

**SUPERVISION OF THE EXECUTION  
OF JUDGMENTS AND DECISIONS**  
OF THE EUROPEAN COURT  
OF HUMAN RIGHTS

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of the Committee of Ministers  
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# I. Introduction by the Chairs of the Human Rights meetings

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2015 has seen a confirmation of recent positive trends. The results suggest a durable upturn in the wake of the Interlaken process and the introduction of new working methods for the Committee of Ministers in 2011.

It is clear, however, that the continuation of these positive results rests on continued resolute action by the respondent States. The impetus for such action must be maintained and we thus strongly encourage all concerned to reinforce their efforts.

The central elements of effective execution are political will and efficient cooperation between all the different actors concerned both at national and European levels. This shared responsibility was at the heart of the High Level Conference organised in Brussels by the Belgian Chairmanship of the Committee of Ministers between 26 and 27 March 2015. Entitled “The implementation of the European Convention on Human Rights: Our shared responsibility”, its conclusions were endorsed by the Committee of Ministers at its May 2015 session.

The Conference came at a good time in view of the on-going reflections on the long term future of the Convention system, the many urgent challenges which confront human rights protection in Europe and the execution of the European Court of Human Rights’ judgments. It is in this context a source of great satisfaction that all the member States reaffirmed their deep and binding commitment to the Convention system and acknowledged its extraordinary contribution to the protection of human rights in Europe and its central role in maintaining democratic stability across the continent. This commitment has also received frequent expression in the course of the Committee of Ministers’ supervision of execution, as evidenced notably by the important efforts engaged to bring to a successful conclusion the execution processes in a record number of cases, many of which have related to long standing structural problems.

As to the future, the Brussels Action Plan provides an important roadmap for the development of responses to deal with the present challenges. Further inspiration could be found in the discussions on the conclusions of the Steering Committee for Human Rights (CDDH) on the long term future of the European Court of Human Rights, which the Committee of Ministers received at the end of 2015 and on the comments thereto submitted by the Court.

A common denominator emerging from all the reflections in the different fora is the essential role which the Committee of Ministers must continue to play through its supervision of execution. This puts a great responsibility on the Chairs of the Committee’s Human Rights meetings, both in ensuring that the Committee’s efforts address the really deserving cases and in ensuring that its interventions are timely and efficiently supporting execution.

One of the main concepts repeatedly stressed in the Brussels Declaration, and which has guided us throughout our Chairmanships to live up to these responsibilities, is dialogue. Efficient dialogue between the respondent States and the Committee is vital to ensure constructive support for the national execution processes wherever needed. But, as stressed in the Declaration, dialogue is also essential in all relations, and at all levels; between the various relevant national authorities and, in some cases, between the different concerned States. It is noteworthy that the important role which may be played by the Secretary General in this connection received special attention in several Committee of Ministers decisions in 2015.

When we look back it is clear that much has been achieved in 2015 to guarantee the effectiveness of the Convention system. The Committee's efforts to make its supervision of execution more efficient and transparent have been important contributions in this process.

The challenges the system is facing, in particular in the small group of complex and sensitive cases where execution is linked to important political and/or technical concerns, will continue to put to the test the Committee's capacity to devise constructive approaches. The commitments made in Brussels, together with our own positive experiences and the spirit of constructive dialogue which prevails, induce us to express the trust that it will be able to meet these challenges successfully.

Bosnia and Herzegovina  
Mr Almir Šahović

Bulgaria  
Mrs Katya Todorova

Estonia  
Mrs Katrin Kivi



## II. Remarks by the Director General of the Directorate General of Human Rights and Rule of Law

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### Introduction

2015 was in particular marked by the High-level conference organised by the Belgian Chairmanship of the Committee of Ministers in Brussels. This conference provided a new opportunity for our States to reaffirm their deep and abiding commitment to the European Convention on Human Rights (ECHR), to acknowledge the importance of the ECHR system in assuring democratic stability in Europe, to reiterate the subsidiary nature of the supervisory mechanism and to underline the binding force of the judgments of the Court, as enshrined in Article 46 of the Convention.

Whilst noting the progress achieved with regard to the execution of judgments, the States emphasised again the need for an effective and prompt execution of judgments, thus strengthening the credibility of the Court and the Convention system in general. In the light of the positive results achieved, they also welcomed the new working methods adopted by the Committee of Ministers in 2011. In this respect, it is encouraging to note that, despite the years of economic crisis, several countries succeeded in completing difficult reforms aimed at overcoming various complex problems, such as the excessive length of proceedings or prison overcrowding leading to poor conditions of detention.

### Positive developments confirmed

The 2015 statistics confirm the positive trends which have emerged over recent years. The statistics<sup>1</sup> thus again show a record number of cases closed, especially old complex cases, dealt with under enhanced supervision track. A promising decrease in the number of pending cases adds to this picture. Moreover, it is clear that the new working methods allowed a better management of new cases, as demonstrated by the high percentage of rapid closures.

The concrete results achieved at national level indicate that the domestic execution processes have become more efficient. This trend justifies the current examination by the Steering Committee for Human Rights (CDDH), in the framework of implementation of the Brussels Action Plan, of a possible update of Recommendation (2008)<sup>2</sup>.

1. Remark: this year the presentation of the statistics focus more on reference cases in order to facilitate the assessment of the Committee of Ministers' actions and that of the Department for the execution of the European Court's judgments. Indeed, the pilot judgments (that stem the flow of repetitive cases) and the unilateral declarations in a great number of cases (almost exclusively repetitive) are no longer indicative of the scale of the structural problems revealed by the Court.
2. Recommendation (2008) 2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights

## Two major challenges

Despite the undeniable progress achieved, the statistics still show that major challenges continue to exist. A first challenge is the continued increase of cases pending for more than 5 years. Whilst these cases accounted for some 20% of the total at the end of 2011, by the end 2015 they accounted for around 55%. Since this increase affects primarily cases under standard supervision, the Brussels Conference invited the Member States and the Department for the execution of judgments of the European Court to take stock of the situation in order to assess which cases could be closed. This work has begun, and already bears fruit.

A second challenge is the management of sensitive and complex problems. The Committee of Ministers is increasingly confronted with difficulties related to “pockets of resistance” linked to deeply-rooted prejudices of a social nature (for example toward Roma or certain minorities) or related to political considerations, national security or even to the situations in areas/regions of “frozen conflict”. These cases evidently require considerable efforts from the States concerned, from the Committee of Ministers and the Department for the execution of the European Court’s judgments.

## Further strengthening the dynamics

The globally very encouraging results, highlighted by the 2015 report, are based on a series of dynamics which contribute to overcoming problems encountered. I outlined the major trends in the 2014 annual report. Besides the direct influence of discussions between the States in the Committee of Ministers and the effect of subsequent decisions and resolutions, there is notably the interaction with the Court and national authorities, largely facilitated by the setting up of effective domestic remedies, the rapid support capacity of the Department for the execution of judgments, the coordination with cooperation programmes<sup>3</sup>, and the action of the Parliamentary Assembly of the Council of Europe and national parliaments.

These dynamics are based, on one hand on the full respect for Convention requirements, *conditio sine qua non* for the credibility of the system. On the other hand, these dynamics tend to bring all the necessary support to the actors involved, either through adapted technical assistance or constructive dialogue at the highest possible level, where appropriate. At the initiative of the Secretary General, significant efforts were made in order to strengthen the dynamic with cooperation programmes. Likewise, the Committee of Ministers has, on different occasions, invited the States to take full advantage of these programmes, to stimulate the national execution process.

The year 2015 highlighted the crucial role of dialogue, a role on which I shall focus hereafter.

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3. The HELP programme plays, in this respect, an important role in improving the training of judges, prosecutors and other law professionals concerned by the Convention; it is encouraging that the HELP programme is being increasingly solicited.

One of the fundamental conditions to further advance the execution of controversial or politically sensitive judgments is undoubtedly establishing dialogue with key interlocutors. This dialogue should in particular aim at creating a common understanding of the execution requirements and the consequences that should flow from them. The Committee of Ministers has devoted a lot of time and energy to this dialogue during the year under review. It has welcomed on several occasions the presence of Ministers and Vice-ministers to its work, to discuss the progress of the execution process in cases concerning their respective countries.

Outside the Committee of Ministers, high-level dialogues may also prove very useful insofar as they can transcend the strict execution framework in order to address other issues linked to the execution process, thus contributing and facilitating the latter.

This is the case, for example, in the context of the drawing-up of the Council of Europe's action plans for member States (notably Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, the Republic of Moldova and Ukraine). Problems related to execution are indeed here placed in a global context of reforms, which often mutually supplement and support each other. The same applies, though in a less visible way, when implementing different cooperation programmes of a more specific nature. In this context, it is also worth underlining the synergies which develop through a constructive dialogue with other international actors and which are able to support complex or sensitive execution processes.

Many other bodies of the Council of Europe are participating in these dialogues, each one with its specificity and expertise, for instance, the Venice Commission, the CPT, the CEPEJ, the CCJE and CCPE, the Commissioner for Human Rights, the Parliamentary Assembly, and different expert committees. The Brussels Declaration provides for a series of recommendations and invitations in this regard. That said, this dialogue, which is essential for execution, can and must take place also at national level, between the various authorities involved.

It can also be noted that on a number of occasions in 2015, the Committee of Ministers has formally invited the Secretary General to intervene personally, in particular to convey certain messages or raise execution issues during his contacts with the authorities of the respondent State. In the same vein, the Committee of Ministers has invited all States Parties to raise questions related to execution in their contacts with the States concerned.

These dialogues are particularly useful in order to prepare a favourable ground for execution and for the identification of possible solutions. Thus, even though the execution process in some sensitive and complex cases has not progressed significantly in 2015, it is encouraging to note that the dialogue is still open in these cases. Indeed, it is of utmost importance to maintain the dialogue and to avoid deadlocks based on provisions of domestic laws or even on the constitution. Experience has shown how, through interpretation and dialogue, constitutional courts have successfully overcome conflicts and eventually found solutions, reconciling national interests and the Convention requirements.

The Annual Report demonstrates that notable progress has been achieved in 2015. This progress highlights the effectiveness of the control system of the Convention. The Brussels Conference emphasised a crucial element at the basis of the strengthening of its effectiveness: the shared responsibility of all actors of the system, both at national and European levels. We must all commit to continuing our efforts in that direction.

## III. Improving the execution process: a permanent reform work

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### A. Guaranteeing long-term effectiveness: main trends

1. The main developments concerning the execution process of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), are summarized in the Annual Reports 2007-2009.
2. The pressure on the Convention system due to the success of the right to individual petition and the enlargement of the Council of Europe led rapidly to the necessity of 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 Convention. The main avenues followed since then consisted in improving:
  - ▶ the domestic implementation of the Convention in general;
  - ▶ the efficiency of the procedures before the European Court of Human Rights (the Court);
  - ▶ the execution of the Court's judgments and its supervision by the Committee of Ministers (the CM).
3. The importance of these three lines of action has been regularly emphasised at ministerial meetings and also at the Council of Europe's 3rd Summit in Warsaw in 2005 and in the ensuing Action Plan. A big part of the implementing work was entrusted to the Steering Committee for Human Rights (CDDH).

Since 2000 the CDDH has presented a number of different proposals. These have in particular led the Committee of Ministers to:

- ▶ adopt seven Recommendations to states on various measures to improve the national implementation of the Convention<sup>4</sup>, including in the context of the execution of judgments of the Court;
- ▶ adopt Protocol No. 14<sup>5</sup>, both improving the procedures before the Court and providing the Committee of Ministers with certain new powers for the supervision of execution (in particular the possibility to lodge with the Court requests for the interpretation of judgments and to bring infringement proceedings in case of refusal to abide by a judgment) ;
- ▶ adopt new Rules for the supervision of the execution of judgments and of the terms of friendly settlements (adopted in 2000, with further important amendments in 2006) in parallel with the development of the Committee of Ministers' working methods<sup>6</sup>;

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4. – [Recommendation No. R\(2000\)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;
- [Recommendation Rec\(2002\)13](#) of the Committee of Ministers to member states 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](#) of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training;
  - [Recommendation Rec\(2004\)5](#) of the Committee of Ministers to member states 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](#) of the Committee of Ministers to member states on the improvement of domestic remedies.

