient degree of protection against abuse (violation of Art. 8).

IM Non-pecuniary damage sustained by the applicants was compensated by the ECtHR. In August 2008, the Federal Migration Service annulled its decision on the undesirability of the first applicant's presence on the territory of the Russian Federation and the deportation order of 2005 delivered against him.
In December 2008, the CM noted the measures taken and being taken by the Russian authorities with respect to the first applicant's situation, in particular the fact that he had been granted the reopening of proceedings concerning the refusal to grant him a residence permit and invited, accordingly, the Russian authorities rapidly to inform it of the outcome of these judicial proceedings. The CM noted however that, despite the annulment of the deportation order, the first applicant is still residing illegally in Russian territory and invited therefore the Russian authorities to secure his presence on the territory of the Russian Federation to guarantee him the possibility to exercise his rights effectively until a final decision concerning his presence in the Russian Federation is taken by a judicial authority.

GM The questions relating to the use of an expulsion procedure entirely within the competence of the executive, without sufficient legal safeguards against arbitrariness is followed in the *Bolat* case. The judgment of the ECtHR in the present case has, however, been translated, published and disseminated to all territorial departments of the Federal Migration Service, by a circular letter of its Director, to all courts, to the President of the Supreme Court, to the General Prosecutor's office, to the Constitutional Court and to the Representative of the President of the Russian Federation in the Dalnevostochniy federal district.

38. **SUI / Boultif (Final Resolution (2009) 15)**

Application No. 54273/00 *Last examination: 1043-1.1*
Judgment of 2/08/2001, final on 2/11/2001

Infringement of the right to respect for the family life of the applicant, an Algerian national married to a Swiss, due to the non-renewal of his residence permit following his conviction in 1997 to 2 years unconditional imprisonment for robbery and damage to property: the ECtHR found that it was practically impossible for the applicant to live with his family outside Switzerland whereas he presented only a comparatively limited danger to public order (violation of Art. 8).

IM On 29 August 2001, following the ECtHR's judgment, the ban on the applicant's entry to Switzerland was lifted. He was given a visa and could thus return to Switzerland, where an indefinite authorisation to remain was issued to him in February 2002 by the Migration Office of the Canton of Zurich.

GM The ECtHR's judgment in this case, which is considered to be an isolated one, was published.

D.2. Detention in view of expulsion

39. **BEL / Riad and Idiab**

Application No. 29787/03 *Last examination: 1043-4.1*
Judgment of 24/01/2008, final on 24/04/2008

Unlawful detention of two Palestinian nationals at the Brussels-National Airport in December 2002 in spite of the absence of any legal basis and in spite of court decisions ordering their immediate release (violation of Art. 5§1); inhuman and degrading treatment of the applicants on account of their detention for more than 10 days in the transit zone *inter alia* without the authorities caring for the essential needs (violation of Art. 3).

IM The applicants were repatriated on the 5th and 8th March 2003 to Beyrouth. The ECtHR granted their claim for just satisfaction for non-pecuniary damage in full and with particular regard to the undoubted distress that the applicants had suffered. No other measure seems necessary.

GM **Unlawful detention**: the ECtHR noted, on the basis of different national and international sources that this was not an isolated case and that the Aliens Office had developed a real "practice" of transferring aliens subject to orders of repatriation, from the detention centre where they were detained to the transit zone of the airport, following the delivery of a decision by a judicial authority releasing them. The CM has requested information on measures taken or envisaged to ensure that court orders to release those in a similar situation to the applicants are taken into account and to stop the "practice" of placing the parties concerned in the transit zone.

Conditions of detention in the transit zone of the airport: information is expected on measures taken or envisaged to ensure that no one is held in the transit zone for anything exceeding "… extremely short periods of time", or otherwise only under appropriate conditions in accordance with the ECtHR findings and the relevant recommendations of the CPT.

40. **POL / Shamsa (Final Resolution (2008) 15)**

Applications Nos. 45355/99 and 45357/99 *Last examination: 1020-1.1*
Judgment of 27/11/2003, final on 27/02/2004

Unlawful detention of the applicants, Libyan nationals, in the transit zone at Warsaw airport between 25 August 1997 and 3 October 1997, on the mere basis of internal airport police instructions which were not subject to judicial review: the Polish authorities did not consider the applicants' stay in the transit zone as a deprivation of liberty in the sense of the legislation in force at the time (violation of Art. 5§1).

IM The applicants were released and were still in Poland at the time of the ECtHR's judgment.

GM Since 1 September 2003, proceedings concerning the detention of aliens against whom a deportation order has been issued have been governed by a new Law on Aliens, also applicable to detention in transit zones. This law provides among other things that the extension of the detention must be based on a judicial decision, which is subject to appeal in accordance with the provisions of the Code of Criminal Procedure. The new law also provides for the award of compensation to foreigners who have been detained illegally.

In order to guide the application of the new law, the judgment of the ECtHR was published, and the presidents of courts of appeal and prosecutors at appeal courts sent the judgment to all judges of criminal courts and prosecutors under their administrative jurisdiction. The judgment was also sent out to officials of the frontier police, and questions relating to this judgment are raised during seminars organised for these officials in the framework of their vocational training.

E. Access to and efficient functioning of justice

E.1. Excessive length of judicial proceedings

41. BEL / Dumont and other similar cases (See also AR 2007, p. 78)

Application No. 49525/99 *Last examination: 1035-4.2*
Judgment of 28/04/2005, final on 28/07/2005

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

IM The acceleration of the pending criminal proceedings is expected, to the extent possible.

GM **Excessive length of proceedings**: the problem of the backlog of the Brussels Court of Appeal presented in AR 2007 has been solved – see also *Oval S.P.R.L.* case. Information with respect to the Brussels first-instance courts has been sought.

As regards the situation at national level, also described in AR 2007, a new Law, of 26 April 2007, amending the Judicial Code with a view to reducing the judicial backlog has been adopted. The budget of the Ministry of Justice has also been increased. In 2008, it was raised by 4.7% compared to 2007, providing more resources for logistics (e.g. further development of IT systems, fitting out of courts and tribunals) and increases in staff (e.g. for the courts and tribunals, with a priority for the courts responsible for the execution of sentences. Positive results are registered and the number of pending cases appears to be decreasing.

Even if Belgian law does not seem to provide specific remedies in case of excessively lengthy proceedings (see also AR 2007) the ECtHR has accepted that in Belgium it is possible for persons having criminal charges against them, to request the domestic court to find, at the stage of the examination of the merits, that the requirement of trial within a reasonable time has been infringed, and to redress such a violation, and that this remedy must thus be used in order exhaust domestic remedies.

A remedy now also exists in civil proceedings. The ECtHR has thus held that since 28 March 2007 there exists an action for damages in case of complaints about the excessive length of civil proceedings. Furthermore, it is recalled that the above-mentioned amendment in 2007 to the Judicial Code contains certain provisions allowing a request for acceleration of the proceedings.

42. BEL / Entreprises Robert Delbrassinne S.A. and other similar cases

Application No. 49204/99 *Last examination: 1035-4.2*
Judgment of 01/07/2004, final on 01/10/2004

Excessive length of proceedings concerning civil rights and obligations before the *Conseil d'Etat* between 1975 and 2004 (violations of Art. 6§1).

IM The proceedings are closed.

GM The ECtHR's judgment was notified to the *Auditeur général* of the *Conseil d'Etat* and the Minister of the Interior and published on the Internet in the three national languages.
A Law was adopted in 2006, aimed at reducing the backlog of *Conseil d'Etat* through structural and organisational measures, in particular: doing away with the non-judicial functions, improving the functioning of sections, better defining the tasks of the registrar, deputy registrar and administrator. Management changes and simplification of procedures are also provided for, as well as the recruitment of new judges to deal with the judicial backlog.

The CM is assessing the measures taken.

43. CRO / Počuča and other similar cases

Application No. 38550/02
Judgment of 29/06/2006, final on 29/09/2006

Last examination: 1035-4.2

Excessive length of proceedings before administrative authorities and courts (violation of Art. 6§1).

IM The CM is awaiting information on the progress of cases still pending and, to the extent possible, on the acceleration of the proceedings.

GM **Excessive length of proceedings**: the violation found in some of these cases was due, to a great extent, to a legal gap, created in 1998 by a decision of the Constitutional Court declaring the unconstitutionality of certain legislative provisions concerning pension rights, which resulted in the lodging of more than 427 800 applications with the local Pension Fund's regional offices. The legislation required to fill that legal gap was adopted in 2004 and 2005 and the CM is awaiting information on its impact in reducing the length of proceedings. Clarifications are also expected on measures taken or envisaged to avoid violations similar to that found in the *Smoje* case.
Effective remedy against the excessive length of proceedings: in 2007, the Constitutional Court decided, in conformity with the ECtHR criteria, that the period during which the case was pending before the administrative authorities should also be taken into consideration when assessing the length of administrative proceedings. See for details of the other measures taken Final Resolution (2005) 60 adopted in the *Horvat* case. Additional questions on this issue are examined at present in the framework of the *Raguž* case (Section 4.1).
The judgments were translated, published and sent out to the Constitutional Court, the Supreme Court and to the competent courts.

44. CYP / Gregoriou and other similar cases (See also AR 2007, p. 82)

Application No. 6470/02
Judgment of 25/03/2003, final on 09/07/2003

Last examination: 1035-4.2

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

IM The CM is awaiting information on the progress of the proceedings still pending.

GM **Length of proceedings**: in view of the systemic nature of the problem, the CM urged the Cypriot authorities to take all necessary action. It took note of the regulatory measures already taken between 1995 and 2003 (see AR 2007) and of the research being undertaken by the Supreme Court on the causes of excessive length of proceedings.

Effective remedy: legislation aimed at providing an effective remedy in cases of excessively lengthy proceedings is being prepared. The draft law has retroactive application and provides for the acceleration of civil cases unreasonably delayed and the award of compensation in cases no longer pending. The draft legislation will be tabled in Parliament by the Ministry of Justice once the consultation procedure is over and is expected to enter into force in 2009. More information is awaited, in particular with regard to the possible creation of an equivalent effective remedy in respect of criminal proceedings, in the light of the CM's Recommendation Rec (2004) 6 to member states on the improvement of domestic remedies.

The judgments were promptly disseminated to judicial authorities, the Ministry of Justice, the

Cyprus Bar Association and the Legal Affairs and Human Rights Parliamentary Committees.

45. FRA / Chaineux and other similar cases (Final Resolution (2008) 38)

Application No. 56243/00
Judgment of 14/10/2003, final on 14/01/2004

Last examination: 1028-1.1

Excessive length of proceedings related to civil rights and obligations before labour courts (violations of Art. 6§1).

IM In all these cases, the domestic proceedings are closed.

GM The composition of the *conseils de prud'hommes* (first-instance labour courts) was modified by a decree in 2002. The judges have been reallocated to different sections of the *conseils de prud'hommes* to take into account the evolution of the different types of disputes. As a result, the average time required to reach a judgment before the *conseils de prud'hommes* has decreased (12 months in 2005).

Moreover, the measures taken to remedy to the length of civil proceedings in general (see Final Resolution (2008) 39 in the case of *C.R.* and other cases of length of civil proceedings), have also benefited the labour courts.
A remedy deemed effective by the ECtHR has also existed since 1999, in the form of an action for damages against the state for malfunctioning of justice, following a revision of the interpretation of Article L. 781-1 of the Code of Judicial Organisation (see in particular the *Nouhaud* judgment of 9 July 2002).

46. FRA / C.R. and other similar cases (Final Resolution (2008) 39)

Application No. 42407/98
Judgment of 23/09/2003, final on 23/12/2003

Last examination: 1028-1.1

Excessive length of certain civil proceedings (violations of Art. 6§1, mainly in the course of the 1990s, and absence of an effective remedy to complain about this (violation of Art. 13 in one case).

IM The CM requested, to the extent possible, the acceleration of the proceedings which were still pending when the ECtHR delivered its judgments.

GM **Excessive length of proceedings before civil courts**: in 2002, a new five-year orientation and programming law for Justice (*loi quinquennale d'orientation et de programmation pour la justice*, LOPJ) was adopted.
First, there was a large increase in the court staff. Between 1998 and 2002 more than 2 400 new posts were created in the judicial services, and the creation of 4 450 supplementary posts (magistrates and clerks) was programmed between 2002 and 2007.
Moreover, "objective-setting contracts" were signed with certain pilot sites: in return for additional staff and financial means, the courts undertook to reduce considerably the time taken to deliver judgments.

Moreover new quarterly statistics are now compiled to identify any anomaly as quickly as possible.

These general measures add to the specific measures already taken to limit the length of proceedings before the *Cour de cassation* (see *Hermant* case, Final Resolution (2003) 88) and before the Aix en Provence Court of Appeal: see *Bozza* case, Final Resolution (2002) 63).

The government stated that the measures taken showed the efforts made to avoid excessive length of proceedings before Civil Courts and undertook to continue to do what is necessary to avoid new violations similar to those found in these cases.

Absence of an effective remedy: a remedy deemed effective by the ECtHR has existed since 1999, in the form of an action for damages against the state for malfunctioning of justice (see in particular the *Nouhaud* judgment of 9 July 2002).

47. FRA / Lutz (Final Resolution (2008) 10)

Application No. 48215/99
Judgment of 26/03/2002, final on 26/06/2002

Last examination: 1020-1.1

Excessive length of certain civil proceedings before administrative courts (violation of Art. 6§1) as well as absence of an effective remedy in practice or in law to complain of a breach of the right to be heard within a reasonable time (violation of Art. 13).

IM Acceleration of pending proceedings, to the extent possible, has been requested. The ECtHR awarded just satisfaction for the non-pecuniary damage suffered by the applicant.

GM **Effective remedy to complain of a breach of the right to be heard within a reasonable time**: After the facts of the present case, in a judgment of 11 July 2001 (case *Magiera*), the Administrative Court of Appeal granted compensation in respect of damage suffered on account of a violation of the time requirements of Art. 6§1 of the ECHR. This judgment was affirmed by the *Conseil d'Etat* in June 2002.

In its judgment of *Broca and Texier-Micault* (21 October 2003, final on 23 January 2004), the ECtHR noted that the judgment of 28 June 2002 delivered by the *Conseil d'Etat* had been published in numerous publications. The ECtHR found accordingly that the *Magiera* judgment had acquired sufficient legal certainty and could not be ignored by the public as of 1 January 2003; therefore, as from this date the new remedy should be exhausted by applicants for the purpose of Art. 35§1 of the ECHR.

The above case-law has subsequently been codified. The Administrative Code of Justice was thus modified in 2005 and now provides that "the *Conseil d'Etat* has jurisdiction in the first and final instance (…) for actions against the state for excessive length of proceedings before administrative courts". Thus an effective remedy exists in French law, in practice as in law, to complain about excessive length of proceedings before administrative courts.

Length of proceedings before administrative courts: A first series of measures was adopted in 1995 to reduce the length of proceedings before administrative courts in general and the *Conseil d'Etat* in particular: see Final Resolution (95) 254 in the *Beaumartin* case. Further measures have subsequently been adopted: see Resolution (2005)63 in the *S.A.P.L. and Others* group of cases, formerly *Caillot* group and Resolution (2008) 12 in the *Raffi* group of cases.

48. FRA / Piron (Final Resolution (2009) 3)
FRA / Epoux Machard (Final Resolution (2009) 3)

Application Nos. 36436/97 and 42928/02
Judgments of 14/11/2000 and 25/04/2006, final on 14/02/2001 and 13/09/2006

Last examination: 1042-1.1

Violations of the applicants' right to the peaceful enjoyment of their possessions, due to particularly lengthy (more than thirty years in each case) land consolidation proceedings and the lack of adequate compensation for losses linked thereto (violations of Art. 1 of Prot. No. 1 and Art. 6 §1).

IM *Piron* case: Following the last *Conseil d'Etat* decision mentioned in the ECtHR's judgment, the case was examined anew by the National Land Development Board (*commission nationale d'aménagement foncier*), but upon appeal by the applicant, the new decision was also eventually set aside by the *Conseil d'Etat* in 2002. The Board re-examined the case in 2003 and, in a reasoned decision taken in the light of a report by a new expert and the oral observations of the applicant, increased the compensation from 28 730.85 to 93 741 euros. The decision, which became final in 2005, indicates that the new amount takes into consideration "among other things the abnormal delay since the first judicial decision, concerning the dispute (…), and the subsequent loss of productivity".

Epoux Machard case: The ECtHR's judgment indicates that the proceedings were closed at the time of the ECtHR's judgment and that the applicants had been able to continue to use the disputed lands until the end of the proceedings. The ECtHR thus compensated only the non-pecuniary damage resulting from the length of the proceedings. It dismissed the applicants' claims relating to pecuniary damage as the kind of

damage claimed was not linked to the excessively lengthy proceedings.

GM **Respect of property rights**: A law, which entered into force in 2006, has reformed the Rural Code (*code rural*). This law has, among other things, changed the procedure for appeals against Departmental Land Development Boards (*commissions départementales d'aménagement foncier*), which was to a great extent responsible for the excessive length of the proceedings in these cases.
Under the new rules, the National Land Development Board has been abolished and the procedure simplified.
As before, the Departmental Board rules on the legality of the regrouping of land. Its decisions may, however, now be appealed directly to the Administrative Tribunal. If a Board decision is set aside on appeal, the Board must take a new decision within one year and the Board is also empowered to order the local authority (*Département*) to pay damages if it considers that the changes resulting from the new decision have a disproportionate impact on the situation of certain landowners.
These changes have a number of advantages which respond to the ECtHR's findings of violations in these cases.
First, administrative consolidation proceedings are no longer prolonged by the intervention of a National Board which was often faced with unanswerable legal questions. Secondly, the Departmental Board's right, if its first decision has been set aside, to award damages to the interested landowner, enables it to settle disputes more quickly and easily, without affecting the rights of other landowners (who might become potential applicants) and without affecting the coherence of the distribution of land. Finally, when the Departmental Board awards damages, proceedings can no longer be prolonged by repeated appeals against its decisions, which made former proceedings endless. From now on, though the decision to award damages may be appealed, once the remedies available before the administrative courts are exhausted, the proceedings end.

Excessive length of proceedings before administrative courts: In cases concerning consolidation proceedings, before the 2005 reform, the Rural Code stated that appeals against damages awarded to landowners were to be brought in special proceedings before an expropriation court. Now, the Rural Code gives this competence to administrative courts, which are also competent to assess the lawfulness of the entire proceedings. This unification of the different actions involved in land consolidation proceedings fosters swift and coherent case handling.

As regards the more general question of the measures taken to ensure the efficiency of administrative courts, see case of *Raffi v. France* and thirty other similar cases (Final Resolution (2008) 12).

49. GER / Sürmeli and other similar cases

Application No. 75529/01
Judgment of 08/06/2006 – Grand Chamber

Last examination: 1035-4.2

Excessive length of certain civil proceedings (violation of Art. 6§1) and lack of an effective remedy in this respect (violation of Art. 13).

IM All proceedings at issue have been closed. No further measure appears necessary.

GM **Excessive length of civil proceedings**: According to the statistics provided in 2005, the average length of proceedings was of 4.4 months before district courts, 7.4 months in regional courts, 4.9 months for appeal cases in the regional courts (15.5 months including first instance proceedings), 7.5 months in the higher Court of Appeal (23.2 months including the proceedings before the previous instances). The CM has requested more recent statistics in order to assess the trends.

Lack of an effective remedy: The right to trial within a reasonable time is accepted as a constitutional right in Germany. Before the ECtHR the government invoked several possible remedies (constitutional complaint, special action to challenge inaction and appeal to a higher authority, action for damages to obtain acceleration of pending proceedings or compensation for excessively lengthy proceedings), but their effectiveness was not considered sufficiently established by the ECtHR, even if certain developments, in particular as regards the right to damages, were noted.

In light hereof the *Sürmeli* judgment has been published and sent out to the courts and justice authorities concerned, i.e. the Federal Constitutional Court, the Federal Court of Justice and all state justice administrations, all Ministries of Justice of the Länder (*Landesjustizverwaltungen*) in order to draw their attention to the situation.
Furthermore, a bill aimed at introducing into German law a new remedy, capable of accelerating proceedings, was tabled in September 2005 and has been debated among legal experts in October 2007. The Ministry is currently working on a new draft proposal in the light of the results of this debate.

Information is awaited on developments of the existing remedies and of the progress of the new legal reform as well as on all other measures taken or envisaged to provide for an effective remedy against excessive length of proceedings.

50. HUN / Tímár and other similar cases (See also AR 2007, p. 86)

Application No. 36186/97
Judgment of 25/02/2003, final on 09/07/2003

Last examination: 1035-4.2

Excessive length of civil or labour proceedings (violations of Art. 6§1). The proceedings began between 1986 and 1998 and most of them ended between 2000 and 2005.

IM The CM is awaiting information on the progress of cases still pending and, to the extent possible, on the acceleration of the proceedings.

GM **Excessive length of civil proceedings**: in addition to the general reforms adopted between 1997 and 2002 (see for details AR 2007) with the aims of accelerating civil proceedings and modernising the system of legal remedies, the authorities clarified that, as regards delays resulting from the late submission of experts' opinions, new amendments to the Code of Civil Procedure, which entered into force on 1 January 2009, now provide for more effective sanctions against court experts in case of unjustified delays.

Information is awaited on the timetable for the legislative project and on its relevant provisions. Further recent statistical data regarding the cases pending before the local courts and country courts have been requested.

Effective remedies against excessive length of judicial proceedings: the effectiveness of the new law of 2006 is being assessed.

51. ITA / Ceteroni and other similar cases (See also AR 2007, p. 87)

Application No. 22461/93

Judgment of 06/08/1992 (final)

IR (97) 336, (99) 436, (99) 437, (2000) 135, (2005) 114 and (2007) 2

CM/Inf/DH (2005) 31 and addendum 1 and 2, CM/Inf/DH (2005) 33, CM/Inf (2005) 39, CM/Inf/DH (2007) 9, CM/Del/Act/DH (2007) 1007 final, CM/Inf/DH (2008) 42
Last examination: 1043-4.3

Excessive length of judicial proceedings in civil, criminal and administrative matters (violation of Art. 6§1).

IM The CM is awaiting information on the acceleration of the proceedings that are still pending and in particular on the continuing follow up given by the Superior Council for the Magistrature to the fate of pending cases. The authorities indicated that the findings of the ECtHR had been signalled to the domestic courts with a view to accelerating the pending proceedings. Taking into account the possible continued contribution of the Superior Council of the Magistrature, the most appropriate follow-up to individual measures is under consideration in the framework of bilateral contacts.

GM Since the early 1980s a large number of ECtHR judgments and CM decisions (under former Art. 32 of the ECHR) have established a structural problem related to the length of judicial proceedings in Italy. Notwithstanding a long series of reforms and reinforcements of resources and efforts to create an effective remedy as well as special efforts to deal with the oldest pending cases, the CM has been compelled to conclude that the problem persists (see for a summary AR 2007 p.87).
In this situation the CM, in December 2005, demanded in IR (2005) 114, taking into account Parliamentary Assembly Recommendation

1684 (2004), the establishment of a new strategy, relying in particular on a reinforcement of political support, at the highest level, and an interdisciplinary approach to which all the main actors of the judicial system would contribute.
The responses to this IR have been examined in a new IR adopted in February 2007, IR (2007) 2, which, although recognising the measures, legislative or others, taken in the meanwhile, urged the Italian authorities at the highest level to maintain their political commitment to resolving the problem of the excessive length of judicial proceedings and invited the authorities to undertake interdisciplinary action, involving the main judicial actors, co-ordinated at the highest political level, with a view to drawing up a new, effective strategy.
Following this IR the Italian authorities provided information regarding a number of legislative initiatives. Information on the results of the special commission ("Mirabelli Commission") set up by the Ministry of Justice was also submitted. A number of meetings between the Secretariat and relevant Italian authorities were also organised in Rome in October 2007 where further information on planned reforms, both normative and organisational, was presented.
After the dissolution of the Italian Parliament in February 2008, the newly elected government, from its inception, set about reforming justice according to a programme along guidelines which seem to continue those set up in the previous legislatures. A second series of meetings took place in October 2008 between the highest government authorities and the Secretariat and the Italian government gave an exhaustive presentation of the legislative measures already taken and those on the way to adoption by the Parliament, as well as of organisational measures, completed by statistical data, and also reaffirmed its strong commitment to reaching a definitive solution to the structural problem of the length of proceedings (see document CM/Inf/DH (2008) 42).
In its decision of December 2008 the CM noted with interest the results of the above-mentioned meetings in Rome in October 2008, as well as the progress accomplished by Italy in the fields of civil, criminal, and administrative procedure, and in particular the progress accomplished following the reform of administrative proceedings, which is beginning to produce concrete effects on the length of such proceedings.
The CM encouraged the Italian authorities to continue their efforts with a view to ensuring the swift adoption of the remaining measures for civil proceedings, as well as of those aimed at reducing the backlog of administrative proceedings, and to pursue the consideration of any other measures improving the efficiency of justice.
It added that, considering that the results of the reforms will only be measurable in the medium term, the Italian authorities were invited to draw up a timetable for the results anticipated in the medium term, to assess these results as the reforms proceed, and to adopt a method for analysing the results in order to make any necessary adjustments, if needed.
Recalling IR (2007) 27 on bankruptcy proceedings, the CM also invited the Italian authorities to provide the expected information regarding the effects of the 2006 reform on bankruptcy on the acceleration of this kind of proceedings.

52. ITA / K. (Final Resolution (2008) 46)

Application No. 38805/97
Judgment of 20/07/2004, final on 15/12/2004
Last examination: 1028-1.1

Excessive length of proceedings: inaction by the Italian administrative authorities to respond to a request in 1994 by a Polish court (pursuant to the United Nations Convention on the Recovery of Maintenance Abroad) for the enforcement in Italy of a Polish judgment of 1993 ordering payment of maintenance including default interest in case of delay the Italian enforcement proceedings ended in 2002 with the seizure of the debtor's property (violation of Art. 6§1).

IM The enforcement proceedings for which the Italian authorities were responsible ended in 2002, before delivery of the ECtHR's judgment. The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage sustained. In these circumstances, no further individual measure seems necessary.

GM The violation in this case is unusual and differs from the other cases of excessive length of proceedings in that the ECtHR found that the delays were in particular imputable to the admin-

istrative authorities responsible for the handling of the enforcement request. The Interior Ministry organised a number of meetings in 2005 to examine the problems raised in this case and ensure that the violation is not repeated. The ECtHR's judgment has been published on the Internet site of the Court of Cassation.

53. ITA / Mostacciuolo Giuseppe No. 1 and other similar cases

Application No. 64705/01 *Last examination: 1035-4.2*
Judgment of 29/03/2006 – Grand Chamber

Insufficient compensation awarded by domestic courts to redress the consequences of excessively lengthy proceedings and unjustified delays in payment of sums awarded (application of Law No. 89 of 24 March 2001, known as the "Pinto Act") (violation of Art. 6§1).

IM In all these cases, the ECtHR compared the compensation awarded by the domestic courts, in general as concerns non-pecuniary damages, with the amount it would itself have granted according to its case-law and awarded, where necessary, the difference, taking also into account the additional damages suffered on account of the delays in the payment of the compensation awarded by the domestic courts.

GM The ECtHR concluded that the application of the Pinto law raised a large-scale problem and invited the Italian authorities "to take all measures necessary to ensure that domestic judgments [in the context of the Pinto procedures] are not only compatible with the ECtHR's case-law, but also enforced within six months of their deposit with the registry" as provided for by the law.

Delay in payment of compensation: the CM recalled that a compensatory remedy must be accompanied by adequate arrangements so that domestic decisions awarding compensation are executed within the statutory six months limit, as also stressed by the ECtHR in its judgments, and encouraged the Italian authorities to take rapidly the necessary measures to this effect.
Inadequate amount of compensation: the violations found in these cases occurred before a change in the Court of Cassation case-law. In the judgments it delivered in 2004, the Court of Cassation held that the criteria set by the European Court to determine the level of the compensation to be awarded in proceedings brought under the Pinto Act are binding on the Italian judges.
The authorities have also indicated that certain procedural fees had been abolished.
Length of proceedings: see *Ceteroni* case.

54. NOR / A. and E. Riis (Final Resolution (2009) 10)

Application No. 9042/04 *Last examination: 1043-1.1*
Judgment of 31/05/2007, final on 31/08/2007

Excessive length of civil proceedings, which lasted 17 years and five months for three levels of jurisdiction, from 1986 to 2003 (violation of Art. 6§1).

IM The proceedings at issue came to an end in 2003. The ECtHR awarded to the applicant just satisfaction in respect of the non-pecuniary damage suffered.

GM **Length of proceedings**: The Norwegian authorities consider that this case does not disclose any structural problem. They indicated nonetheless that preventive measures had been taken to guarantee the right to a fair trial within a reasonable time.
As regards criminal proceedings, the Criminal Procedure Act was amended in 2002 and measures to accelerate proceedings have been introduced, such as time-limits for trial hearing, the reduction of the time spent in investigating and adjudicating and the appointment by the court of another counsel if the one chosen by the defendant is responsible for significant delay.

As regards civil proceedings, the preventive measures introduced following the adoption of the Civil Procedure Act in 2005 include: the judges' explicit responsibility for dealing with cases in an expedite manner and the overall responsibility of the head of the court to control the length of proceedings; the introduction of imperative time limits (six months from the filing of the case for the main hearing, unless there are special circumstances); and new rules regarding evidence.

Effective remedies against excessive length of proceedings: in case of excessive length of criminal proceedings, the compensatory measures consist in the reduction of the sentence or the awarding of pecuniary damages and, exceptionally, non-pecuniary damages. In civil proceedings, compensation claims could be based on the regular compensation regime interpreted in the light of Art. 13 of the ECHR.

Publication and dissemination: Given the direct effect of the ECHR in Norway, publication and dissemination of the ECtHR's judgment to all competent courts should be sufficient to avoid similar violations, including by providing an effective remedy. A summary of the judgment in Norwegian, with a link to the original text, was published on the Internet site Lovdata. The Lovdata database is widely used by all who practice law in Norway: lawyers, civil servants, prosecutors and judges alike.

55. POL / Podbielski and other similar cases (See also AR 2007, p. 91) POL / Kudla and other similar cases (See also AR 2007, p. 91)

Application Nos. 27916/95+ and 30210/96+
Judgment of 30/10/1998 (final), IR (2007) 28
Judgment of 26/10/2000 – Grand Chamber, IR (2007) 28
Last examination: 1035-4.2

Excessive length of proceedings before civil and labour courts (*Podbielski* group of cases) or before the criminal courts (*Kudla* group of cases) (violations of Art. 6§1); lack of effective remedy (violations of Art. 13).

IM In most cases, measures to accelerate the domestic pending proceedings have been taken.

GM **Length of proceedings**: The CM has taken note of the statistical data provided, which require however clarifications and updating. It has welcomed, in particular, the legislative reforms of 1997 and 2003 (Code of Criminal Procedure with subsequent amendments) and the additional administrative and structural measures adopted (see for details IR (2007) 28 of 4 April 2007 and AR 2007). Following the adoption of the IR, the Minister of Justice indicated as a priority the systematic control of the efficiency and speediness of judicial proceedings in the light of the ECHR requirements. Also, the Code of Civil Procedure was amended in view of alleviating the judges' workload in civil cases. Further amendments to the legislation on procedural rules and on electronic proceedings are being examined. Information is awaited thereon as well as on measures aimed particularly at reducing the backlog and at evaluating the trends concerning the length of judicial proceedings.