The status of implementation of these five Recommendations has been evaluated by the CDDH. Civil society was invited to assist the governmental experts in this evaluation (see doc. [CDDH\(2006\)008 Add.1](#)). Subsequently, the Committee of Ministers has adopted special Recommendations on the improvement of the execution of judgments:

- [Recommendation CM/Rec\(2008\)2](#) of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights;
- [Recommendation CM/Rec\(2010\)3](#) of the Committee of Ministers to member states on effective remedies for excessive length of proceedings.

In addition to these Recommendations to member states, the Committee of Ministers adopted a number of Resolutions addressed to the Court:

- [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,
- as well as in 2013 the following non-binding instruments intended to assist national implementation of the Convention:
- a [Guide](#) to good practice in respect of domestic remedies;
  - a [Toolkit](#) to inform public officials about the State's obligations under the European Convention on Human Rights.

5. This Protocol, now ratified by all contracting parties to the Convention, entered into force on 1st June 2010. A general overview of major consequences of the entry into force of the Protocol No. 14 is presented in the information document [DGHL-Exec/Inf\(2010\)1](#).
6. Relevant texts are published on the web site of the Department for the execution of judgments of the Court. Further details with respect to the developments of the Rules and working methods are found in the Appendix 7 and also in previous Annual reports.

- ▶ reinforce subsidiarity by inviting states in 2009 to submit (at the latest six months after a certain judgment has become final) action plans and/or action reports (covering both individual and general measures), today regularly required in the context of the new supervision modalities agreed in 2011.

5. In addition, the Parliamentary Assembly started in 2000 to follow the implementation of judgments on a more regular basis, notably by introducing a system of regular reports, partly following country visits in order to assess progress concerning open issues in important cases. The reports have notably led to Recommendations and other texts for the attention of the Committee of Ministers, the Court and national authorities.

## **B. The Interlaken - Izmir - Brighton – Brussels process**

6. Shortly after the adoption of Protocol No. 14, the *Warsaw Summit* (2005) invited a Group of Wise Persons to report to the Committee of Ministers on the long-term effectiveness of the Convention control mechanism. The follow-up to this report, presented in November 2006, was impaired by the lasting non-entry into force of Protocol No. 14. Fresh impetus came as a result of the High Level Conference on the future of the Court, organised by the Swiss Chairmanship of the Committee of Ministers in *Interlaken* in February 2010. On the eve of the conference, the ratification of Protocol No. 14 by all member states was complete, condition for its entry into force. The declaration and Action Plan adopted at the Interlaken Conference generated an important dynamic, supported and developed by the *Izmir* Conference organised in 2011 by the Turkish Chairmanship of the CM, and the *Brighton* Conference, organised in 2012 by the United Kingdom Chairmanship of the CM. The results of these conferences were subsequently endorsed by the CM at its ministerial sessions.

7. The national dimension of this development was underlined by special conferences and other activities organised by several Chairs of the CM, notably by the Chairmanships of Ukraine (Kyiv Conference, 2011), Albania (Tirana Conference, 2012) and Azerbaijan (Baku Conference for supreme courts of the member states organised in 2014).

8. On a practical level, the new reform process has dealt with a wide range of issues.

9. Among the first results was the Ministers' Deputies' adoption of new working methods as of 1 January 2011, based on a twin-track system for better prioritisation of supervision and emphasising judgments revealing important structural problems, including pilot judgments and judgments requiring urgent individual measures. Further details about the new modalities are given in Appendix 8.<sup>7</sup>

10. In parallel, the CDDH started reflections on possible further measures without changing the Convention (final report of December 2010) as well as measures requiring amendments to the Convention (final report of February 2012). Related proposals concerned the supervision of the respect of unilateral declarations, the means of

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7. The documents at the basis of the reform are available on the Committee of Ministers web site and on the web site of the Department for the Execution of Judgments of the Court (see notably CM/Inf/DH(2010)37 and CM/Inf/DH(2010)45 final).

filtering applications, the Court's handling of repetitive applications, the introduction of fees for applicants and other forms regulating access to the Court, changes to the admissibility criteria, and the Court's competence to render advisory opinions at domestic courts' requests. A separate report of June 2012 examined the possible introduction of a simplified procedure for amending certain provisions of the Convention.

11. Moreover, the CDDH was mandated to examine the measures taken by the member states *to implement the relevant parts of the Interlaken and Izmir declarations* (preparatory work carried out by working group GT-GDR-A). This examination gave rise to a series of Recommendations as regards, inter alia, awareness raising, effective remedies and the execution of the Court's judgments, the drawing of conclusions from judgments against other states and the applicants' information on the Convention and the Court's case-law. The Recommendations directly addressing the execution of the Court's judgments were reproduced in the 2012 Annual Report. A second mandate related to the effects of Protocol No. 14 and the implementation of the Interlaken and Izmir Declarations on the situation of the Court. Certain statistics regarding the impact of this Protocol on the CM are presented in the statistical part of the annual reports (notably the development of friendly settlements, cases dealt with by the new committees of three judges ("WECL" cases), pilot judgments and cases with indications under Article 46 of relevance for execution) - see Appendix 1 C.

12. Following the political *guidance* given at the Brighton Conference in April 2012, the reform work accelerated and the CDDH was mandated to prepare *two draft protocols* to the Convention (preparatory work carried out by working group GT-GDR-B). Both protocols were adopted by the CM in 2013. *Protocol No. 15* (ratified by 24 of the 47 Member states end of 2015) concerns the principle of subsidiarity and the states' margin of appreciation in implementing the Convention, certain admissibility criteria (reduction of the time limit for submitting applications from 6 to 4 months, rejection of applications if the applicant is not found to have suffered a "significant disadvantage", provided that the complaints had been duly considered by domestic courts) and certain aspects of the Court's functioning (age limits for judges, simplified relinquishment of jurisdiction in favour of the Grand Chamber). *Protocol No. 16* (ratified by six states by the end of 2015, of ten necessary for its entry into force) allows specified highest domestic courts and tribunals to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms enshrined in the Convention, raised in cases pending before them.

13. The Committee also gave mandate to the CDDH to examine a series of other questions, some of which related to the execution of judgments and the Committee of Ministers' supervision thereof<sup>8</sup>.

14. One questions related to the advisability and modalities of a *representative application procedure* before the Court in case of numerous complaints alleging the

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8. Further mandates to the CDDH related to the development of a toolkit for public officials on the State's obligations under the Convention and the preparation of a guide to good practices as regards effective remedies. The work carried out under these mandates did not, however, cover the obligations linked to execution or the question of remedies necessary to ensure execution - cf. CM Recommendation (2000)2 cited above (the work carried out by working group GT-GDR-D).



same violation of the ECHR against the same state (preparatory work carried out by the working group GT-GDR-C). The CDDH's concluded that, taking into account the Court's existing tools, there would be no significant added value to such a procedure in the current circumstances, although subsequent developments could render a re-examination of the question necessary.

15. Concerning possible means to resolve *large numbers of applications resulting from systemic problems* (preparatory work carried out by working group GT-GDR-D), the CDDH underlined the necessity of full, prompt and effective execution of judgments of the Court, friendly settlements or unilateral declarations and full co-operation of the respondent state with the CM. It also highlighted that a carefully designed, effective domestic remedy allows the 'repatriation' of applications pending before the Court and referred to recent experience that showed this response's powerful impact. The CDDH stressed however, as frequently done by the CM, that such 'repatriation' does not absolve the respondent state from resolving the underlying systemic problem.

16. The Committee also decided to examine the question of *whether more efficient measures are required vis-à-vis states that fail to implement judgments in a timely manner*. This work supplements the one previously undertaken relating to the problem of slowness and negligence in the execution<sup>9</sup>, including modalities to prevent such situations<sup>10</sup>.

17. The Committee of Ministers started its examination of this question in September 2012, whilst in parallel giving a mandate to the CDDH to examine the same question. The first results of the CM's examination were presented in December 2012, and those of its working group GT-REF.ECHR in April 2013 (see AR 2013). These results were communicated to the CDDH to assist its special working group (GT-GDR-E) set up to examine the issue, including through an exchange of views with representatives of civil society and independent experts. The ensuing CDDH report of November 2013 noted the excessively large and growing number of judgments pending before the CM, its resulting serious concern and the necessity of remedial action, comprising, inter alia, the more effective application of existing measures among the CM's new working methods and/or the introduction of genuinely new, more effective measures. Furthermore, the need to reinforce the staff and the information technology capacity of the Department for the execution of judgments of the Court could be considered.

18. Before continuing its own examination, the Committee of Ministers requested in February 2014 an opinion from the Court on the proposals contained in the CDDH report. The Court, in its opinion of May 2014, stressed the importance of adequate and timely execution and highlighted the continuing problem of repetitive cases, in particular with regard to a certain number of states. The Court also indicated that its approach to the pilot judgment procedure (allowing for a directive to the respondent state among the operative provisions of the judgment) has proceeded from the concern – clearly expressed in the Brighton Declaration – to safeguard the

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9. In the context of this work the Secretariat has also presented several memoranda on the issue see notably CM/Inf(2003)37rev6, CM/Inf/DH(2006)18, CDDH(2008)14 Addendum II.

10. See for example the CDDH proposals in document CDDH(2006)008. The CDDH has also subsequently presented additional proposals – see document CDDH(2008)014 relating notably to Action Plans and Action Reports.

effectiveness of the Convention proceedings, while respecting the competences and prerogatives of the different actors in the system. It recognised the interest of the overall Convention system that its two institutional pillars – the Court and the Committee of Ministers – act in a mutually reinforcing way. The Court concluded by noting that very few of the CDDH proposals appeared to find much support and that it was hard to see how they could significantly improve the current system – yet such improvement was undoubtedly needed. Reflection thus had to continue.

19. The efficiency of the execution was also among the themes discussed at the Oslo Conference organised, with the support of the Norwegian Government, between 7-8 April 2014 by the Norwegian Institute *PluriCourts* and the CDDH (and its working group GT-GDR-F), and, as part of its mandate from the CM to examine the “*Long-term future of the European Court of Human Rights*”. Several avenues for future development, both at the Council of Europe level and at national level (e.g. the creation of an independent national mechanism ensuring that governments draw full conclusion of the Court’s judgments) were explored. The conclusion, as drawn notably by the Director General of Human Rights and Rule of Law, was that further in-depth reflections were required.

20. In the pursuit of the reform efforts, the Belgian Chair of the Committee of Ministers organised on 26-27 March 2015 a high level conference entitled “The implementation of the Convention: Our shared responsibility” in Brussels on 26-27 March 2015. The Declaration adopted at the Brussels Conference and the accompanying action plan were endorsed by the Committee at its ministerial session in May 2015 and are presented in appendix 6.

21. Subsequently, in December 2015, the CDDH sent its final report on the long-term future of the European Court of Human Rights to the CM – relevant conclusions for the execution of judgments are presented in appendix 6 - which decided to send also this report to the Court to obtain its views.

22. In parallel, the Parliamentary Assembly of the Council of Europe has continued its regular reporting on the implementation of the Court’s judgments, partly based on country visits, resulting in recommendations to states, the Committee of Ministers and the Court. An eighth report was presented in September 2015<sup>11</sup> leading to a number of recommendations to the Committee of Ministers and the states<sup>12</sup>. The Parliamentary Assembly also increased its efforts to disseminate knowledge about the Convention requirements, notably in execution matters, among the legal advisers attached to competent parliamentary commissions and to encourage national parliaments to contribute to the execution of the Court’s judgments, by setting up, as already done in a number of states, special parliamentary mechanisms to supervise the timely progress of the execution. In this context, an overview of existing mechanisms was published in October 2014 and revised in 2015<sup>13</sup>.

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11. Doc. 13864 of 9/9/2015

12. Recommendation 2079 (2015) and Resolution 2075 (2015)

13. PPSD(2014)22 rev 8/9/2015.

## C. Development of cooperation activities

### i. The targeted cooperation activities of the Department for the execution of judgments of the Court

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23. In accordance with its mandate<sup>14</sup>, the Department for the execution of judgments of the European Court of Human Rights advises and assists the Committee of Ministers in the supervision of the execution of judgments of the Court, and provides support to the member states in their efforts to achieve full, effective and prompt execution of the judgments. Since 2006, the Committee of Ministers provides special support to the Department for the development of the targeted co-operation activities, which comprise legal expertise, round tables, exchanges of experience between interested states and training programmes. Every year numerous such activities take place.

24. As regards the round tables organised, these aim at share experiences, including among national stakeholders and outside experts, notably from the CEPEJ and the CPT. Such events have thus been organised around themes such as: ways and means to resolve the problem of the excessive length of proceedings, problems linked with the nationalisation of properties under former communist regimes (notably in Romania and Albania), the development of viable strategies to improve detention conditions and effective remedies and different issues linked with excessive recourse to detention on remand. This kind of activities are also frequently organised to contribute to the solution of problems in a specific country such as the problem of execution of domestic court judgments in Ukraine and the right to freedom of expression in Turkey.

25. Certain round Tables aim in principle all Contracting Parties. In December 2011 a multilateral Round Table for all State Parties was thus held in Tirana to discuss the organisation of an efficient domestic capacity for rapid execution of the European Court's Judgments. In October 2014, a multilateral round table was organised in Strasbourg with the aim to harmonise the drafting of action plans and action reports and to share good practices and in 2015, a similar multilateral roundtable for State Parties was held to share national experiences regarding the reopening of judicial proceedings in order to secure individual redress to applicants (see appendix 7).

26. These activities are supplemented by regular and ad hoc visits to Strasbourg by government agents, other officials and/or judges, to participate in different events related to the Committee of Ministers' supervision of execution and/or related to specific execution issues. This practice continued in 2015.

27. The CM's Recommendation CM/Rec(2008)2 to the member states on efficient domestic capacity for the rapid execution of judgments of the Court continues to be, together with the other Committee Recommendations cited above, an important contribution to the execution process and a constant source of inspiration in regular bilateral relations between national authorities and the Department for the execution of judgments of the Court<sup>15</sup>.

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14. As delegated by the Director General pursuant to the mandate of the Directorate General "Human Rights and Rule of Law", and under the Director's authority.

15. Important positive developments in the different areas covered by this recommendation were noted at the multi-lateral conference organised in Tirana in December 2011(see further below under ii). The conclusions are available on the Department's web site.

## ii. More general cooperation programmes

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28. The importance of technical assistance and cooperation programmes was highlighted at the Brighton Conference and its follow-up, notably during the discussions within the Committee of Ministers' working group GT-REF.ECHR (see notably the "tools" discussion summarised in AR 2013 appendix 3) and the CDDH (see the conclusions in appendix 6) to the present AR). The Secretary General underlined the need to ensure that co-operation and technical assistance reflect the findings of the monitoring bodies and the judgments of the Court. Concrete action in this respect has been reinforced since 2014 in order to take account of structural problems identified in the judgments of the Court. Increasingly, the Committee of Ministers in its decisions in individual cases invites states to take advantage of the different co-operation programmes offered by the Council of Europe. Some national Action Plans refer to such programmes, as this was the case with Azerbaijan, Bosnia and Herzegovina and Ukraine.

## iii. Additional support for cooperation programs

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29. Support for programmes of relevance for the execution of the Court's judgments is also provided by the HRTF<sup>16</sup>, the European Union, individual states and certain organisations.

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16. A full list of projects supported by the Fund is available on its web site ([www.coe.int/t/dghl/humanrightstrustfund](http://www.coe.int/t/dghl/humanrightstrustfund)). Between 2009 and 2015 the Department for the execution of judgments implemented a number of special cooperation programmes specifically targeted towards the execution of judgments of the European Court – see e.g. in AR 2014. The conclusions of the seminars and conferences (and other relevant documentation) organised in this context are available on the web site of the Department for the execution of judgments of the Court ([www.coe.int/execution](http://www.coe.int/execution)).

## IV. Main achievements

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### Introduction

Over the years the Committee of Ministers has been seized by some 3.500 cases originating in individual applications calling for the supervision of execution of more or less important general measures. 2.000 of these cases have been closed by final resolutions relying, as the case may be, on adaptations of domestic case-law, changes of administrative practice or legislative or constitutional reforms.

**The present survey presents short summaries<sup>17</sup> of a selection of more important reforms and achievements reported in final resolutions since the new Convention system was set up through Protocol No. 11 in November 1998<sup>18</sup>.**

In view of the wealth of cases closed the selection concentrates those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. The survey does not cover the numerous cases in which necessary remedial action has been ensured through adaptation of case-law and/or administrative practices or information on the individual redress provided to applicants.

The presentation is organised **by country** and **reforms are in principle presented in the order corresponding to the domains in the “Thematic overview”** – see Appendix 5.

When reading the survey it should be borne in mind that execution is a special instance of the general implementation of the Convention and that individual execution processes may radiate well beyond the immediate execution process, both domestically and also in other states. Many reforms also address issues which are constant challenges for the Member states as societal conditions develop. The effects of reforms adopted at one point in time may thus need to be monitored and possibly revisited as conditions change – a typical problem of this kind is the excessive length of judicial proceedings<sup>19</sup>.

A presentation of **reforms and achievements in cases still pending before the Committee of Ministers under enhanced supervision** can be found in the “Thematic overview”<sup>20</sup>.

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17. The summaries are the sole responsibility of the Department for execution of the judgments of the European Court.

18. When the Court celebrated its first 40 years of existence in 1998, the Court published a summary of more important reforms and achievements up to 1998, which year was also the year of the entry into force of Protocol No. 11, in a special publication “[Survey : 40 years of activity](#)”. It is recalled that the Secretariat of the Parliamentary Assembly recently published a document with selected examples on the “Impact of the European Convention on Human Rights in States Parties”.

19. The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued a general recommendation - [Recommendation \(2004\)5](#) of the Committee of Ministers to member States on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

20. Progress and achievements in pending cases under standard supervision can be consulted on the Department’s website.

## Albania

**Legal certainty:** The supervisory review procedure was repealed in 2001.<sup>21</sup>

**Enforcement of judicial decisions:** The bailiff system has been reformed to ensure effective implementation of judicial decisions.<sup>22</sup>

## Andorra

**Access to court:** The right to constitutional appeal was extended so as to allow appeals without prior agreement of the public prosecutor.<sup>23</sup>

## Armenia

**Access to court:** The possibility for commercial entities to be exempted from court fees was improved in 2009 to guarantee the right to pursue judicial proceedings, notably to challenge the legality of administrative action, in cases where the levying of such fees would make the pursuit of proceedings impossible.<sup>24</sup>

**Broadcasting licenses:** To protect against unwarranted refusals of broadcasting licences the Television and Radio Broadcasting Act was amended in 2010, introducing the obligation to provide properly substantiated and reasoned decisions with respect to the selection, refusal or invalidation of such licences.<sup>25</sup>

**Conscientious objection:** A system of alternative service, under military control, was set up in 2004 and thoroughly revised in 2013 in order to put the service under civilian government control, to reduce the extra length as compared to military service and provide means of redress to conscientious objectors already unjustly convicted.<sup>26</sup>

## Austria

**Expulsion and related issues:** In order to secure a full examination of all relevant aspects of family and private life when deciding on issues of removal and residence permits, an explicit reference to the requirements of Article 8§2 was included in the Aliens' Act 2005.<sup>27</sup> As regards threats of ill-treatment in the country of destination, the law was changed in 2002 in order to take into account not only threats from state bodies but all threats whatever the source.<sup>28</sup>

**Compensation for detention:** The procedure for deciding questions of compensation for detention after acquittal or the discontinuation of the proceedings was reformed in 2005 to fully respect the requirements of fair and public trial and to abolish the possibility of voicing doubts about innocence after acquittal.<sup>29</sup>

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21. *Vrioni*, Appl. No. 2141/03, [CM/Res\(2011\)85](#)

22. *Qufaj Co. Sh. P.K.*, Appl. No. 54268/00, Final resolution [CM/ResDH\(2011\)86](#)

23. *Millan i Tornes*, Appl. No. 35052/97, Final Resolution [DH \(1999\) 721](#)

24. *Paykar Yev Haghtanak*, Appl. No. 21638/02, Final Resolution [CM/ResDH\(2011\)185](#)

25. *Meltex Ltd and Mesrop Movsesyan*, Appl. No. 32283/04, Final Resolution [CM/ResDH\(2011\)39](#)

26. *Bayatyan*, Appl. No. 23459/03+, Final Resolution [CM/ResDH\(2014\)225](#)

27. *Yildiz*, Appl. No. 37295/97+, Final Resolution [CM/ResDH\(2009\)117](#)

28. *Ahmed*, Appl. No. 25964/94, Final Resolution [ResDH\(2002\)99](#)

29. *Szücs*, Appl. No. 20602/92, Final Resolution [ResDH\(2006\)2](#)

**Excessive length of proceedings:** Several reforms have addressed the problem of excessively lengthy proceedings, notably the Administrative Reform Act 2001 aimed at alleviating the case-load of the administrative courts and accelerating administrative proceedings<sup>30</sup>. The Austrian administrative court system has been fundamentally reorganized with effect from January 2014, notably to speed up proceedings. New remedies were also introduced to speed up proceedings, or the scope of existing remedies broadened by the jurisprudence of the Supreme Court.<sup>31</sup> Other reforms were introduced in 2008 to guarantee that *criminal proceedings* are carried out rapidly and to ensure an effective remedy whereby lengthy proceedings may be accelerated or mitigation of sentence ordered as compensation.<sup>32</sup> The Code of civil proceedings was amended in 2003 with a view to streamlining and accelerating civil proceedings.<sup>33</sup>

**Fair and public hearings:** A number of reforms have improved the right to a public and oral hearing, notably in criminal proceedings under the Media Act<sup>34</sup> (see also “compensation for detention above), in family law and guardianship proceedings<sup>35</sup>, and last but not least in administrative proceedings by the abovementioned fundamental reorganization of the Austrian administrative court system.