Lack of an effective remedy: In its IR (2007) 28, the CM welcomed the creation of a domestic remedy in 2004, allowing both for the acceleration of pending proceedings and the compensation for delays found, but noted that the new remedy seemed inapplicable at the pre-trial stage of criminal proceedings. In response to this IR, in February 2008 the Ministry of Justice prepared a draft amendment to the Law of 17 June 2004, aimed in particular at introducing an effective remedy against excessive length of investigation.

56. SVK / Jakub and other similar cases

Application No. 2015/02
Judgment of 28/02/2006, final on 28/05/2006
Last examination: 1035-4.2

Excessive length of civil proceedings initiated between 1990 and 2000 and closed, in most of the cases, between 1999 and 2004 (violations of Art. 6§1); lack of any domestic remedy before 2002; ineffective character of the constitutional remedy introduced in 2002, as a result of Constitutional Court's decisions dismissing complaints because the allegedly lengthy proceedings had ended or had been lawfully stayed, or awarding manifestly inadequate compensation (violations of Art. 13). Unfairness of the proceedings in one case as the court refused in 1999 to decide on the applicant's request for protection of her rights on the merits as the court costs were not paid and without adequate examination of whether applicant should be exempted (violation of Art. 6§1); lack of respect

for private life due to the unfairness of certain proceedings ending in 1999 in which one of the applicants sought unsuccessfully to challenge the correctness of his registration as a former State Security Agency (StB) (burden of proof on applicant) (violation of Art. 8).

IM At the CM's request, the authorities have provided information on the state of the proceedings which were still pending. This information is being assessed.

In the cases, where the ECtHR found that the proceedings had been unfair, the applicants are entitled to request new, fair proceedings.

GM **Length of proceedings**: Legislative and other measures have already been adopted, since 2000 to improve the efficiency of the judicial system and avoid new violations, particularly in the context of the examination of the *Jóri* case (see Final Resolution (2005) 67). Subsequently, further legislative measures as well as measures concerning staff, judicial organisation and IT developments were adopted or are under preparation:

a) *Legislative measures*: In 2007, three sets of legal amendments were adopted and a further one has been proposed. The first set of amendments, which came into force in July 2007 (the "little amendment to the Code of Civil Procedure") modified *inter alia* allocation of jurisdiction, the process for serving documents and file management in the appellate courts, with the purpose of improving the functioning of courts. As a result of the second legislative change, the Companies Register is now available online and individuals no longer need to seize a court to create a company or deal with other administrative aspects of company law. The third legislative change simplified the procedure relating to voluntary auctions.

A fourth set of legislative amendments is being prepared introducing important changes to the Code of Civil Procedure (the "big" amendment to the Code of Civil Procedure), aimed at streamlining the management of civil proceedings.

b) *Staff and judicial organisation*: The number of judges was increased by 50 in the first quarter of 2008 and 9 new district courts have been created and have been operational since 1 January 2008. Furthermore, the Minister of Justice has invited all judges to take a pro-active and responsible approach to the completion of judiciary duties. The Minister attends court without giving prior notice to monitor judges' readiness for hearings. A draft bill is being considered, which would enable senior judicial officials and court secretaries to undertake simple judicial work, allowing judges to concentrate exclusively on decision making.

c) *IT Development*: A number of technical changes have been made to the management of the court system, including the establishment of electronic databases and a central database for the court system which would allow users to check efficiently for parallel proceedings; for judges to monitor the status of cases before the courts and to check on the status of prisoners who are serving their sentences.

d) *Statistical data*: The statistics provided for the years 2002-2006 indicate that the average length of civil proceedings has decreased (from 17.56 months in 2004 to 15.40 months in 2006), but remains higher than in 2002.

Upon request of the Legislative Committee of the National Council which issued a report in April 2007 on the judiciary, the Minister of Justice is finalising a proposal aimed at "stabilising the judiciary", which takes into account decisions of the Constitutional Court and of the ECtHR; opinions of courts' managing officials and judges about the main problems in the judiciary and possible solutions, as well as opinions of the working committee implementing the project of Evaluation of Workload of Judges.

Information has been requested with respect to the progress of reforms, the development of the ongoing reflection in the Ministry of Justice and the current trend concerning the length of civil proceedings.

Effective remedies against excessive length of proceedings: A reform of the Constitution, in 2002, introduced the possibility to complain of violations of human rights protected by international treaties. The ECtHR found on several occasions that this new constitutional complaint represents an effective remedy in the sense of Art. 13 of the ECHR (see, among others, the admissibility decision of 22 October 2002 in the case of *Andrášik and Others*), except in some cases where the Constitutional had dismissed complaints merely on the grounds that the impugned proceedings were no longer pending. This case-law of the Constitutional Court is no longer applied. Furthermore, the Constitutional Court's practice of rejecting appeals concerning stayed proceedings and awarding inadequate compensation has undergone considerable development

and the CM is currently assessing, taking into account also Recommendation Rec (2004) 6 to member states on the improvement of internal remedies, whether it is possible to conclude, on the basis of the recent information provided, that the practice is now in line with the requirements of the case-law of the ECtHR

Insufficient examination of the necessity for exemption from court costs: Considering the direct effect of the ECtHR's judgments, new violations ought to be prevented for the future through the publication of the judgment in the *Muckova* case. That judgment was disseminated on 10 October 2006, together with a circular by the Minister of Justice, to regional courts, with a request to inform district court judges.

Fairness of proceedings regarding registration as state security agent: The Lustration Act of 1991, which provided that certain important posts in state institutions could only be held by persons who had not been "agents" of the StB, ceased to have effect in Slovakia on 31 December 1996. As to the specific problem of the burden of proof in disputes this has been resolved as the impugned provision was repealed as of 20 December 1997 following a judgment of the Consitutional Court of 11 November 1997. The Minister of Justice has, nevertheless, sent out a circular to the presidents of regional courts requesting them to distribute the judgment in the *Turek* case to all judges of these courts as well as to the district courts in their jurisdiction.

Publication: The most important judgments have been translated and published.

57. SVN / Lukenda and other similar cases (See also AR 2007, p. 94)

Application No. 23032/02+ *Last examination: 1043-4.2*
Judgment of 06/10/2005, final on 06/01/2006

Excessive length of proceedings before civil courts (violations of Art. 6§1), lack of effective remedy against excessive length of proceedings (violations of Art. 13).

IM All relevant domestic courts have been informed of the priority to be given to cases still pending. The CM is awaiting information on the state of proceedings and on measures taken or envisaged to accelerate them.

GM Slovenian authorities provided an action plan for the implementation of measures to avoid further similar violations.

Excessive length of civil proceedings: according to the statistical data provided, in 2002-2007 court backlogs have been reduced by an average annual rate of 9%, with a steady decrease in the backlog cases in 2007 compared with previous years in all courts. These figures are indicative of a positive development in dealing with backlog cases. Furthermore, the increase of posts within the judiciary is helpful to solve the problem of backlog and excessive length of proceedings. The measures taken have yielded the first tangible results as corroborated by the fact that the backlog cases have been reduced three times before local courts and twice before higher courts, while the district courts have slightly less performing statistics.

The "Lukenda Project" on faster resolution of court proceedings and reducing arrears at courts and state prosecutors' offices and other measures to prevent unreasonably lengthy trials have been described in AR 2007.

Information is awaited on the further implementation of the "Lukenda Project". In particular, further updated statistical information on the backlog cases, the average length of civil proceedings and the implementation of the planned increase of posts within the judiciary would be helpful. Information on any other measures taken or envisaged in this respect would be also appreciated (e.g. the measures taken concerning the introduction computer systems in courts and the remuneration of court staff, training etc.)

Effective remedies: a new law on the Protection of the right to trial without undue delay took effect on 1 January 2007. This law provides various remedies (remedies for acceleration and compensation) against excessive length of proceedings (see details in Annual Report 2007). In accordance with the findings of the ECtHR in the *Grzinčič* case (judgment of 3 May 2007, final on 03 August 2007) and in the *Tomažič* case (judgment of 13 December 2007, final on 2 June 2008), the remedies introduced by the 2006 Act are effective so far as the first and second instance courts are concerned.

On the other hand, the information available at this stage is not sufficient yet to allow an assess-

ment of the effectiveness of the remedies in case of excessively long proceedings before the Supreme Court and the Constitutional Court.
Additional information is awaited on the functioning of the different remedies introduced in practice, in particular as far as proceedings before the Supreme Court and before the Constitutional Court are concerned.

58. MKD / Janeva[19] and other similar cases (See also AR 2007, p. 95) MKD / Atanasovic

Application Nos. 58185/00 and 13886/02
Judgment of 03/10/2002 – Friendly settlement
Judgment of 22/12/2005, final on 12/04/2006
Last examination: 1035-4.2 (1043-3.Aint)

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

IM Information is awaited on urgent measures required to accelerate the pending proceedings.

GM **Excessive length of proceedings**: A new Law on Civil Proceedings was adopted in September 2005 with the primary purpose of increasing the efficiency of civil proceedings and reducing their duration. A new Law on Enforcement was also adopted in 2005 (see for details AR 2007).
Lack of effective remedies: A new Law on Courts was adopted in 2006, but both the Supreme Court and the ECtHR (case *Parizov*, application No. 14258/03, judgment of 7 February 2008, final on 2008) found that certain shortcomings remained to be remedied.
The law was amended in March 2008 and it now provides that the Supreme Court is the only competent court to make decisions concerning the excessive length of proceedings and should make such decisions within 6 months, taking into account the case-law of the ECtHR. A special division of the Supreme Court deals only with this type of cases and, if it finds a violation of the right to a trial within reasonable time, it shall make a decision on the applicant's right or obligation and shall also award a just satisfaction to the applicant.

Statistics on national court decisions on complaints concerning length of proceedings as well as the initial assessment of the efficiency of the remedy introduced have been requested.

The relevant judgments have been translated, published on the Internet site of the Ministry of Justice, sent out to the relevant courts and circulated to the Ministry of Foreign Affairs, the Constitutional Court, the Supreme Court and the Public Prosecutor's Office.

59. TUR / Ormancı and Others and other similar cases

Application No. 43647/98
Judgment of 21/12/2004, final on 21/03/2005
Last examination: 1043-5.1

Excessive length of proceedings before administrative, civil, labour and criminal courts (violations of Art. 6 § 1) and lack of an effective remedy in this respect (violation of Art. 13).

IM Information is awaited on the acceleration of the proceedings, if they are still pending.

GM **Excessive length of proceedings**:
a. *Compensation proceedings before administrative courts*: A new draft Code of Administrative Procedure, submitted to the office of the Prime Minister in 2005, aims at decreasing the workload of administrative courts and the length of proceedings before them by laying down procedures for resolving disputes before the trial stage and for friendly settlements.

In addition, in 2006, a new law was adopted, providing that all disputes between the administration and citizens regarding public works will first be examined by an Ombudsman before being brought before the administrative authorities or the administrative courts. The application of this law is however suspended, pending the examina-

19. Although the *Janeva* judgment is a friendly settlement involving the mere payment of certain sums of money, the authorities agreed to undertake certain individual and general measures under the supervision of the CM.

tion of its constitutionality by the Constitutional Court.
Furthermore, a Law of 2004 aimed at reducing the length of proceedings before the Council of State has established a new Chamber and revised the functions and jurisdictions of the other Chambers.
The judgment in the case of *Ormancı and Others* was published.
Information is awaited on the adoption of the draft laws and their texts, as well as the outcome of the challenge before the Constitutional Court.
b. *Cases before civil courts*: A new law in 2004, reorganised the competence and jurisdiction of Civil and Criminal Courts of First Instance and established Regional Courts. A number of new courts have also been established: 823 Civil Peace Courts, 960 Civil Courts of First Instance, 704 Cadastral Courts, 174 Enforcement Courts, 98 Labour Courts, 149 Family Courts, 54 Commercial Courts, 20 Consumer Rights Courts, 4 Intellectual Property Rights Courts, 19 Juvenile Courts and 1 Maritime Court.
According to the statistics provided by the Ministry of Justice, the average length of civil proceedings in Turkey is 177 days before first-instance courts and 86 days before the Civil Chambers of the Court of Cassation.
A new law amending the Code of Civil Procedure is also being drafted in order to prevent lengthy proceedings before civil courts.
Information is awaited on the adoption of this draft law as well as on publication and expected results. Information is also expected on the dissemination of relevant judgments of the ECtHR, in particular to family courts and the Court of Cassation.

c. *Cases before labour courts, commercial and consumers' courts and cadastre courts*: The planned amendments to the Code of Civil Procedure, referred to above, should reduce the length of proceedings before these courts, since the procedures before them are also governed by the Code of Civil Procedure.

d. *Execution proceedings*: There does not seem to be a systemic problem of excessive length of execution proceedings in Turkey. No special measures are therefore considered required in response to the ECtHR's findings of violations in respect of such proceedings.

e. *Cases before criminal courts*: The information submitted by the authorities is currently being assessed.

Effective remedies: The CM has requested information on the measures envisaged to ensure effective remedies to accelerate the proceedings and/or to provide litigants with compensation or other forms of redress for the delays that have already occurred.

E.2. Lack of access to a court

60. BEL / Loncke

Application No. 20656/03
Judgment of 25/09/2007, final on 25/12/2007

Last examination: 1043-4.2

Breach of the applicant's right of access to a court, in the context of tax proceedings constituting a "criminal charge" against him: in 1999, the Court of Appeal declared the applicant's appeal inadmissible as he had not paid the amounts he had been ordered to pay at first instance to secure costs, which were disproportionate in the circumstances of the case (violation of Art. 6§1).

IM In its examination of the just satisfaction to be granted to the applicant, the ECtHR held that it could not speculate on the possible outcome of the proceedings if no violation had taken place. Information is expected as to whether it is possible for the applicant to have his case re-examined in the light of the violation found.

GM Information is awaited on measures taken or envisaged to ensure that the provision at the origin of the violation is applied in accordance with the ECHR as interpreted in this judgment. The confirmation of the publication of the ECtHR judgment is also expected, and of its dissemination to the courts and tax administrations concerned, possibly with a circular letter.

61. GRC/ Liakopoulou and other similar cases (examination in principle closed at the 1020th meeting in March 2008)

Application No. 20627/04 *Last examination: 1020-6.1*
Judgment of 24/05/2006, final on 23/10/2006

Disproportionate hindrance to the applicants' right of access to a court in different "civil" cases, due to dismissal of their appeals by the Court of Cassation between 2001 and 2004, in accordance with an excessively formalistic practice requiring the cassation request to contain a summary of the facts at the basis of the appeal courts rejection of the appeal (violation of Art. 6§1); breach of the applicant's right to freedom of expression as a result of his being ordered to pay damages in civil defamation proceedings (in the *Lionarakis* case only), without the courts making the necessary distinction between facts and value judgments (violation of Art. 10).

IM In the cases of *Liakopoulou*, *Efstathiou and Others* and *Zouboulidis*, the applicants were awarded just satisfaction in respect of non-pecuniary damages. In view of the interest of legal certainty in civil proceedings and the lack of any sign that the violations created any serious doubt as to the outcome of the cases or caused any serious consequences for the applicants, no other individual measures would appear to be necessary. In the *Lionarakis* case, the ECtHR awarded just satisfaction in respect of the total amount of damages the applicant was ordered to pay under the domestic judgment which he could not challenge before the Court of Cassation.

GM **Lack of access to a court**: In order to ensure the conformity of the practice of the Court of Cassation with the requirements stemming from these ECtHR judgments, the *Zouboulidis* case was transmitted to the President of Court of Cassation and the President of the Court of Appeal. In addition, the *Efstathiou and Others* judgment was widely disseminated to all judicial authorities. In order to inform the public of the new requirements, Greek translations of the judgments in the cases of *Efstathiou* and *Zouboulidis* have been placed on the Internet site of the Legal Office of the State. Given that in all four cases the violations arose from an application by the Court of Cassation of its own case-law, and given the direct effect that the ECtHR's case-law enjoys in Greek law, no further general measures appear necessary.

Freedom of expression: see for the general measures already adopted the case of *Rizos and Daskas* (Section 6.1, 997th meeting, June 2007).

62. GRC / Skondrianos and other similar cases (Final Resolution (2008) 42)

Application No. 63000/00 *Last examination: 1028-1.1*
Judgment of 18/12/2003, final on 18/03/2004

Violations of the applicants' right of access to a court due to the Court of Cassation's dismissal of their appeals on points of law against their criminal convictions, as they had failed to establish that they had surrendered to custody pursuant to those convictions (violations of Art. 6§1); violation of the applicant's right to an adversarial trial as the Court of Cassation's dismissal decision was based on grounds evoked *ex officio* and not contained in the prosecutor's pleadings (violation of Art. 6§1 in one case)

IM Following the judgments of the ECtHR, the applicants were entitled to request that their cases be reopened before the Court of Cassation in accordance with the Code of Criminal Procedure.

GM **Right of access to a court**: In 2001 and 2003, i.e. after the facts of the *Skondrianos* case, the Court of Cassation established that the conditions for examination of cassation appeals should be assessed *in concreto* so as to take into consideration the gravity of the offence and the penalty imposed and ensure a fair balance between the provisions of the law and the individual's right of access to a court under the ECHR, which has a supra-statutory force in Greek law. Subsequently, in 2005, the provision of the Code of Criminal Procedure at issue was repealed.

Right to an adversarial trial: Similar violations should be avoided through direct effect of the

ECHR in Greek law. To this end, the judgment was translated and published with a commentary in a widely-read criminal law journal and on the website of the Athens Bar. Moreover, all the judgments were promptly translated and disseminated to all competent judicial authorities and were published on the State Legal Council's website.

63. GRC/ Tsironis (Final Resolution (2008) 43)

Application No. 44584/98
Judgment of 6/12/2001, final on 6/03/2002

Last examination: 1028-1.1

Violation of the right of access to a court (violation of Art. 6§1) as well as failure to respect property rights (violation of Art. 1 of Prot. No. 1) in that the courts dismissed as out of time the applicant's appeal for annulment of the sale of his land by public auction on request by a creditor bank, even though the courts had admitted that the notification of the sale to the applicant, a captain in the merchant navy, was void (violation of Art. 6§1).

IM The ECtHR awarded just satisfaction for pecuniary and non-pecuniary damage. No further claim was made before the CM.

GM In view of the special circumstances of the present case, the Ministry of Justice found it sufficient to promptly disseminate the ECtHR's judgment to the association of bailiffs and draw their attention to their duty to exercise diligence and to exhaust all means provided for by law to find the persons concerned before considering them to be persons whose address is not known.

64. POL / Podbielski and PPU Polpure (see also AR 2007, p. 91) (examination in principle closed at the 1035th meeting in September 2008)

Application No. 39199/98
Judgment of 26/07/2005, final on 30/11/2005

Last examination: 1035-6.1

Lack of access to a court due to domestic courts' refusal in 1999 to exempt the applicant from court fees in respect of an appeal lodged against a judgment concerning his pecuniary claims against a municipality, for which his company had carried out construction work (violation of Art. 6§1).

IM The ECtHR rejected the applicant's claim for pecuniary damage, as it found no link between the pecuniary damage claimed and the financial loss allegedly sustained.

After the ECtHR judgment, the applicant sought the reopening of the civil proceedings but in 2005 his request was dismissed on the grounds that the Code of Civil Procedure did not contain a clear provision allowing reopening in cases in which the ECtHR had delivered a judgment in favour of the applicant. A constitutional complaint was then dismissed in 2006 as out of time.

In the light of a change in the case-law of the Supreme Court in 2007 related to the possibilities of obtaining the reopening of civil proceedings following a finding of violation by the ECtHR of Art. 6§1, it appeared that it was possible, on the basis of the Code of Civil procedure, to obtain the reopening of the impugned civil proceedings against the municipality. The applicant was informed of this change of case-law by the Ministry of Justice on 18 April 2008 and that he might lodge within 3 months a request for reopening of the proceedings. On 22 July 2008 he lodged such an application, invoking notably the judgment of the ECtHR. However, by a decision of 23 October 2008 the Supreme Court declared this application inadmissible as unfounded. The Supreme Court did not directly address the ECHR issue but confined itself to recall that it had already dismissed a similar application in 2005 and that an intervening different interpretation of domestic law in another case did not constitute a new ground for reopening.

The applicant may, however, under the Civil Code also bring an action for compensation against the State treasury, under the Civil Code (as amended on 17 June 2004) which provides that "if damage has been caused by the issuance of a final judgment or decision, its redress may be requested once its incompatibility with the law has been established in appropriate proceedings. There appears to be agreement that "appropriate proceedings include the proceedings before the

ECtHR. Any claims for compensation will, however, be time-barred as from 1 December 2008, three years after the date on which the judgment of the ECtHR became final.

GM Legislative measures were taken in 2006 in the framework of the execution of the case of *Kreuz* (application No. 28249/95, judgment of 19 June 2001): all general questions related to the imposition of costs are now included in a single law, which provides for fixed amounts for costs in most court proceedings and simplify the calculation of proportional costs, which remain applicable in most disputes over assets. The new law also lays down new rules for exemption from costs.

65. PRT / Gregório de Andrade (examination in principle closed at the 1035th meeting in September 2008)

Application No. 41537/02
Judgment of 14/10/2006, final on 26/03/2007

Last examination: 1035-6.1

Lack of access to a court in 2002 due to the public prosecutor's failure to notify on time the applicant of a judgment, concerning the accumulation of his pension rights. As the judgment was notified when it had already become final, the applicant could not lodge an appeal for harmonisation of jurisprudence before the Plenary Chamber of the Supreme Administrative Court (violation of Art. 6§1).

IM The applicant died in 2004. Subsequent to the facts of this case, in 2005, the Plenary Chamber of the Supreme Administrative Court clarified the subject-matter of the applicant's proceedings before the national courts. On an appeal for harmonisation of jurisprudence, it gave an authoritative ruling on the question of the accumulation of pension rights and rejected the claims made by persons in the same situation as the applicant. In the light hereof, the violation does not appear to have cast a serious doubt on the outcome of the impugned proceedings. In these circumstances, no further individual measure is necessary.

GM The Prosecutor General issued an order to public prosecutors, containing instructions on notification. The order made it clear that public prosecutors must inform the applicants in good time of any decision concerning them of which the prosecutors were notified. When they decide not to pursue the proceedings, they must draw the applicants' attention to the court decision delivered, to allow them, if appropriate, to pursue the case within the statutory time-limits.

Moreover, the Code of Civil Procedure was amended in 2007 and provides henceforth for the re-examination of final domestic judgments, following the finding of a violation by the ECtHR.

The ECtHR's judgment has been translated and published on the Internet site of the Cabinet of Documentation and Comparative Law, under the competence of the Prosecutor General of the Republic.

66. RUS / Dubinskaya and other similar cases (Final Resolution (2008) 17)

Application No. 4856/03
Judgment of 13/07/2006, final on 13/10/2006

Last examination: 1020-1.1

Violations of the applicants' right of access to a court or to a fair trial in different "civil" proceedings related *inter alia* to issues of pension, employment compensation and erasure of some data in the medical records (violations of Art. 6§1): Court decisions taken without the applicants' having been summoned as provided for by law and without any examination of the question of whether or not the applicants had been duly summoned.

IM The ECtHR awarded damages for non-pecuniary damages in some of the cases, in the others the applicants did not submit any claims to the ECtHR, nor did they avail themselves of the possibility, following the judgments of the ECtHR, to apply for a re-trial on the basis of newly discovered circumstances.

GM In 2005 the Deputy to the President of the Supreme Court issued a circular letter to all Presidents of Regional Courts drawing their attention

to the ECtHR's judgments in the *Sukhorubchenko* and *Groshev* cases and inviting them to take measures to prevent new, similar violations. The *Dubinskaya* judgment was sent out by a letter of the Deputy to the President of the Supreme Court of the Russian Federation to all courts in 2007. The *Yakovlev* and the *Dubinskaya* judgments were published.

E.3. Non-execution of domestic judicial proceedings

67. ALB / Beshiri (See also AR 2007, p. 175)
ALB / Ramadhi and 5 others

Application Nos. 7352/03 and 38222/02
Judgment of 22/08/2006, final on 12/02/2007

Judgment of 13/11/2007, final on 2/06/2008
Last examination: 1043-4.2

Violation of the right to a fair trial and the right to protection of property due to the non-enforcement of final judicial decisions granting in some cases restitution of plots of nationalised lands and in others compensation for their value (violation of Art. 6§1 and Art. 1, Prot. No. 1); lack of an effective remedy to obtain the enforcement of such decisions (violation of Art. 13 in conjunction with Art. 6§1 in the *Ramadhi* case).

IM In the *Beshiri* case, the ECtHR awarded the applicants a lump sum as just satisfaction in respect of non-pecuniary and pecuniary damage, including an amount corresponding to the current value of the non-restituted plots. No additional measure seems to be required.

In the *Ramadhi* case, the ECtHR noted the government's failure to follow the indications it had given as to general measures in earlier judgments. In order to provide a final settlement of the property issue, the ECtHR ordered, in addition to the non-pecuniary damages, the return of the plots of land whose restitution had been ordered by the competent commission, and the payment of the compensation corresponding to the value (at the time of the relevant decisions) of the other plots whose restitution had not been ordered, together with a measure of interest to reflect the intervening loss of use of the plots. Failing restitution within 3 months, the government was ordered to pay monetary compensation instead. Information is currently awaited on the issue of restitution.

GM The ECtHR gave a number of indications in order to assist the respondent state in complying with its obligations under Art. 46. In particular, in the *Ramadhi* judgment, it stressed that the respondent state should, above all, introduce a remedy which secures genuinely effective redress for the ECHR violations identified as well as in respect of all similar applications pending before the ECtHR, in accordance with the principles for the protection of the rights laid down in Art. 6 § 1 and 13 of the ECHR and Art. 1 of Prot. No. 1. The measures should *inter alia* include the adoption of maps for the property valuation in respect of those applicants who are entitled to receive compensation in kind and the designation of an adequate fund in respect to those applicants who are entitled to receive compensation in value, so that all claimants having commission's decisions in their favour can speedily obtain the lands or the sums due. The ECtHR stressed that such measures should be made available as a matter of urgency.

In response hereto the CM noted with interest that the Property Act had been amended with a view to widening its scope and improving enforcement proceedings and that in May 2008 a National Strategy for Development and Integration (2007-2013) had been adopted for improving the property restitution and compensation process. The main objectives of the strategy are:

- to finalise property registration by 2012;
- to make an audit and transfer of public properties to central and local government bodies (70% completed);
- to implement a coherent methodology for the valuation of property;
- to have a fund in place for restitution in kind, to modernise the Property Office and to improve the regulatory framework (by 2013);
- to ensure compensation is paid where restitution in kind is not possible (by 2014).

Following the establishment of this strategy, a number of measures have been taken and others are under way.

A "Land Value Map" has thus been approved, an electronic database was finalised in April 2008 recording all decisions taken on property rights since 1993, and an inter-ministerial task force has

been charged with identifying plots of land that can be used for a compensation fund.
The CM encouraged the authorities to continue their efforts to take all the measures announced as promptly as possible and requested further information, *inter alia*, on the content and impact of the amendments to the Property Act, on the implementation of the National Strategy and on measures taken or envisaged to solve the systematic problem highlighted by the ECtHR in the *Ramadhi* case in respect of the lack of an effective domestic remedy to ensure the enforcement of decisions concerning property restitution or compensation.
The ECtHR's judgment was translated into Albanian, published and disseminated to the relevant domestic judicial, legislative and executive authorities.
Unfair trial: see case *Qufaj* (judgment of 18 November 2004).

68. ALB / Driza

Application No. 33771/02 *Last examination: 1043-4.2*
Judgment of 13/11/2007, final on 02/06/2008

Breach of the right to legal certainty because a final judgment of 1998 granting compensation for property nationalised during the communist regime was subsequently quashed twice by the Supreme Court, once in parallel proceedings and once by means of supervisory-review (violation of Art. 6§1); lack of impartiality of the Supreme Court due to the role of its president in the supervisory review proceedings and because a number of judges had to decide a matter on which they had already expressed their opinions, and even justify their earlier positions (violation of Art. 6§1); the lack of enforcement of the final judgments also deprived the right of access to court of all useful effect (violation of Art. 6§1); the interference also violated the applicant's property rights and demonstrated a lack of effective remedies (violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 13).

IM The ECtHR ordered the restitution of one of the plots of land and indicated that failing such restitution additional just satisfaction should be paid. It also awarded just satisfaction for pecuniary and non-pecuniary damages in respect of both plots of land. Information is awaited on the return of the contested land.

GM **Lack of legal certainty**: The provisions at the origin of the violation in this case, concerning the supervisory review procedure, are no longer in force, having been repealed in 2001, and the finality of domestic court judgments is now secured. With regard to the possibility of challenging final decisions in parallel proceedings, the CM has requested information on measures envisaged to identify related proceedings and where necessary to join them, or in the alternative to prohibit further institution of new proceedings related to the same matter.

Lack of impartiality of the Supreme Court: Information is awaited on measures taken or envisaged to avoid similar violations, and in particular on the ECtHR's judgment's publication and dissemination to the Supreme Court.

Property rights and lack of effective remedy: In order to assist the respondent state in complying with its obligations under Art. 46 as far as these issues are concerned, the ECtHR gave a number of indications similar to those in the *Ramadhi* case (see above). The advancement of execution on this point is thus also similar to the one in the *Ramadhi* and *Beshiri* cases.

69. ALB / Qufaj Co. Sh.P.K. (See also AR 2007, p. 106)

Application No. 54268/00 *Last examination: 1043-4.2*
Judgment of 18/11/2004 final on 30/03/2005

Non-enforcement of a final domestic decision of 1996 ordering a municipality to compensate the applicant company for damage sustained following the refusal to grant a building permit (violation of Art. 6§1).

IM No individual measure is required as all damages have been covered by the just satisfaction awarded. Pecuniary damage included a sum corresponding to the amount due under the un-

enforced domestic judgment. Additional compensation, determined on an equitable basis was awarded to compensate for the loss of the possibility to use the sums in accordance with the applicant's plans and expectations up till the date of the ECtHR's judgment.

GM In order to deal with the problem of lack of funds, which was at the origin of the violation in this case, a working group was established in 2003 to identify the unenforced financial judicial decisions. The implementation of its recommendations is due to be accelerated. Particular funds shall also be provided within the state budget and the budgetary institutions, with a view to paying financial debts related to the enforcement of final judicial decisions.

A number of amendments to the law giving individual institutions budgetary responsibility for complying with domestic judgments were adopted by the Parliament in October 2008.

In addition, the bailiffs' system is being reformed in order to improve the bailiff's office organisation and functioning. In particular, the bailiff service, up to now attached to the Ministry of Justice, will be transformed into a liberal profession. This reform is intended to ensure effective implementation of domestic court judgments by creating or contracting specialised bodies to deal with execution of judgments. A draft law on the reform of the bailiff system was expected by July 2008, together with a draft amendment to the chapter on enforcement of final judgments in the Civil Procedure Code.

In 2006 the Constitutional Court changed its practice in order to align it to the ECtHR judgment in this case and held that it was henceforth competent to examine requests concerning non-enforcement of domestic judicial decisions and that such non-enforcement may constitute a violation of the right for a fair trial.