**Discrimination based on sexual orientation:** The discrimination of same sex couples in the enjoyment of benefits under the scheme for sickness and accident insurance offered to civil servants was abrogated through a change of the relevant legislation in 2010.<sup>36</sup> Also second parent adoption in same sex couples has been authorised by a change of the Civil Code in 2013.<sup>37</sup> The discrimination between homo- and heterosexuals as regards the age as from which consensual sexual relations were permitted was abrogated in 2009.<sup>38</sup>

**Parental rights:** The discrimination of unmarried fathers with respect to child custody has been addressed by the change in the Law amending Child Custody Law and the Law on Names from 1 February 2013.<sup>39</sup>

**International child abduction:** Prompt enforcement of return orders and visiting rights under the 1980 Hague Convention is now ensured on the basis of a law from January 2005 which provides that requests for such enforcement are dealt with by a single specialised court.<sup>40</sup>

**Prisoners voting:** The Electoral Code was amended in June 2011 to better guarantee the right of prisoners to vote. The law now provides that decisions on disenfranchisement are taken by the judge at the time of sentencing, taking into account the gravity of the offence committed and a number of other relevant factors.<sup>41</sup>

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30. G.S., Appl. No. 26297/95, Final Resolution [ResDH\(2004\)77](#)

31. *Rambauske*, Appl. No. 45369/07, Final Resolution [CM/ResDH\(2015\)222](#)

32. *Schweighofer*, Appl. No. 35673/97+, Final Resolution [CM/ResDH\(2007\)113](#)

33. *Schreder*, Appl. No. 38536/97, Final Resolution [CM/ResDH\(2009\)118](#)

34. *A.T.*, Appl. No. 32636/96, Final Resolution [CM/ResDH\(2007\)76](#)

35. *Moser*, Appl. No. 12643/02, Final Resolution [CM/ResDH\(2010\)1](#)

36. *P.B. and J.S.*, Appl. No. 18984/02, Final Resolution [CM/ResDH\(2011\)42](#)

37. *X. and Others*, Appl. No. 190107, Final Resolution [CM/ResDH\(2014\)159](#)

38. *L. and V. and S.L.*, Appl. No. 39392/98, Final Resolution [CM/ResDH\(2007\)111](#)

39. *Sporer*, Appl. No. 35637/03, Final Resolution [CM/ResDH\(2015\)19](#)

40. *Sylvester*, Appl., No. 36812/97+, Final Resolution [CCM/ResDH\(2010\)84](#)

41. *Frodl*, Appl. No. 20201/04, Final Resolution [CM/ResDH\(2011\)91](#)

## Belgium

**Expulsion and related issues:** The modalities for examining asylum requests, notably as regards the burden of proof and the possibility of urgent suspension of removal decisions in case of alleged ill-treatment in the country of origin, were amended by the Law on Foreigners in 2014. The practice to detain unaccompanied foreign minors ended in 2007 and in 2012 a new Law charged the Aliens Office with the task of ensuring that such minors are properly received and cared for upon arrival in case of deportation.<sup>42</sup>

**Compensation for detention:** The necessity for acquitted persons to adduce evidence to prove their innocence in order to obtain compensation for their detention on remand was abrogated in 2010.<sup>43</sup>

**Excessive length of proceedings:** A series of reforms have been engaged to ensure trials within a reasonable time in all sectors of the judiciary: civil and criminal procedures<sup>44</sup>, including pre-trial investigations<sup>45</sup> and the special situation in Brussels.<sup>46</sup> The possibility to seek compensation in case of excessively long proceedings has also been recognised in civil and criminal matters.<sup>47</sup> Further reforms have addressed the situation before the Council of State.<sup>48</sup>

**Fair trial:** A modernization of the proceedings before the Assize Court was undertaken on the basis of a law of January 2010, with the aim of reducing the number of cases, improving the quality of judgments and promoting the rights of the defence. Jury decisions on guilt must henceforth also be substantiated<sup>49</sup>. The protection against the use of evidence obtained under torture was reinforced by an amendment to the Code of Criminal Procedure in 2013<sup>50</sup>.

## Bosnia and Herzegovina

**Expulsion and related issues:** Detention of aliens on security grounds now requires that a deportation order has first been issued – 2012 amendment to the 2008 Aliens Act.<sup>51</sup>

**Psychiatric detention:** Social Assistance Centres are no longer competent to order psychiatric placement of offenders found not guilty for reason of insanity; it henceforth falls upon the competent criminal court to order such placement (for a maximum period of 6 months), whilst at the same time being obliged to refer the matter directly to the civil court for a final decision – 2009 amendment to the 2003 Criminal Procedure Code.<sup>52</sup>

42. *Mubilanzila and Kaniki Mitunga*, Appl. No. 13178/03, Final Resolution [CM/ResDH\(2014\)226](#)

43. *Capeau*, Appl. No. 42914/98, Final Resolution [CM/ResDH\(2011\)43](#)

44. *Dumont*, Appl. No. 49525/99, Final Resolution [CM/ResDH\(2015\)245](#)

45. *Strategies and Communications and Dumoulin*, Appl. No. 37370/97+, Final Resolution [CM/ResDH\(2011\)190](#)

46. *Oval and 20 other cases*, Appl. No. 49794/99, Final Resolution [CM/ResDH\(2011\)189](#)

47. *Ibid.*

48. *Entreprises Delbrassine*, Appl. No. 49204/99, Final Resolution [CM/ResDH\(2015\)132](#)

49. *Taxquet*, Appl. No. 926/05, Final Resolution [CM/ResDH\(2012\)112](#)

50. *El Haski*, Appl. No. 649/08, Final Resolution [CM/ResDH\(2014\)110](#)

51. *Hamdani*, Appl. No. 31098/10, Final Resolution [CM/ResDH\(2014\)186](#)

52. *Tokic and Others*, Appl. No. 12455+, Final Resolution [CM/ResDH\(2014\)197](#)



**Repayment of “Old” foreign currency savings:** The obligation to submit final judgments ordering the state to repay “old” foreign currency savings, i.e. deposited prior to the dissolution of the Socialist Federative Republic of Yugoslavia, to the ministries of finances, on entity or other level, for verification before settlement was repealed in 2006 and 2007 and judgments are now sent directly to these instances for enforcement<sup>53</sup> In this connection, the Federation decided in 2009 and 2010 to issue government bonds to allow for the repayment of these “old” savings.<sup>54</sup>

**Pensions for persons displaced during the war:** Individuals who were granted pensions before the war in what is today the Federation of Bosnia and Herzegovina (FBiH), and who moved to Republika Srpska during the war, were allowed upon their return to FBiH to apply for FBiH pension.<sup>55</sup>

## Bulgaria

**Expulsion and related issues:** Judicial review of expulsion orders based on national security grounds has developed in practice and was expressly provided for in the Aliens Act in April 2007. Further changes introduced in 2009 and 2011 require that before expelling an alien residing permanently in Bulgaria, the authorities should take into account his personal and family situation, his level of integration and the strength of his connections with the country of origin.<sup>56</sup>

**Detention:** The guarantees surrounding detention on remand have been strengthened in important respects through several reforms 2000-2006, notably to prevent continuation of detention despite release orders and to prevent excessively lengthy detention.<sup>57</sup>

**Excessive length of proceedings:** The possibility to obtain compensation for excessive length of civil and criminal proceedings was introduced in 2012. The possibility to seek acceleration of pending proceedings was introduced in the Civil Procedure Code of 2007, the Code of Administrative Procedure of 2006.<sup>58</sup>

**Trial in absentia:** Several reforms between 2000 and 2011 have secured and improved the possibility to obtain the reopening of criminal cases heard in absentia.<sup>59</sup>

**Freedom of religion:** Excessive executive interferences with freedom of religion, notably direct interferences in the choice of church leadership, and discriminations based on the registration or not of a church are no longer possible as such registration was transferred in 2002 from the executive to the judiciary.<sup>60</sup>

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53. *Jeličić* and 3 other cases, Appl. No. 41183/02+, Final Resolution [CM/ResDH\(2012\)10](#)

54. *Suljagic*, Appl. No. 27912/12, Final Resolution [CM/ResDH\(2011\)44](#)

55. *Karanovic*, Appl. No. 39462/03, Final Resolution [CM/ResDH\(2012\)148](#)

56. *Al-Nashif*, Appl. No. 50963/95, Final Resolution [CM/ResDH\(2015\)44](#)

57. *Evgeni Ivanov* and 3 other cases, Appl. No. 44009/02+, Final Resolution [CM/ResDH\(2012\)164](#); *Bojilo and 8 other cases*, Appl. No. 45114/98+, Final Resolution [CM/ResDH\(2012\)166](#)

58. *Finger, Dimitrov and Hamanov and 54 other cases in the Djangofov and Kitov groups*, Appl. Nos. 37346/05 and 48059/06+, Final Resolution [CM/ResDH\(2015\)154](#)

59. *Kounov*, Appl. No. 24379/02, Final Resolution [CM/ResDH\(2008\)70](#) and *Aliykov*, Appl. No. 333/04; Final Resolution [CM/ResDH\(2014\)259](#)

60. *Boychev and Others*, Appl. No. 77185/01, [CM/ResDH\(2012\)169](#); *Ivanova*, Appl. No. 52435/99, Final Resolution [CM/ResDH\(2012\)155](#); *Hasan and Chaush* and 1 other case, Appl. No. 30985/96+, Final Resolution

**Freedom of expression:** Prison sentences for insult have been abolished in 2000.<sup>61</sup>

**Freedom of movement:** The possibility to impose travel bans for unpaid taxes was repealed following a decision by the Constitutional Court in 2011. The provisions of the Aliens Act enacting the same ban for foreign citizens were repealed in March 2013.<sup>62</sup> Accused may since 2006 contest a prohibition to leave the country at any time during criminal proceedings.<sup>63</sup>

## Croatia

**Excessive length of proceedings:** A number of successive reforms have introduced and improved compensatory and acceleratory remedies in case of excessive length of proceedings<sup>64/65</sup>, most recently through new legislation in 2013. In addition, a reform of land registry proceedings aimed at computerising all data, decreasing the number of pending cases as well as shortening the overall duration of proceedings, was implemented in 2006.<sup>66</sup> The different proceedings stayed during the “Homeland War” were resumed by special legislation in 2003.<sup>67</sup>

**Judicial discipline:** The procedures before the National Judicial Council when handling disciplinary cases against judges were reformed in 2011 to avoid any risk of lack of impartiality, secure access of the public to hearings and the respect of the principle of equality of arms.<sup>68</sup>

**Paternity:** Procedures for establishing paternity in case of a refusal of the putative father to cooperate were improved in 2003.<sup>69</sup>

**Better protection from eviction:** Domestic courts have started to apply the proportionality test in eviction proceedings<sup>70</sup>.

## Cyprus

**Actions of police officers:** The detainees’ right to be protected from torture or inhuman or degrading treatment or punishment or any other physical, psychological or mental violence and the State’s obligation to ensure this right has been improved through the adoption of the “Rights of Persons under Arrest and Detention Law 2005” from December 2005. These new statutory rights and obligations play an important role in improving the criminal and civil liability of the State and of principals of detention centres in case of abuse.<sup>71</sup>

61. *Raichinov*, Appl. No. 47579/99, Final Resolution [CM/ResDH\(2011\)5](#)

62. *Riener*, Appl. No. 46343/99, Final Resolution [CM/ResDH\(2013\)100](#)

63. *Makedonski*, Appl. No. 36036/04, Final Resolution [CM/ResDH\(2013\)2](#)

64. *Horvat* and 9 other cases, Appl. No. 51585/99+, Final Resolution [CM/ResDH\(2005\)60](#)

65. *Debelic* and 8 other cases, Appl. No. 5209/03+, Final Resolution [CM/ResDH\(2007\)102](#)

66. *Buj*, Appl. No. 24661/02, Final Resolution [CM/ResDH\(2011\)47](#)

67. *Kuti*, Appl. No. 48778/99+, Final Resolution [CM/ResDH\(2006\)3](#)

68. *Olujić*, Appl. No. 22330/05, Final Resolution [CM/ResDH\(2011\)194](#)

69. *Mikulic*, Appl. No. 53176/99, Final Resolution [CM/ResDH\(2006\)69](#)

70. *Ćosić*, Appl.No. 28261/06 and *Paulić*, Appl. No. 3572/06, Final Resolution [CM/ResDH\(2011\)48](#)

71. *Egmez and Denizci and Others*, Appl. Nos. 30873/962, 5316-25321/94, 27207/95, Final Resolution [ResDH\(2006\)13](#)

**Excessive length of proceedings:** A series of measures have been taken in order to improve the efficiency of the judicial system including in order accelerating judicial proceedings. An increased number of judges have been appointed to family, assize and district courts and a special judge has been assigned at the Supreme Court to follow up statistics concerning older cases. Disciplinary measures can be taken against judges who do not comply with Supreme Court directions provided under the Rules of Procedure for timely issue of judgments. In addition, an effective remedy for excessively lengthy civil and administrative proceedings was provided by special legislation in force since 05/02/2010.<sup>72</sup>

**Contempt of court:** The Courts of Justice Law was amended in 2009 so that cases of contempt can no longer be tried by the court on the face of which the alleged contempt was committed. Rather, they are to be tried by a separate court<sup>73</sup>.