In 2007 the authorities decided to conduct a general study of the domestic legislation with the view to improving the execution procedure of the judgments of the ECtHR. In this framework a working group, including representatives of the Ministry of Justice, the Ministry of Finance and the Tirana Municipality, was to be established in the view of clarifying the division of competencies in situations similar to the one of this case. The enforcement of domestic judicial decisions by state institutions when they are debtors has been fixed as a priority in the government's programme. In January 2008, the Secretariat had bilateral consultations in Tirana with the Albanian authorities to discuss the measures envisaged and taken in order to avoid similar violations.

The ECtHR's judgment was translated, published and sent out to the Prime Minister, the President of the High Council of Justice, the President of the Constitutional Court, the Ministry of Justice, the Ministry of Finance, the Ministry of European Integration and the Tirana municipality. Moreover, the government agent has translated and forwarded to the Ministry of Justice, to the Parliament, the Bar and the civil society the conclusions of the Round Table, Strasbourg on 21 and 22 June 2007, on "Non-Enforcement of Domestic Judicial Decisions in Member States" (document CM/Inf/DH (2007) 33).

Information is awaited on the follow-up given to the different reforms announced by the authorities.

70. AZE / Tarverdiyev
AZE / Efendiyeva

Application Nos. 33343/03 and 31556/03
Judgment of 26/07/2007, final on 26/10/2007

Judgment of 25/10/2007, final on 25/01/2008
Last examination: 1035-4.2

Failure (*Tarverdiyev*) or delay (*Efendiyeva*) in the enforcement of final judgments, respectively of 2001 and 1994, ordering the applicants' reinstatement in their posts (violations of Art. 6§1) and payment of certain sums, thus also breaching the applicant's property rights (violation of Art. 1 of Prot. No. 1 in *Efediyeva* case).

IM *Tarverdiyev*: The applicant asked the ECtHR for the enforcement of the 2001 judgment ordering his reinstatement as director of a regional forest enterprise (which was being transferred under the authority of the Ministry of the Environment). In response, the ECtHR indicated that it considered that the government should secure, by appropriate means, the enforcement of the judgment at issue. It stressed, however, that the determination whether the required execution measures would involve reinstating the applicant in an equivalent job at an equivalent institution

or, in case of impossibility to do so, granting him reasonable compensation for non-enforcement, or a combination of these and other measures, was a decision that fell to the respondent State.

Shortly before the ECtHR's judgment, in June 2007, the Court of Appeal of the Republic of Azerbaijan quashed the unenforced judgment. In December 2007, the applicant indicated that he had not waived his claims. The adoption of individual measures remains awaited.

Efendiyeva: The applicant was reinstated in her post as chief physician at the Republican Maternity Hospital on 11 July 2007 and the ECtHR reserved the question of the award of a just satisfaction. The issue of other possible individual measures will be examined later, in the light of the judgment of the ECtHR on just satisfaction.

GM The CM has requested confirmation of the translation and publication of the ECtHR's judgment, as well as of its dissemination to the Ministry of Justice, the President's office, the Ombudsman, the Constitutional Court and the Ministry of Environment (in the case of *Tarverdiyev*).

Information is awaited on measures envisaged by the authorities to prevent new violations, on enforcement proceedings currently in force and on effective remedies available to complain and obtain compensation in case of late enforcement of judicial decisions.

71. BIH / Jelicic (See also AR 2007, p. 107)
BIH / Pejaković and Others

Application No. 41183/02 and 337/04+
Judgment of 31/10/2006, final on 31/01/2007

Judgment of 18/12/2007, final on 18/03/2008
Last examination: 1043-4.2

Violation of the right of access to court and of the right of property because of a statutory prohibition introduced in 1996 on the execution of final domestic judgments regarding the release of old savings accounts in foreign currency (violations of Art. 6 of the ECHR and 1 of Prot. No. 1 – these violations established already by the Human Rights Chamber in 2000).

IM No individual measure is required as all damages, including default interest for the delay, have been covered by the just satisfaction awarded.

GM The statutory provisions in force since 1996, which subjected all final judgments relating to old foreign savings accounts (i.e. savings accounts dating from the period before the dissolution of the Socialist Federal Republic of Yugoslavia) to administrative verification have been repealed in 2007. The law now provides for the registration of the relevant final judgments and the payment of creditors. Special funds have been earmarked for discharging the obligations arising from these judgments in the regional budgets within the next two years.

Detailed information is awaited on deadlines envisaged or set for registration of all final judgments concerning the "old savings", on the final number of such judgments and the aggregate debt represented, as well as on payments made or envisaged and appropriations in the 2009 budgets for that purpose.

The authorities have also provided statistical data concerning prosecutions under the 2003 Criminal Code for non-enforcement of a final and enforceable decision of the Constitutional Court, Court of Bosnia and Herzegovina or of the former Human Rights Chamber of Bosnia and Herzegovina (its mandate ceased on 31 December 2003 and its powers were in principle transferred to the Constitutional Court).

Information is awaited on further developments in prosecuting failure to abide by final judgments and possibly on other measures taken or envisaged to enhance compliance with such judgments.

An Action plan is expected on further measures to prevent similar violations, including the recording of all outstanding debts of this kind, in particular under domestic judgments.

The ECtHR's judgments in these cases were published and forwarded to the courts involved as well as to other authorities, such as Court of Bosnia and Herzegovina, Constitutional Court, Supreme Courts and governments in both entities and Council of Ministers of Bosnia and Herzegovina.

72. BIH / Karanovic

Application No. 39462/03
Judgment of 20/11/2007, final on 20/02/2008
Last examination: 1043-4.2

Non-enforcement since 2003 of a final decision of the former Human Rights Chamber of Bosnia and Herzegovina ("HRC") finding discrimination against persons returning to the Federation of Bosnia and Herzegovina ("the Federation") from the Republika Srpska ("RS"), after being internally displaced during the armed conflict, as they were not entitled to pension rights under the Federation fund, generally more favourable than those they had under the RS fund; the HRC ordered the transfer of the pension rights of these persons, including those of the applicant, to the Federation's pension fund and the payment of the difference in pension as from the date of application to the HRC (violation of Art. 6§1).

IM The ECtHR ordered the enforcement of the HRC's decision in respect of the applicant. The applicant's pension was, accordingly, transferred to the Federation Pension Fund as from 21 February 2008. The difference between the amounts he had received from the RS Pension fund and those payable under the more favourable regime of the Federation has been paid. No further individual measure appears necessary.

GM In July 2008 the Federation government adopted an action plan, envisaging *inter alia* the collection and analysis of data on the number of people in the same situation as the applicant and on the amounts due. The Federation government will decide on additional measures on the basis of this analysis. However, the action plan so far provides for no particular legislative measures.

Negotiations are under way between the Federation and the RS (the entities) with a view to resolving the problem of payment of pensions between the entities, but no agreement has been reached yet.

The ECtHR noted the large number of potential applicants suggested by the non-execution of the decision of the HRC. One case similar to *Karanovic* is currently pending before it. In two other cases the applicants request their transfer to the Federation fund even though they have not obtained a decision from the HRC.

Information is awaited on further progress made, in particular with regard to implementation of the action plan and results of the reflection on inter-entity payment of pensions.

Information is also awaited on measures taken or envisaged to ensure that the decisions of the HRC, and of its successor, are enforced.

The judgment has been translated into the official languages of Bosnia and Herzegovina, published and forwarded to all the administrative and judicial bodies involved in the present case, the Federation Pension Fund and the RS Pension Fund.

73. BGR / Angelov and other similar cases (See also AR 2007, p. 107)

Application No. 44076/98
Judgment of 22/04/2004, final on 22/07/2004, memorandum CM/Inf/DH (2007) 33
Last examination: 1035-4.2

Delay by authorities in complying with court judgments, between 1996 and 2003, awarding compensation to the applicants (violations of Art. 1 Prot. No. 1 and, in some cases, of Art. 6§1).

IM See AR 2007.

GM The legislative work referred to in AR 2007 has led to a new Code of Civil Procedure, in force as of 1 March 2008. The new Code, however, expressly prohibits the forced execution of debts against state institutions notwithstanding the fact that in 2005, the Bulgarian authorities had indicated that they were considering possible amendments thereto to ensure the execution of judgments ordering the payment of compensation by public institutions. In this context, in January 2008, the Legal Committee of the Parliament rejected the possibility of introducing a mechanism for the forcible execution of judicial decisions against state institutions considering *inter alia* that no such system existed in any other European state and that the question of execution by the state was within the remit of the Ministry of Finance.

Information remains expected in particular on measures envisaged or already adopted to introduce in domestic law an efficient mechanism for

the execution of judicial decisions against state institutions. Clarification has also been requested on the relevant regulations and practice followed by the courts when they have to execute judgments ordering them to pay compensation for illegal actions.

74. UKR / Zhovner and other similar cases (See also AR 2007, p. 110)

Application No. 56848/00
Judgment of 29/06/2004, final on 29/09/2004
IR (2008) 1
Memorandum CM/Inf/DH (2007) 30 (rev. in English only) and CM/Inf/DH (2007) 33
Last examination: 1043-4.2

Failure or serious delay by the Administration or state companies in abiding by final domestic judgments; absence of effective remedies to secure compliance; violation of applicants' right to protection of their property (violations of Art. 6§1, 13 and 1, Prot. No. 1).

IM Information on enforcement of still non-enforced domestic judgments is expected.

GM In view of the developments in respect of general measures – see AR 2007 – the CM adopted an interim resolution at its HR meeting in March 2008 (1020th) in which the CM notably:

- Expressed particular concern that notwithstanding a number of legislative and other important initiatives, which have been repeatedly brought to the attention of the CM, little progress has been made so far in resolving the structural problem of non-execution of domestic judicial decisions;
- Strongly encouraged the Ukrainian authorities to enhance their political commitment in order to achieve tangible results and to make it a high political priority to abide by their obligations under the ECHR and by the ECtHR's judgments, to ensure full and timely execution of the domestic courts' decision;
- Called upon the Ukrainian authorities to set up an effective national policy, co-ordinated at the highest governmental level, with a view to effectively implementing the package of measures announced and other measures which may be necessary to tackle the problem at issue;
- Urged the Ukrainian authorities to adopt as a matter of priority the draft laws that were announced before the CM, in particular the law On Amendments to Certain Legal Acts of Ukraine (on the protection of the right to pre-trial and trial proceedings and enforcement of court decisions within reasonable time);
- Encouraged the authorities, pending the adoption of the draft laws announced, to consider the adoption of interim measures limiting as far as possible the risk of new violations of the ECHR of the same kind,;
- Invited the Ukrainian authorities to consider, in addition to the measures announced, appropriate solutions in the following areas:

– to improve budgetary planning, particularly by ensuring compatibility between the budgetary laws and the state's payment obligations;

– to ensure the existence of specific mechanisms for rapid additional funding to avoid unnecessary delays in the execution of judicial decisions in case of shortfalls in the initial budgetary appropriations; and

– to ensure the existence of an effective procedure and funds for the execution of domestic courts' judgments delivered against the state.

- Invited the competent Ukrainian authorities to ensure wide dissemination of the IR to the government, the parliament and the judiciary.

The responses to this IR will be examined at the first HR meeting in 2009.

E.4. Unfair judicial proceedings

75. ARM / Harutyunyan

Application No. 36549/03
Judgment of 28/06/2007, final on 28/09/2007
Last examination 1035-4.2

Breach of the right to fair trial on account of the use of statements which had been obtained under duress when convicting the applicant, serviceman in the army, in 1999 for murder of another serviceman in the army (violation of Art. 6§1).

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. The applicant was sentenced to ten years' imprisonment and was detained from 17 April 1999 to 22 December 2003, when he was released on parole. The Code of Criminal Procedure provides for the possibility to reopen criminal proceedings in the event of "new circumstances". Clarifications have been sought as regards the possibility in law and practice to reopen the applicant's case.

GM The ECtHR's judgment has been translated and published.

Under the Code of Criminal Procedure, as worded already at the time of the events, it is illegal to use in criminal procedure as evidence or as a basis for an accusation facts obtained: by force, threat, fraud, violation of dignity, as well with the use of other illegal actions. Recent examples of the application of this provision of the Code of Criminal Procedure have been requested, as well as examples of the application of other provisions, which might be relevant.
Information on further measures, *inter alia* the dissemination of the ECtHR's judgment to military and civil courts and to the police, has also been requested.

76. ARM / Nikoghosyan and Melkonyan

Application No. 11724/04+
Judgment of 06/12/2007, final on 06/03/2008

Last examination: 1043-4.2

Unfair civil proceedings concerning the annulment of a property sale contract: the applicants received the summons after the hearing, and thus could not take part in it (violation of Art. 6§1).

IM The applicants made no claim for non-pecuniary damage and the ECtHR, holding that it could not speculate as to the outcome of proceedings had they been fair, rejected the applicants' claims for pecuniary damage. The ECtHR stated that the most appropriate form of redress in cases where a trial was held in the applicant's absence in breach of the ECHR would as a rule be to reopen the proceedings and re-examine the case in keeping with all the requirements of a fair trial. Such a reopening is possible under Armenian law.

Information is awaited on measures taken or envisaged in favour of the applicants.

GM The ECtHR judgment was translated, the confirmation of its publication is awaited as well as that of its dissemination to the Court of Cassation, civil courts of appeal and regional courts.

77. BEL / Da Luz Domingues Ferreira (examination in principle closed at the 1035th meeting in September 2008)

Application No. 50049/99
Judgment of 24/05/2007, final on 24/08/2007

Last examination: 1035-6.1

Unfair criminal trial (violation of Art. 6§1) on account of an appeal court's refusal in 1998 to reopen proceedings which had taken place in the absence of the accused despite clear indications that he wished to avail himself of his right to appear in court.

IM Following the entry into force, on 1 December 2007, of a new law on reopening of judicial proceedings, the Court of Cassation, in April 2008, referred the case for retrial to the competent court of appeal.

GM In order to avoid similar violations, due to a too strict application of formal rules of admissibility, the ECtHR judgment was published without delay on the Internet sites of the Ministry of Justice and the *Cour de cassation*. Then, in June 2008, the College of Prosecutors General sent out a circular letter instructing the persons in charge of notifying decisions of convictions in absentia to include in the notification a mandatory document specifying the procedure for requesting the setting aside of the conviction. A standard document has been prepared to this effect. The same instruction applies when the person to be notified is already detained, in Belgium or abroad. Finally, information on the procedure to follow to request the setting aside of a conviction in absentia and on the rights of the person concerned will also be included in the European arrest warrant, in the section "legal guarantees".

78. **BGR / Kounov (Final Resolution (2008) 70)**

Application No. 24379/02 *Last examination: 1035-1.1*
Judgment of 23/05/2006, final on 23/08/2006

Unfair criminal trial on account of the refusal by the Supreme Court of Cassation, in 2002, to re-examine the case of the applicant, who had been convicted *in absentia* in 1999, as it found, in accordance with the practice at the time, that certain elements of the file demonstrated that the applicant "was aware of the proceedings" within the meaning of the Code of Criminal Procedure, although it was clear that he had not received any official information as to the accusations against him or the date of his trial (violation of Art. 6§1).

IM Following the ECtHR's judgment, the Prosecutor General requested reopening of the proceedings. In 2007, the Supreme Court of Cassation upheld this request. It annulled the conviction of the applicant and sent the case to the competent court for a new examination. It should be noted that the applicant has served the entire sentence of four years' imprisonment imposed in the proceedings at issue. In case of acquittal, mitigation of the sentence or termination of the proceedings by discharging the accused, the applicant may request compensation for having been detained on the basis of a conviction pronounced in his absence, relying on the Act on the Responsibility of the State for Damage caused to Individuals by its acts. No further measure appears necessary.

GM The Code of Criminal Procedure, in force since 2000, should, in principle not allow this kind of violation, as it provides for the possibility for a person sentenced in absentia to obtain a retrial, provided that he or she had not been aware of the proceedings. This requirement has been developed in the practice established by the Supreme Court of Cassation since the violation: the accused must today be notified personally of the trial and the charges against him in order for it to be established that he is aware of the proceedings.

Evidence of the new practice has been submitted. In view of the above, the violation do no longer appears to reveal any structural problem concerning the guarantees of fair trial in *in absentia* cases.

Thus, considering the development of practice and of the direct effect given by Bulgarian courts to the ECHR and to the ECtHR's case-law, the publication of the ECtHR's judgment and its dissemination to the Supreme Court of Cassation appear to be sufficient measures for execution.

79. **BGR / Padalov (see also AR 2007, p. 117) (examination in principle closed at the 1028th meeting in June 2008)**

Application No. 54784/00 *Last examination: 1028-6.1*
Judgment of 10/08/2006, final on 10/11/2006

Unfair criminal trial on account of the breach of the applicant's right to benefit from free legal aid in 1997 (violations of Art. 6§§1 and 3c).

IM As a result of the unfair trial against the applicant between 1997 and 1999, he was sentenced to more that 14 years' imprisonment but was released in 2006 following the ECtHR judgment. Upon request by the Prosecutor General, the Supreme Court of Cassation annulled in March 2007 the verdict and referred the case back for a new examination at the pre-trial stage. In its decision, the Supreme Court of Cassation referred explicitly to the need of ensuring a proper legal representation for Mr Padalov during the new proceedings.

GM See AR 2007.

80. **FIN / V.**

Application No. 40412/98
Judgment of 24/04/2007, final on 24/07/2007

Last examination: 1035-4.2

Unfair criminal proceedings: the applicant was unable to argue that he had been incited by the police to commit a drug offence, because the police authorities failed to disclose during the proceedings, in 1996, the relevant information and this shortcoming could not be rectified by the courts (violation of Art 6§1).

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. The practice of the domestic courts demonstrates that reopening of criminal proceedings is possible under the general provisions of the Code of Judicial Procedure in cases in which the ECtHR has found a violation and that the applicant could thus if so required obtain a new fair procedure. No further measure appears necessary.

GM The Police Act was amended in 2001 and in 2005, adding explicit provisions on certain special preventive methods and investigative techniques, including undercover operations and induced deals.

The legislation on telephone tapping has also been amended subsequently and provides today *inter alia* that at the conclusion of the preliminary investigation, the suspect must be informed about the telephone tapping and all irrelevant information gathered must be destroyed.

The ECtHR judgment has been published.

Information has been requested on any further measures taken or envisaged.

81. **FRA / Augusto (see also AR 2007, p. 119) (examination in principle closed at the 1043rd meeting in December 2008)**

Application No. 71665/01
Judgment of 11/01/2007, final on 11/04/2007

Last examination: 1043-6.1

Unfair civil trial (violation of Art. 6§1) on account of the failure to communicate to the applicant the report by the doctor appointed by the CNITAAT (national tribunal for incapacity and the establishment of insurance for industrial accidents) in proceedings seeking in 1996 to obtain a retirement pension on the basis of her incapacity to work.

IM As regards pecuniary damage, the ECtHR declined to speculate as to the outcome of the proceedings had they been conducted in conformity with the ECHR and awarded the applicant just satisfaction in respect of non-pecuniary damage. The applicant may now e.g. request the re-examination of her situation by asking the competent regional authority (*Caisse Régionale d'Assurance maladie* – CRAM) to grant her a retirement pension on the basis of her incapacity to work. If need be, she could challenge the decision before the CNITAAT (see below the measures taken to avoid new, similar violations at this stage of the proceedings).

GM Subsequent to the facts of this case, legislative changes amended the proceedings before the CNITAAT. Now, the president in charge of the case may appoint one or several medical expert and copies of their reports must be sent to the parties. Furthermore, the judgment was sent out to the First President of the *Cour de cassation*, to the Prosecutor General before the *Cour de cassation* and to the Directorate of Criminal Affairs and Pardons of the Ministry of Justice.

82. **FRA / Cabourdin and other similar cases (See also AR 2007, p. 119)**

Application No. 60796/00
Judgment of 11/04/2006, final on 11/07/2006

Last examination: 1035-4.2 (1043-3.Aint)

Unfairness of civil proceedings and disproportionate interference with the applicants' property rights on account of the retroactive application of a law to pending judicial proceedings, which had not been justified by compelling grounds of general interest (violations of Art. 6§1 and 1, Prot. No. 1).

IM See AR 2007.

GM The French authorities, and in particular the Ministry of Economy and Finance, are continuing their examination (see AR 2007) of the issue of the use of laws designed to legalise existing practices (*lois de validation*) and on measures necessary to avoid new violations. They also drew the Committee's attention on the evolution – compliant with the ECHR's requirements – of the *Conseil constitutionnel*, the Court of Cassation and the *Conseil d'Etat* in this field.

Further information is awaited in respect of these points.

83. FRA / Frette (Final Resolution (2008) 40)

Application No. 36515/97
Judgment of 26/02/2002, final on 26/05/2002

Last examination: 1028-1.1

Infringement of the right to a fair trial in adoption proceedings before the *Conseil d'Etat*: the applicant, who was unrepresented and had not been notified of the hearing, could not familiarise himself with the Government Commissioner's submissions or the general tenor of those submissions and thus have the opportunity to submit a memorandum in reply (violation of Art. 6§1).

IM The applicant submitted no claims either before the ECtHR or before the CM.

GM Several measures have been adopted to ensure the adversarial character of proceedings before the *Conseil d'Etat* for unrepresented parties. Since 1 January 2001, the Code of Administrative Justice provides that any party, represented or unrepresented, is notified of the date of the hearing. Unrepresented applicants may thus attend the hearing, hear the Government Commissioner's submissions and submit a memorandum in reply for the deliberations, if they so wish. This notification also allows the party to make contact with the Government Commissioner in order to receive the general tenor of his submissions.

Subsequently, in a memorandum of 23 November 2001, the President of the judicial department of the *Conseil d'Etat* reminded Government Commissioners that an unrepresented applicant must receive the same information as that given to counsel (members of the specific bars of the *Conseil d'Etat* and the *Cour de cassation*). The Government Commissioner's submissions are therefore henceforth communicated to unrepresented applicants upon request.

84. FRA / Meftah and 25 other similar cases (Final Resolution (2008) 71)

Application No. 32911/66
Judgment of 26/07/2002, final on 26/07/2002

Last examination: 1035-1.1

Breach of the right to a fair trial before the criminal chamber or the social chambers of the *Cour de cassation* due to the failure to communicate, in whole or in part, the report of the reporting judge (*conseiller rapporteur*) and/or the conclusions of the Advocate-General to parties not represented by counsel, who as a consequence could not reply (violation of Art. 6§1). Some of these cases also concern the presence of the advocate-general at the deliberations before the *Cour de Cassation* (violation of Art. 6§1).

IM **Cases concerning proceedings before the criminal chamber of the *Cour de cassation*:** Under the Code of Criminal Procedure, the applicants were entitled to request the review of the final criminal court decisions.

Cases concerning proceedings before the social chamber of the *Cour de cassation*: The ECtHR considered that the finding of a violation constituted in itself sufficient just satisfaction for the alleged non-pecuniary damage. As regards pecuniary damage, in one case, no claims for pecuniary damages were lodged before the ECtHR or the CM. In another case, the ECtHR concluded that it could not award the pecuniary damage sought as it could not speculate on the outcome of the domestic proceedings had no violation taken place and the applicant did not maintain his claims at the execution stage, before the CM. In the other cases, the ECtHR found no causal link between the damages claimed and the violation.

GM The *Cour de cassation* has changed the way in which it investigates and determines matters submitted to it.
Advisory reports drafted by the judge rapporteur (*conseiller rapporteur*), which set out the legal questions raised by the case, are communicated with the file to both the public prosecutor and the parties. Opinions on decisions and draft judgments drawn up for consideration by the Bench are communicated neither to the advocates-general nor to the parties. Advocates General no longer take part in preparatory conferences or in the deliberations of the Bench.
Since 2003, the parties not represented by counsel can access to information on equal terms with represented parties.
A consultation service was set up within the *Cour de cassation* enabling parties and/or their counsel to consult documents concerning the proceedings. Since December 2006, appellants submitting personal memorials receive written acknowledgement of receipt and, when the report is deposited, they are informed by letter that they may receive a copy by post upon request to the registry.
Finally, parties not represented by counsel are informed of the meaning of the conclusions of the Attorney General by the prosecution before the hearing. In the same letter, they are informed that they may send supplementary observations to the registrar of the *Cour de cassation*.
The procedure is organised so as to allow applicants not represented by counsel to receive the information they wish, irrespective of their place of residence, thus eliminating the imbalance found by the ECtHR relating to investigation and judgment procedure before the *Cour de cassation*.

85. ISL / Eggertsdottir

Application No. 31930/04
Judgment of 05/05/2007, final on 05/10/2007
Last examination: 1043-4.2

Violation of the applicant's right to a fair hearing by an impartial tribunal: in proceedings concerning compensation for medical negligence, the Supreme Court in 2004 overturned the District Court's decision, favourable to the applicant, on the basis of an opinion from the State Medico-Legal Board, four of whose members were employees of the defendant hospital (violation of Art. 6§1).

IM The ECtHR awarded the applicant just satisfaction including compensation for loss of opportunities and non-pecuniary damages suffered.
The authorities indicated that the applicant did not ask for reopening of the proceedings. It seems that, although it is not explicitly provided, Icelandic law would not exclude the possibility of reopening proceedings in order to give effect to a judgment of the ECtHR. Clarifications are expected in this respect, together with examples of relevant case-law.

GM The Minister of Health has submitted a Bill to the Parliament aimed at abolishing the State Medico-Legal Board Act on account of the fact that the procedure of this Board does not comply with the rules on impartiality. The Bill proposes instead to solve disputes on medical issues before courts, with the assistance from court-appointed assessors and specialist judges.
The judgment of the ECtHR has been translated and published, thus ensuring its dissemination to practicing lawyers and other interested persons.
Information is awaited on progress in the adoption of the draft legislation.

86. ITA / F.C.B. and other similar cases (See also AR 2007, p. 124)

Application No. 12151/86
Judgment of 28/08/1991 (final)
Resolution (93)6 and IR (2002)30
Last examination: 1035-4.2

Unfairness of criminal proceedings by which the applicants were sentenced in absentia to several years' imprisonment although it had not been shown that the applicants had willfully absconded or renounced to their right to attend the hearings (violations of Art. 6§§1 and 3).

IM The general situation of the applicants is described in AR 2007. The recent developments include:

F.C.B.: In 2004, the applicant contested under Article 670 of the Code of Criminal Procedure (CPP) (*incidente d'esecuzione*) before the Italian

courts the lawfulness of the continuation of his detention, allegedly on the basis of the conviction impugned by the ECtHR. The Court of Cassation, in a final judgment of 15 November 2006, dismissed this request. In relation thereof, the applicant has seized the ECtHR of a new application. The ECtHR, however, on 25 November 2008 declared the application inadmissible for non-exhaustion of the domestic remedies. The ECtHR considered, in particular, that the applicant, following the indications given by the Court of Cassation in its judgment of 15 November 2006, could apply for suspension of the time-limit for appeal against his sentence (*istanza di rimessione in termini*) under new Article 175 of the CPP of 2005 (see also GM below).

Ali Ay: In 2000, the applicant was arrested in Lithuania and extradited to Italy. He applied for suspension of the time-limit for appeal against his sentence (*istanza di rimessione in termini*), under former Article 175 of the CPP, but the Court of Cassation rejected this request by a final judgment on 4 December 2003. Following the judgment of the ECtHR of 14 December 2006, the Verona Tribunal, seized again by the applicant, decided to accept the request for suspension of time-limit for appeal against sentence and to free the applicant. Subsequently, the applicant had the possibility to lodge an appeal against his in absentia conviction, impugned by the ECtHR.

Information is still awaited on the individual situations of the certain of the other applicants, particularly with regard to the possibility of having a fresh judicial determination of the validity of the charges laid against them.

GM The first developments are summarised in AR 2007. The new Bill which aimed at reforming in absentia convictions with reference to the ECtHR case-law, was dropped following the dissolution of Parliament in February 2008.

The Court of Cassation's case-law (see AR 2007), applying retroactively the 2005 amendments to the CPP to "old" cases, as established in the framework of the execution of the *Somogyi* case (ECtHR judgment of 18 May 2004), has subsequently been reiterated in particular by the Verona Tribunal in the *Ay Ali* case in 2008 (see above).

87. MDA / Gurov (examination in principle closed at the 1028th meeting in June 2008)

Application No. 36455/02
Judgment of 11/07/2006, final on 11/10/2006

Last examination: 1028-6.1

Unfair civil proceedings: the appeal court which decided against the applicant in 2002 was not a "tribunal established by the law" because it was presided by a judge whose term of office had expired since 2000 (violation of Art. 6§1).

IM On 1 November 2006, the Civil and Administrative Chamber of the Supreme Court of Justice granted the applicant's request for reopening, quashed the decisions of the court of appeal and of the first instance court of 2002 and referred the case back to the appeal court. No further individual measure seems necessary.

GM At the time of the facts, despite the absence of a legal basis, the practice was that judges whose term of office had expired were authorised to continue to sit until the President decided the question of their appointment. In 2005, the law was amended and it now explicitly provides that judges are designated by the President of the Republic at the proposal of the Judicial Council, out of a list of candidates established by competitive examination. Having completed a 5-year probationary period, they may continue to sit until they reach 65. In view hereof the kind of problem here at issue ought not to occur again.

The ECtHR's judgment has been translated, published and sent out to the relevant authorities and domestic courts.

88. NLD / Geerings

Application No. 30810/03
Judgment of 01/03/2007, final on 01/06/2007 (merits); and of 14/02/2008, final on 14/05/2008 (just satisfaction)

Last examination: 1035-4.2

Infringement of the applicant's right to be presumed innocent on account of a court of appeal's order, in 2001, for the confiscation of advantages considered to have been illegally obtained in connection with thefts of which the applicant had been partially acquitted by a judgment of 1999 (violation of Art. 6§2).

IM As a result of new proceedings, introduced by the Advocate General following the ECtHR's judgment on the merits, the confiscation order of 2001 was reduced in 2007 to an amount corresponding to that of the offence for which the applicant had been convicted by the judgment of 1999. In the just satisfaction proceedings before the ECtHR the applicant withdrew his claim in respect of pecuniary damage. The ECtHR awarded just satisfaction in respect of non-pecuniary damage. No further individual measure appears necessary.

GM The ECtHR judgment was published in several Dutch legal journals. Furthermore, the Board of Prosecutors-General issued in 2007 a guideline for confiscation practice, which stipulates that no advantage obtained could be confiscated in respect of counts on which one had been acquitted, unless it was firmly established that the person concerned had derived an actual advantage from those counts. Information is awaited as to whether further measures aimed at ensuring that confiscation procedures are conducted in accordance with the ECHR are being considered.

89. NOR / Ekeberg and Others (Final Resolution (2009) 9)

Application No. 11106/04
Judgment of 31/07/2007, final on 31/10/2007

Last examination: 1043-1.1

Unfair criminal proceedings: lack of impartiality of the High Court in that a judge, who had been involved in a decision to extend the detention on remand of one of the applicants in 2002 based on a special provision requiring a "particularly confirmed suspicion" of the applicant's guilt, later took part also in the trial and sentencing of the same applicant in 2003 (violation of Art. 6§1).

IM Following the ECtHR's judgment, the applicant, who was serving a prison sentence of 12 years, applied for the reopening of his case. The Criminal Cases Review Commission decided on 12 October 2007 to accept this request and transferred the case to the Supreme Court, which, on 19 November 2007, quashed the High Court's judgment in the part concerning the applicant and ordered his release as there was no longer a legal basis for his detention.

GM Given the direct effect of the ECHR in Norway, publication and dissemination of the ECtHR's judgment to all competent courts should be sufficient to guarantee that the requirements of the ECHR and the case-law of the ECtHR will be taken into account in the future, in order to prevent new, similar violations. In this perspective, a summary of the *Ekeberg* judgment was published in Norwegian in the judicial database Lovdata, which is widely used by lawyers, civil servants, prosecutors and judges. The National Courts Administration has also communicated to all courts and judges the judgment, together with an explanatory note underlining in particular that the new practice applied also to cases heard by a jury, and not only to the presiding judge but also to the other professional judges.

90. **NOR / O. (Final Resolution (2009) 8)**
NOR / Y. (Final Resolution (2009) 8)

Application Nos. 29327/95 and 56568/00
Judgment of 11/02/2003, final on 11/05/2003
Judgment of 11/02/2003, final on 11/05/2003
Last examination: 1043-1.1

Breach of the presumption of innocence of the applicants, as the courts used, in decisions on damages (in proceedings brought by O. against the state and brought by the victims of the crime against Y.) language which too strongly suggested the applicants' guilt, despite their previous acquittal in criminal proceedings against them (violations of Art. 6§2).

IM The applicant in the *O.* case did not exercise his right to request the reopening of the proceedings at issue.

In the *Y.* case, the applicant's request for reopening of his trial was rejected in 2005 by a decision of the Appeals Leave Committee of the Supreme Court, which considered that the consequences of the violation had been sufficiently redressed through the finding of a violation by the ECtHR and the awarding of a just satisfaction in respect of non-pecuniary damage. The Appeals Committee added that the outcome of the proceedings would have been the same in the absence of a violation of the ECHR. The Committee expressed, however, its agreement with the finding of a violation of the ECHR by the ECtHR and distanced itself in clear terms from the way the High Court had expressed itself.

GM The provisions of the Criminal Procedure Act, which were at the origin of the violation in the *O.* case, were amended in 2003. According to this amendment, acquitted persons are no longer required, in order to obtain compensation, to prove that they had not committed the offences with which they had been charged.
As the violation of the presumption of the applicant's innocence in the *Y.* case was not related to the applicable law but only to the reasoning of the High Court, upheld by the Supreme Court, casting doubts on the correctness of his acquittal, the publication and the dissemination of the ECtHR's judgment are sufficient measures to prevent new violations.
The judgments of the ECtHR have been published and sent out to judicial authorities. The judgments raised great interest in Norway, they were publicly debated and covered thoroughly in the main media.

91. **NOR / Walston (No. 1) (Final Resolution (2008) 55)**

Application No. 37372/97
Judgment of 03/06/2003, final on 03/09/2003
Last examination: 1028-1.1

Violation of the principle of equality of arms in that, in 1996, in certain civil proceedings regarding the sale of land, the High Court omitted to transmit to the applicants or their lawyer a copy of their opponents' observations and that the Supreme Court, before which the applicants lodged a complaint, took no action in respect of this omission (violation of Art. 6§1).

IM Before the ECtHR, the applicants sought the restitution of the land or compensation for the market value of the land. The ECtHR rejected the claim as it could not speculate on the outcome of the proceedings had no violation taken place.
The applicants' request for the reopening of the domestic civil proceedings, which is possible under the Code of Civil Procedure, was turned down in 2004 by the Supreme Court out of consideration, in particular, for legal certainty of the person who is now the owner of the real estate. Moreover, the Supreme Court stated that the issue of the case would have been the same, had the violation of the ECHR not occurred. Therefore, no further question arises regarding damage for loss of opportunity.

GM The judgment of the ECtHR was included in a Newsletter published by the Judicial Administration which is distributed on a regular basis to all courts in Norway. The judgment of the ECtHR has also been taken into account in two decisions by the Supreme Court of Norway in 2003, making it clear that a change in case-law, in conformity with the ECHR, has taken place.

92. **POL / Berliński (Final Resolution (2008) 56)**

Applications No. 27715/95 and 30209/96
Judgment of 20/06/2002, final on 20/09/2002
Last examination: 1028-1.1

Unfair criminal proceedings, in that between 1993 and 1994 the applicants were deprived of counsel for more than one year during the pre-trial investigation and the first stage of the judicial proceedings because the prosecutor ignored, in contravention of domestic law, their request for appointment of an official lawyer (violation of Art. 6§§1 and 3c).

IM Before the ECtHR the applicants' received certain compensation for non-pecuniary damage. Before the CM the government indicated that the applicants were convicted by a final judgment in 1996 and sentenced respectively to a year and a year and a half of imprisonment and that these sentences were suspended for three years.
Under the Polish Criminal Code, suspended prison sentences are automatically removed from criminal records after 6 months have elapsed after the end of the probationary period. Moreover, under the Code of Criminal Procedure, the applicants may request the reopening of their criminal proceedings, by invoking the finding of a violation of the ECHR.

GM The ECtHR's judgment was published and sent out to the offices of all public prosecutors attached to appeal courts with a request to communicate it to all public prosecutors and to take it into account in the training of the subordinate prosecutors' offices.

93. **ROM / Maszni**

Application No. 59892/00
Judgment of 21/09/2006, final on 21/12/2006
Last examination: 1035-4.2

Lack of independence and impartiality of the court due to conviction of a civilian by a military court in 1998, *inter alia* for suborning a policeman to forgery (violation of Art. 6§1).

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. In addition, the reopening of proceedings is possible under the Code of Criminal Procedure thus allowing the applicant, in particular having regard to the general measures taken, the possibility of having a new trial before an independent and impartial tribunal. No further measure appears to be necessary.

GM At the time of the facts in this case, civilians could be tried by military courts if they were accused of committing offences together with military personnel, including at the time also policemen (connection of offences). Following a legislative change in 2003, policemen are now defined as civil servants, rather than as military personnel and are therefore tried by ordinary courts. Furthermore, the Code of Criminal Procedure has also been amended in 2006 and now provides that, in case of indivisibility or connexion, if one of the instances is ordinary and the other one military, the competence belongs to the ordinary instance. Other legislative changes in 2004 regulated the statute of the both ordinary and military magistrates as well as the judicial organisation of ordinary and military courts. These measures are being assessed.

The judgment of the ECtHR was published and sent to the Supreme Council of Magistracy, with a view to its dissemination to all domestic courts, with the recommendation to include it for consideration in the activities related to continued training of judges.

94. **SVK / Indra (Final Resolution (2008) 22)**

Application No. 46845/99
Judgment of 01/02/2005, final on 01/05/2005
Last examination: 1020-1.1

Lack of fair hearing before an impartial tribunal in that one of the judges who had taken part in proceedings in 1984 concerning the applicant's dismissal from work also took part in proceedings before the Supreme Court in 1996 concerning the applicant's rehabilitation under special legisla-

tion aimed at mitigating certain injustices created during the former Communist regime (violation of Art. 6§1).

IM Reopening of civil proceedings is possible under domestic law and, according to the transitional provisions, the applicant in this case could have applied for reopening until 30 November 2005.

GM The violation does not put at issue existing rules on the impartiality of judges, but rather their application in the instant case. In line herewith, the judgment was published and sent out to all regional courts with a circular letter from the Minister of Justice. Presidents of regional courts have been asked to inform all regional and district court judges under their jurisdiction of the judgment in order to avoid possible similar violations (direct effect).

95. SVN / Švarc and Kavnik

Application No. 75617/01
Judgment of 08/02/2007, final on 08/05/2007

Last examination: 1028-4.2

Lack of impartiality of the Constitutional Court in that the presiding judge of the bench who declared the applicants' complaint inadmissible in 2000 had previously delivered an expert opinion in the proceedings engaged before the first-instance court to obtain reparation for a car accident (violation of Art. 6§1); excessive length of the proceedings in general (violation of Art. 6) and absence of an effective remedy (violation of Art. 13).

IM The applicants made no claim before the ECtHR in respect of their complaint concerning the partiality of the Constitutional Court. The proceedings ended in 2000, when the Constitutional Court declared the complaint inadmissible. The ECtHR awarded the applicants just satisfaction in respect of non-pecuniary damage. No other individual measure appears to be necessary.

GM Although the relevant law still explicitly provides that "expressing a scientific opinion on a legal matter which may be relevant for the proceedings" shall not serve as grounds for disqualifying a judge from proceedings, the authorities maintain that it is today possible to obtain the disqualification of a judge from a case if, before becoming a Constitutional Court judge, he had previously delivered a professional opinion in the case. The government provided relevant examples of decisions in this direction and referred also to the direct effect of the ECtHR's judgments. As all information concerning, *inter alia*, composition of panels is published on the Internet and in the Official Gazette of Republic of Slovenia and is also rapidly notified to people that have filed a constitutional appeal, it is also in practice possible today for parties concerned to request such a disqualification. No further general measure seems required.

The issue of the excessive length of proceedings and effective remedies is dealt with in the context of the *Lukenda* group of cases.

96. SUI / Wettstein (Final Resolution (2009) 14)

Application No. 33958/96
Judgment of 21/12/2000, final on 21/03/2001

Last examination: 1043-1.1

Infringement of the applicant's right to a hearing before an impartial tribunal in that two part-time alternate judges from the Administrative Tribunal of the Canton of Zurich before which the applicant brought a dispute had been involved before, as advocates in other proceedings brought against the applicant (violation of Art. 6§1).

IM On 29 June 2001, the applicant lodged a request for revision, which was admitted by the Federal Court and the applicant's case was remitted to an administrative tribunal of which the composition satisfied the requirements of the ECHR and national law.

GM The relevant provision of the 1959 Administrative Justice Act of the Canton of Zurich was

amended in 1997, i.e. before the ECtHR judgment in this case. It now provides that full-time membership of the Administrative Tribunal is compatible neither with the exercise of any other full-time professional activity nor with the professional representation of third parties before judicial or administrative bodies or with the professional representation of third parties before the Administrative Tribunal.
In addition, the ECtHR's judgment was published.

97. MKD / Stoimenov (examination in principle closed at the 1035th meeting in September 2008)

Application No. 17995/02
Judgment of 05/04/2007, final on 05/07/2007
Last examination: 1035-6.1

Unfair criminal proceedings: the applicant's right to equality of arms was violated as a result of the domestic courts' dismissal of his repeated requests for an alternative expert examination in 2000-2001 (violation of Art.6§1).

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. In 2001, the applicant was sentenced to four years' imprisonment as a result of the proceedings at issue and was released from prison in 2005. Following the ECtHR judgment, the proceedings were reopened in 2007 and the violation rectified as the court appointed the independent Institute for Forensic Medicine and Criminology from Skopje to conduct an expert examination.

GM In June 2007, the Supreme Court published a legal opinion, concerning the present case, confirming that the ECHR is an integral part of the domestic legal order and that domestic courts should refer to relevant ECtHR's judgments in the reasoning part of their decisions. It stressed that domestic courts should respect the principle of fair trial and equality of arms in criminal proceedings.

The Ministry of Justice has indicated that a reform of the criminal legislation is under way and that the ECtHR's case-law, and the judgment in the present case in particular, will be taken into consideration when redrafting the Code of Criminal Procedure.

The judgment was translated, published and forwarded with an explanatory note to the concerned Court of First Instance and to the Directorate for Execution of Sanctions.

98. TUR / Hulki Güneş and other similar cases (See also AR 2007, p. 129)

Application No. 28490/95
Judgment of 19/06/2003, final on 19/09/2003
IR (2005) 113; (2007) 26; (2007) 150
Last examination: 1043-4.3

Unfair criminal proceedings (judgments final 1994-1999), because of convictions to lengthy prison sentences (on the basis of statements made by gendarmes or other persons who never appeared before the court, or on the basis of statements obtained under duress and in the absence of a lawyer); ill-treatment of applicants while in police custody; lack of independence and impartiality of state security courts; excessive length of criminal proceedings; absence of an effective remedy (violations of Art. 6 §§ 1 and 3, 3 and 13).

IM The applicants continue to serve their sentences, as the current provisions on reopening of criminal proceedings, which entered into force in 2003, are not applicable to their cases, although they are applicable to cases decided by the ECtHR before the ones here at issue, as well as to new cases decided by the ECtHR. In the case of *Hulki Gunes*, the applicant's petition challenging the constitutionality of the Code's provisions on account of the discriminatory character of their scope of application was rejected twice in 2003 (before the incorporation of human rights treaties into Turkish law through Article 90 of the Constitution).
Given the absence of progress in the implementation of the judgment in the case of *Hulki Gunes*, the Chairman of the CM addressed the CM's concerns about the situation to the Minister of Foreign Affairs of Turkey on 21 February 2005 and on 12 April 2006.
The Committee furthermore adopted three IR, respectively in November 2005 (IR (2005) 113),

in April 2007 (IR (2007) 26) and in December 2007 (IR (2007) 150) insisting on execution.
In the latter the CM "firmly recalled the obligation of the Turkish authorities […] to redress the violations found in respect of the applicant" and "strongly urged the Turkish authorities to remove promptly the legal lacuna preventing the reopening of domestic proceedings in the applicant's case".
In December 2008, the CM reiterated its grave concern that the Turkish authorities had still not responded to any of the interim resolutions adopted; it noted that this situation amounted to a manifest breach of Turkey's obligation under Art. 46, paragraph 1, of the ECHR and decided therefore to examine these cases at each of its regular meetings as from January 2009 until the authorities provide tangible information on the measures envisaged.

GM Relevant general measures have been taken and/or are supervised in the context of other cases (see e.g. Final Resolution (99) 555 in the *Çıraklar* case) and cases regarding actions of the Turkish Security Forces (*Aksoy* group of cases).

99. UKR / Grabchuk (Final Resolution (2008) 63)

Application No. 8599/02
Judgment of 21/09/2006, final on 21/12/2006
Last examination: 1028-1.1

Violation of the applicant's right to the presumption of innocence due to the fact that an investigator's decision in 2000 to close criminal proceedings against the applicant, as confirmed by the courts on appeal in 2001, was couched in terms which left no doubt that she was guilty of plundering of state property (violation of Art. 6§2).

IM The ECtHR awarded a just satisfaction in respect of non-pecuniary damages. Following the ECtHR's judgment, on 25 January 2007 the authorities reminded the applicant of her right to initiate reopening of the proceedings with a view to obtaining a rectification of the decisions at issue. The applicant has not availed herself of this possibility.

GM The judgment was translated and published. It was also sent out to all competent authorities, i.e. the Prosecutor General's Office, the Ministry of Internal Affairs, the State Security Service, the State Tax Administration and the Supreme Court, inviting them to take account of the findings of the ECtHR in their daily practice. The Prosecutor General's Office ordered the Ministry of Internal Affairs to send the judgment to investigators. It has also been sent to officials of the local departments of the Ministry of Internal Affairs. The local investigation departments of the State Tax Administration have been ordered to hold a training session on the ECtHR's conclusions in the judgment and the ECHR as a whole. Finally, the Supreme Court has written to the heads of the courts of appeal, drawing their attention to the ECtHR's conclusions.

100. UKR / Sovtransavto Holding and other similar cases (See also AR 2007, p. 131)

Application No. 48553/99
Judgment of 25/07/2002, final on 06/11/2002 (merits) and of 02/10/2003, final on 24/03/2004 (just satisfaction)
IR (2004) 14
Last examination: 1043-4.3

Non-respect of final character of judgments, interference by the executive in pending court proceedings, unfairness of proceedings (violation of Art. 6§1), resulting violation of the applicants' property rights (violation of Art. 1, Prot. No. 1).

IM Following the judgment of the ECtHR in the *Sovtransavto Holding* case, in 2005 the Ukrainian court partially granted the claim of the applicant company's legal successor and awarded compensation in respect of pecuniary damage. No further individual measure seems necessary in the other cases as all applicants have been granted just satisfaction covering pecuniary and non-pecuniary damages sustained.

GM On 11 April 2004 the CM adopted IR (2004) 14, taking stock of the measures adopted so far and pointing out the outstanding questions.

Subsequently, as regards the Executive's repeated interferences with judicial proceedings, the CM noted with concern, in June 2008, that no progress had been achieved with regard to the reform of the judicial system aimed at enhancing its independence and impartiality since the adoption in April 2007 at their first reading of the draft amendments to the Law "On the Judicial System of Ukraine" and to the Law "On the Status of Judges". It would appear that these two drafts have subsequently been combined in one single draft, which is still pending before the Parliament. The CM consequently, urged the competent Ukrainian authorities to adopt these draft amendments as a matter of priority.

The supervisory review ("protest") procedure was abolished in June 2001. The new Code of Civil Procedure in force since 1 September 2005 also abolished the prosecutors' power to request revision of final judgments in civil cases.

In June 2008 the CM noted in this respect that the ECtHR had found the new cassation procedure to be in compliance with the ECHR, in particular as it did not, unlike the supervisory review procedure, undermine the principle of legal certainty and decided consequently to close the examination of this aspect.

The measures taken in respect of training of judges and prosecutors and the publication and dissemination of the ECtHR's judgments are described in AR 2007.

101. UKR / Strizhak (Final Resolution (2008) 65)

Application No. 72269/01
Judgment of 8/11/2005, final on 8/02/2006

Last examination: 1028-1.1

Breach of the applicant's right to a fair trial in 2000 in that he was not summoned to the hearing in the proceedings he had brought to obtain the rectification of official notices relating to his father's rehabilitation following a criminal conviction in 1938 (violation of Art. 6§1).

IM The ECtHR awarded the applicant a certain sum for non-pecuniary damage. Following the ECtHR's judgment, the Supreme Court of Ukraine allowed the applicant's request for re opening of proceedings under exceptional circumstances, quashed the decision at issue and remitted the case for fresh consideration by the Court of Appeal of Dnipropetrovsk Region. On 29 May 2007, a hearing was held before the Court of Appeal of Dnipropetrovsk Region. The applicant and his representative were heard and presented their arguments before the court. The Court of Appeal of Dnipropetrovsk Region rejected the applicant's claim.

GM In order to ensure the traceability of summons, the new Code of Civil Procedure in force since 1 September 2005 ("the CCP") provides a single procedure for delivery of all kinds of summons, that is, by registered letter with acknowledgment of receipt or by messenger. Acknowledgement of receipt shall be obtained from the recipient in writing. Summons may also be handed over directly in court, and in case of postponement of a hearing, the persons concerned may be informed on receipt (handed over in person with a signature) of the time and place of the next hearing. Participants in proceedings as well as witnesses, experts, specialists and interpreters may be informed or summonsed by telegram, fax or by other means which prove receipt of notification or subpoena.

According to the CCP, the court shall postpone consideration of a case if, *inter alia*, a party or a participant fails to appear and no information is available to the effect that the summons has been served.

The judgment was translated and published. It was also sent to the Supreme Court of Ukraine, together with a letter drawing the judges' attention to their obligations arising from the findings of the ECtHR.

102. **UK / Grieves and other similar cases (examination in principle closed at the 1028th meeting in June 2008)**

Application No. 57067/00 *Last examination: 1028-6.1*
Judgment of 16/12/2003 – Grand Chamber

Unfair proceedings before the naval court-martial between 1996 and 1998, i.e. both before and after the entry into force on 1 April 1997 of the Armed Forces Act 1996: lack of independence and impartiality of the court, in particular due to the conflicting roles played by the convening authority; the lack of any apparent basis on which the applicants could challenge the composition of their courts-martial; the fact that no appeal lay to a judicial authority where a guilty plea had been entered; the fact that the Judge Advocate in a naval court-martial was not a civilian; the relative lack of detail and clarity in the briefing notes prepared for members of naval courts-martial and the lack of a full-time Permanent President of Courts-Martial (violations of Art. 6§1).

IM In none of these cases there appear, from the information available and the applicants' submissions, that any serious doubt exists as to the outcome of the proceedings such as to require re-opening in the light of existing CM practice as re-stated in the CM's Recommendation Rec (2000) 2.

GM On 1 April 1997, new provisions of the Armed Forces Act 1996 entered into force, which resolved the shortcomings found by the ECtHR in respect of the conflicting role played by the convening authority and of the lack of a possibility to appeal to a judicial authority against sentence where a guilty plea has been entered (see Final Resolution (98) 11 in the case of *Findlay*).

As regards the further shortcomings identified in respect of the system set up under the new Act, new measures have been taken or are being taken in the wake of the *Grieves* judgment.

Lack of a civilian in the pivotal role of Judge Advocate in a naval court-martial: under a new law of 2004, serving naval personnel are no longer appointed as judge advocates; it is now a civilian who appoints judge advocates from among civilian barristers, solicitors and other individuals holding judicial appointments.

Insufficient detail and clarity in the briefing notes for members of naval courts-martial: the existing briefing notes (already amended in 2002 and 2004) and guidelines (issued in March 2005) are to be replaced in due course by a new guide for lay members of courts-martial and the Summary Appeal Court.

Absence of a full-time Permanent President of Courts-Martial for the Navy (PPCM): changes have been made, in particular in 2005, to ensure the balance between the role of the president and that of the judge advocate by emphasising and strengthening the central role of the civilian judge advocate in the conduct of the court, and to that extent, reducing the role of the president. Moreover, while PPCMs have not been appointed, there are sufficient safeguards for the independence of the president and other members of the court-martial. It is to be noted that the emphasis put by the ECtHR on the PPCM was linked to the ad hoc nature of the tribunal in these cases, which will however be eliminated by the Armed Forces Act 2006. This Act, which will come into force in January 2009, sets up a single, standing Court Martial for all three branches of the armed forces (army, navy, air force), which may sit in more than one place at the same time. Different judge advocates and service personnel may make up the court for different trials. This Act does not disturb the measures taken above with respect to the appointment of civilian judge advocates, the level of detail and clarity in briefing notes provided for members of courts-martial and the possibility of appeal to a judicial authority against sentence in the event that a guilty plea is entered.

Publication: The ECtHR judgment in *Grieves* case has been published.

103. **UK / Tsfayo (examination in principle closed at the 1028th meeting in June 2008)**

Application No. 60860/00 *Last examination: 1028-6.1*
Judgment of 14/11/2006, final on 14/02/2007, rectified on 10/07/2007

Lack of independence and impartiality of a Housing Benefit Review Board (HBRB) to which the applicant had applied in 1999 to resolve a dispute concerning housing benefit and assistance with

local tax, on account of the composition of the HBRB (five elected councillors from the same local authority which would have been liable to pay a percentage of the housing benefit if awarded) and to the absence of subsequent supervision by a judicial body with full powers and providing the necessary guarantees (violation of Art. 6§1).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damage, but not in respect of loss allegedly flowing from the outcome of the domestic proceedings as the ECtHR could not speculate on the outcome of the proceedings had no violation occurred. Before the CM it was noted that there were no allegations of actual bias in the present case and that the competent domestic court found that the Board's decision was neither unreasonable nor irrational. In these circumstances there did not appear to exist any serious doubts as to the outcome of the domestic proceedings and no issue of individual measures was raised.

GM At the relevant time, a claim for housing benefit was first considered by officials employed by the local authority and working in the housing department. If the benefit was refused the claimant was entitled to a review of the decision, first by the local authority itself, then by a HBRB comprising up to five elected councillors from the local authority.
Since July 2001, HBRBs have been replaced by tribunals, which are entirely independent of the local authority and are able to investigate and question all facts which may be relevant.
In addition, the judgment of the ECtHR has been published and referred to in a number of law reports and articles.

E.5. Non-respect of final character of court judgments

104. MDA / Asito

Application No. 40663/98
Judgment of 08/11/2005, final on 08/02/2006

Judgment of 24/04/2007 (Art. 41) – Friendly settlement
Last examination: 1035-4.2

Unfair civil proceedings and breach of the property rights of the applicant, an insurance company, on account of the setting aside in 1997 of final judgments in its favour, as a result of appeals lodged by the Prosecutor General, who was entitled by law to challenge final judgments at any time (violation of Art. 6§1 and Art. 1 of Prot. No. 1).

IM In April 2007 the ECtHR accepted a friendly settlement between the parties under which the applicant company is compensated for the pecuniary damages suffered. No further individual measure is thus required.

GM The ECtHR judgment has been translated, published and transmitted to the competent authorities to make them aware of the requirements of the ECHR with regard to the rule of law. The new Code of Criminal Procedure of 2003 has abolished the request for annulment as an extraordinary appeal and the authorities are currently examining whether further amendments are necessary to harmonise national legislation with the ECHR standards.

The CM has requested information as to whether there are still provisions entitling the prosecutors to intervene in civil and/or commercial proceedings, particularly by challenging final judicial decisions, and if so, on what grounds.

105. ROM / Androne

Application No. 54062/00
Judgment of 22/12/2004, final on 06/06/2005

Last examination: 1035-4.2

Violation of the applicant's right to fair trial on account of the reopening in 2000, of civil proceedings following a request lodged by the prosecutor general, leading to the quashing in 2002 of a final judgment of 1997 ordering return of nationalised property (violation of Art. 6§1); violation of the applicant's property rights (violation of Art. 1 Prot. No. 1).

IM The ECtHR has indicated that the return of the property at issue, as ordered by the court decision of 1997, would put the applicants as far as possible in the situation equivalent to that in which they would have been if there had been no breach of the ECHR. On 2 September 2005, the Mayor of Bucharest ordered the restitution of the building to the applicants but the latter challenged the terms of this restitution because, in accordance with the law, it required them to conclude a five-year lease with the sitting tenants in the building. They have therefore refused to accept the material restitution of the building. The authorities pointed out that these terms corresponded to those already provided by the law in force at the relevant time of the violation. According to the latest information available, the applicants obtained the possession of the property and a restoration report was drafted. In addition, on 7 June 2006 the Bucharest Court of Appeal ordered the eviction of the tenants from the applicants' flat. The CM is assessing the measures taken.

GM The CM has raised the issue of the compatibility with the ECtHR of the possibility provided by the Romanian Code of Civil Procedure to request the revision of final court decisions if the interests of the state or of other public-law bodies were not represented or were represented in bad faith.

The Romanian authorities have expressed their intention to consider the issue in a working group for the amendment of the Romanian Code of Civil Procedure established by the Ministry of Justice. It seems that the draft prepared in particular limits the prosecutors' possibility to challenge the judgments to cases in which they are parties.

Additional clarifications are expected on the progress of this working group and on the provisions of the draft amendment to the Code of Civil Procedure mentioned by the government.

The ECtHR judgment was published and sent out by the Superior Council of Magistracy to courts and prosecutors' offices, recommending that all the court decisions involving the state or bodies established under public law be communicated to the prosecutor's offices.

F. Protection of private and family life

F.1. Home, correspondence and secret surveillance

106. BEL / Van Rossem (Final Resolution (2008) 37)

Application No. 41872/98
Judgment of 9/12/2004, final on 9/03/2005

Last examination: 1028-1.1

Infringement of the applicant's right to respect for his home in the context of a criminal investigation due to searches carried out in 1990 in his home and on the premises of several companies of which he was a director: the search warrants were imprecise and no list of materials seized was made (violation of Art. 8).

IM Many of the documents seized were included in the case file. Some of them were returned to the applicant or the legal entity which was the target of the search. The accounting documents of one of the companies were returned to the "trustee". Only unclaimed documents were destroyed. On 20 January 2006, the Belgian authorities wrote to the applicant's lawyer to ask whether he had further demands with a view to the *restitution in integrum* following the ECtHR's judgment. No follow-up was given to this request by the applicant.

GM The origin of the violation was not the law itself, but its implementation in the applicant's case. The judgment was sent out to the King's Prosecutors at the offices of Antwerp, Brussels, Ghent, Liège and Mons as well as to investigating judges. Furthermore, it was published and commented on. The government considers that, given the direct effect given to the ECHR in Belgian Law, the measures adopted will prevent similar violations.

107. BGR / Association for European Integration and Human Rights and Ekimdzhiev

Application No. 62540/00 *Last examination: 1043-4.2*
Judgment of 28/06/2007, final on 30/01/2008

Absence of sufficient guarantees surrounding secret surveillance under the Special Surveillance Means Act of 1997: whereas substantial safeguards against arbitrary or indiscriminate surveillance exist during its initial stage (the law thus clearly spells out the authorities entitled to request surveillance and for what reasons and for what duration), this is not the case during the later stages, namely when the surveillance is actually carried out and the information gathered is stored or used; in addition persons concerned may never be notified and little, if any, independent control of the functioning of the system exists, in particular when used in the interest of national security (violation of Art. 8).

IM See GM.

GM The judgment was translated, published and sent to the Constitutional Court, the Prosecution Office of Cassation, the Supreme Court of Cassation, all regional, military and appellate tribunals, as well as to all the other institutions concerned, with a circular letter placing an emphasis on the most important conclusions of the judgment.
Draft amendments have been prepared to the Special Surveillance Means Act of 1997 as a direct response to the ECtHR's judgment in this case. The main elements of the proposed amendments aim to introduce external control of the special surveillance measures by an independent authority, and through annual parliamentary scrutiny, as well as to inform people who have been subjected to undue use of special surveillance means.

At the CM's HR meeting in December 2008 (1043rd) further information has been requested on the most relevant proposals for amendments, as well as on the progress of the legislative reform, including the time-frame for its adoption. The law was adopted shortly after the meeting. The new situation is under examination.

108. CZE / Heglas

Application No. 5935/02 *Last examination: 1035-4.2*
Judgment of 01/03/2007, final on 09/07/2007

Disrespect of the applicant's private life as a result of a recording of a conversation obtained in 2000 through a body-planted listening device and of a list of the telephone calls made, without any legal basis in domestic law (violation of Art. 8).

IM The ECtHR found that neither the use of the recording or of the list of telephone conversations in the criminal trial engaged against the applicant had violated the applicant's right to a fair trial. It also considered that the finding of the violation of private life constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained because of that violation. No special requests for individual measures have been made. In these circumstances none appear necessary.

GM **Use of the telephone call list**: Subsequent to the facts at issue, the Code of Criminal Procedure was amended to expressly give the authorities access to telephone calls records in criminal investigations. The Telecommunications Act was also amended, so as to allow the authorities to obtain lists of calls or other communications in connection with criminal matters. No further measure appears necessary.

Recording conversations by means of listening devices concealed on people's bodies: In 2002 a new Article of the Code of Criminal Procedure came into force, setting out the conditions for the use of monitoring devices, in particular as regards the authorisations needed. The new provisions explicitly state that recordings may only be used as evidence in court proceedings if accompanied by documentary proof that they have been legally obtained; if they turn out to be useless in criminal proceedings they must be destroyed. The CM has requested further details on the content and scope of application of the new provision.

Publication and dissemination of the ECtHR's judgment: Over and above the ordinary publication of the judgment, an interpretation advice has

been published by the office of the Chief Prosecutor in 2004, to harmonise the application of laws concerning the use of recorded conversations as evidence in criminal proceedings. The CM has requested clarification, in particular as to whether the interpretation advice referred to the ECtHR's judgment in this case.

109. NLD / Doerga

Application No. 50210/99
Judgment of 27/04/2004, final on 27/07/2004

Last examination: 1035-5.1

Interception of telephone conversations of a prisoner in 1995 in the absence of clear and detailed legal rules (violation of Art. 8).

IM The recordings concerned and the transcripts thereof have been destroyed and are thus no longer in the possession of the authorities. No further measure appears necessary.

GM A law, providing a legal basis for a regulation concerning the recording of prisoners' telephone conversations, has been adopted on 7 April 2005. The draft regulation is being prepared and the CM has requested further information on its content and the time-frame expected for its adoption.