**Right to marry:** A new law of 2002 ensured that members of the Turkish Cypriot community are allowed to marry on the same conditions as Greek Cypriots.<sup>74</sup>

**Voting rights:** Turkish Cypriots have received the right to vote in parliamentary elections since 2006 as a result of the Law on “the exercise of the right to vote and to be elected by members of the Turkish community with habitual residence in free territory of the Republic” from February 2006.<sup>75</sup> One Turkish Cypriot was also candidate MP.

## Czech Republic

**Detention:** The principle of a “detention hearing” allowing the accused to appear before his judges in proceedings relating to his/her detention on remand was introduced in the Code of Criminal Procedure in 2012.<sup>76</sup>

**Judicial review of the administration:** Judicial review of decisions by administrative authorities was extended in two steps through changes of the Code of Civil Procedure in 2001 and 2003.<sup>77</sup>

**Constitutional complaints:** The right of appeal to the Constitutional Court was improved by special legislation in 2004 in order not to compel applicants to first have recourse to “extraordinary appeals” as the admissibility of such appeals was a question of discretion.<sup>78</sup>

**Excessive length of proceedings:** : The possibility to obtain compensation in case of unreasonably lengthy judicial proceedings was introduced in the Act on Liability for Damage caused in the Exercise of Public Authority in 2006.<sup>79</sup>

**Custody and public care of children:** Child custody proceedings including enforcement issues, were improved, notably through better co-operation of local authorities

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72. *Gregoriou* and 24 other cases, Appl. No. 62242/00, Final Resolution [CM/ResDH\(2013\)154](#)

73. *Kyprianou*, Appl. No. 73797/01, Final Resolution [CM/ResDH\(2015\)47](#)

74. *Selim*, Appl. No. 47293/99, Final Resolution [CM/ResDH\(2003\)49](#)

75. *Aziz*, Appl. No. 69949/01, Final Resolution [CM/ResDH\(2007\)77](#)

76. *Husak, Kneble and Krejcir*, Appl. No. 19970/04+, Final Resolution [CM/ResDH\(2013\)120](#)

77. *Kilian*, Appl. No. 48309/99, Final Resolution [ResDH\(2006\)70](#)

78. *Beles and Others*, Appl. No. 47273/99, Final Resolution [CM/ResDH\(2007\)115](#)

79. *Borankova and Hartman* and 69 other cases, Appl. No. 41486/98+, Final Resolution [CM/ResDH\(2013\)89](#)

in 2008. Decision-making was speeded up and a possibility of mediation introduced.<sup>80</sup> These possibilities were further strengthened in 2011.<sup>81</sup> Public care of a child can no longer be ordered solely because of the inadequate housing conditions or the poor financial situation of his/her parents and, in parallel, vulnerable families have received improved rights to subsidised housing.<sup>82</sup>

**International child abduction:** As to international child abduction, the procedures under the Hague Convention have been centralised in one court to ensure better respect of the strict time limits laid down.<sup>83</sup>

**Protection of private life:** The conditions under which the police may have recourse to secret audio and video surveillance were regulated in detail in 2002 together with a requirement of prior authorisation by a judge in case home or correspondence were affected.<sup>84</sup>

**Protection of minority shareholders:** The possibility under the Commercial Code for shareholders having more than 90% of the shares in a company to take over the remaining shares at a price decided by arbitration even where the minority shareholders wished a court decision was abolished in 2008.<sup>85</sup> Minority shareholders were also in 2011 granted the right to challenge a decision to wind up the company or to transfer its assets to the main shareholder. Statutory bodies of actors on the financial markets (e.g. boards of banks, investment or insurance companies) also got the right in 2006 to lodge appeals to the courts against the imposition of receivership (Credit Unions were exempted from placement under receivership).<sup>86</sup>

## Denmark

**Excessive length of proceedings:** New specific remedies to obtain the acceleration of proceedings were introduced in January 2007 and July 2007, through amendments to the Administration of Justice Act and the Bankruptcy Act, to prevent excessive length of proceedings.<sup>87</sup>

**Freedom of association:** A person's affiliation to a union or non-membership of a union can no longer be taken into account in a recruitment situation or in connection with dismissal according to the Act on protection against dismissal due to association membership as amended in April 2006.<sup>88</sup>

## Estonia

**Detention:** An arrested person may now claim compensation for unjust detention under the Unjust Deprivation of Liberty (Compensation) Act in case the person

80. *Reslova* and 6 other cases, Appl. No. 7550/04, Final Resolution [CM/ResDH\(2011\)99](#)

81. *Bergmann*, Appl. No. 8857/08+, Final Resolution [CM/ResDH\(2013\)155](#)

82. *Wallove and Walla*, Appl. No. 23848/04+, Final Resolution [CM/ResDH\(2013\)218](#)

83. *Macready*, Appl. No. 4824/06, Final Resolution [CM/ResDH\(2012\)21](#)

84. *Heglas*, Appl. No. 5935/02, Final Resolution [CM/ResDH\(2011\)98](#)

85. *Suda*, Appl. No. 1643/06, Final Resolution [CM/ResDH\(2012\)18](#)

86. *Drzstevni zalozna PRIA and Others*, Appl. No. 72034/01, Final Resolution [CM/ResDH\(2013\)122](#)

87. *Christensen, Valentin and Nielsen*, Appl. No. 247/07+, Final Resolution [CM/ResDH\(2012\)73](#)

88. *Sørensen and Rasmussen*, Appl. No. 52562/99, Final Resolution [CM/ResDH\(2007\)6](#)

concerned is not brought before a judge within 48 hours.<sup>89</sup> In addition a new distinct right to compensation has been created in the State Liability Act in case activities of a public authority have been established to be contrary to the Convention by the European Court.

**State responsibility for Convention violations:** Improved domestic remedies through codification in the State Liability Act (2013) of a right to compensation for unlawful state action, and imposition of strict state liability in case of violations of the right to life or prohibition of torture<sup>90</sup>.

**No punishment without law:** Improved legal certainty as a result of the repeal of a provision imposing criminal liability in cases where certain acts had caused what was vaguely referred to as “significant damage to the State”.<sup>91</sup>

## Finland

**Fair trial:** Reform of the legislation on telecommunications to ensure that the defence in criminal proceedings has sufficient access to all intercepted communications so that it may assess the relevance of those chosen and presented by the prosecution.<sup>92</sup> Better protection of the right not to incriminate oneself has been introduced through changes of the Enforcement Act introducing a right to refuse to give information in enforcement proceedings if the information may be incriminating in a parallel, pending, criminal case.<sup>93</sup> Criminal proceedings against persons under guardianship or other forms of legal protection have been revised through a change of the Code of Criminal Procedure to ensure that the guardian is informed of the proceedings and possible hearings.<sup>94</sup>

**Public care of children:** Improved procedures for the taking of children into public care and for controlling the continued need for such care, as well as more detailed regulations regarding contacts between a child placed in public care and the parents combined with improved possibilities of appealing restrictions imposed - the Child Welfare Act 2006 as amended in 2008.<sup>95</sup>

**Freedom of expression:** In order to avoid possibly arbitrary seizures of printed materials, new legislation of 2004 has clarified the relation between the legislative provisions on publications and the Coercive Measures Act and those in the Act on the Exercise of Freedom of Expression in Mass Media.<sup>96</sup>

## France

**Expulsion and related issues:** The legal guarantees surrounding entry prohibitions were improved through changes in the Code of entry and residence of foreigners and asylum in 2007: legislation adopted to ensure that appeals against entry

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89. *Harkmann and Bergmann*, Appl. No. 2192/03+, Final Resolution [CM/ResDH\(2010\)158](#)

90. *Kochetov*, Appl. No. 41653/05, Final Resolution [CM/ResDH\(2013\)9](#)

91. *Livik*, Appl. No. 12157/05, Final Resolution [CM/ResDH\(2010\)157](#)

92. *Natunen*, Appl. No. 21022/04, Final Resolution [CM/ResDH\(2011\)206](#)

93. *Marttinen*, Appl. No. 19235/03, Final Resolution [CM/ResDH\(2012\)22](#)

94. *K.A.*, Appl. No. 27751/95, Final Resolution [CM/ResDH\(2007\)34](#)

95. *Goussev, Marenk, Soini and Others*, Appl. No. 35083/97+, Final Resolution [CM/ResDH\(2007\)36](#)

96. *Vaudelle*, Appl. No. 35683/97, Final Resolution [CM/ResDH\(2008\)14](#)

prohibitions have an automatic suspensive effect; aliens held in waiting zones ensured assistance of an interpreter and possibility to communicate with a lawyer of their choice (agreements concluded with specialised associations to provide assistance in these respects)<sup>97</sup>.

**Domestic servitude:** The protection of vulnerable persons was improved through amendments to the Criminal Code in 2003 and in addition, a new criminal offence of “trafficking in human beings” was created in 2007, punishable by ten years’ imprisonment where it is committed against a minor.<sup>98</sup> A law adopted in 2013 amended the Criminal Code in order to define and combat “human trafficking”<sup>99</sup>.

**Deprivation of liberty:** Reforms were adopted in order to regulate the State policing powers in the high seas in order to counter piracy. A specific regime for deprivation of liberty was set up in order to permit the arrest and detention of persons arrested in the high seas for piracy actions, while ensuring the compliance with the procedural requirements of the Convention<sup>100</sup>.

**Detention conditions:** A number of measures have been adopted with a view to improve detention conditions in special situations, notably as regards the handling of prisoners with psychiatric disorders<sup>101</sup> and motor-disabled prisoners<sup>102</sup>; also the effectiveness of remedies in case of solitary confinement has been improved<sup>103</sup>. Further, strip searches have been strictly regulated, being authorised only on an exceptional basis when patdowns or the use of electronic detection means were insufficient<sup>104</sup>. Detainees now have a right to appeal against “security rotations”<sup>105</sup>. A post of General Controller of Places of Detention has been created to ensure the respect of detainees’ fundamental rights.<sup>106</sup>

**Fair trial:** A number of reforms have been adopted to improve the fairness of different types of proceedings, including: better reasons in Assize courts judgments<sup>107</sup>, improved protection against self-incrimination as persons arrested or in detention are no longer compelled to testify under oath as witnesses with ensuing risks of perjury<sup>108</sup>; improved guarantees of fairness when accused do not surrender to justice, including right to be represented by counsel and to lodge appeals<sup>109</sup>; important changes of the procedure before the Court of Audit in 2009<sup>110</sup>; changes in the organization of the supervisory authorities of the banking and insurance licensing preventing certain problems caused by the absence of clear separations between

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97. *Gebremedhin*, Appl. No. 25389/05, Final Resolution [CM/ResDH\(2013\)56](#)

98. *Siliadin*, Appl. No. 73316/01, Final Resolution [CM/ResDH\(2011\)210](#)

99. *CN and V*, Appl. No. 67724/09, Final Resolution [CM/ResDH\(2014\)39](#)

100. *Medvedyev and Others*, Appl. No. 3394/03, Final Resolution [CM/ResDH\(2014\)78](#)

101. *R.L. and M.-J.D.*, Appl. No. 44568/98, Final Resolution [CM/ResDH\(2014\)113](#)

102. *Vincent*, Appl. No. 6253/03, Final Resolution [CM/ResDH\(2009\)79](#)

103. *Ramirez Sanchez*, Appl. No. 5945/00, Final Resolution [CM/ResDH\(2010\)162](#)

104. *El Shennawy*, Appl. No. 51246/08, Final Resolution [CM/ResDH\(2015\)77](#)

105. *Alboreo*, Appl. No. 51019/08, Final Resolution [CM/ResDH\(2014\)47](#)

106. *Rivière*, Appl. No. 33834/03, Final Resolution [CM/ResDH\(2009\)2](#)

107. *Agnelet*, Appl. No. 61198/08, Final Resolution [CM/ResDH\(2014\)09](#)

108. *Brusco*, Appl. No. 1466/07, Final Resolution [CM/ResDH\(2011\)209](#)

109. *Poitrimol* and 3 other cases, Appl. No. 14032/88+, Final Resolution [CM/ResDH\(2007\)154](#)

110. *Martinie, Richard Dubarry and Siffre*, Appl. No. 58675/00+, Final Resolution [CM/ResDH\(2010\)124](#)

the functions of prosecution, investigation and sanction<sup>111</sup>; better equality of arms in the evaluation of the value of expropriated lands between those expropriated and the Government Commissioner<sup>112</sup>.