110. PRT / Antunes Rocha

Application No. 64330/01
Judgment of 31/05/2005, final on 12/10/2005

Last examination: 1028-5.1

Insufficient clarity of the legal provisions under which the applicant's private life was subject to security investigation on account of her appointment to a post in a government agency in 1994 (violation of Art. 8); unreasonable length of criminal proceedings joined by the applicant as "*assistente*" in order to obtain damage (violation of Art. 6).

IM The records gathered on the applicant have been destroyed. In 2000, the Lisbon Tribunal closed by a final judgment the criminal proceedings initiated by the applicant and declared her request for damages inadmissible. The ECtHR awarded her just satisfaction in respect of non-pecuniary damage. No further individual measure seems necessary.

GM The ECtHR judgment has been translated, published on the official Internet site and transmitted to the authorities concerned.

Right to respect of private life: new legislation regulating the reorganisation of the National Security Authority has entered into force in 2007 and, in this framework, a bill amending the instructions on information security and confidential files is under preparation in order to establish new security clearance rules. The CM has requested clarification on the contents of this draft legislation, in particular as regards the safeguards for individuals subject to investigation, and on the progress of its adoption.

Excessively lengthy proceedings: this issue is dealt with in the context of the *Oliveira Modesto* group of cases.

111. RUS / Prokopovich (examination in principle closed at the 1028th meeting in June 2008)

Application No. 58255/00
Judgment of 18/11/2004, final on 18/02/2005

Last examination: 1028-6.1

Unlawful forcible eviction of the applicant from a flat, after the death of her partner in 1998, who was the sole lessee under the lease concluded with the state (violation of Art. 8).

IM The ECtHR awarded the applicant just satisfaction covering the non-pecuniary damage she sustained as a result of the forcible eviction. No further claim has been lodged by the applicant since then.

GM It appears that the violation was due to the uncertainty existing, in Russian law, on whether

an unmarried partner should be considered as "family member" and enjoy the same rights in case of eviction. The new Housing Code, in force since 1 March 2005, provides a clear possibility for a partner to be recognised as a family member of the lessee by judicial decision. Accordingly, to evict a partner thus recognised, it would be necessary to follow the specific eviction procedure applicable to the lessee's family members.
In the light of the fact that, in this particular case, the domestic courts rejected the applicant's request to have her status of "family member" recognised the ECtHR judgment was published and sent out to all Russian courts together with a circular letter from the Deputy President of the Supreme Court of the Russian Federation. It is thus expected, given the direct effect of the ECHR, that the courts will interpret the relevant Articles of the Housing Code in the light of the ECHR requirements.

112. ESP / Prado Bugallo (Final Resolution (2008) 35)

Application No. 58496/00
Judgment of 18/02/2003, final on 18/05/2003
Last examination: 1035-1.1

Breach of the applicant's right to respect for private life on account the lack of clarity of the legislation authorising telephone tapping. The applicant's telephone communications were intercepted, with judicial authorisation, in 1990 and 1991, following a criminal investigation by the police concerning drug trafficking (violation of Art. 8).

IM The recordings in question are kept by the trial court (the Criminal Chamber of the *Audiencia Nacional*) and no-one can have access to them.

GM The ECtHR has acknowledged in an admissibility decision of 2006 (application No. 17060/02, *Coban v. Spain*) that the Code of Criminal Procedure, as amended in 1988 (following the *Valenzuela Contreras* case, Resolution (99) 127) and completed by the Supreme Court (since 1992) and the Constitutional Court case-law, has remedied the gaps in the legislation and provides now adequate safeguards.

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

113. SWE / Segersted-Wiberg and Others (See also AR 2007, p. 139)

Application No. 62332/00
Judgment of 06/06/2006, final on 06/09/2006
Last examination: 1043-4.2

Unjustified storage, by the police, of information on the applicants' former political activities in violation of their right to privacy (violation of Art. 8), to freedom of expression and association (violations of Art. 10 and 11) and lack of any effective remedy with respect to these violations (violation of Art. 13).

IM The information in question has been eliminated from the records of the Swedish Security Service and is therefore neither searchable nor accessible to Swedish Security Service personnel.

GM **Violation of right to privacy and resulting violations of the right to freedom of expression and association**: the judgment of the ECtHR has been sent out to the Supreme Administrative Court, all administrative courts of appeal, the parliamentary Ombudsman and the Chancellor of Justice with a memorandum on 15 January 2007 analysing the judgment. Relevant officers from the Swedish Security Service have also received information about the implications of the judgment for the activities of the Swedish Security Service. No further measure seems necessary.

Lack of effective remedies: a new agency, the Swedish Commission on Security and Integrity Protection was established, partly as a response to the ECtHR's judgment in this case and started operating in January 2008 in order to supervise the use of secret surveillance by crime-fighting agencies and the processing of personal data by the Swedish Security Service. Its mandate and operation are regulated by law. The Commission has taken over the functions previously held by the Records Board and has also acquired a new supervisory and control function aimed at improving individual access to a national legal remedy in

cases involving secret surveillance and processing of personal data by the Swedish Security Service. As of 1 January 2007 a new provision governing appeals was introduced in the Personal Data Act, stating that decisions directly affecting an individual taken under this Act by a public authority may be appealed to an administrative court. The provision also applies to the processing of personal data by the Swedish Security Service, and means among other things that an appeal may be made to an administrative court against a decision by the Swedish Security Service not to correct or eliminate personal data that the complainant asserts is being processed in contravention of active legislation. Work is currently in progress at the Ministry of Justice to further modernise the legislation regulating processing of personal data by the Police Service.

Information is awaited showing the effectiveness of the Data Inspection Board's powers concerning requests for erasure of information kept on record by the Security Service, or the effectiveness of any other remedy on this question. Information about the progress of the proposed legislative amendments to the Police Data Act is awaited.

114. UK / Copland (examination in principle closed at the 1020th meeting in March 2008)

Application No. 62617/00 *Last examination: 1020-6.1*
Judgment of 03/04/2007, final on 03/07/2007

Secret monitoring in 1999 of the telephone, e-mail and Internet usage of the applicant, an employee of a state education institution, at the order of the head of the institution because of suspicions that she made excessive use of the institution's facilities for personal purpose; absence of a domestic law regulating such monitoring (violation of Art. 8).

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage.

GM **Legislative measures**: in 2000, after the facts in this case, new legislation entered into force, which provides for the regulation of *inter alia* interception of different kinds of communications. The Regulations adopted under the new legislation set out the circumstances in which employers may record or monitor an employee's communications (such as e-mail or telephone) without the consent of the employee or the other party to the communication. Employers are required to take reasonable steps to inform employees that their communications might be intercepted. Guidance on monitoring staff usage of technology is available on the website of the Department of Business, Enterprise and Regulatory Reform. The guidance includes the requirement to inform staff of interceptions made under the Regulations without consent and the requirement to have the consent of the sender and recipient for interceptions outside the scope of the Regulations (such consent may be obtained by inserting a clause in staff contracts and by call operators or recorded messages at the beginning of a call stating that calls might be monitored or recorded unless third parties objected).
Publication and dissemination: the judgment has been published and a letter, drawing attention to the judgment, was sent to all Further Education Institutions in England and Wales.

F.2. Respect of physical integrity

115. TUR / Y.F (Final Resolution (2008) 62)

Application No. 24209/94 *Last examination: 1028-1.1*
Judgment of 22/07/2003, final on 22/10/2003

Violation of the right to respect for private life in that the applicant's wife was forced to undergo a gynaecological examination when taken into police custody in 1993 notwithstanding the absence of any adequate legal basis for ordering such an interference (violation of Art. 8).

IM The ECtHR awarded a certain sum for non-pecuniary damage. In the circumstances of the case, no question of individual measures was raised before the CM.

GM The Regulations on Arrest, Detention and Interrogation were amended in January 2004 so as to specify that a medical examination of detainees shall only be carried out by a forensic doctor and that security forces shall only be present on the premises if the forensic doctor so requests for security reasons. Subsequently, the Code of Criminal Procedure was amended in 2005. It now provides that the physical examination of, or the taking of body samples from, an accused or a suspect shall require a judicial decision following a request lodged by a public prosecutor or a victim, or otherwise a decision taken by a judge or a court. The request should be presented within twenty-four hours to a judge or to a court which should approve it within twenty-four hours. An objection may be lodged against a decision ordering physical examination. Physical examinations and the taking of body samples shall be carried out by doctors or competent medical personnel.

The new Criminal Code also provides that any person who orders a gynaecological examination to be conducted or who performs such an examination on an individual without due authorisation will be liable to imprisonment for a term of 3 months to one year.

The ECtHR's judgment was also published.

F.3. Lack of access to information

116. UK / Roche (see also AR 2007, p. 142, Final Resolution (2009) 20)

Application No.32555/96 *Last examination: 1043-1.1*
Judgment of 19/10/2005 – Grand Chamber

Failure to fulfil the positive obligation to provide an effective and accessible procedure giving the applicant access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in mustard and nerve gas tests in 1963 under the auspices of the British armed forces (violation of Art. 8).

IM At the time of the delivery of the judgment by the ECtHR, a hearing was pending before the Pensions Appeal Tribunal (PAT) concerning the existence of a causal link between the tests and the applicant's medical conditions in the context of the applicant's claim for a service pension. Previous decisions had held that the applicant had suffered no long-term respiratory effect from the tests. In a judgment of 23 July 2007, the PAT found that the applicant's exposure to mustard gas during the tests was a cause of his chronic obstructive pulmonary disorder and concluded that the disorder was attributable to his service. On 11 January 2008 the Service Personnel and Veterans Agency assessed the applicant's level of disability and increased the amount of his service pension.

GM Under the Data Protection Act 1998 (DPA 1998), which entered into force in 2000, individuals have a right to receive personal data that a public authority holds about them. Review and appeal procedures are provided, including for information related to national security, if the applicant is not satisfied with the content or timeliness of the response he/she receives.

In addition, the Freedom of Information Act 2000 (FOIA 2000), which came fully into force in 2005, creates a general right of access to any information held by a public authority. The appeals procedure is similar to that under the DPA 1998.

An information access request falling outside the scope of the DPA 1998 and FOIA 2000 would still be within the ambit of the Human Rights Act 1998 (HRA 1998), entered into force on 2 October 2000, which requires public authorities to act in a way which is compatible with the ECHR. An applicant who believed that the relevant authority had not discharged its obligations under the ECHR could seek judicial review of their action in the Administrative Court.

Furthermore, a Porton Down Volunteers' free Helpline was set up in February 1998, with the objective of helping former volunteers or their representatives gain easy access to information relating to their participation in the tests.

Aside from the legislative measures summarised above, other measures have been adopted aimed at, in particular:

- clarifying the responsibilities of persons handling requests for access to information;
- simplifying the procedure for individuals to make a request for information about their actual or possible exposure to hazard; and
- improving the public availability of information about the tests at Porton Down, by publish-

ing in 2006 a historical survey of the Service Volunteer Programme.

F.4. Establishment of paternity

117. RUS / Znamenskaya (Final Resolution (2008) 21)

Application No. 77785/01
Judgment of 2/06/2005, final on 12/10/2005

Last examination: 1020-1.1

Violation of the applicant's right to private life due to the domestic courts' refusal to establish in 2001 the biological paternity and amend the surname of the applicant's stillborn child (35 weeks), who had been registered under the name of the applicant's husband from whom she was separated at the time. The domestic courts rejected the applicant's request on the ground that the stillborn child had not acquired civil rights under the relevant provisions of the Family Code which applied only to living children (violation of the Art. 8).

IM The applicant had the possibility of re-submitting her claim to the domestic courts. However, no further complaints have been lodged by the applicant.

GM The government submitted before the ECtHR that the domestic courts had erred in their interpretation of the Family Code. In order to prevent similar violations, the judgment of the ECtHR was published and sent to all competent authorities, together with letters from their hierarchy inviting them to take account of the findings of the ECtHR in their daily practice.

118. SUI / Jäggi (See also AR 2007, p. 144)

Application No. 58757/00
Judgment of 13/07/2006, final on 13/10/2006

Last examination: 1035-4.1

Failure to respect the applicant's right to his private life due to the refusal to authorise him to obtain DNA evidence from the mortal remains of a person, believed to be his father to establish his parentage with certainty (violation of Art. 8).

IM In January 2007 the applicant lodged an application for revision with the Federal Court, seeking first the annulment of the 1999 domestic decisions by which he was refused a DNA test on the remains of his alleged father and secondly the authorisation to proceed with the same test at his own expense. In its judgment of 30 July 2007, the Federal Court admitted the application and annulled its own previous decision of 1999. However, it did not decide on the applicant's authorisation to carry out a DNA test on the remains, considering that this fell within the competence of a first-instance court. Finally, although it recognised the applicant's right to have satisfaction, the Federal Court considered it was not bound to indicate before which authority and by which kind of procedure the applicant was to obtain it, due to recent developments in case-law and legislation. Instead, it provided the applicant with several sources, mainly doctrinal, on the subject. On 12 December 2007, the applicant asked the first-instance court for authorisation to proceed with the DNA test. Information is awaited on the progress of these proceedings.

GM In July 2006, the judgment of the ECtHR was sent out to the authorities directly concerned, and brought to the attention of the Cantons via a circular in November 2006. Furthermore, the judgment was published. In view of these measures and of the direct effect granted to the ECHR in Switzerland, it may be assumed that the requirements of Art. 8 and the ECtHR's case-law will be taken into account in the future, thus preventing new, similar violations.

F.5. Respect of custody and access rights

119. AUT / Moser (See also AR 2007, p. 145)

Application No. 12643/02
Judgment of 21/09/2006, final on 21/12/2006
Last examination: 1043-4.1

Violation by a domestic court of the right to respect for family life of a mother and her son (both Serbian nationals) as the child was placed with foster parents 8 days after his birth in 2000 and custody transferred to the Youth Welfare Office without alternative solutions having been explored (violation of Art. 8); violation of the principle of equality of arms because of the lack of opportunity to comment on reports of the Welfare Office, the absence of a public hearing and of public pronouncement of the decisions (3 violations of Art. 6§1).

IM Proceedings concerning the extension of the mother's visiting rights (2 hours per month, on birthdays and Christmas – see AR 2007 p. 145) are pending since July 2007. In October 2008, an expert opinion from a child psychologist, recommended not to extend the visiting rights. The court ordered a complementary opinion. The authorities have recently refused to prolong the mother's residence permit. She may, however, appeal this decision. The authorities have undertaken not to expel her as long as proceedings regarding the extension of her visiting rights are pending.

Details are awaited on the expert opinion as well as information on the state of the proceedings on the first applicant's request for extended visiting rights and the measures envisaged to tackle the existing obstacles against extended visiting rights. Further information is also awaited on the development of the first applicant's residence status in Austria.

GM As regards the equality of arms, see the measures adopted in the framework of the execution of the *Buchberger* case.

As regards the absence of a public hearing, the main elements of the reformed Austrian Non-Contentious Proceedings Act and the issue of publication and dissemination of the judgment have been presented in the AR 2007, p. 145.

Dissemination of the ECtHR's judgment to all Youth Welfare Offices is awaited, as well as information on the possibility to pronounce decisions in family-law and custody proceedings publicly.

120. CZE / Havelka and Others (See also AR 2007, p. 147)
CZE / Wallowa & Walla (See also AR 2007, p. 147)

Application Nos. 23499/06 and 23848/04
Judgment of 21/06/2007, final on 21/09/2007
Judgment of 26/10/2006, final on 26/03/2007
Last examination: 1043-4.2

Violation of the applicants' right to respect for their private and family life on account of the fact that their children had been taken into public care on the sole ground that the families' economic and social conditions were not satisfactory: the fundamental problem was their housing; neither the applicants' capacity to bring up their children,nor the affection they bore them had ever been called into question (violation of Art. 8).

IM *Havelka* case: The three children, who were aged 14, 15 and 16 years old in 2007, are still in public care. However, their placement is subject to judicial review at six-month intervals to establish whether the conditions for public care still exist. The President of the competent court has promised to take into account the ECtHR's judgment when reviewing the situation. In spring 2008, two meetings with the applicant, his legal representatives, and representatives of the Prague 15 City District took place at the Family Policy Department of the Ministry of Labour and Social Affairs to address the applicant's situation. The applicant is in regular contact with the children via telephone; he regularly sees them during holidays and can apply for a travel allowance to visit them oftener. For the moment he has not applied at the courts for the termination of the children's institutional care because he intends to find a stable employment and an appropriate housing for himself and the children first. Possible housing solutions are being explored in co-

operation also with the Ministry of Labour and Social Affairs.

The CM awaits information on the measures taken to help the applicant to find suitable housing for him and the children and on whether there has been a judicial review of the placement of the children in public care.

Wallowa & Walla case: As of 2008, the two eldest children are of age. The care order concerning the third child was annulled in February 2006 and he returned to live with his parents. The custody of the two youngest children was given to foster parents in January 2005. The applicants instituted civil proceedings with a view of terminating the foster care and obtaining the custody of the youngest children again but their application was dismissed in June 2007 on the grounds that the children have built strong emotional ties with the foster parents. The applicants may apply for review to the Constitutional Court. Meanwhile, the authorities are working progressively to restore ties between the two youngest children and the applicants and create conditions for their eventual reunion. The applicants have regular written contact with the two children. A first, very positive meeting between the first applicant, the mother, and the foster-parents took place on 27 February 2008. A visit of the two elder children in the foster family was planned to be held in June 2008 to re-establish contacts with the two younger siblings. It seems that the first applicant would prefer that her children stay with the foster family until they finish school as they are used to their environment now. Information is awaited on the development of the family contacts and on whether the judgment of June 2007 has been appealed before the Constitutional Court.

GM According to a recent analysis by experts from the Czech Ministry of the Interior, many children are placed in public care institutions because of the economic situation of their parents and only few children in these institutions are actually orphans or ill-treated children. No efficient procedure seems to be in place to reassess whether the economic situation of the family has improved; the average stay of the children in the public institution is 14.5 years.

In June 2006, the Law on Socio-Legal Protection was amended and imposes now on the competent public authorities a duty to provide parents immediate and comprehensive assistance with a view to effectively reuniting the family following removal of children from their care. This task involves, among others, a duty to assist the parents in applying for financial and other kinds of material benefits to which they are entitled to within the scheme of state social support. Reflections are ongoing on further measures, to be presented by the end of 2009.

Information is awaited on further measures to address the systemic problem, as well as on the follow-up mechanism that takes effect after the placement of children to establish whether the conditions for public care still exist.

A translation of the ECtHR's judgment in both cases has been disseminated to socio-legal protection agencies. The judgments have also been presented to the Justices of the Constitutional Court at a plenary session.

121. CZE / Reslová and other similar cases

Application No. 7550/04
Judgment of 18/07/2006, final on 18/10/2006

Last examination: 1035-4.2

Authorities' failure to take adequate measures to ensure that the applicants' right of access to their children be determined by a judge and enforced (violations of Art. 8), in some cases also excessive length of the civil proceedings related to the applicants' custody or visiting rights, in the light of the special diligence required in this type of cases (violation of Art. 6§1) and lack of an effective remedy (violation of Art. 13).

IM In the *Reslová* case, the applicant did not obtain the custody of her children, but was granted in January 2007 visiting rights and has not expressed any further request.

In the *Koudelka* case, after the applicant obtained visiting rights in December 2006, a first meeting between him and his daughter was scheduled for February 2008, but the daughter did not attend and her mother was fined 1 000 CZK (around 40 euros) for her lack of co-operation.

In the *Zavřel* case, in September 2007, the Brno district court ordered a progressive re-establishment of contacts between the applicant and his child and, subsequently, regular monthly

visits and visiting arrangements for the school holidays.

In the *Mezl* case, the applicant's daughter attained her majority in 2004. As a consequence, the national court pronounced the issues of the custody and visiting rights extinguished.

In the *Fiala* case, the custody of the children was given to the mother in 2005 and any contact between the applicant and the children was forbidden indefinitely. This decision was not challenged by the applicant or the ECtHR.

In the *Kříž* case, the proceedings are closed. The applicant's visiting rights were in force (but not enforced) for more than ten years until they were converted in 2004 and 2005 into a right to written contact only. The ECtHR did not criticise this arrangement.

Information has been requested as to whether the applicant's visiting rights in the *Reslova* and *Zavřel* cases are respected in practice, on the developments in the *Koudelka* case, in the light of the applicant's daughter turning 18 in December 2008. No further individual measure seems necessary in the *Mezl*, *Fiala* and *Kříž* cases.

The question of effective access to a judge is linked to the adoption of general measures (see below).

GM **Right to respect of family life**: a reform of the Code of Civil Procedure in family matters has recently been adopted.

The CM has requested information on how this reform affects the enforcement of visiting rights.

Excessive length of civil proceedings and lack of effective remedies: this issue is dealt with in the context of the execution of the *Bořánková* case.

The judgments of the ECtHR have already been translated, published and sent out to the authorities concerned.

122. PRT / Reigado Ramos

Application No. 73229/01
Judgment of 22/11/2005, final on 22/02/2006

Last examination: 1043-4.2

Authorities' failure, since 1997, to take adequate and sufficient action to enforce the applicant's right of access to his daughter, born in 1995 (violation of Art. 8).

IM In February 2007, the authorities identified the whereabouts of the mother and the child. Psychological examinations took place beginning 2008, following which two meetings took place before the judge in May 2008 between the parents accompanied by their counsel. The child refused to meet her father and an Intervention Plan was presented to the judge in July 2008, suggesting that psychotherapist support should begin in order to evaluate the difficulties and the positive factors as regards the objective pursued. Information is awaited as to whether this Intervention Plan has been implemented.

GM Portuguese law provides a party's right to act against a parent who fails to exercise parental authority correctly and sanctions can be applied with a view to ensuring respect for obligations.

The judgment has been translated, published and sent to all national authorities concerned, including, in particular, all magistrates working on family cases. Furthermore, both the Supreme Council of Magistrates and the Institute of Social Reintegration were requested to adopt appropriate measures in order to prevent new, similar violations in the future. The Institute for Social Security has also been recently vested with competencies concerning parental authority and envisages implementing alternative measures, in particular mediation and training on positive parenting, to resolve conflict situations due to non-execution of judicial decisions.

The adequacy of the legal framework remains to be assessed. In this context, further information has been requested on the measures taken or envisaged by the Supreme Council of Magistrates, and on the implementation of the measures envisaged by the Institute for Social Security.

123. **SER / V.A.M. (See also AR 2007, p. 93)**

Application No. 39177/05 *Last examination: 1043-4.2*
Judgment of 13/03/2007, final on 13/06/2007

Excessive length of divorce and custody proceedings started in 1999 and still pending and lack of an effective remedy (violations of Art. 6§1, 13 and 8). Further violation of right to respect of family life because of non-enforcement of an interim court order of 1999, granting the applicant access to her daughter (violation of Art. 8).

IM The CM's supervision of IM has been based on the obligation, identified already in the ECtHR's judgment, to enforce, "by appropriate means", the interim access order of 1999 and to "bring to a conclusion, with particular diligence, the ongoing civil proceedings. In response hereto the Serbian authorities have submitted the following information.

A judgment which became final in March 2008 repealed the 1999 interim access order, left custody to the father and confirmed the applicant's visiting rights. However, so far the child's father has persisted in obstructing the applicant's access to her child. In view hereof, the applicant engaged enforcement proceedings. The father has been fined and the attachment and the public auction of certain chattels ordered. The court indicated that the father's non-compliance was not in the best interest of the child. This decision is under appeal and a final decision is awaited.

Following a complaint by the Social Care Centre, in October 2008 the public prosecutor filed a criminal indictment against the child's father before the court for abduction of a minor.

Proceedings have also, in the meantime, been engaged for the deprivation of parental rights. An expert report concerning both parents and child in the context of the requested change of the custody decision is expected and a guardian was appointed to represent the interests of the minor child in these proceedings. The Social Care Centre has also taken steps to prepare the child for future contacts with the applicant. A meeting was furthermore held, in October 2008, between all authorities involved in the case, including the Deputy Minister of Justice, to plan the future measures to be taken by the end of 2008.

The CM has noted the steps taken by the authorities and their commitment to implement the judgment. It has requested information on developments in the different proceedings engaged.

GM **Excessive length of civil proceedings**: It appears that the new legislative framework is capable of preventing length of proceedings. The detailed report provided by the authorities in June 2008 shows a positive trend and significant efforts to shorten the length of judiciary proceedings, including civil proceedings. The Strategy and Action Plan to be implemented by 2012 set forth a clear roadmap for increasing of efficiency in the judiciary. However, certain problems still persist, such as those related to service of court documents.

Information is awaited on further developments in the implementation of the Strategy and Action Plan as far as the curbing of length of judiciary proceedings is concerned and on further progress in the adoption of a package of draft laws concerning the judiciary and the draft amendments to the Civil Procedure Act, Information is also expected on measures taken or envisaged to improve efficient service of documents taking into account the problems related to widespread non-compliance with residence regulations.

Breach of the right to respect for family life due to non-enforcement of a judicial decision: According to the 2004 Enforcement Procedure Act, courts must act urgently in all enforcement proceedings and decide on any enforcement application within 3 days. In case of non-compliance with a child custody order within 3 days, fines are imposed and, ultimately, if necessary, the child may be taken forcibly in co-operation with the social care authorities.

Copies of domestic case files showing the application of the relevant legislation have been submitted.

Furthermore, in co-operation with the Department for the execution of judgments, a seminar was organised in Belgrade, on 25 and 26 September 2008, on Art. 8 of the ECHR. The seminar was attended by high-profile officials and members of various authorities concerned and led to the identification of a number of problems and the setting out of proposals for improving the enforcement of domestic courts' decisions in family matters. In this connection, the Ministry of Labour and Social Policy is considering preparing draft internal instructions, to be distributed to all

courts, concerning the powers of social care centres in accordance with the Family Act. Amendments to the Enforcement Procedure Act are also being finalised and further measures envisaged, in the light of the conclusions of the seminar. Information is awaited on further developments in the implementation of the measures announced.

Lack of an effective remedy: The Constitutional Court Act of 2007 provides the possibility to lodge a complaint before the Constitutional Court in case of breach of the right to a trial within reasonable time, even if the other legal remedies have not been exhausted. In 2008, additional bylaws of the Constitutional Court completed the legislative framework required for its operation and a special Damages Commission started also operating. In October 2008, the Constitutional Court upheld the first constitutional complaint and, as of 1 October 2008 a total of 1 497 constitutional complaints had been filed.

Notwithstanding the introduction of this legislation, there is no evidence yet that an effective remedy in compliance with the ECHR's standards is available in practice (see also CM Recommendation Rec (2004) 6 to member states on the improvement of domestic remedies). Information is thus awaited on the implementation of the statutory provisions concerning complaints before Constitutional Court as well as their effectiveness in practice, including further information on the first experience of the Constitutional Court and Damages Commission in this regard.

The judgment has been translated, disseminated to courts and published (*inter alia* in the Official Gazette). It has also been discussed at a seminar organised on 14 and 15 June 2007 by the Department for Human and Minority Rights of the government and the State Agent in co-operation with the Council of Europe, attended by members of judiciary and state authorities.

124. SUI / Bianchi (Final Resolution (2008) 58, see also AR 2007, p. 154)

Application No. 7548/04
Judgment of 22/06/2006, final on 22/09/2006

Last examination: 1028-1.1

Failure by Swiss authorities to take adequate and sufficient action to enforce the applicant's right to have his son (born in 1999) returned to him, in Italy, after his abduction to Switzerland by the mother in 2003 (violation of Art. 8).

IM Towards the end of 2007, the Italian police and judicial authorities, acting in co-operation with the Swiss authorities, succeeded in finding the secret hiding place of the mother and her children, in Mozambique. On 26 October 2007 the mother was expelled from Mozambique for being in for possession of forged travel documents and not having a residence permit. She was accompanied, with her children, to Italy, and after being detained there, she returned to Switzerland. The applicant and his son are now together. In the light of these developments, no further individual measure is necessary in this case.

GM The judgment of the ECtHR was sent out to the authorities directly concerned and brought to the attention of the Cantons via a circular. It was also published.

Beyond those measures, considered sufficient for the specific violation in this very isolated and specific case, the government also informed the CM that a new law was adopted by the Swiss Parliament on 21 December 2007, which would enter into force on 1 July 2009.

This law is aimed at improving the handling of civil aspects of cases of international child abduction. It provides for, *inter alia*, accelerated return procedures; the conclusion of friendly settlements in conflicts between parents; combining decisions on return with enforceable measures; and requiring cantons to designate a single authority in charge of enforcement. The law also provides that the parties should whenever possible be heard by the court and that the minor(s) should be heard in an appropriate manner. Lastly, the court is required to work, as much as possible, with the competent authorities of the state in which the child habitually resided immediately before being abducted.

125. TUR / Sophia Guðrún Hansen (Final Resolution (2008) 61)

Application No. 36141/97
Judgment of 23/09/2003, final on 23/12/2003

Last examination: 1028-1.1

Failure of the Turkish authorities to take necessary and adequate measures to enforce between 1992 and 2000 different court decisions granting the applicant, an Icelandic national, visiting rights to her daughters (violation of Art. 8).

IM The visiting rights became unenforceable when the applicant's daughters reached the age of eighteen, in June 1999 and October 2000, as they were then considered adults under Turkish law.

GM In January 2003, a *Law on the Establishment of Family Law Courts* came into force. Under this law, all matters related to family law are dealt with by special Family Courts. Judges in these courts are appointed from among specialists in family law. The Ministry of Justice ensures that an expert in education, a psychologist or a social worker be appointed to every family court.
In 2003, the Code of Enforcement and Execution of Court Decisions and Bankruptcy Procedures was amended in order to improve the effective enforcement of access or visiting rights.This law provides, *inter alia*, that an enforcement officer issues an enforcement order requiring access to be given within seven days. Any person who fails to comply with access arrangements specified in an enforcement order is liable to prosecution. Following the amendments of 2003, the term of imprisonment has been increased from 1-3 months to 2-6 months, upon complaint by the person entitled to have access to the children. This sentence may not be reduced or converted into a fine. Furthermore, a social worker, an expert in education, a psychologist or a child development officer shall be present during the enforcement of court decisions concerning access rights. The judgment of the ECtHR was translated and published.

126. UK / T.P. and K.M. (Final Resolution (2008) 43)

Application No. 28945/95
Judgment of 10/05/2001, Grand Chamber

Last examination: 1035-1.1

Breach of the right of the applicants – a mother and her daughter – to respect for their family life on account of the local authorities' failure to submit to the competent national court the question of whether some crucial evidence should be disclosed to the mother. As a result, the latter was not adequately involved in the decision-making process leading to the placement of her 4 year old daughter into care from 1987 to 1988 (violation of Art. 8). Absence of an effective remedy for obtaining a determination of their claim that the local authorities had breached their right to respect for family life and obtaining an enforceable award of compensation (violation of Art. 13).

IM The child was returned to her mother in November 1988 and, one year later, the High Court ruled that she was no longer a ward of the court.

GM **Right to respect for family life**: The Family Proceedings Rules which came into force in 1991 provide for the disclosure of documents to parties to the proceedings and require parties to serve in advance on other parties copies of any documents, including experts' reports, on which they intend to rely. Furthermore, the courts recognised the importance of adequate involvement of parents in the decision-making process in care proceedings.
Effective remedy: the Human Rights Act (HRA) of 1998 provides an effective remedy even if Art. 13 was not incorporated into the Act. The injured party can bring proceedings against local authorities not acting in a manner compatible with the ECHR and the domestic courts must take into account the principles applied by the ECtHR when awarding damages. Examples of case-law demonstrating the effectiveness of this remedy have been provided.
The ECtHR's judgment in this case was published.

G. Cases concerning environmental protection

G.1. Non-respect of judicial decisions in the field of the environment

127. TUR / Ahmet Okyay and Others (See also AR 2007, p. 155)

Application No. 36220/97
Judgment of 12/07/2005, final on 12/10/2005, IR (2007) 4

Last examination: 1035-4.2

Government's non-compliance with domestic court decisions in 1996-1998 ordering suspension of activities of thermal power plants (operating under a joint venture with the government) polluting the environment (violation of Art. 6§1).

IM In response to IR (2007) 4, the authorities confirmed in March 2008 that filter mechanisms had already been installed in all three power plants. Until the installation, the power plants had been operating at minimum capacity so as not to cause any danger to the environment. Administrative fines had also been imposed in 2006 on the power plants for polluting the environment and compensation proceedings were under way. No further individual measure seems necessary in this case.

GM See case *Taşkin and Others*.

G.2. Non-protection of persons living in risk zones

128. TUR / Taşkin and Others and other similar cases (See also AR 2007, p. 156)

Application No. 46117/99
Judgment of 10/11/2004, final on 30/03/2005, rectified on 01/02/2005

Last examination: 1035-4.2

Violation of the applicants' right to their private and family life due to decisions by the executive authorities to allow in 2001-2002 the resumption and continuation of a gold-mining operation likely to cause harm to the environment (violation of Art. 8) and in this context also of their right of access to court because of the non-respect of a domestic court decisions ordering in 1996 the stay of production at the gold mine (violation of Art. 6).

IM According to a new environmental impact report of 2007, the mine currently operates under a new operating permit of 2004 and in accordance with environmental standards. New periodic checks will also be carried out in the mining area for a period of ten years, renewable. Information is awaited as to the extent to which the applicants or any other persons concerned have been involved in the decision-making process on the environmental impact report as required under the ECHR.

Information is also required on the outcome of the applicants' appeal against a decision of the Izmir Administrative Court of 12 December 2007: the applicants had challenged the decision to grant a new operating permit, but their request was rejected on the basis of the new environmental impact report. However, the legal basis which provided for the situation assessment report was declared null and void by the 6th Chamber of the Supreme Administrative Court on 31 October 2007.

More than 1 500 applications concerning the resumption of the mining activity are furthermore pending before the ECtHR.

Since the events in question the urban plan for the area has been annulled, last by the Supreme Administrative Court in May 2007. Clarifications on the consequences of this decision are expected.

GM The government has referred to the possibilities offered by the existing law: the possibility of bringing compensation proceedings before the Supreme Administrative Court against the administration or the civil servant deliberately refusing to comply with a court decision and the possibility of imposing criminal liability. Relevant case-law examples have been provided. In addition, reference has been made to the new Criminal Code of 2007, which sanctions both

intentional and unintentional disposal of hazardous substances in a way that might cause damage to the environment.
Furthermore, a new provision of the Environmental Law ensures the involvement of persons, such as inhabitants of relevant areas, civil society institutions etc., in the decision-making process on environmental issues.

Information on any further reflections as to necessary general measures has been requested taking into account in particular the lessons to be learnt also from the *Ahmet Okyay and Others* case.

Publication and dissemination of the judgments have been ensured.

H. Freedom of religion

129. MDA / Metropolitan Church of Bessarabia and Others (See also AR 2007, p. 158)

Application No. 45701/99
Judgment of 13/12/2001, final on 27/03/2002,
IR (2006) 12

CM/Inf/DH (2008) 47

Last examination: 1043-4.2

Failure of the government to recognise the applicant Church with the consequence that it could not defend its interests, including property claims, and that its religious activities were illegal; also absence of effective domestic remedies (violation of Art. 9 and 13).

IM Following the ECtHR's judgment, the Moldovan authorities recognised and registered the applicant Church on 30 July 2002 in accordance with the Moldovan Law on Religious Denominations, as amended after the facts of this case in 2002. The Church has thus acquired legal personality opening the possibility for it to claim property entitlements, among other things.
The applicant Church has, however, continued to complain about obstacles for the registration of certain parishes and of other difficulties encountered. The CM has taken note of these complaints and the explanations provided in this respect by the authorities. With a view to clarifying outstanding questions, bilateral meetings between the Secretariat and the relevant authorities took place in September 2008. In this context a meeting was organised by the Ministry of Justice with representatives of various religious denominations to discuss issues related to the implementation of the new law on religious denominations, *inter alia* certain problems experienced with the new registration procedure. The applicant Church, which was invited, was not present at the meeting, nor has it subsequently submitted further complaints.

GM The judgment of the ECtHR was translated and published in the Official Journal of Moldova.
Following the developments presented in AR 2007, a new law on Religious Denominations was promulgated and published in the Official Journal on 17 August 2007 but certain concerns expressed by the CM, in particular in IR (2006) 12, did not appear to have been taken into account. In response to the questions thus raised, the authorities have presented in 2008 a series of explanations in particular as regards the functioning of the new registration system and the new legal framework for religious activities in Moldova, stressing that also unregistered churches or groupings enjoy freedom of religion in accordance with the ECHR requirements under the new system.

The CM noted with satisfaction the important number of measures already taken, but also that a number of issues required additional clarification. Following the above-mentioned meetings with the Moldovan authorities in September 2008 outstanding issues regarding general measures have been identified and presented in Memorandum CM/Inf/DH (2008) 47. The issues relate in particular to the functioning of the new registration procedure and the efficiency of remedies in certain situations and to certain questions regarding the general right to exercise freedom of religion. The CM thus encouraged the authorities to pursue their reflection on these issues and on possible needs to further align existing administrative practices and relevant legislation with the new law on religious denominations and the ECHR.

I. Freedom of expression and information

I.1. Absence of protection against defamation

130. AUT / Pfeifer

Application No. 12556/03
Judgment of 15/11/2007; final on 15/02/2008
Last examination: 1043-4.2

Failure of the domestic courts to protect the applicant's reputation against defamatory statements made in a newspaper in 2000 in the context of an ongoing political debate (the author of the statements was acquitted under Art. 6 of the Media Act), notwithstanding the fact that the accusations levelled against him did not have a sufficient factual basis (violation of Art. 8).

IM The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage sustained. Information is awaited as to whether the applicant may request reopening of the defamation proceedings under the Media Act or start new proceedings.

GM Between 1997 and 2005 the Austrian authorities have provided regular training for judges on the ECHR, and especially the ECtHR's case-law relating to Art. 10, following a number of judgments finding violations of the ECHR because of excessive restrictions of freedom of expression. The ECtHR's judgment in this case is, however, new in that it highlights the limits of freedom of expression. It has thus been published in German in various law journals.

Taking into account the circumstances and the special type of violation in this case, information is expected on further training and awareness-raising measures for judges on the interplay of Art. 8 and 10 as well as on dissemination of the ECtHR's judgment.

I.2. Defamation

131. FRA / Colombani (Final Resolution (2008) 8)

Application No. 51279/99
Judgment of 25/06/2002, final on 25/09/2002
Last examination: 1020-1.1

Infringement of the freedom of expression of the applicants (the daily newspaper *Le Monde*, its director and a journalist) on account of their conviction, in 1998, for insulting a foreign Head of State in application of the Law on the Freedom of the Press of 1881, which did not allow for the *exceptio veritatis* defence (violation of Art. 10).

IM All sums paid by the applicants as a consequence of their criminal conviction and the civil damages awarded to the King of Morocco have been covered by the just satisfaction awarded by the ECtHR. The applicants had also the possibility of requesting the reopening of the proceedings before domestic courts in order to erase any remaining consequence of their conviction.

GM The judgment of the ECtHR was first published and/or commented on in several French Law reviews in order to guide the application of the law in question. In 2004, the provision at the origin of the violation in this case was repealed.

132. POL / Dąbrowski

Application No. 18235/02
Judgment of 19/12/2006, final on 19/03/2007
Last examination: 1043-5.3b

Violation of the applicant's right to freedom of expression as he was found guilty of defamation, in 2000, for having published an article criticising a deputy mayor. However, domestic courts had not sufficiently taken into account journalists' vocation for communicating on general interest questions, which can lead them to exaggerate to some extent knowing that political figures, in view of

their status, are open to criticism. Such a decision could dissuade journalists from contributing to public debate (violation of Art. 10).

IM By a judgment of 7 November 2000, upheld at appeal by the Olsztyn Regional Court on 18 October 2001, the criminal proceedings against the applicant were conditionally discontinued as he was put on probation and was ordered to pay as penalty a sum of money to a charity. The ECtHR awarded him just satisfaction in respect of the non-pecuniary and pecuniary damage sustained, covering *inter alia* the pecuniary penalty imposed (in all, a total of approximately 330 euros).

In addition, he may apply for the reopening of the criminal proceedings against him on the grounds of the judgment of the ECtHR.

GM In order to raise the awareness of domestic courts of the requirements of the ECHR in the field of freedom of expression, and the need, in particular, to examine adequately the evidence and motivate sufficiently their decisions, the judgment has been published and its broad dissemination has been requested.

133. POL / Kwiecień

Application No. 51744/99
Judgment of 09/01/2007, final on 09/04/2007

Last examination: 1043-5.3b

Violation of the applicant's right to freedom of expression on account of civil sanctions unjustly imposed on him, in 1998 under a special law on local election and an order to pay damages to a local politician for having publicly criticised the politician in the context of local elections without the domestic courts having taken into account neither the fact that the addressee of the criticisms was a politician nor the distinctions to be made between statements of fact and value judgments (violation of Art.10).

IM The ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary and pecuniary damage sustained, covering both the civil sanction imposed and the damages which he had been ordered to pay (some 21 500 PLN).
In 1999, the applicant applied to have the proceedings reopened, but in vain. Following an appeal lodged by the applicant, the Constitutional Court found in 2001 that the provision under which the applicant had been sanctioned was unconstitutional in that it prevented the reopening of the domestic proceedings in question. The applicant asked for an interpretation of this decision, and on 14 April 2004 the Constitutional Court confirmed that proceedings closed by a decision (*postanowienie*) rendered on the basis of a legal disposition which had been declared unconstitutional could be reopened.

GM In 2002, the provision of the 1998 law on local elections, under which the applicant was fined, was amended. Moreover, the authorities provided examples of the case-law of certain appeal courts concerning the application of this provision showing that it is now interpreted narrowly and applied only in case of untrue information included in electoral material. In order to raise the awareness of domestic courts of the criteria flowing from the ECHR and the ECtHR case-law in the field of freedom of expression, the judgment has been published and its broad dissemination has been requested.

134. PRT / De Almeida Azevedo (Final Resolution (2008) 77)

Application No. 43924/02
Judgment of 23/01/2007, final on 23/04/2007

Last examination: 1035-1.1

Breach of a politician's right to freedom of expression in relation with criminal libel proceedings (violation of Art. 10).

IM The applicant was reimbursed for the damages paid and the conviction was removed from his criminal record.

GM The ECtHR's judgment was translated, published on the Internet and distributed to the Superior Judicial Council, the body which manages the judiciary. Given the direct effect of

the ECHR in Portugal, these measures should prevent similar violations from occurring. Moreover, freedom of expression has been dealt with in university courses, seminars and continuous training courses in 2007 and 2008.

135. ROM / Dalban (examination in principle closed at the 1035th meeting in September 2008)
ROM / Cumpănă and Mazăre (examination in principle closed at the 1035th meeting in September 2008)
ROM / Sabou and Pîrcălab (examination in principle closed at the 1035th meeting in September 2008)

Application Nos. 33348/96, 28114/95, 46572/99
Judgment of 28/09/1999 – Grand Chamber, IR (2005) 2
Judgment of 17/12/2004 – Grand Chamber
Judgment of 28/09/2004, final on 28/12/2004
Last examination: 1035-6.1

Disproportionate convictions (non-respect of defences of truth and good faith, excessive sanctions involving deprivation of liberty and additional penalties in the form of loss of certain civil rights) of journalists for defamation of public officials between 1994 and 1997 (violations of Art. 10). In one case, suspension of the applicant's parental rights automatically included in additional penalties although his conviction totally unrelated to questions linked with parental authority (violation of Art. 8); also lack of remedies in this respect as the loss of parental rights was automatic and prescribed by legislation in case of prison sentences (violation also of Art. 13).

IM *Dalban*: The applicant received a suspended sentence of 3 months imprisonment, certain secondary penalties including a prohibition to work as a journalist, and an obligation to pay damages. This conviction was subsequently partly quashed after an intervention by the public prosecutor. The applicant died, however, before this intervention and the case before the ECtHR was pursued by his widow. The widow only claimed just satisfaction in respect of the non-pecuniary damage, which she also received. The ECtHR noted that there was no indication that the civil damages awarded to the injured party had ever been paid and the government had added that the widow could in any event recover any such sums in ordinary civil proceedings.

Cumpănă and Mazăre: This case was special in that the applicants' conviction was found in conformity with the ECHR, and it was only the criminal sanction which was found excessive by the ECtHR (seven months' imprisonment, disqualification from exercising certain civil rights and prohibition to work as journalists for one year). The applicants were granted a presidential pardon in 1996 dispensing them from serving their prison sentence and putting an end to the secondary penalties. Moreover, it appears that they could continue to work as journalists. They have also been rehabilitated and their criminal records no longer contain any mention of their convictions. The ECtHR rejected their request of reimbursement of the civil damages which they had paid the injured party as the only violation related to the harshness of the criminal sanctions. The finding of a violation was considered sufficient as far as non-pecuniary damage was concerned.

Sabou and Pîrcălab: The first applicant was sentenced to ten months' imprisonment, secondary penalties including the automatic suspension of his parental rights during the imprisonment. The sentence was rapidly suspended and a presidential pardon was granted in 1999. The second applicant was sentenced to a suspended criminal fine (never paid). The applicants have since been rehabilitated and their criminal records erased. The ECtHR granted just satisfaction covering the civil damages the applicants were ordered to pay, and had effectively paid, to the injured party and non-pecuniary damage.

GM **Excessive sanctioning of press offenses**: The ECtHR noted several shortcomings in the domestic courts' examination of defamation cases against public officials and also that the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression only in exceptional circumstances, in particular where other fundamental rights have been seriously impaired.

In order to ensure a rapid development of the domestic case-law, the *Dalban* judgment was translated and published in June 2000. Conferences,

training courses and seminars for judges and public prosecutors have been organised since 2001, specifically dealing with issues related to the freedom of expression with a view to ensuring the direct effect of the ECHR in domestic law and thus its interpretation in accordance with the case-law of the ECtHR. As from 2004, the Romanian authorities have provided examples of such direct effect by submitting court decisions concerning charges of criminal libel in which courts (often making reference to the Strasbourg case-law) acquitted defendants not least in view of their intention to make public information and ideas on issues of public interest.

Subsequently, a new law entered into force in 2005, which abolished imprisonment for defamation. In 2006, both insult and defamation were decriminalised and only civil actions were allowed. Although the decriminalising law was later declared to be unconstitutional by the Constitutional Court, the abrogation of the criticised provisions remains definitive, unless a new law is adopted to restore them. In this context, the Romanian authorities are preparing a new draft Criminal Code, which contains no provision penalising defamation.

Automatic suspension of parental rights and lack of effective remedies: It seems that in the light of the judgment of the ECtHR in the *Sabou and Pîrcălab* case, that the legislative, automatic, prescription of suspension of parental rights has been reconsidered through a development of the the practice of the domestic courts. These have thus ceased to automatically prohibit those serving prison sentences from exercising their parental rights and started to examine the necessity of such a measure in each case. Examples of the case-law of Bucharest courts, as well as from the High Courts of Cassation and of Justice in this respect have been provided. The judgment of the ECtHR was furthermore published and transmitted to the Superior Council of Magistracy, with a view to bringing it to the attention of all the domestic courts. In view of this development, the problem of effective remedies also appears solved. A summary of the judgment was furthermore published in a legal journal freely distributed to all courts.

136. **RUS / Grinberg (Final Resolution (2008) 18)**
RUS / Zakharov (Final Resolution (2008) 18)

Application Nos. 23472/03 and 14881/03
Judgment of 21/07/2005, final on 21/10/2005
Judgment of 5/10/2006, final on 5/01/2007
Last examination: 1020-1.1

Disproportionate interferences with the applicants' freedom of expression as they were found guilty of defamation in 2002 and 2003, under civil law, following their publication of an article criticising a political candidate and their submission of a complaint to competent state officials about irregularities in the conduct of the head of the town council (violation of Art. 10).

IM The sums paid to the opposing party as well as the non-pecuniary damage suffered were covered by the award of a just satisfaction.

GM Even before the delivery of these judgments, on 24 February 2005 the Plenum of the Supreme Court of the Russian Federation issued a Decree providing guidelines to lower courts on the application of Article 152 of the Civil Code, in the light of Art. 10 of the ECHR.

The Supreme Court insisted, in particular, on the necessity for judges to distinguish between statements of fact capable of being proven, and value judgments, opinions or convictions which do not fall within the scope of Article 152. The Supreme Court also stated that if a person contacts relevant authorities in order to inform them of a crime being committed or prepared or of other facts, which have not been confirmed at the end of an inquiry or a verification, this mere fact cannot in itself entail this person's liability pursuant to Article 152 of the Civil Code. The only case which may give rise to judicial proceedings is a recognised abuse of right. The *Grinberg* judgment has also been published.

I.3. Speech threatening public order or national security

137. **FRA / Association Ekin (Final Resolution (2008) 3)**

Application No. 39288/98 *Last examination: 1020-1.1*
Judgment of 17/07/2001, final on 17/10/2001

Infringement of the freedom of expression of the applicant (a Basque association) on account of a ban on one of its books in 1988 on the basis of a decree of 1939 which empowered the Minister of the Interior to ban the publication of foreign publications without the law or the case-law fixing the limits of this competence (violation of Art. 10). Excessive length of certain proceedings before administrative courts (violation of Art. 6§1).

IM By a judgment of 9 July 1997 the *Conseil d'Etat* quashed the Minister of the Interior's Decree of 1988 banning the circulation, distribution and sale of the book published by the applicant association.

GM **Freedom of expression**: The Decree of 1939, which was at the origin of the violation found, was repealed in 2004, following an injunction issued to the Prime Minister by the *Conseil d'Etat* in a judgment of 2003 finding that the decree was in violation of Art. 10 of the ECHR. The judgment of the ECtHR was published in several Administrative Law Reviews.

Length of proceedings before administrative courts: Legislative and other measures adopted are summarised in Resolution (2005) 63 in the case of *SAPL* (judgment of 18 December 2001, final on 18 March 2002) and other similar cases.

138. **TUR / Emir (Final Resolution (2009) 17)**

Application No. 10054/03 *Last examination: 1043-1.1*
Judgment of 03/05/2007, final on 03/08/2007

Unjustified interference with the applicant's freedom of expression as a result of his conviction under Art. 169 of the former Criminal Code for "facilitating the activities of [a gang or an armed organisation]" on account of a series of articles published in a magazine recounting the action of security forces in Turkish prisons (violation of Art. 10).

IM Following the modification introduced in Article 169 of the Criminal Code in 2003, the charges against the applicant ceased to be a criminal offence. Accordingly, the applicant's conviction was erased and he never paid the fine imposed.

GM In 2003, Article 169 of the Criminal Code was partially amended by deleting the phrase "facilitating the activities of [a gang or an armed organisation]". The new Criminal Code which came into force in June 2005 does not contain a similar provision either.

I.4. Other issues

139. **FRA / Du Roy and Malaurie (Final Resolution (2008) 9)**

Application No. 34000/96 *Last examination: 1020-1.1*
Judgment of 3/10/2000, final on 3/01/2001

Infringement of the freedom of expression of some journalists, on account of their criminal conviction in 1996 for publishing information regarding a civil action combined with criminal proceedings (violation of Art. 10).

IM The ECtHR held that the judgment constituted in itself sufficient just satisfaction for the alleged pecuniary and non-pecuniary damage. The fine imposed on the applicants was never recovered following an amnesty, and the damage awarded to the other party was limited to one symbolic franc. The applicants' conviction no longer appears on their criminal records.

GM The judgment of the ECtHR was published in 2001. In two successive judgments of January and March 2001, the criminal chamber of the *Cour de cassation* held that the provision at the origin of the violation (Article 2 of the Law of 2 July 1931) was incompatible with the ECHR and therefore could not serve as a ground for a crimi-

nal conviction. The provision at issue thus no longer applies in French Law.

140. MDA / Amihalachioaie (Final Resolution (2009) 5)

Application No. 60115/00Judgment of 20/04/2004, final on 20/07/2004 *Last examination: 1043-1.1*

Breach of the freedom of expression of the applicant, a lawyer and the President of the Bar Association, in that he was condemned by the Constitutional Court in 2000 to pay an administrative fine for criticising in an interview published in a newspaper a decision by the Constitutional Court finding that the statutory provisions requiring lawyers to be members of the Bar Association were unconstitutional (violation of Art. 10).

IM On 3 August 2004, the Constitutional Court examined the applicant's case *ex officio* and ordered the reimbursement of the administrative fine. The decision at the origin of the violation had no effect on the applicant's criminal record and he does not appear to be suffering any other consequence of the impugned decision. The ECtHR considered that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered and rejected the remainder of the applicant's claims for just satisfaction.

GM The ECtHR's judgment has been translated, published and sent out by the Ministry of Justice to all domestic courts. In addition, the High Council of the Judiciary has been requested to draw the attention of domestic courts to the need to comply with the provisions of domestic law according direct effect to the ECHR.

141. SUI / Monnat (Final Resolution (2008) 24)

Application No. 73604/01
Judgment of 21/09/2006, final on 21/12/2006 *Last examination: 1020-1.1*

Violation of the right to freedom of expression of the applicant, a journalist, due to a prohibition in 2001 on rebroadcasting a television documentary he made, dealing with Swiss history during the Second World War (violation of Art. 10).

IM The applicant did not apply for compensation for pecuniary damage before the ECtHR, but asked that the prohibition be lifted. The ECtHR responded that this was an execution question, to be dealt with under the supervision of the CM. The applicant's film was rebroadcasted in 2006, and there are no more obstacles to its distribution. Nonetheless, the applicant may request the reopening of the impugned proceedings.

GM In order to prevent similar violations, the ECtHR's judgment was transmitted to the Federal Tribunal, the Federal Office of Communication and to the Independent Complaints Authority. The full judgment has been published (direct effect).

J. Freedom of assembly

142. ARM / Galstyan

Application No. 26986/03
Judgment of 15/11/2007 final on 15/02/2008 *Last examination: 1043-4.2*

Breach of the applicant's right of freedom of assembly due to his arrest and sentencing to three days' detention for participating in a rally in April 2003 following the presidential elections (violation of Art. 11); infringement of the applicant's right to adequate time and facilities for the preparation of his defence (violation of Art. 6§3b combined with of Art. 6§1); breach of the right of appeal in criminal matters (violation of Art. 2 of Prot. No. 7).

IM The ECtHR awarded just satisfaction to the applicant in respect of non-pecuniary damage. The applicant's detention ceased before the ECtHR's judgment. Information is awaited on any possible record of the applicant's conviction and on measures taken or envisaged in his favour.

GM **Freedom of assembly**: Amendments to the law on conducting meetings, assemblies, rallies and demonstrations, have been adopted on 11 June 2008, after an expert examination by the Venice Commission. The importance of setting up of an effective and independent system for monitoring the enforcement of the law, underlined also by the Venice Commission, has been stressed. Moreover, the European Court's case-law according to which in no circumstances should penalties be applied for mere participation in a rally which has not been prohibited has been recalled before the CM and the Armenian authorities have been invited to provide information on penalties potentially applicable to participants in a rally, as well as details on the publication of the ECtHR's judgment and its dissemination to administrative and criminal courts.

Fair trial and right to appeal in criminal matters: As regards the three violations found in this case, it appears from the judgment of the ECtHR that the provisions applicable at the material time are no longer in force.

143. BGR / UMO Ilinden and Ivanov (See also AR 2007, p. 170)
BGR / Ivanov and Others (See also AR 2007, p. 170)

Application Nos. 44079/98 and 46336/99
Judgment of 20/10/2005, final on 15/02/2006

Judgment of 24/11/2005, final on 24/02/2006
Last examination: 1043-4.2

Infringement of the freedom of assembly of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – prohibition of their meetings between 1998 and 2003, based on considerations of national security (alleged separatist ideas) when these organisations had not hinted at any intention to use violence or other undemocratic means to achieve their aims; lack of effective remedies to complain against the prohibitions of their meetings (violations of Art. 11 and 13).

IM The Bulgarian authorities have informed the CM about the developments, in general positive, in 2006 and 2007. There appears, however, to have been 3 incidents in respect of which applications have also been lodged with the ECtHR (see AR 2007).
The authorities have indicated that the United Macedonian Organisation Ilinden – PIRIN has declared itself satisfied, in certain publications, with the organisation of two commemorative meetings in spring 2008. Additional information has been requested on the applicants' meetings since June 2008.

GM Awareness raising activities, including training with Council of Europe participation, have been organised (see AR 2007). Further activities, involving governors, police and local authorities also took place in Sandanski in April 2008. Contacts are under way regarding the effects of the training and awareness raising measures taken.

A reflection was carried out within the Ministry of Justice on the need to amend the Meetings and Marches Act. In view of the development of the direct effect of the ECHR and the case-law of the ECtHR it was considered unnecessary to change the grounds on which a meeting may be banned, as these appear to leave room for a ECHR conform application taking into account the awareness and training activities that have taken place. The necessity of improving domestic remedies is, however, examined in order to allow that complaints against meeting bans are examined before the date intended for the meeting, and possibly also to allow appeals against bans to ensure a more stable application of the law. A Bill on Meetings and Marches has been submitted to the Bulgarian Parliament in October 2008 and the CM is assessing the information provided on its content.

Further information is awaited on this issue, as well as on the time frame for the adoption of the draft law amending Meetings and Marches Act.

K. Freedom of association

K.1. Political parties

144. ARM / Mkrtchyan (Final Resolution (2008) 2, see also AR 2007, p. 169)

Application No. 6562/03
Judgment of 11/01/2007, final on 11/04/2007
Last examination: 1020-1.1

Breach of the applicant's freedom of association and assembly on account of the fact that the relevant law was not formulated precisely enough to enable the applicant to foresee that he would be sentenced to a fine for having participated in a demonstration in 2002 (violation of Art. 11).

IM The applicant was sentenced to a fine equivalent to one euro and made no claim in respect of pecuniary damage before the ECtHR. Moreover, the ECtHR held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

GM After the facts at the origin of this case, on 28 April 2004, the Armenian Parliament adopted a law regulating the procedure for holding assemblies, rallies, street processions and demonstrations. In addition, the judgment of the ECtHR was translated and published.

145. BGR/ UMO Ilinden-PIRIN and Others (See also AR 2007, p. 164)
BGR / UMO Ilinden and Others (See also AR 2007, p. 164)

Application Nos. 59489/00 and 59491/00,
Judgment of 20/10/2005, final on 20/01/2006
Judgment of 19/10/2006, final on 19/04/2006
CM/Inf/DH (2007) 8
Last examination 1043-4.2

Infringement of the freedom of association of organisations which aim to achieve "the recognition of the Macedonian minority in Bulgaria" – dissolution of their political party and refusal to register their association, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (violation of Art. 11 and 13).

IM **Re-registration of the political party**: Following the judgment of the ECtHR the applicants have twice, in vain, sought re-registration of a political party with the same name and similar statutes as that unjustifiably dissolved. The last request was rejected by the Supreme Court of Cassation on 11 October 2007 (a more detailed description is found in AR 2007 p. 164).

The first two refusals to re-register mentioned above are also the subject of two new applications before the ECtHR. The applicants have also complained before the CM, in May 2008, of new actions of the police towards their members, which, according to the authorities concern criminal proceedings opened in 2008 on indications of forgery of documents regarding the registration of this party in 2006.

Bilateral contacts have been taken, *inter alia* in the context of a visit by the Secretariat to Sofia in December 2008, in order to assist in finding solutions to outstanding questions.

In its last decision in this case in December 2008, the CM recalled that in other cases relating to the dissolution of political parties, it was supervising the removal by the respondent state of the laws or practices incriminated by the ECtHR and the possibility given to the applicants to have their organisation registered anew in proceedings respecting the ECHR (see document CM/Inf/DH (2007) 8). The CM recalled the outstanding issues regarding individual measures, and noted in this respect that the applicants had lodged a new request for registration; and invited the Bulgarian authorities to keep the CM informed of developments in this matter.

Registration of the association: The ECtHR noted that in 2002-2004 the competent courts once again refused to register the applicant association. These facts are the object of another application, currently pending before the ECtHR. The authorities have, however, indicated that a possible new request was likely to be examined in

compliance with the requirements of the ECHR, having regard to the direct effect in domestic law of the ECHR and of the ECtHR judgments (see also the general measures).

GM **Dissolution of political parties**: In view of the direct effect of the ECtHR's case-law should enjoy in Bulgarian law, the government considered it sufficient to ensure a ECHR conform interpretation of Bulgarian law to send the ECtHR's judgment, with a covering letter indicating that the transmission was made in the context of Bulgaria's execution of the ECtHR's judgment, to the Constitutional Court and to the competent court for the registration of political parties. In addition, with a view to raising the awareness of the competent authorities, a CD manual, elaborated by the National Institute of Justice, was sent to 153 courts, the same number of prosecutor's offices and to 29 investigation offices. The manual contains examples of case-law of the ECtHR in the field of the freedom of association and freedom of assembly, as well as articles, studies and other material relating to these areas.

Following the decisions adopted by the CM, several training activities have been organised between October 2007 and October 2008, with the participation in particular of judges from the Supreme Court of Cassation, from the Sofia City Court and of representatives of the prosecution office.

Registration of associations: The ECtHR's judgment has been disseminated to relevant courts, with a note drawing their attention to Bulgaria's obligations under the ECHR.

Both judgments have furthermore been published.

General evaluation: The CM has noted with interest the various training activities referred to above organised by the Bulgarian authorities with the participation of the Council of Europe, with the aim of raising the awareness of the competent authorities concerning the requirements of the ECHR and the judgments of the ECtHR in these fields.

The effectiveness of these measures is currently being assessed, in particular in the light of the handling of the new registration requests.

146. **RUS / Presidential Party of Mordovia (Final Resolution (2008) 20)**

Application No. 65659/01
Judgment of 5/10/2004, final on 5/01/2005, rectified on 31/03/2005

Last examination: 1020-1.1

Violation of the applicant party's right to association due to the regional authorities' unlawful refusal to renew the applicant party's registration in 1999 (violation of Art. 11).

IM The ECtHR found that the damage caused by the violation was irreparable as, following legislative changes in 2001, regional political parties have ceased to be recognised by law. Accordingly, the party cannot any longer be lawfully recognised in its original concept.

GM The judgment of the ECtHR was published and sent out to the regional authorities by a circular letter drawing their attention to their responsibility under the ECHR to ensure, *inter alia*, that any limitation of individual rights be strictly in accordance with domestic law.

K.2. Trade Unions

147. **TUR / Karaçay**

Application No. 6615/03
Judgment of 27/03/2007, final on 27/06/2007

Last examination: 1035-4.2

Violation of the applicant's freedom of association, on account of a disciplinary sanction imposed on him in 2002 for having participated in a protest meeting organised by the trade union he is a member of and lack of an effective remedy in this regard (violation of Art. 11 and 13).