**Excessive length of proceedings:** A number of reforms have been taken over time to ensure trial within a reasonable time in civil proceedings<sup>113</sup>, criminal<sup>114</sup> (including reforms to limit the duration of pre-trial detention), administrative<sup>115</sup>, labour court<sup>116</sup>, and land consolidation proceedings<sup>117</sup>. The possibility to obtain compensation for unreasonably long proceedings, earlier recognized with respect to civil and criminal proceedings<sup>118</sup>, was recognized in administrative proceedings in 2001 and was codified in 2005<sup>119</sup>.

**Family life:** Discrimination between adulterine and legitimate ones in the context of inheritance proceedings was repealed through a change in the relevant legislation in 2001<sup>120</sup>.

**Secret surveillance:** The conditions governing recourse by the police to secret audio and video surveillance in criminal cases were more clearly set out in new legislation in 2004 (excluded from such surveillance were notably offices of press and broadcasting companies, doctors, notaries, bailiffs and also the offices, homes and vehicles of lawyers, magistrates and parliamentarians)<sup>121</sup>.

## Georgia

**Medical care in prison:** Extensive reforms of the prison system were undertaken in 2010-2014 in order to improve the medical care system and a new Prison Code adopted, notably including the right to health in line with European Prison Rules.<sup>122</sup>

**Detention:** Introduction of new rules to ensure speedy judicial control of detention, also after the prosecutor's transfer of the case-file to the trial court – codified in the 2010 Code of Criminal Procedure.<sup>123</sup>

**Enforcement of judicial decisions:** Enforcement of judicial decisions has been improved, including through a special budget in 2007 to ensure the honouring by the state of old judgment debt and a new enforcement organisation was set up – the National Bureau of Enforcement. Enforcement was further improved in 2010, notably as regards judgment debt owed by the

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111. *Dubus*, Appl. No. 5242/04, Final Resolution [CM/ResDH\(2011\)102](#)

112. *Yvon*, Appl. No. 44962/98, Final Resolution [CM/ResDH\(2007\)79](#)

113. *C.R.* and 9 other cases, Appl. No. 42407/98+, Final Resolution [CM/ResDH\(2008\)39](#), *Sapl* and 57 other cases, Appl. No. 37565/97+, Final Resolution [CM/ResDH\(2005\)63](#)

114. *Sapl* and 57 other cases, Appl. No. 37565/97+, Final Resolution [CM/ResDH\(2005\)63](#); *Barillot* and 9 other cases, Appl. No. 49533/99+, Final Resolution [CM/ResDH\(2007\)39](#)

115. *Beaumartin*, Appl. No. 15287/89, Final Resolution [CM/ResDH\(1995\)254](#)

116. *Chaineux* and 2 other cases, Appl. No. 56243/00+, Final Resolution [CM/ResDH\(2008\)38](#)

117. *Piron and Époux Machard*, Appl. No. 36436/97, Final Resolution [CM/ResDH\(2009\)3](#)

118. *Barillot* and 9 other cases, Appl. No. 49533/99+, Final Resolution [CM/ResDH\(2007\)39](#)

119. *Lutz*, Appl. No. 48215/99, Final Resolution [CM/ResDH\(2008\)10](#)

120. *Mazurek*, Appl. No. 34406/07, Final Resolution [CM/ResDH\(2005\)25](#)

121. *Vetter*, Appl. No. 59842/00, Final Resolution [CM/ResDH\(2010\)5](#)

122. *Ghavitadze* and 4 other cases, Appl. No. 23204/07, Final Resolution [CM/ResDH\(2014\)209](#)

123. *Patsuria* and 3 other cases, Appl. No. 30779/04+, Final Resolution [CM/ResDH\(2011\)105](#)

state or public law entities, including the creation of a government fund to honour such debt and the payment of damages for losses caused.<sup>124</sup>

**Fair trial:** The adversarial principle has been introduced in all criminal proceedings and the necessity of motivating court decisions has been stressed through amendments in 2006 and 2007 to the Criminal Procedure Code.<sup>125</sup> The 2010 revision developed and improved the right to be exempted from court fees where necessary to preserve the right of access to court.<sup>126</sup>

**Freedom of expression:** The law on defamation has been changed to distinguish facts and value judgments and journalists and others are no longer required to prove the truth of the information communicated. A new law on freedom of expression from 2004 also provides that it is for private claimants to prove that statements challenged are false, and that officials must prove that the statements were published with knowledge that they were false. Good faith about the truth is also introduced as a general defence.<sup>127</sup>

**Compensation to victims of Soviet era repression:** Legislative amendments were adopted in 2011 and 2014 in order to grant compensation to the victims of Soviet era repression<sup>128</sup>.

## Germany

**Foreigners' right to child benefits:** The discrimination of foreigners in the enjoyment of the right to child benefits, based on the temporary character of their residence permits, was quashed by the Constitutional Court in 2004 and a new uniform system entered into force retroactively in January 2006.<sup>129</sup>

**Detention:** A clear right of access to information in the investigation file relevant for the evaluation of the lawfulness of detention on remand was introduced by a new law of 2010.

**Excessive length of proceedings:** A possibility to obtain compensation for excessively long proceedings, following an unsuccessful complaint to the court concerned with a view to accelerating the proceedings, was introduced in December 2011.<sup>130</sup>

**Retroactive application of criminal law:** The possibility to prolong preventive detention of dangerous criminals after these had served their sentences even in situations where such a prolongation had not been foreseen by law at the time of conviction was declared unconstitutional in 2011. Transitional arrangements were defined by the Constitutional Court and a new Convention conform system was put in place in 2013.<sup>131</sup>

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124. *"Iza" Ltd and Makrakhidze*, Appl. No. 28537/02+, Final Resolution [CM/ResDH\(2011\)108](#)

125. *Donadze*, Appl. No. 74644/01, Final Resolution [CM/ResDH\(2011\)63](#)

126. *FC Mretebi*, Appl. No. 38736/04, Final Resolution [CM/ResDH\(2010\)163](#)

127. *Goreshvili*, Appl. No. 12979/04, Final Resolution [CM/ResDH\(2010\)164](#)

128. *Klaus and Yuri Kiladze*, Appl. No. 7975/06, Final Resolution [CM/ResDH\(2015\)41](#)

129. *Niedzwiecki and Okpisz*, Appl. No. 58453/00, Final Resolution [CM/ResDH\(2011\)111](#)

130. *Rumpf*, Appl. No. 46344/06, Final Resolution [CM/ResDH\(2013\)244](#)

131. *M.*, Appl. No. 19359/04, Final Resolution [CM/ResDH\(2014\)290](#)



**Rights of biological fathers:** In 2013 a new bill came into force to strengthen the legal position of biological, non-legal fathers in the field of access and information rights.<sup>132</sup>

## Greece

**Expulsion and related issues:** As regards expulsion proceedings, the Criminal Code was amended in 2012, setting up a maximum period of detention with a view to expulsion, as well as time-limits for the judicial review of such detention<sup>133</sup>.

**Fair trial:** The obligation to surrender to justice in criminal cases before being allowed to lodge an appeal was abrogated in 2005.

**Excessive length of proceedings**<sup>134</sup>: As regards civil and criminal proceedings, a number of legislative reforms have been adopted since 2001 in order to speed up proceedings, including notably different time-limits<sup>135</sup>, as well as measures to limit trial adjournments<sup>136</sup>. These measures were supplemented in 2014 by the adoption of organisational measures to simplify and accelerate proceedings<sup>137</sup> and the introduction of a compensatory remedy. As regards administrative proceedings, a constitutional reform was adopted in 2003 aiming at addressing procedural formalism and speeding up proceedings. This constitutional and then legislative reforms focused notably on the redistribution of competence between the Council of State and lower courts. Acceleratory and compensatory remedies were set up in 2012, and considered effective and accessible by the European Court<sup>138</sup>.

**Conscientious objection:** In 2001, the right to an alternative service for conscientious objectors was enshrined in the Constitution, and the right to the removal from criminal records of sentences imposed on grounds of conscientious objection to armed and military service was legally recognised<sup>139</sup>.

**Discrimination in the award of allowances:** Greek law was amended in 2009, repealing the nationality of the children as a prerequisite for acquiring advantages attached to the status of "mother of a large family"<sup>140</sup>.

**Property rights:** As regards expropriation proceedings, a new Code of Expropriation was adopted in 2001, providing for adequate compensation and strict deadlines<sup>141</sup>. An automated notification procedure was created to inform dormant account holders of upcoming limitation period expiry before transferring the account to the State<sup>142</sup>.

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132. *Zaunegger*, Appl. No. 22028/04, [CM/ResDH\(2014\)163](#)

133. *Mathloom*, Appl. No. 48883/07, Final Resolution [CM/ResDH\(2014\)232](#)

134. For more information on measures adopted regarding this specific issue, see Appendix 3 and 5.

135. *Academy Trading Ltd and Others*, Appl. No. 30342/96+, Final Resolution [ResDH\(2005\)64](#)

136. *Tarighi Wageh Dashti* and 7 other cases, Appl. No. 24453/94+, Final Resolution [ResDH\(2005\)66](#)

137. *Michelioudakis* and 82 other cases and *Glykantzi* and 57 other cases, Appl. Nos. 54447/10+ and 40150/09+, Final Resolution [CM/ResDH\(2015\)231](#)

138. *Vassilios Athanasiou and Others* and 205 other cases, Appl. No. 50973/08+, Final Resolution [CM/ResDH\(2015\)230](#)

139. *Thlimmenos*, Appl. No. 34369/97, Final Resolution [CM/ResDH\(2005\)89](#)

140. *Zeibek*, Appl. No. 46368/06, Final Resolution [CM/ResDH\(2012\)34](#)

141. *Azas* and 8 other cases, Appl. No. 50824/99+, Final Resolution [CM/ResDH\(2011\)217](#)

142. *Zolotas*, Appl. No. 66610/09, Final Resolution [CM/ResDH\(2014\)58](#)

**Education of Roma children:** Specific measures were adopted in order to facilitate the enrolment of Roma children in the national education system and to monitor their regular attendance of classes, including simplified enrolment procedures, special instructions to teachers and monitoring of attendance<sup>143</sup>.

**Electoral rights:** The Constitution was amended in 2008 so that the prohibition of the exercise of professional activities by members of Parliament was abrogated<sup>144</sup>.

## Hungary

**Actions of security forces - effective investigations:** The Code of Criminal Procedure introduced in 2003 the right to bring private prosecution in case prosecutors declined to bring criminal prosecution combined with an obligation for prosecutors to cite factual reasons in any decision to close an investigation as well as for courts in decisions dismissing a private bill of indictment<sup>145</sup>.