IM According to the applicable law, the applicant was entitled to have the warning erased from his employment records after 5 years from its issue, i.e. as from 2007. As the applicant may thus today on request obtain this erasure no further individual measure seems necessary.

GM The relevant legislative bodies are preparing a Draft Law on Public Employees, providing

inter alia that disciplinary "warnings" be subject to judicial control. The CM has requested information on the developments concerning this draft law.

The judgment was translated and published on the website of the Ministry of Justice.

148. **UK / Associated Society of Locomotive Engineers and Firemen (ASLEF) (See also AR 2007, p. 168)**

Application No. 11002/05
Judgment of 27/02/2007, final on 27/05/2007

Last examination: 1035-4.2

Violation of freedom of association on account of the legal impossibility for a trade union to expel one of its members on account of his membership of a political party advocating views incompatible with those of the trade union (violation of Art. 11).

IM These are linked with the GM, see AR 2007.

GM In response to the request made by the CM, the UK authorities have indicated that the requisite amendments are being carried out by way of the Employment Bill, which was introduced before Parliament on 6 December 2007. The Third Reading in the House of Lords took place on 3 June 2008. The Bill has been introduced in the House of Commons and is awaiting Second Reading. The Explanatory Notes to the Bill (Bill 117 EN 07-08) state that clause 18 amends trade union membership law to ensure UK compliance with the ruling of the ECtHR in the present case.

Clause 18 of the Bill, as introduced in the House of Commons in June 2008, proposes amendments to section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 to permit the expulsion of an individual from a trade union on grounds of their membership of a political party, if membership of that political party is contrary to a rule or an objective (provided the objective is reasonably practicable to ascertain) of the trade union; the decision to expel is taken fairly and in accordance with union rules; and the individual does not lose his livelihood or suffer other exceptional hardship by reason of not being or ceasing to be a member of the trade union. The United Kingdom authorities hope to be in a position to bring the amendments necessary to implement this case into force before January 2009.

K.3. Other Associations

149. **AZE / Ramazanova and Others and other similar cases**

Application No. 44363/02
Judgment of 01/02/2007, final on 01/05/2007

Last examination: 1043-4.2

Violation of the applicants' right of freedom of association due to the repeated failure of the Ministry of Justice to decide definitively on the applicants' requests for registration of their associations, or to respond thereto within the statutory time-limits (violations of Art. 11).

IM In all these cases, the ECtHR awarded the applicants just satisfaction in respect of non-pecuniary damage. In two cases, the association at issue was finally registered respectively in 2005 and 2008. The issue of the procedure to be followed for the registration of the third association has been raised by the CM, in the light of the ECtHR finding that the Ministry of Justice had refused to register the association without taking into account the revised charter submitted by the applicant. Information on this issue is awaited.

GM The judgment of the ECtHR in the case of *Ramazanova* has been translated, sent out to judges and other legal professionals, and included in the curricula for the training of judges and candidates for the position of judge. New provisions regarding "state registration and the state register of legal entities" have been adopted and are under examination.

150. **ITA / Maestri (Final Resolution (2008) 47, see also AR 2007, p. 170)**
ITA / N.F. (Final Resolution (2008) 48, see also AR 2007, p. 171)

Application Nos. 39748/98 and 37119/97
Judgment of 17/02/2004, Grand Chamber
Judgment of 2/08/2001, final on 12/12/2001
Last examination: 1028-1.1

Unlawful interference with the freedom of association of the applicants, Italian judges, on account of the disciplinary sanction imposed upon them in 1994 and 1995, respectively, for having belonged to a Masonic lodge before 1993, at a time when the legal basis for such sanctions was not sufficiently clear, precise and predictable (violation of Art. 11).

IM *Maestri*: The ECtHR specified that it was the responsibility of the respondent state to implement the proper means to erase the consequences of the damage related to the applicant's career which could have or has resulted from the disciplinary sanction imposed in violation of the ECHR. However, the applicant resigned from national legal service in March 2005. Consequently, no further individual measure seems necessary.
N.F.: In 2003, the Supreme Judicial Board, noting that Italian law did not allow for reopening or re-examination of disciplinary proceedings, decided to add the ECtHR's judgment to the applicant's professional file. Concerning other possible negative consequences of the violation of the ECHR on the applicant's career, it appears that the refusal to grant him promotion in 2000 was declared void by the Regional Administrative Court. Following this decision, the Supreme Judicial Board approved the advancement of the applicant's career as from October 2000, based on a detailed evaluation of the applicant's professional competencies. Consequently, no further individual measure was required.

GM A new guidance was adopted in 1993 which sets out clearly the incompatibility of the exercise of the functions of judge with the membership of the freemasons. The ECtHR's judgment in the case of *N.F.* was brought to the attention of the competent judicial authorities and also published in Italian.

151. **TUR / Djavit An (Final Resolution (2008) 59)**

Application No. 20652/92
Judgment of 20/02/2003, final on 9/07/2003
Last examination: 1028-1.1

Breach of the applicant's right to freedom of peaceful assembly on account of refusals by the competent authorities to allow the applicant, a co-ordinator of the "Movement for an Independent and Federal Cyprus", to cross the "green line" and participate in bi-communal meetings between 1992 and 1998 (violation of Art. 11); absence of an effective remedy in this respect (violation of Art. 13).

IM The Turkish authorities indicated that the applicant was no longer prevented from going to the southern part of Cyprus to take part in meetings between the two communities or other peaceful meetings. A list was also provided showing that the applicant crossed the "green line" from the north to the south and back several times a month during the period 27 April 2003 to 31 May 2004.

GM **Right to freedom of assembly**: The Turkish authorities indicated that, following the judgment of the ECtHR, the "Council of Ministers of the TRNC" adopted several decisions in order to provide a legal basis regulating the crossing of the "green line" in both directions.

Lack of an effective remedy: The Turkish authorities indicated the right to an effective remedy was established following a judgment of 16 May 2003 in which the "High Administrative Court" overturned, in circumstances similar to those of the present case, the authorities' refusal to authorise the crossing of the "green line". The "High Administrative Court" considered that such a refusal violated the fundamental rights of the persons in question and was contrary to domestic law. The Turkish authorities added that, following the precedent case, persons concerned may lodge an application for compensation with a district court. In addition, this would make it possible for the "High Administrative Court" to decide on similar complaints in the future in due time. Finally, they indicated that since the opening of the checkpoints in April 2003, no similar complaint has been lodged with the "High Administrative Court".

The judgment of the ECtHR was translated and published in 2004. In 2005 the "Ministry of Foreign Affairs of the TRNC" also asked the "Ministry of the Interior" to send the ECtHR's judgment to the authorities competent for controlling the crossing of the "green line" in both directions.

L. Right to marry

M. Effective remedies – specific issues

152. ALB / Gjonbocari and Others

Application No. 10508/02
Judgment of 23/10/2007, final on 31/03/2008
Last examination: 1035-2.1

Non-execution of a Supreme Court's judgment of 2003, ordering the Land Commission to take a decision regarding the applicants' claims on land appearing to have belonged to their parent and confiscated during the communist period (violation of Art. 6§1); excessive length of proceedings, pending since 2000 (violation of Art. 6§1) as well as the absence of and effective recourse for complaint during this period (violation of Art. 13 together with Art. 6§1).

IM The applicants were awarded just satisfaction for non-pecuniary damages. Regarding pecuniary damages, the ECtHR indicated that the government should ensure the execution of the judgment of 2003 in an appropriate manner and in the shortest possible time. Information is awaited in this respect.

GM **Non-enforcement of domestic final decisions**: See case *Beshiri and Others*.
Excessive length of proceedings and lack of effective remedy in this respect: The ECtHR noted that the judicial system failed to manage properly the multiplication of proceedings on the same issue where it could have combined all the proceedings. Concerning the lack of effective remedy, this violation arose from the lack of any provision in national law which the applicant's could have used to obtain redress for the excessive length of the proceedings.

Information is awaited on the steps which are envisaged or have been taken in order to accelerate domestic civil proceedings and provide an effective remedy against their excessive length.

153. AUT / Jancikova and other similar cases

Application No. 56483/00
Judgment of 07/04/2005, final on 07/07/2005
Last examination: 1043-4.2

Excessive length of certain proceedings in determination of a criminal charge before administrative authorities and courts (violations of Art. 6§1) and lack of an effective remedy (violations of Art. 13).

IM The proceedings are closed in all these cases. No further individual measure is required.

GM **Excessive length of proceedings before the Administrative Court**: Legislative measures were adopted in 2002 (see case of *G.S.*, Resolution (2004) 77) and further general measures were adopted in the cases of *Alge* and *Schluga*, Resolution (2007) 110). The number of cases pending for an excessive time (more than 3 years) before the Administrative Court has significantly diminished over the last years. However the high number of recent complaints means that excessive length of proceedings remains an issue. To reduce the workload of the Administrative Court, a new Asylum Court has been set up which is dealing with asylum cases. Those cases accounted for a considerable part of the workload of the Administrative Court.
The judgments were transmitted to the Presidency of the Administrative and Constitutional Court, forwarded to a range of federal and regional public authorities and published. Information is awaited on the further development of the

length of proceedings before the Administrative Court, in particular following the establishment of the new Asylum Court, which took up its work in July 2008.

Effective remedy: Written information is awaited on existing or envisaged measures to safeguard individuals effectively against lengthy criminal proceedings before administrative courts.

154. ITA / Saggio (Final Resolution (2008) 52)

Application No. 41879/98
Judgment of 25/10/2001, final on 25/01/2002

Last examination: 1028-1.1

Lack of an effective remedy because the applicant could not for over four years recover the salary arrears owed to him by a company put under extraordinary administration in 1995, challenge the acts of the liquidators or even request the examination of his complaints. Under the law applicable at the material time, a remedy was only applicable after the final liquidation balance sheet and the scheme for distribution had been established (violation of Art. 13).

IM After the deposition of the final liquidation balance sheet and the scheme for distribution, accomplished on 13 October 1999, the applicant had the possibility of lodging a complaint contesting the scheme for distribution.
As he did not avail himself of this possibility, the final liquidation balance sheet and the scheme for distribution became final as far as he was concerned, in accordance with national law. The ECtHR rejected his claim for compensation for the loss allegedly suffered because of the absence if a speedy and efficient judicial procedure to decide on his claims. It noted that these losses were being examined in the framework of the pending extraordinary administration procedure.

GM The Law which was at the basis of the violation was amended in 1999 by legislative decree. This decree introduced a new regulation in "extraordinary administration" proceedings and in particular allows any creditor to challenge the action of a liquidator before domestic courts even before the establishment of the final balance sheet. The judgment was published and brought to the attention of the Italian judicial authorities.

N. Property rights

N.1. Expropriations, nationalisations

155. AZE / Akimova

Application No. 19853/03
Judgment of 27/09/2007, final on 27/12/2007 and of 09/10/2008 – Friendly settlement (just satisfaction)

Last examination: 1043-4.2

Interference with the applicant's property rights on account of a decision of the Court of appeal recognising that the applicant was the lawful tenant of a flat but postponing nonetheless for an indefinite period of time the execution of an order for the eviction of the IDPs who had illegally occupied the flat, without such postponement having any basis in any domestic legislation (violation of Art. 1 of Prot. No. 1).

IM In its judgment of 9 October 2008 on just satisfaction, the ECtHR took note of a friendly settlement reached by the parties, according to which the government undertook to pay certain sums to the applicant for pecuniary and non-pecuniary damage and took note of the fact that the Supreme Court had quashed in January 2008 the judgment at the origin of the violation. Later, in March 2008, the applicant recovered possession of her apartment.

GM Confirmation is awaited of the translation and publication of the ECtHR judgment as well as its dissemination to the Court of Appeal.

156. ITA / Belvedere Alberghiera S.R.L. and other similar cases (See also AR 2007, p. 178)

Application No. 31524/96
Judgment of 30/05/2000, final on 30/08/2000 (merits) and of 30/10/2003, final on 30/01/2004 (just satisfaction)

IR (2007) 3
Last examination: 1028-4.2

Inadequate guarantees to secure the lawfulness of emergency expropriations carried by local authorities under (leading to "constructive expropriations") and excessively restrictive compensation rules (violations of Art. 1, Prot. No. 1).

In its IR (2007) 3, the CM noted a number of recent developments with interest (see also AR 2007) and encouraged the Italian authorities:

- as regards **IM**, to ensure that redress mechanisms are rapid, efficient and able to the fullest extent possible to discharge the ECtHR of its functions under Art. 41 of the ECHR in the pending cases;
- as regards **GM**, to continue their efforts to rapidly take all further measures needed to bring to an end definitively the practice of "constructive expropriations" and to ensure that any occupation of land by the public authorities comply with the requirements of legality as required by the ECHR.

Recent developments: As regards the absence of full compensation in respect of irregular occupation of land which took place before 30 September 1996, the Constitutional Court declared in October 2007 the relevant provisions of law unconstitutional and this limitation is thus no longer applicable. Subsequently, in December 2007, the Compendium on Expropriation (*Testo Unico*) was also accordingly amended and now provides for full market value compensation also in cases of irregular occupation which have occurred before 30 September 1996.

The government has also drawn attention to certain recent decisions from the Council of State and the Regional Administrative tribunals interpreting and applying Article 43 of the Compendium in line with the recommendations in Interim Resolution (2007) 3. The examination will continue at the first HR meeting in March 2009 in the light of information to be provided on the GM.

157. ITA / Scordino 1 and other similar cases (See also AR 2007, p. 179)

Application No. 36813/97
Judgment of 29/03/2006, final on 29/03/2006 (Grand Chamber)

Last examination: 1028-4.2

Systemic violation due to the excessive length of civil proceedings seeking compensation for expropriation and inadequacy of domestic remedies (violations of Art. 6§1); unfair civil proceedings due to the adoption of legislation retrospectively reducing compensation for expropriation and affecting ongoing judicial proceedings (violation of Art. 6§1) and violation of the applicants' property rights as a result of the resulting disproportionately low compensation awarded (violations of Art. 1, Prot. No. 1).

IM The ECtHR awarded pecuniary damages covering all the applicant's losses and non-pecuniary damage. No other measures are required.

GM (See also AR 2007)

Recent developments: As regards the inadequately low compensation in the expropriation proceedings, in October 2007, the Constitutional Court declared the unconstitutionality of the provision criticised by the ECtHR, which is accordingly no longer applicable. The scope of this change is being assessed.

As regards the structural problem of excessive length of proceedings, see case *Ceteroni* and, in particular, IR (2007) 2.

As regards the effectiveness of the compensatory remedy (Pinto Act), see in particular the *Mostacciuolo* case.

158. **POL / Broniowski (see also AR 2007, p. 180) (examination in principle closed at the 1020th meeting in March 2008)**

Application No. 31443/96
Judgment of 22/06/2004 – Grand Chamber ("pilot judgment") and of 28/09/2005 – Friendly settlement (just satisfaction), IR (2005) 58

Last examination: 1020-6.1

Lack of an effective mechanism to implement the applicant's right to compensation for property abandoned as a result of boundary changes in the aftermath of the Second World War (violation of Art.1, Prot. No. 1).

IM The parties reached a friendly settlement by which the payment of a lump sum would constitute the final settlement of the case. No further measure appears necessary.

GM In this case the ECtHR for the first time provided indications in the operative provisions of a judgment on the general measures that the respondent state should take to remedy a systemic problem identified already in the judgment (cf. CM Resolution (2004) 3 on judgments revealing an underlying systemic problem and Recommendation (2004) 6 on the improvement of domestic remedies). The ECtHR furthermore decided to adjourn all similar applications pending the adoption of measures at the national level.
Following the judgment, the CM adopted an interim resolution (IR (2005) 58) in which, *inter alia*, it called upon the Polish authorities to intensify their efforts rapidly to finalise the required legislative reform and requested a comprehensive plan of action for the effective implementation of the envisaged compensation mechanism.
In July 2005, the Polish Parliament passed a Law setting the ceiling for compensation for Bug River property at 20% of its original value and implementing the right to compensation either through an auction of state lands or through cash payment, depending on the claimant's choice (see for details IR (2005) 58). In the friendly settlement of 28 September 2005 the government also undertook to rapidly ensure that the revised compensation mechanism became effective.

In two new decisions concerning similar cases, in December 2007, the ECtHR found in particular that the maximum level of compensation provided for by the new law of 2005 was in conformity with the requirements of the ECHR and that the procedures for compensation made available to the claimants in question under this law, functioned efficiently (see decisions in *Wolkenberg and Others v. Poland*, No. 50003/99 and *Witkowska-Tobola v. Poland*, No. 11208/02). On the basis on this finding, the ECtHR has begun the process of striking out the clone cases on its list.

Having examined the measures adopted by the respondent state to ensure the full implementation of the new compensation mechanism for claimants concerned by property abandoned in the territories beyond the Bug River, the CM decided, in March 2008, to close its supervision of the execution of this judgment.

In September 2008, the ECtHR decided to close the "pilot-judgment procedure" applied in the *Broniowski* case.

159. **ROM / Străin and Others and other similar cases (See also AR 2007, p. 181)**

Application No. 57001/00
Judgment of 21/07/2005, final on 30/11/2005

Last examination: 1035-4.2

Non-restitution of properties nationalised by the earlier communist regime to their owners as a result of the sale of the properties by the state to third persons; absence of any clear domestic rules on compensation to the owners in such situations (violation of Art. 1, Prot. No. 1).

IM The ECtHR awarded just satisfaction for non-pecuniary damage in most cases and ordered the return of the properties in question or payment of just satisfaction for pecuniary damage corresponding to their market value within three months of the date on which its judgments became final. Information is awaited on the current situation, in particular, whether the different properties at issue in the different cases have been returned or if the owners have received compensation instead.

GM A new law of 2005 applies the principles expressed in international case-law related to illegal or *de facto* expropriation. It qualifies as illegal the nationalisations carried out by the communist regime and provides an obligation of restitution in kind or, if that is impossible, compensation equivalent to the market value of the property.

Those entitled to compensation can, in principle, receive it in the form of participation in a common system of placing for movable securities, organised in the form of a joint stock company, Proprietatea. However, this company Proprietatea is not yet effectively able to provide the applicants with compensation. Moreover, the law does not take into consideration prejudice resulting from the prolonged absence of compensation of persons who, like the applicants, were deprived of their property despite final judgments ordering its return.

In order to improve and accelerate the processing of restitution requests for properties seized abusively, in 2007 a Government Ordinance provided that claimants shall benefit from securities at face value which will be transformed into shares issued by the Property Fund or as monetary compensation, not exceeding 500 000 RON. Sums above this amount must be given in the form of shares in the new company. Up to 1 February 2008, 2 440 requests for monetary compensation were registered, of which 855 resulted in a decision (the total amount of compensation paid amounted to 72 000 000 RON). Shareholders in the Property Fund are free to transfer their shares and are entitled to dividends. The authorities are undertaking further steps in order to evaluate the Property Fund and then list it at the stock exchange.

A control mechanism for the implementation of restitution decisions was set up in 2005, and can impose sanctions.

According to the statistics of the National Authority for the Restitution of Property, between 16 October 2006 and 24 April 2008, a total of 35 068 documented claims were filed with the Central Commission for Restitution seeking to restore ownership rights over land. As of May 2008, 2 128 decisions granting compensation were issued and handed over to the rightful owners, the value of the compensation awards being set at 413 865 364 RON.

The CM has received submissions by several NGOs in 2008 regarding the functioning of the Property Fund and a recent ruling by the Supreme Court apparently excluding restitution actions under the civil law.

At its last examination of these cases at the HR meeting in September 2008, the CM noted with interest the information provided by the Romanian authorities on the functioning of the restitution/compensation mechanism and on measures adopted with a view to its improvement, in particular the creation of a new possibility of monetary compensation,

It noted, however, that the recent information, in particular the submissions of the NGOs still needs to be assessed. The CM also recalled that information has still to be provided on the issue of compensation for prejudice resulting from the prolonged absence of compensation of persons deprived of their property despite final judgments ordering its return, which is not covered by the current mechanism;

The judgments of the ECtHR in the *Străin*, *Păduraru* and *Porteanu* cases were published and disseminated.

160. UKR / Fedorenko (Final Resolution (2008) 25)

Application No. 25921/02
Judgment of 1/06/2006, final on 1/09/2006

Last examination: 1020-1.1

Unjustified interference with the applicant's property rights, in light of the status and apparent expertise of the authority purchasing the applicant's property and accepting a clause guaranteeing the value of the price in dollars until payment (allegedly a common practice), inequitable on the part of the authorities to subsequently refuse to honour the clause on the basis that the purchasing authority acted *ultra vires* and illegally as a government decree prohibited transactions in foreign currency (violation of Art. 1, Prot. No. 1)

IM All pecuniary and non-pecuniary damages have been covered by the ECtHR's award of just satisfaction.

GM The judgment was translated and published. It was sent to all competent authorities together with letters from their hierarchy inviting

them to take account of the findings of the ECtHR in their daily practice.

N.2. Disproportionate restrictions to property rights

161. CRO / Radanović and other similar cases

Application No. 9056/02
Judgment of 21/12/2006, final on 21/03/2007
Last examination: 1035-4.2

Disproportionate restriction to the applicants' property rights due to the authorities' failure to enforce, until late 2003, decisions of 2000, ordering the eviction of refugees occupying the applicants' properties in the framework of the former "Take-over Act" which allowed the temporary take over of unoccupied properties by third persons (violation of Art. 1 Prot. No. 1). Lack of remedy to obtain the eviction of the occupants and compensation for the lack of use of the apartment (violation of Art. 13); excessive length of the enforcement proceedings (violation of Art. 6).

IM The applicants have recovered their properties. In addition, the ECtHR awarded them just satisfaction for pecuniary and non-pecuniary damages. No further measure appears necessary.

GM **Absence of enforcement of property rights**: in 1998, the "Take-over Act" was repealed and a Programme for the Return of Refugees and Displaced Persons became applicable in proceedings concerning the temporary use, management and control of the property of persons who had left Croatia. Such proceedings are to be conducted by housing commissions at first instance and by municipal courts at second instance. The law currently establishes a right to housing for temporary occupants and provides that once this right has been satisfied, the occupant must vacate the house or flat temporarily occupied within 90 days. Within 15 days from the expiry of this time-limit, the State Attorney will institute state proceedings for eviction. Furthermore, the owner is entitled to compensation for the damage sustained if (s)he applied for repossession of his or her property prior to 30 October 2002 but did not obtain the property by that date.

Clarifications have been requested as to the scope of the relevant legislation and on possible further measures to prevent new violations.

Lack of remedy: the CM has requested information on the measures taken or envisaged to ensure effective remedies.

The judgments have been translated, published and sent to the Constitutional Court, the Supreme Court and to the courts dealing with the cases.

162. GRC / Eko-Elda Avee (examination in principle closed at the 1028th meeting in June 2008)

Application No. 10162/02
Judgment of 09/03/2006; final on 09/06/2006
Last examination: 1028-6.1

Violation of the property rights of the applicant company on account of the tax authorities' refusal to pay interest for a delay of 5 years (from 1988 to 1993) in reimbursing tax which the company had unduly paid. In 2000 the Supreme Administrative Court accepted the refusal and dismissed the applicant's claim for interest (violation of Art. 1 of Prot. No. 1).

IM The ECtHR awarded the applicant company just satisfaction in respect of pecuniary damages, covering the interest due to it from June 1988 until November 1993.

GM A Law of 1993 provides that the state pays interest in all cases similar to that at issue. In rejecting the applicant's claim in 2000, the Supreme Administrative Court held however that this Law was not applicable to cases predating its entry into force. In 2002, the Supreme Administrative Court changed its case-law, holding that the state had the obligation to pay interest in all cases of delayed reimbursement of unduly paid taxes, as from the date on which the claimant lodged application with the competent court.

The ECtHR's judgment was published and widely distributed to all administrative courts as well as

to all tax authorities in the country. Thus, given the direct effect of the ECtHR's case-law in Greek law, the authorities are expected to take into account the requirements of the ECHR in similar cases.

163. POL / Hutten-Czapska (See also AR 2007, p. 183)

Application No. 35014/97
Judgment final on 19/06/2006 – Grand Chamber; ("pilot judgment"); judgment of 28/04/2008 – Grand Chamber – Friendly settlement

Last examination: 1043-4.2

Violation of the applicant's right of property due to limitations on use of property by landlords, and in particular the rent control scheme (violation of Art. 1, Prot. No. 1).

IM The applicant's house was definitively made available to her in February 2006. As regards the pecuniary damage sustained, the parties reached a friendly settlement in 2008 according to which the government undertook in particular to compensate the pecuniary damage suffered by the applicant. The ECtHR furthermore awarded directly non-pecuniary damage and certain costs and expenses. No further individual measure seems to be required.

GM Applying the "pilot-judgment" procedure, the ECtHR concluded that the violation found was the result of a structural problem linked to a malfunctioning of national legislation and that the respondent state must secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords and the general interest of the community in accordance with the principles of the protection of property rights under the ECHR. The ECtHR took the view that, in spite of a judgment of the Polish Constitutional Court of 2005 (i.e. rendered after the Chamber judgment of 22 February 2005) the general situation had not yet been brought into line with the standards of the ECHR.
The development of general measures is summarised in AR 2007.

In its judgment of 28 April 2008 (friendly settlement) under Art. 41 of the ECHR, the ECtHR noted the legislative process under way, under the supervision of the CM.

Having taken account of the government's demonstrated active commitment to taking measures to resolve the systemic problem identified in the principal judgment and the individual measures of redress afforded to the applicant under the terms of agreement, it decided to strike the case out of the list.

On 8 July 2008 the ECtHR decided to maintain the adjournment of pending and future applications concerning the operation of the rent-control scheme in Poland pending the implementation by Poland of the general measures referred to in the judgment of 28 April 2008.

The situation is presently under examination by the CM. Further information is awaited on the development of domestic courts' case-law concerning the definition of "decent profit", the legislative work mentioned in items 5-6 above as well as on other measures to prevent new, similar violations. Clarification would be also useful concerning the determination of the scope of the notion of "basic rent" and its introduction into the legislative framework.

164. SWE / Evaldsson and Others (Final Resolution (2009) 12)

Application No. 75252/01
Judgment of 13/02/2007, final on 13/05/2007

Last examination: 1043-1.1

Breach of the applicants' property rights due to the absence of adequate possibilities of control of their trade union's use of certain fees they had to pay to it in 1999 under collective agreements made in conformity with the law on collective agreements (for the union's monitoring of wages), (violation of Art. 1 of Prot. No. 1).

IM The ECtHR has awarded the applicants just satisfaction in respect of the non-pecuniary damage and they have not claimed any pecuniary damage in respect of the sums levied (about 160 euros per applicant). They do not seem to work any longer for the construction company at issue in the case and have raised no complaint regarding additional payment requests.

GM In April 2007, the clause on the levy of the monitoring fee was abolished and a new collective agreement for the building sector was concluded. The ECtHR's judgment has been translated, published and disseminated to the authorities concerned, such as the Labour Court, the Supreme Court, the Supreme Administrative Court, to the Ombudsman and the Chancellor. In view of all these measures and in the light of the direct effect accorded to the ECHR in Sweden, the authorities consider that if a clause like the one criticised in this judgment were to be inserted again by the parties in a collective agreement and the wage-monitoring activities would lack the necessary transparency, it is reasonable to assume that the domestic courts would refuse to accept it and/or any payment obligation arising from it, thus preventing new similar violations.

165. SWE / Stockholms Försäkrings- och Skadeståndsjuridik Ab (Final Resolution (2009) 13)

Application No. 38993/97
Judgment of 16/09/2003, final on 16/12/2003
Last examination: 1043-1.1

Breach of the applicant company's property rights resulting from its unjustified strict liability to pay the costs of the administration of its bankruptcy estate, although the bankruptcy was annulled on appeal: the bankruptcy had been declared as a result of the applicant's inability to honour a court order at first instance, directly enforceable as a matter of law and without appeal, to pay the legal costs of its adversary in a civil case for damages lost at first instance, but won on appeal; also lack of an effective remedy (violations of Art. 1 of Prot. No. 1 and of Art. 13).

IM The ECtHR awarded the applicant company, as pecuniary damages, the amount of the bankruptcy costs plus interest.

GM In its judgment of 2003, the ECtHR noted the existence of a case-law from the Supreme Court at the time, according to which it was the state which was responsible for the bankruptcy costs under the Tort Liability Act if the bankruptcy was revoked on appeal because of a manifestly erroneous evaluation of the situation by the lower court. The ECtHR did not, however, consider it necessary to exhaust this remedy as the revocation of the bankruptcy in this case was not considered to flow from such a grave error of evaluation. According to a new law of 2005, amending the Bankruptcy Act, if a bankruptcy decision is quashed on appeal, the creditor applying for bankruptcy shall compensate the debtor for bankruptcy costs taken out of the estate, unless the debtor has caused the costs by his own negligence.

A decision by a District Court on responsibility for bankruptcy costs may be appealed to the Court of Appeal and then to the Supreme Court.

The judgment of the ECtHR has been distributed to the authorities concerned and summaries have been published in law journals and by the National Courts Administration (*Domstolsverket*).

166. TUR / Doğan and Others (Final Resolution (2008) 60)

Application No. 8803/02
Judgment of 29/06/2004, final on 10/11/2004, rectified on 18/11/2004, and judgment (just satisfaction) of 13/07/2006, final on 23/10/2006
Last examination: 1028-1.1

Violation of the right to respect for the applicants' homes (violations of Art. 8) due to continuous denial of access to their properties in South-East Turkey since 1994 on security grounds (violations of Art. 1 of Prot. No. 1) and lack of an effective remedy in respect thereof (violations of Art. 13).

IM The ECtHR considered that the ability of the applicants to return to their village and the granting of compensation for the loss sustained by them during the period in which they were denied access to their homes and land would put the applicants as far as possible in a situation equivalent to the one in which they would have been if there had not been a breach of the ECHR. However, it appeared from the parties' submissions that the applicants were no longer willing to return to their homes and land. Thus, the ECtHR considered that the compensation for the pecuniary loss in question would be the most appropriate just satisfaction for the applicants and

awarded certain sums in this respect. Therefore, no further individual measure appears to be necessary.

GM Besides the possibilities of returning to the villages and the compensation available under the ordinary law, the special Compensation Law of 2004 (amended in 2005) provides for an alternative possibility of obtaining, directly from the administration, compensation for pecuniary damages caused as a result of terrorist activities and operations carried out in combating terrorism during the period from 1987 to 2005, with a possibility of judicial review of decisions taken in this respect. The law indicates that non-pecuniary damages can be obtained through an action before the administrative courts.

The law does not cover damages settled by the state by other means, damages compensated by the judgments of the ECtHR, damages resulting from social and economical reasons or damages sustained by those leaving their residences voluntarily (for reasons not related to concerns of security), damages caused by intentional acts and damages of those convicted of aiding and abetting terrorist organisations. The rules governing the functioning of "damage assessment and compensation commissions" and their working methods are contained in a special regulation, which also lays down the rules relating to methods of determining the amounts of compensation to be awarded.

The Turkish authorities indicated that as of February 2008 almost 300 000 claims had been received. Of these more than 121 000 claims had already been brought to an end: almost 80 000 claims had been declared admissible and the claimants had received compensation (for a total sum of some 225 million euros), and almost 42 000 claims had been rejected.