**Detention:** The Code of Criminal Procedure was modified in several steps in 2003-2006 to stress the obligation to provide reasons in decisions on detention on remand and to ensure that prosecution motions to extend detention during the investigation are served on the defendant before the hearing on the prolongation at issue.<sup>146 147</sup>

**Fair trial:** The Code of Criminal Procedure which permitted *in camera* sessions was amended in 2006 so that a public hearing must be held, with the presence of the accused and his defence counsel, notably if a sentence is to be made more severe on appeal.<sup>148</sup>

**Freedom of Assembly:** The Constitutional Court repealed the provision concerning the requirement of prior notice before holding demonstrations and domestic courts will ensure that assemblies are henceforth tolerated.<sup>149</sup>

## Iceland

**Fair trial:** To solve the problem of possible links between the members of the State Medical Board and hospitals at issue in tort proceedings for malpractice, the Board was abolished in 2008 and its competence transferred to the ordinary courts, with special composition.<sup>150</sup> Introduction in 2001 of a right to appeal against fines imposed by the Labour Court.<sup>151</sup>

**Freedom of association:** The statutory obligation imposed also on non-members of a private law organisation – the Federation of Icelandic Industries – to pay an “Industrial charge” was abolished in 2011.<sup>152</sup>

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143. *Sampanis and Others*, Appl. No. 32526/05, Final Resolution [CM/ResDH\(2011\)119](#)

144. *Lykourezos*, Appl. No. 33554/03, Final Resolution [CM/ResDH\(2010\)171](#)

145. *Kmetty and Barta*, Appl. No. 57967+ , Final Resolution [CM/ResDH\(2011\)297](#)

146. *Osvath*, Appl. No. 20723/02, Final Resolution [CM/ResDH\(2008\)74](#)

147. *Imre, Maglódi, Csáky and Bárkányi*, Appl. No. 53129/99+, Final Resolution [CM/ResDH\(2011\)222](#)

148. *Csikos*, Appl. No. 37251/04, Final Resolution [CM/ResDH\(2008\)72](#)

149. *Bukta and Others*, Appl. No. 25691/04, Final Resolution [CM/ResDH\(2010\)54](#)

150. *Sara Lind Eggertsdottir*, Appl. No. 31930/04, Final Resolution [CM/ResDH \(2015\)201](#)

151. *Siglfirdingur EHF*, Appl. No. 34142/96, Final Resolution [CM/ResDH\(202\)67](#)

152. *Vörður Ólafsson*, Appl. No. 20161/06, Final Resolution [CM/ResDH\(2015\)200](#)

## Ireland

**Compensation for unlawful detention:** A person unlawfully deprived of his or her liberty as a result of a judicial act may since 2014 institute proceedings to recover compensation following amendments to “The European Convention on Human Rights Act 2003”.<sup>153</sup>

**Right to lawful abortion:** A framework establishing whether individuals qualify for lawful abortion in accordance with the Constitution, setting out criteria and actions to be taken for the assessment of the pregnancy’s risks for the mother’s life was provided in the Protection of Life during Pregnancy Bill 2013. An urgent procedure and a review procedure before a committee of medical practitioners are provided for.<sup>154</sup>

**Young offenders with mental disorder:** A statutory framework for the High Court to deal with cases concerning young offenders in need of special care was created in 2011 and Special Care Unit was set up to provide secure residential service to children and young people in need of specialised targeted intervention.<sup>155</sup>

## Italy

**Restrictions following bankruptcy:** The rules of Italian law which unjustifiably imposed a blanket suspension of electoral rights for five years counting from the declaration of bankruptcy and limitations on the personal capacity of the bankrupt (notably prohibition to exercise a number of professional activities) were abolished in 2006.<sup>156 157</sup>

**Detention:** Correspondence with lawyers and organs of the European Convention are excluded from monitoring in the new legislation of 2004, which sets limits to the monitoring and restriction of prisoners’ correspondence.<sup>158 159</sup>

**Fair trial:** Changes to the Constitution in 1999 gave constitutional rank to a number of requirements of fair proceedings. A 2001 reform introduced improved safeguards as regards the use of testimony given during investigations by a person who decides to remain silent during trial, thus preventing convictions exclusively on materials the accused had never been able to refute.<sup>160</sup> The guarantees in case of *in absentia* proceedings were improved to make it possible to appeal against judgments rendered *in absentia* at first instance even if the normal deadlines have expired.<sup>161</sup>

**Excessive length of proceedings:** First Instance Courts (tribunali) with jurisdiction over civil proceedings have, over the past years, succeeded, through appropriate organisational measures, to reduce the average length of civil cases and the backlog of such cases pending for more than three years is now well below the relevant

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153. *D.G.*, Appl. No. 39474/98, Final Resolution [CM/ResDH\(2014\)234](#)

154. *A., B. and C.*, Appl. No. 25579/05, Final Resolution [CM/ResDH\(2014\)273](#)

155. *D.G.*, Appl. No. 39474/98, Final Resolution [CM/ResDH\(2014\)234](#)

156. *Albanese*, Appl. No. 77924/01, Final Resolution [CM/ResDH\(2008\)45](#)

157. *Abbateello, Federici, Maugeri, Scasser*, Appl. No. 39638/04+, Final Resolution [CM/ResDH\(2008\)75](#)

158. *Labita and Indelicato*, Appl. No. 26772/95+, Final Resolution [CM/ResDH\(2009\)83](#)

159. *Calogero Diana and six other cases*, Appl. No. 15211/89+, Final Resolution [ResDH\(2005\)55](#)

160. *Craxi N° 2*, Appl. No. 34896/97, Final Resolution [ResDH\(2005\)28](#)

161. *F.C.B. and 4 other cases*, Appl. No. 12151/86+, Final Resolution [CM/ResDH\(2011\)122](#)

national average indicators.<sup>162</sup> Also promising results obtained by the First Instance Courts and the Courts of Appeal as regards the average length of divorce and legal separation proceedings between 2011 and 2013.<sup>163</sup>

**Public care of children and adoption:** Supervision of care measures was strengthened through amendments in 2003 to the law on adoption and State guardianship, thus the details of how the responsibility will be exercised and how the parents and other members of the nuclear family are to maintain their links with the minor child, and duration of the placement must be indicated in the placement orders; any significant event must be reported to the judge, and the minor's relations with and return to its family of origin must be facilitated.<sup>164</sup> New rules, concerning the adoption of minors, providing in particular better information and greater involvement of parents from the beginning of the procedure were introduced in 2007.<sup>165</sup>

**Enforcement of domestic eviction decisions:** A series of reforms relating to the legal framework governing the eviction of tenants after the expiry of their leases, and the enforcement of judicial decisions ordering eviction, made recourse to an earlier legislative practice of suspending execution for different, frequently consecutive periods, less and less necessary. The Constitutional Court found in addition in 2003 that the legislative practice was unconstitutional. In parallel legislation introduced a right to compensation in case of excessive length of the enforcement proceedings (including for the periods where legislation suspended execution).<sup>166</sup>

**Discrimination of foreigners:** In 2013, the law was amended and now family allowance is paid to EU nationals as well as to other long-term resident foreigners.<sup>167</sup>

## Latvia

**Protection of rights in detention:** The effectiveness of judicial supervision of pre-trial detention was improved through the creation in 2005 of the post of investigative judge with power notably to decide on the application and extension of certain means of restraint (detention, house arrest, placement in an institution) and through the imposition of a set of time-limits for pre-trial detention. The reform also comprised more restrictive rules for the supervision of correspondence and new rules providing that detention centre administrations should allow a detainee to contact his family or other persons.<sup>168</sup>

**Electoral rights:** Amendments in the Parliamentary Elections Act from 2009 and 2014 narrowed the scope of eligibility restrictions, excluding only those persons who were formerly directly involved in KGB's primary functions.<sup>169</sup>

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162. A.C. (5), Appl. No. 27985/95, Final Resolution [CM/ResDH\(2015\)247](#)

163. *Andreoletti*, Appl. No. 29155/95+, Final Resolution [CM/ResDH\(2015\)246](#)

164. *Scozzari and Giunta*, Appl. No. 39221/98+, Final Resolution [CM/ResDH\(2008\)53](#)

165. *Todorova*, Appl. No. 33932/06, Final Resolution [CM/ResDH\(2010\)172](#)

166. *Immobiliare Saffi* and 156 other cases, Appl. No. 22774/93+, Final Resolution [CM/ResDH\(2007\)84](#)

167. *Dhabbi*, Appl. No. 17120/09, Final Resolution [CM/ResDH\(2015\)203](#)

168. *Lavents and Jurjevs*, Appl. No. 70923/01+, Final Resolution [CM/ResDH\(2009\)131](#)

169. *Adamsons*, Appl. No. 3669/03, Final Resolution [CM/ResDH\(2014\)279](#)

## Liechtenstein

**Effective remedies:** The competence of the State Court was extended in November 2003 to comprise any application of an alleged violation of the Convention by any public authority, including individual acts of the Prince.<sup>170</sup>

## Lithuania

**Detention:** An exhaustive list of grounds on which the measure of detention on remand may be imposed was set out.<sup>171</sup> Since the coming into force of the Code on the Execution of Criminal Sentences on 1 May 2003 it is no longer possible to monitor the correspondence of prisoners without authorization.<sup>172</sup>

**Fair trial:** The procedure for taking evidence from an anonymous witness has been subjected to better safeguards in the interest of fairness (the anonymous witness may thus be questioned at a non-public hearing after appropriate acoustic and visual obstacles have been created to prevent identification).<sup>173</sup> The problems of impartiality raised by the competence of Presidents of higher courts and of their criminal divisions to submit petitions to quash or amend particular judgments by lower courts was solved in 2003 through the abolishment of this competence.<sup>174</sup>

**Excessive length of proceedings:** In order to accelerate judicial proceedings stricter time-limits for the completion of criminal cases were set in 2003 and new domestic remedies devised, notably the possibility for the investigation judge to order the speeding up of investigations or their closure.<sup>175</sup> Several amendments of the Criminal Procedure Code adopted between 2010 and 2014 aim at accelerating pre-trial investigations. They introduce maximum length of adjournment of trial proceedings and the right to lodge complaints to be examined within 7 days. Article 6.272 of the Civil Code providing for liability for damage caused by unlawful actions of preliminary investigation officials, prosecutors, judges and the court has been acknowledged as a proper legal ground for compensation of damage sustained due to prolonged proceedings.<sup>176</sup>

**Protection of private life:** In order to prevent flagrant abuses of press freedom interfering with private life, the ceiling on awards of compensation in respect of non-pecuniary damages (leading at the time to derisory awards) was removed in the new Civil Code 2001.<sup>177</sup>

## Luxembourg

**Excessive length of proceedings:** The Judicial Police Service was reinforced and reorganised, the coordination between police and judicial authorities was improved and the staff of prosecutors and investigating judges was increased to reduce the length of civil and criminal proceedings. Compensation for the administration's

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170. *Wille*, Appl. No. 28396/95, Final Resolution [ResDH\(2004\)84](#)

171. *Jecius*, Appl. No. 34578/97, Final Resolution [ResDH\(2004\)56](#)

172. *Valasinas*, Appl. No. 44558/98, Final Resolution [ResDH\(2004\)44](#)

173. *Birutis and Others*, Appl. No. 47698/99+, Final Resolution [ResDH\(2004\)45](#)

174. *Daktaras*, Appl. No. 42095/98, Final Resolution [ResDH\(2004\)43](#)

175. *Girdaukas* and 3 other cases, Appl. No. 70661/01+, Final Resolution [CM/ResDH\(2007\)127](#)

176. *Sulcas* and 14 other cases, Appl. No. 35624/04, Final Resolution [CM/ResDH\(2014\)291](#)

177. *Armoniene and Biriuk*, Appl. No. 36919/02+, Final Resolution [CM/ResDH\(2010\)174](#)

dysfunction may be requested on the basis of the Civil Code or the special Act 1988 having gained sufficient legal certainty.<sup>178</sup>

**Access to court:** The excessive formalism of appeals and cassation procedures was remedied by new legislation in 2010<sup>179</sup>.