In addition hereto, the Turkish authorities submitted an outline of a project carried out by the Institute of Population Studies at the University of Hacettepe in Ankara. The project concerns issues related to the internally displaced persons (IDP) from south and south-east of Turkey who left their villages after the 1980s. The aim of the project is to determine certain points (regions where IDPs choose to settle, reasons for internal displacement, problems IDPs face at their new settlement etc.) which will assist the Turkish Government to improve the situation of IDPs in Turkey.

In the case of *İçyer v. Turkey* (application No. 18888/02, decision of 12 January 2006), the ECtHR noted it had already identified the structural problem with regard to internally displaced persons in the Doğan judgment and had indicated possible remedial measures. It concluded that the Turkish government had taken several measures, including enacting the Compensation Law, and could therefore be deemed to have fulfilled the duty to review the systemic situation at issue and to introduce an effective remedy. Accordingly, the ECtHR rejected the applicant's complaints on the ground of non-exhaustion of domestic remedies.

167. TUR / Fener Rum Erkek Lisesi Vakfi

Application No. 34478/97
Judgment of 09/01/2007, final on 09/04/2007, rectified on 22/05/2007

Last examination: 1043-5.3a

Violation of the right to peaceful enjoyment of the possessions of the applicant, a minority community foundation established under the Ottoman empire, on account of a domestic court decision, final in 1996, ordering the annulment of property titles lawfully acquired by the applicant foundation in 1952-1958 as the law stood at the time: foundations of minority groups governed by the Lausanne Treaty such as the applicant foundation, had as a result of a development of the case-law of the Court of Cassation in 1974 lost their right to acquire property and to own other property than those already owned by them in 1936 and detailed in a special declaration) (violation of Art 1 Prot. 1).

IM The ECtHR held that Turkey was to re-enter the property in the land register under the applicant's name within three months of the date on which the ECtHR's judgment became final. Failing such re-registration, the state was to pay the applicant 890 000 euros in respect pecuniary damage. As a result of the impugned decisions the property had reverted to the previous owners. The authorities chose this second option and the amounts awarded were paid.

GM The law on foundations was amended in 2002 to allow community foundations, including those of the minorities covered by the Lausanne Treaty, such as the applicant, to acquire and possess immovable property, with the permission of the Council of Ministers, regardless of whether they were entitled to such a right in their constitutive documents to the extent that the such properties are to be used for the foundation's activities in the religious, social, educational, sanitary or cultural fields. Upon request lodged within 6 months from the entry into force of the law earlier possessions can be inscribed on the property records to the extent the use conforms with the above-mentioned requirements.

In 2003 a provision was included in the 4th reform package adopted in the context of Turkey's EU negotiations indicating that community foundations, whether or not they have a statute, can henceforth acquire properties.

Information has been requested on any other measures taken or envisaged by the Turkish authorities to prevent similar violations. Information has in this context been requested regarding the publication and dissemination of the Court's judgment to the judicial authorities and relevant administrative bodies with necessary instructions.

168. **TUR / Loizidou (See also AR 2007, p. 185)**

Application No. 15318/89
Judgment of 18/12/1996 (final)

IR (99) 680, (2000) 105, (2001) 80, (2003) 190, (2003) 191
Last examination: 1043-4.3

Continuous denial of access by the applicant to her property in the northern part of Cyprus and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).

IM After the payment of just satisfaction on 2 December 2003 (see IR (2003) 190 and (2003) 191), the CM resumed consideration of the merits of the case, including the issue of individual measures in November 2005.
In April 2007, the CM took note of information provided by the Turkish authorities concerning the situation of the applicant's property, as well as concerning the examination *ex proprio motu* of her case by the "Immovable Property Commission". In June and October 2007, it noted with concern that the Turkish authorities had not yet, notwithstanding the exceptional nature of the issue of individual measures as the original judgment stemmed from 1996, made any concrete proposal to the applicant and urged them to adopt without further delay the measures necessary to remedy the consequences of the continuing violation of the applicant's property rights.
In December 2007 the CM welcomed the fact that an offer had been made to the applicant by the Turkish authorities in response to its request and took note with interest of the response by the applicant on the merits of this offer.
In February 2008, the Turkish authorities, in response to the applicant's comments, specified in particular that immediate restitution of the applicant's property could not be envisaged under the "Law of 2005 on the compensation, exchange or restitution of immovable property" as the properties had been allocated to refugees from the south and that restitution after "the solution of the Cyprus problem" could not be envisaged either under the 2005 law because the refugees had developed the properties so that its 1974 value had doubled. The applicant was thus instead offered monetary compensation as well as the possibility of an exchange of property. The applicant replied in turn that this law was not a remedy accepted by the ECtHR and insisted on restitution. Further clarifications on the offer made have been given by the Turkish authorities in December 2008 and these were noted with interest by the CM. The CM noted also that at a first reading of the new information showed that the offer made to the applicant was based on the 2005 law and recalled that all the relevant issues of the effectiveness of this mechanism had not been addressed in detail by the ECtHR so far.

GM The main information regarding the system set up under the 2005 law is presented in the case *Cyprus v. Turkey*.

169. TUR / Eugenia Michaelidou Developments Ltd. and Michael Tymvios

Application No. 16163/90
Judgment of 31/07/2003, final on 31/10/2003 and of 22/04/2008 – Friendly settlement
Last examination: 1043-4.3

Violation of the applicants' right to the peaceful enjoyment of certain properties located in the northern part of Cyprus, in so far as they have been denied access to and control, use and enjoyment of them since 1988, the date on which the applicant company was given the property concerned (in 1996 the second applicant became the exclusive owner) (violation of Art. 1 of Prot. No. 1).

IM A friendly settlement has been agreed between the parties and accepted by the Court in the context of its examination of the issues under Art. 41 of the ECHR. In this settlement the applicant has been awarded one million United States dollars for any pecuniary, non-pecuniary damage, costs and expenses. The agreement also provides for an exchange of property "in so far as the exchange decision may be executed within the control and power of the authorities of the "Turkish Republic of Northern Cyprus".

The Turkish authorities have indicated that the amount agreed has been transferred to the applicant's bank account within the time-limit foreseen by the friendly settlement. By letter of 3 September 2008 the Turkish authorities indicated that in August 2008, Mr Tymvios transferred to the "TRNC" 62 properties belonging to him.

The applicant has indicated that in August 2008, he forwarded all documents necessary for the exchange of property to the Director of the District Land Registry Office of Larnaka. The Land Registry Office replied to him that the issue had been submitted to the Attorney General of the Republic of Cyprus for legal advice before it is considered at their level. As of 11 September 2008 the applicant had not received any further information on this subject. The applicant complained of this situation to the CM

At its HR meeting in December 2008, the CM recalled the terms of the friendly settlement and noted that the respondent state had taken the measures within its power to comply with this friendly settlement and decided to close the examination of the individual measures in this case;

GM These are presented in the case of *Cyprus v. Turkey.*

170. TUR / Xenides Arestis (See also AR 2007, p.185)

Application No. 46347/99
Judgments of 22/12/2005, final on 22/03/2006 (merits) and of 07/12/2006, final on 23/05/2007 (just satisfaction), CM/Inf/DH (2007) 19
Last examination: 1043-4.3

Violation of the right to respect for applicant's home (violation of Art. 8) due to continuous denial of access to her property in the northern part of Cyprus since 1974 and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).

IM **Payment of just satisfaction**: the sums awarded in the judgment of 22 December 2005 (final on 22 March 2006) have been paid (for the question of whether VAT was included in the costs, see Memorandum CM/Inf/DH (2007) 19). However, the sums awarded by the ECtHR in its judgment of 7 December 2006 for pecuniary and non-pecuniary damage and costs have not bee paid. On 4 December 2008, the CM adopted IR (2008) 99, in which it deplored the fact that Turkey had not yet complied with its obligation to pay to the applicant these sums and insisted strongly that Turkey pay them, as well as the default interest due.

In this connection the CM was seized with the question whether the sum awarded by the ECtHR in respect of the pecuniary damage should be considered to include both the damage suffered on account of the loss of use of the property and the value of that property and or whether it only covered the loss of use of that property, without prejudice to the applicant's property rights. At its last HR meeting in December 2008, the CM recalled that the issue regarding what precisely was covered by the amount awarded in respect of pecuniary damage in the above-mentioned judgment was clarified by the European Court's judg-

ment in the case of *Demades v. Turkey* of 22 April 2008, which became final on 1 December 2008. The examination of the issue of individual measures will be resumed in the light of the response of the Turkish authorities to the above-mentioned IR and of information to be provided on the individual measures envisaged to remedy the consequences of the continuing violation of the applicant's property rights and right to respect for her home.

GM The main information available is presented in the context of the case of *Cyprus v. Turkey*.

O. Right to education

171. CZE / D.H. and Others

Application No. 57325/00
Judgment of 13/11/07, final on 13/11/2007

Last examination: 1035-4.2

Discrimination in the enjoyment of the right to education due to the applicants' assignment to special schools between 1996 and 1999 on account of their Roma origin (violation of Art. 14 in conjunction with Art. 2 of Prot. No. 1).

IM The applicants are today between 16-22 old and have therefore exceeded the age of primary education. The ECtHR awarded them just satisfaction in respect of non-pecuniary damage. No further individual measure appears necessary.

GM The legislation at the origin of this case has been repealed and the current legislation provides that children with special educational needs, including socially disadvantaged children, are to be educated in ordinary primary schools. The CM is assessing the detailed information already provided by the authorities and by a specialised NGO (European Roma Rights Centre). It has furthermore invited the Czech authorities to provide further information on the Czech School Act and its impact in practice as well as on other possible measures facilitating the integration of Roma children in the ordinary school system, having regard to Recommendation Rec (2000) 4 of the CM to member states on the education of Roma/Gypsy children in Europe.

172. NOR / Folgerø and Others (See also AR 2007, p. 186)

Application No. 15472/02
Judgment of 29/06/2007 – Grand Chamber

Last examination: 1043-4.2

Refusal by the domestic authorities to grant to the applicants' children full exemption from Christianity, Religion and Philosophy ("KRL") classes taught throughout the ten-year compulsory schooling, the syllabus for which suggests clear quantitative and qualitative preponderance of Christianity (violation of Art. 2, Prot. No. 1).

IM Assuming that the applicant's children are still in compulsory education, individual measures are linked to the adoption of general measures (see also AR 2007).

GM The government has undertaken to reform the legal framework already following a decision of the United Nations Human Rights Committee in 2004 (seized by different applicants) declaring the laws incompatible also with the International Covenant on Civil and Political rights of 1966.

In 2005, the 1998 Education Act was amended.This reform remedied some of the issues at the origin of the violation. Further amendments to the Education Act entered into force in August 2008, with effect from the school year 2008/2009 and a further amendment is expected early 2009, to respond to the remaining concerns of qualitative equality between Christianity and other religions and philosophies. The Curriculum has also been changed in consequence of the amendments as from the 2008/2009 school year. Although there will still be more objectives regarding knowledge of Christianity, due to its role in Norwegian and European culture, according to the government this will not raise any qualitative difference between different religions and philosophies of life. Finally a circular letter of August

2008 gave all schools information about the amendments and instructed them to take immediate measures to implement the new Curriculum for the subject *Religion, Philosophies of Life and Ethics*.

These measures are being assessed in the light also of the criticism expressed by an NGO who considers that the measures taken are insufficient in practice to prevent future violations.

P. Electoral rights

173. GRC / Lykourezos (examination in principle closed at the 1020th meeting in March 2008)

Application No. 33554/03
Judgment of 15/06/2006, final on 15/09/2006

Last examination: 1020-6.1

Forfeiture of the applicant's parliamentary seat won in 2000, due to a Special Supreme Court decision in 2003, retroactively applying a Constitutional amendment of 2001 which prohibited the exercise by parliamentarians of all professional activities (violation of Art. 3 of Prot. No. 1).

IM The applicant was awarded just satisfaction covering his pecuniary damage and costs and expenses. No further measure appears necessary.

GM The Greek authorities noted that the violation found in this case was an isolated one, which was unlikely to be repeated in the context of another parliamentary election after the 2001 amendment of the Constitution. The ECtHR's judgment has been translated, published and sent out to Parliament, the Ministry of Justice, the President of the Special Supreme Court and other judicial bodies. Finally, although the ECtHR reaffirmed states' large margin of appreciation in the domain of electoral systems, in December 2005 the government announced their intention of amending anew the Constitutional provision at the origin of the case.

174. ITA / Albanese and other similar cases (Final Resolution (2008) 45)

Application No. 77924/01
Judgment of 23/03/2006, final on 3/07/2006

Last examination: 1028-1.1

Unnecessary suspension of the applicants' electoral rights and limitations on their legal capacity in the course of bankruptcy proceedings and absence of a remedy to complain of those limits (violations of Art. 3 of Prot. No. 1, of Art. 8 and 13).

IM The restrictions on the applicants were lifted as a result of a legislative decree of 2006.

GM The legislative decree adopted in 2006 has *inter alia* repealed the provisions concerning the suspension of electoral rights and removed the restrictions on the legal capacity of persons subjected to bankruptcy proceedings (for further details see Interim Resolution (2007) 27 "Bankruptcy proceedings in Italy: progress achieved and problems remaining in the execution of the judgments of the ECtHR").

175. TUR / Kavakçı (examination in principle closed at the 1020th meeting in March 2008) TUR / Silay (examination in principle closed at the 1020th meeting in March 2008)

Application Nos. 71907/01 and 8691/02
Judgment of 05/04/07, final on 05/07/07

Judgment of 05/04/07, final on 05/07/07
Last examination: 1020-6.1

Temporary restrictions on the applicants' political rights following the dissolution of their party the Fazilet by the Constitutional Court, in 2001 (the party was considered to have become a center of anti secular activities); the restrictions were imposed on the basis of broad constitutional provisions without any assessment of the real need for them (violation of Art. 3 Prot. No. 1).

IM The political restrictions imposed on the applicants expired in 2006. Under these circumstances, no individual measure appears necessary in these cases.

GM In 2001, the provision of the Turkish Constitution (Article 69) which was criticised in these cases, was amended and now specifies the circumstances under which actions or statements of members of a political party may be attributed to the party.
Furthermore, less stringent sanctions are now provided than closure of a party, a measure which would automatically lead to political restrictions imposed on its members whose actions and/or statements had been attributed to that party. Under these circumstances, no other general measure appears necessary.

Q. Freedom of movement

176. **BGR / Riener**

Application No. 46343/99 *Last examination: 1043-4.2*
Judgment of 23/05/2006, final on 23/08/2006

Violation of the applicant's freedom of movement due to a lengthy and disproportionate prohibition to leave Bulgaria between 1995 and 2004 for non-payment of tax debt (violation of Art. 2 of Prot. No. 4) and lack of an effective remedy in this respect (violation of Art. 13).

IM The travel ban imposed on the applicant was lifted in 2004 following the expiry of the prescription period of her debt. The ECtHR awarded her just satisfaction in respect of the non-pecuniary damage. The applicant's request for compensation of an alleged pecuniary damage was rejected as it was not supported by convincing evidence. In these circumstances, no further individual measure appears to be necessary.

GM The provisions of the Laws on Foreigners and on Passports, challenged in this judgment, were replaced in 1998 and 1999 respectively, by those of the Aliens Law and the Law on Bulgarian Identity Documents. However, these modifications do not appear to have remedied the deficiencies found in the ECtHR's judgment, nor to contain any more safeguards against arbitrariness than those in force at the material time. In addition, it should be noted that the ECtHR referred in its judgment to different solutions concerning these issues adopted by several other member states and indicated that, regardless of the approach chosen, the principle of proportionality must apply, in law and in practice. In response to this situation an action plan has been presented by the authorities envisaging the drafting of legislative proposals in line with the requirements of the ECHR. Further information is awaited.

In the meantime, the ECtHR's judgment was published and sent by the Minister of Justice to the Supreme Administrative Court, the Sofia City Court, the Ministry of Interior and the Ministry of Finance, together with a letter emphasising the conclusions of the ECtHR.

177. **HUN / Földes and Földesné Hajlik (see also AR 2007, p. 188) (examination in principle closed at the 1035th meeting in September 2008)**

Application No. 41463/02 *Last examination: 1035–6.1*
Judgment of 31/10/2006, final on 26/03/2007

Disproportionate restriction to the applicant's freedom of movement due to the withdrawal of his passport, since 1994, on account of pending criminal proceedings against him, without any regular intermediate reassessment of the need to maintain the restriction (violation of Art. 2§2, Prot. No. 4).

IM The proceedings against the applicant ended in 2006 and the travel ban imposed on his passport has been repealed. Furthermore, the ECtHR awarded him just satisfaction in respect of non-pecuniary damage.

GM The ground upon which the applicant's travel abroad had been restricted was repealed in

2002. Furthermore, the ECtHR's judgment has been sent out to regional courts and the department in charge of regulating and supervising withdrawal of passports within the Ministry of Justice and Law Enforcement has been informed.

178. **ROM / Sissanis**

Application No. 23468/02
Judgment of 25/01/07, final on 25/04/2007

Last examination: 1035-4.2

Impossibility to leave the country as a result of an entry arbitrarily made in the passport in 1998 in the context of certain criminal proceedings engaged against him, the applicant was prevented until 2004 from leaving the country without the restriction being "provided for by law" (violation of Art. 2§2 Prot. No. 4).

IM On 10 June 2004 the stamp in question was removed from the applicant's passport. In addition, the ECtHR rejected the claims for pecuniary damages as no causal link with the violation was established and awarded just satisfaction only in respect of non-pecuniary damage. No other measures seem to be necessary.

GM The law of 1969, on the basis of which the restriction had been initially imposed, did not provide adequate safeguards against arbitrary interferences. This law was abrogated in 2001 and new provisions were adopted in 2003.

Clarification has been sought in respect of the current rules on preventive measures forbidding an individual to leave the country and, in particular, on which authorities are empowered to impose such measures, the conditions in which they may be imposed and the safeguards against possible abuses.
The ECtHR judgment has been published and sent to the Superior Council of Magistracy with a view to bringing it to the attention of all the domestic courts and prosecutor offices as well as to the Ministry of Internal Affairs and Administrative Reform to inform its subordinated authorities.

R. Discrimination

179. **AUT / Zeman (See also AR 2007, p. 189)**

Application No. 23960/02
Judgment of 29/06/2006, final on 29/09/2006 and of 10/01/2008 (just satisfaction) – Friendly settlement

Last examination: 1035-4.2

Sexual discrimination under the Amended Pension and Pension Allowance Act, entitling widowers to 40% of the pension their deceased wife had acquired before January 1995 while widows would be entitled to 60% of the pension of their deceased husband, without this distinction being objectively justified (violation of Art. 14 in conjunction with Art. 1, Prot. No. 1).

IM In its judgment of 10 January 2008 on just satisfaction, the ECtHR noted that a friendly settlement had been reached between the applicant and the competent authorities covering all the applicant's claims in respect of his widower's pension. No further individual measure seems necessary.

GM The judgment has been published and widely disseminated (see AR 2007). Information is still awaited on further legislative or other measures envisaged or taken to prevent new, similar violations and ensuring an equal treatment of survivor's pension rights acquired prior to 1995.

180. LIT / Sidabras and Džiautas and other similar cases

Application No. 55480/00+
Judgment of 27/07/2004, final on 27/10/2004

Last examination: 1035-4.2

Imposition in 1999, as a result of new legislation adopted in 1998, of discriminatory employment restrictions, including in the private sector (*inter alia* as lawyers or notaries, as employees of banks and other credit institutions, in security companies, in other companies providing detective services, in communications systems, or in the educational system as teachers, educators or heads of institutions), for a period of 10 years on former employees of the KGB (violation of Art. 14 taken in conjunction with Art. 8).

IM The ECtHR awarded the applicants just satisfaction in respect of pecuniary and non-pecuniary damages.
While one of the applicants (Mr Sidabras) remains unemployed and another died, two applicants are now working. In particular, Mr Džiautas is working as an assistant attorney at law, as the Lithuanian Bar Association applied the ECtHR's case-law directly even before the law imposing the ban was amended. Proceedings are still pending before the national courts in two cases, where the applicants have brought civil actions for damages, and in the case of *Rainys*, where the proceedings have been reopened on the basis of the judgment of the ECtHR. The CM has requested clarifications as to the applicants' situation and the current state of the proceedings still pending.

GM A draft law amending the Act of 1998, at the origin of the violations, was adopted by the Parliament in 2007 but was then vetoed by the President on the ground that it contained a new category of persons to which employments restriction should apply. In the meantime, however, a number of specific laws have been amended to lift the employment restrictions at issue, such the Law on Advocacy, the Law on the Notaries' Offices and the Law on Bailiffs. The CM is awaiting information on the progress of the revised draft law before Parliament.

The judgments have been translated, published and sent out to all courts, the State Security Department and the Genocide and Resistance Research Centre of Lithuania.

181. TUR / Ünal Tekeli

Application No. 29865/96
Judgment of 16/11/2004, final on 16/02/2005

Last examination: 1043-5.1

Discrimination based on gender, on grounds of the impossibility for women, under Turkish law, to have only their maiden name registered after marriage (violation of Art. 14 taken in conjunction with Art. 8).

IM Following the ECtHR judgment, the Ministry of the Interior issued the applicant with an identity card under her maiden name.

GM The ECtHR judgment was published and has received wide public attention in Turkey.
The authorities pointed out that the issuing to the applicant of an identity card bearing her maiden name only constituted a good example of the direct effect given by the executive authorities to the ECHR and to the case-law of the ECtHR, notwithstanding the explicit obligation in the Civil Code for married women to bear their husband's name, alone or in combination with their maiden name.

The Ministry of Justice is nonetheless preparing a draft law aimed at amending the Civil Code, so as to prevent new similar violations, in the light also of CM Resolution (78) 37 on the equality of spouses in civil law, of Recommendation R (85) 2 on legal protection against sex discrimination and of Turkey's obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women, which was ratified by Turkey in 1985 and became directly applicable in 2004, following a constitutional amendment.

The CM has requested information on the progress made in the adoption of the new law and on the time-frame expected for its adoption.

S. Co-operation with the ECtHR and respect of right to individual petition

182. **LVA / Kornakovs**

Application No. 61005/00 *Last examination: 1043-5.3b*
Judgment of 15/06/2006, final on 15/09/2006

Breach of the applicant's right to individual petition to the ECtHR in 2000 due to the interception of a letter he had addressed to the ECtHR and the imposition of a punishment for contacting it while he was detained on remand (violation of Art. 34). Other violations, mainly related to the detention on remand: automatic extension, without a legal basis, of the applicant's detention on remand between 11 March 1998 and 26 November 1998 (violation of Art. 5§1); excessive length of the detention on remand (violation of Art. 5§3); excessive length of the ensuing criminal proceedings (violation of Art. 6§1); unnecessary restrictions to contacts between the detained applicant and his family and illegal censorship of his correspondence (violations of Art. 8).

IM The criminal proceedings against the applicant have ended; he has served his sentence and was released in 2004. The ECtHR awarded him just satisfaction in respect of the non-pecuniary damage sustained. No further individual measure seems necessary.

GM **Breach of the applicant's right to individual application**: the CM has requested the publication and dissemination of the ECtHR judgment, with a cover letter, in particular to the prison authorities.

Most of the other violations found in this case are similar to those found in the case of *Lavents* of 2003 (section 6.1 at the 966th meeting), which has led to the adoption of a number of measures.

As regards the **excessive length of criminal proceedings** there does not seem to be a systemic problem of excessive length of criminal proceedings in Latvia.

183. **RUS / Poleshchuk (Final Resolution (2008) 19, see also AR 2007, p. 192)**

Application No. 60776/00 *Last examination: 1020-1.1*
Judgment of 7/10/2004, final on 7/01/2005

Interference with the applicant's right of individual petition due to the refusal by penitentiary authorities to forward his letters to the ECtHR in 1999 (violation of Art. 34).

IM From 2000 onwards, the applicant's correspondence with the ECtHR has not given cause for concern. As to the previous refusals of the penitentiary authorities, an investigation carried out in 2002 found that the only reason for not forwarding the applicant's letters was that the applicant did not have money to pay for the stamps. The lack of money was due to the applicant's refusal to accept a working position available at the material time. In this respect, the Russian authorities specified that the applicable Rules provide that letters of detainees in pre-trial detention are to be sent at the expense of the pre-trial detention centre concerned. However, as far as the correspondence of the persons serving their sentences is concerned, the Code on Enforcement of Sentences provides that such correspondence has to be sent at their expense because these persons are under an obligation to have a professional activity.

GM The violation was due to the fact that there was no procedure at that time for dispatching letters to the ECtHR. Since then, the unhindered right of detainees to send applications to the ECtHR has been provided for by both law and regulation.

Between 2001 and 2005, circular letters were issued prohibiting the hindering of the dispatch of applications sent by detainees to the ECtHR, and officials were designated for monitoring the unhindered dispatch of applications to the ECtHR from penitentiary institutions. Regional prosecutors were also invited to report violations of this right to the General Prosecutor. These instructions implemented the general principles provided for in existing texts allowing detainees to send

applications to the ECtHR. The judgment was also translated and published in the Bulletin of the penitentiary system (see also judgment of 7 June 2007, case of *Nurmagomedov v. Russian Federation*, where the ECtHR welcomed the legislative amendments and administrative regulations adopted).

T. Interstate case(s)

184. TUR / Cyprus (See also AR 2007, p. 194)

Application No. 25781/94
Judgment of 10/05/2001 – Grand Chamber

Interim Resolutions (2005) 44 and (2007) 25

Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning: Greek Cypriot missing persons and their relatives (violation of Art. 2, 5, 3); Home and property of displaced persons (violation of Art. 8, 1 Prot. No. 1, 13); Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Art. 9, 10, 1 Prot. No. 1, 2 Prot. No. 1, 3, 8, 13); Rights of Turkish Cypriots living in the northern part of Cyprus (violation of Art. 6).

Following the measures adopted by the authorities of the respondent state with a view to complying with the present judgment, the CM decided to close the examination of the issues relating to (for further details see IR (2005) 44 and (2007) 25):

- the rights of Turkish Cypriots living in the northern part of Cyprus, i.e. the possibility of civilians to be tried by military courts
- the living conditions of the Greek Cypriots in the northern part of Cyprus as far as secondary education, censorship of schoolbooks and freedom of religion are concerned

Missing persons: the Committee on Missing Persons in Cyprus (CMP) has met regularly since 2004 and the Turkish delegation keeps the CM informed of the main work carried out in this context. The Exhumation and Identification Programme, launched in 2006, has led, until 1 December 2008, to the exhumation of 466 missing persons and the return of the remains of 110 persons to their relatives. The exhumation activities are being pursued. A special information unit for families started to function on 12 November 2004 within the Office of the Turkish Cypriot Member of the CMP.

The CM has reiterated its evident interest for the work of the CMP; and is awaiting further information on the developments of the Exhumation and Identification Programme.

The CM has also reaffirmed the need for the Turkish authorities to take additional measures to ensure that the effective investigations required by the judgment are carried out, and urged them to provide without further delay information on the concrete means envisaged to achieve this result.

Home and property of displaced persons:

a. *With regard to measures to put an end to the continuing violations*: Following the judgment of 22 December 2005 in the *Xenides-Arestis* case, an "Immovable Property Commission" (IPC) was set up under "Law No. 67/2005 on the compensation, exchange or restitution of immovable property". The questions linked with the interpretation of this judgment and that on Art. 41 in the same case of have been presented in the 2007 report in the context of the *Xenides-Arestis* case. In light of this situation the CM has invited the Turkish authorities regularly to provide all additional information on the functioning of the new compensation and restitution mechanism set up, as well as on the concrete results achieved in this context.

According to the latest information available end 2008, the total number of requests addressed to the IPC had reached 372. In 326 cases, the applicants had asked for monetary compensation to the value of their property, and in 14 cases an exchange of property. The IPC has concluded 50 friendly settlements (in three cases they stipulate the restitution of the property at issue, in one case restitution "once the Cyprus problem has been solved", in 44 cases compensation in the amount of the current value of the property and in 2 cases the exchange of property). The deadline for seizing the IPC has also been extended until 22 December 2009. The CM has noted with interest the additional information provided by the Turkish authorities at its last meeting on the func-

tioning of the "Immovable Property Commission" and has invited them to provide this information in writing and to continue to keep the Committee informed.

b. *With regard to the need for protective measures*: In February 2006 (955th meeting) the Cypriot authorities expressed their concern at the fact that displaced persons' property was being affected either by transfers of title or by construction work.

Whilst underlining the necessity not to interfere or in any way prejudge the assessment the ECtHR would make in the judicial process before it in the *Xenides-Arestis* case, the CM has regularly at subsequent meetings asked for detailed and concrete information on changes and transfers of properties at issue in the judgment and on the measures taken or envisaged regarding this situation (see also the IR (2007) 25 adopted in April 2007). The CM has, however, observed that the information provided by the Turkish authorities still does not answer its questions.

In March 2008 (1020th meeting), the CM took note of outstanding questions and invited the Turkish authorities to reply. The questions concern in particular:

- the different types of title deeds existing in the northern part of Cyprus;
- the real estate projects or the transfers of property as regards property "belonging to the state";
- the conditions for attribution of new deeds to displaced Turkish-Cypriot refugees;
- the procedure for granting of planning permissions concerning property concerned by the "Law on Restitution and Compensation".

The purpose of these questions was to allow the identification of concrete measures aimed at ensuring that awaiting the evaluation of the new restitution and compensation mechanism, the possibilities offered by this mechanism, and in particular the possibility of restitution, were preserved.

The CM has deplored that no information had still been provided on the above questions and has reiterated the insistent invitation to the Turkish authorities to reply without further delay.

c. *With regard to the demolition of several houses in the Karpas region belonging to Greek Cypriots*: The Turkish authorities indicated that these demolitions were aimed at ensuring public security as the houses were abandoned and represented a danger for the population and provided indications as to the procedure used before such demolitions were authorised. The CM has taken note of these explanations and has invited the Turkish authorities to provide the information in writing in order to assess this question.

d. *Specific questions concerning the property rights of the enclaved Greek Cypriots in the northern part of Cyprus*: according to a decision of February 2008, Greek Cypriots who reside in Karpas would continue to enjoy their property after their departure from the "TRNC" as long as they continue to maintain minimal contacts with their property or/and ties with the Karpas society (a simple bank account, for instance). Those not maintaining such contacts can transfer their property to persons of their choice, within a time limit of one year from their departure. They can furthermore apply to the "Immovable Property Commission" (established in 2005) in order to obtain an evaluation of their property, with a view to receiving compensation or an exchange of property.

e. *As regards the inheritance rights of persons living in the southern part of Cyprus in respect of property of deceased Greek Cypriots in the northern part of Cyprus,* the Turkish authorities indicated that the heirs are no longer under the obligation to start the procedure for the administration of the estate within a time limit of one year from the death in order to claim their rights. Once administration of the estate has been completed, the heirs can enjoy their property on the same terms as those who are resident in Karpas and continue to maintain minimal contact with their properties and/or links with the Karpas community.

The CM noted with satisfaction that, according to the Turkish authorities' explanations, restrictions on the property rights of Greek Cypriots definitively leaving the northern part of Cyprus had been limited, as had those affecting inheritance rights of those living in the southern part in respect of property in the northern part belonging to deceased Greek Cypriots.

The CM is awaiting additional information on the regulation of the property rights mentioned above, as well as on the practice in the implementation of this regulation.

State-by-state index of cases

Directorate General of Human Rights
and Legal Affairs
Council of Europe
F-67075 Strasbourg Cedex