**Hunting areas:** The mandatory inclusion of all land owners, including those opposed to hunting, in hunting associations created under the law, with the consequent duty to give up their lands for hunting, was repealed in 2011 so as to allow those opposed to hunting to refuse to join the associations.<sup>180</sup>

## Malta

**Public care of children:** Parents, guardians or young persons involved have received the right to seek court review of final care orders earlier automatically imposed following conviction for certain criminal offences related to minors.<sup>181</sup>

**Detention:** The absence of any automatic judicial review of the merits of detention decisions was remedied in 2002 so that such review on the merits can take place and all detainees have thus received an effective right to speedy review of the lawfulness of continued detention.<sup>182</sup>

**Excessive length of proceedings:** Monitoring of individual cases and case-management were improved, the number of judges increased and the formalities for the various forms of judicial acts were simplified to reduce the length of procedures. Case-law also developed a right to seek compensation in case of excessively lengthy proceedings.<sup>183</sup>

## Republic of Moldova

**Fair trial:** The prosecutor general's power to ask for the annulment of final judgments was abolished in 2007.<sup>184</sup>

**Freedom of religion:** Freedom of religion was improved in important respects following the adoption in 2007 of a new law on religious denominations elaborated in cooperation with independent Council of Europe experts with further amendments in 2009. Clear and objective criteria for registration, suspension and liquidation of religious denominations were laid down and a system of proportionate reactions to breaches of the law defined. Religious freedom for non-registered religious groups was secured and expulsion as a sanction for foreigners disrespecting the law abolished.<sup>185</sup>

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178. *Schuhmacher* and 8 other cases, Appl. No. 63286/00+, Final Resolution [CM/ResDH\(2014\)216](#)

179. *Kemp and Others*, Appl. No. 17140/05+, Final Resolution [CM/ResDH\(2012\)93](#)

180. *Schneider*, Appl. No. 2114/04, Final Resolution [CM/ResDH\(2013\)34](#)

181. *M.D. and Others*, Appl. No. 64791/10, Final Resolution [CM/ResDH\(2014\)265](#)

182. *Sabeur Ben Ali, Aquilina, T.W and Kadem*, Appl. No. 35892/97+, Final Resolution [CM/ResDH\(2007\)8](#)

183. *Debono* and 1 other case, Appl. No. 34539/02, Final Resolution [CM/ResDH\(2014\)280](#)

184. *Rosca, Sppl.* Appl. No. 6267/02, Final Resolution [CM/ResDH\(2007\)56](#); *Tanase*, Appl. No. 7/08, Final Resolution [CM/ResDH\(2012\)40](#)

185. *Metropolitan Church of Bessarabia*, Appl. No. 45701/99+, Final Resolution [CM/ResDH\(2010\)8](#)

**Electoral rights:** The ban for all categories of public servants from holding dual citizenship and of elected MPs with multiple nationalities from taking seats in Parliament was lifted in 2009.<sup>186</sup>

## Monaco

**Functioning of justice:** The right of the accused to remain silent and to be assisted by a lawyer in police custody was enshrined in the Code of Criminal Procedure in 2013.<sup>187</sup>

## Montenegro:

**Protection of property:** The possibility to repeal or restrict acquired pension, in particular used in case of resumed professional activities, was abolished following a change in the Law on Pension and Disability Insurance 2008.<sup>188</sup>

## Netherlands

**Secret surveillance:** The excessive vagueness of the regulations surrounding secret surveillance, including as regards storage, use and disclosure of information gathered, was solved through new more detailed procedures in the Security Services Act 2002.<sup>189</sup>

**Expulsion and related issues:** The right to family reunion of minors with a parent legally residing in the Netherlands was improved in 2006 following a new policy adopted by the Ministry of Justice and based on the ECHR's case-law.<sup>190</sup>

**Placing children in public care:** The procedures for the placement of children in public care were radically changed in a policy framework "Standards 2000", an updated version of which entered into force in 2003 as a binding instruction from the Minister of Justice to the Child Welfare Board. The new procedures improve *inter alia* the involvement of parents in the decision-making process and the intervention of a behavioural psychologist and a legal expert in child protection cases.<sup>191</sup>

**Preventive detention:** The period of "pre-placement detention" of convicted persons suffering from mental disorders awaiting their transfer, after serving their sentences, to custodial psychiatric care (as ordered at the time of conviction - TBS orders) was reduced and no longer exceeds 4 months. Operational capacities of custodial clinics were improved and a compensation scheme for excessive pre-placement detention established as from 2007.<sup>192</sup>

**Surveillance of prisoners:** The regulations concerning the monitoring and recording of prisoners' communications were reformed and updated in several steps 2005-2011

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186. *Tanase*, Appl. No. 7/08, Final Resolution [CM/ResDH\(2012\)40](#)

187. *Navone and Others*, Appl. No. 62880/11+, Final Resolution [CM/ResDH\(2014\)266](#)

188. *Lakićević and Others*, Appl. No. 27458/06+, Final Resolution [CM/ResDH\(2013\)91](#)

189. *R.V. and Others*, Appl. No. 14084/88+, Final Resolution [CM/ResDH\(2007\)86](#)

190. *Tuquabo-Tekle and Others*, Appl. No. 60665/00, Final Resolution [CM/ResDH\(2010\)108](#)

191. *Venema*, Appl. No. 35731/97, Final Resolution [CM/ResDH\(2010\)9](#)

192. *Morsink*, Appl. No. 48865/99, Final Resolution [CM/ResDH\(2014\)294](#)

to create a clear and detailed framework for such monitoring and the keeping and use of information obtained.<sup>193</sup>

## Norway

**Compensation in case of acquittal:** Acquitted persons are since 2003 no longer required, in order to obtain full compensation for detention, to prove that they had not committed the offences with which they had been charged.<sup>194</sup>

**Excessive length of proceedings:** Measures to accelerate criminal proceedings were adopted in 2002 and civil proceedings in 2005. These measures were combined with the possibility to obtain compensation in case of excessively lengthy proceedings and also, in criminal cases, a shortening of sentence<sup>195</sup>.

**Freedom of expression:** Amendment to the Constitution in 2004 to ensure that no person may be held liable in civil proceedings for defamation because of the publication, in good faith, of factual statements on questions of general interest that were eventually not proven to be true.<sup>196</sup> In order to better secure also small political parties' access to television during elections, the statute of the National Public Broadcaster (NRK) was changed in 2009 to include an obligation to provide broad and balanced coverage of political elections and editorial coverage also to smaller parties.<sup>197</sup>

**Freedom of religion in schools:** The undue preference given in religious education to the Christian faith was removed in 2008 and replaced by a more objective, critical and pluralistic education. The possibilities to be exempted from religious education were also improved.<sup>198</sup>

## Poland

**Detention:** Important reforms took place during the years 2000 to limit recourse to detention on remand, the duration of such detention, to provide adequate possibilities of appealing detention decisions<sup>199</sup>, including the right to have access to relevant investigation material to challenge the need for detention and the right to be heard in person by the judge<sup>200</sup>, and to obtain compensation in case of unlawful detention<sup>201</sup>. The new Code of Criminal Procedure 2015 limits pre-trial detention for less serious offences and increases flexibility in the use of bail.<sup>202</sup> The system surrounding monitoring of correspondence of detained persons was improved in 2003 and 2012 allowing judicial review and the right to claim compensation.<sup>203</sup> In

193. *Doerga*, Appl. No. 50210/02, Final Resolution [CM/ResDH\(2011\)137](#)

194. *O. and Y.*, Appl. No. 29327/95+, Final Resolution [CM/ResDH\(2009\)8](#)

195. *A. and E. Riis*, Appl. No. 16468/05 and 9042/04, Final Resolution [CM/ResDH\(2009\)109](#)

196. *Blådet Tromsø A/S and Pål Stensås; Nilsen and Johnsen*; Appl. No. 21980/93+, Final Resolution [CM/ResDH\(2002\)70](#)

197. *TV Vest As and Rogaland Pensjonistparti*, Appl. No. 21132/05, Final Resolution [CM/ResDH\(2011\)234](#)

198. *Folgerö and Others*, Appl. No. 15472/02, Final Resolution [CM/ResDH\(2011\)237](#)

199. *Trzaska* and 172 other cases, Appl. No. 25792/94+, Final Resolution [CM/ResDH\(2014\)268](#)

200. *Chruscinski*, Appl. No. 22755/04, Final Resolution [CM/ResDH\(2011\)142](#)

201. *Bruczynski*, Appl. No. 19206/03, Final Resolution [CM/ResDH\(2012\)43](#)

202. *Trzaska* and 172 other cases, Appl. No. 25792/94+, Final Resolution [CM/ResDH\(2014\)268](#)

203. *Klamecki* and 58 other cases, Appl. No. 31583/96, Final Resolution [CM/ResDH\(2013\)228](#)



order to detect suicidal tendencies, monitoring of a detainees' behaviour in justified cases was made possible in 2009, based on medical reasons or the need to ensure their security. Decisions can be appealed to the courts.<sup>204</sup>

**Access to court:** The system of court fees in civil proceedings has been reformed in 2006 notably to improve the possibilities to be exempted from such fees in order to solve problems of access to court.<sup>205</sup> The system of legal aid was reformed similarly in the framework of an amended Code of Civil Procedure in 2010.<sup>206</sup>

**Access to one's children and international child abduction:** Proceedings for the execution of access or contact orders were streamlined in 2011.<sup>207</sup>

**Access to the secret service files:** In order to ensure the fairness of lustration proceedings legislation was adopted in 2006 defining the instances when files used could be excluded from publicity and providing for a continuous monitoring of the classification of documents<sup>208</sup>. In 2010 a right of access was provided to all documents held in by the Institute of National Remembrance.

**Compensation for property lost in connection with WWII:** In 2005, legislation was adopted setting up of a compensation scheme to honour the Republic of Poland's undertaking to provide compensation for property abandoned after World War II in areas beyond the present borders of the Republic, thereby remedying the defective functioning of an earlier scheme. Compensation was set at 20% of the properties original value and claimants could seek pecuniary and non-pecuniary damages caused by the defective operation of the earlier scheme.<sup>209</sup>

## Portugal

**Psychiatric care in prison:** The legal "ceilings" imposed as regards the maximum number of examinations per year were repealed in 2007 in order to speed up the review of placements in psychiatric clinics in prisons<sup>210</sup>.

**Fair trial:** The Civil Procedure Code was amended in 2007 so that the notes made at first instance and sent to the court of appeal are also communicated to the parties<sup>211</sup>. An upper limit on the sums that could be charged as court fees was introduced in the new Court Fees Code of 2008.<sup>212</sup>

**Protection of family life:** The Civil and Criminal Codes were amended in 2008, on the one hand to strengthen the sanctions in case of child abduction or refusals to abide by visiting or custody agreements and on the other to ensure better mediation in reaching such agreements through a preliminary procedure before the prosecutor.<sup>213</sup>.

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204. *Jasinska*, Appl. No. 28326/05, Final Resolution [CM/ResDH\(2014\)27](#)

205. *Kreuz N°1* and 11 other cases, Appl. No. 28249/95+, Final Resolution [CM/ResDH\(2011\)67](#)

206. *Tabor* and 6 other cases, Appl. No. 12825/02+, Final Resolution [CM/ResDH\(2011\)239](#)

207. *Pawlik* and 4 other cases, Appl. No. 11638/02, Final Resolution [CM/ResDH\(2014\)295](#)

208. *Matyjek* and 11 other cases, Appl. No. 38184/03, Final Resolution [CM/ResDH\(2014\)172](#)

209. *Broniowski*, Appl. No. 31443/96, Final Resolution [CM/ResDH\(2009\)89](#)

210. *Magalhães Pereira No. 2*, Appl. No. 15996/02, Final Resolution [CM/ResDH\(2009\)53](#)

211. *Ferreira Alves*, Appl. No. 41870/05, Final Resolution [CM/ResDH\(2012\)45](#)

212. *Perdigao*, Appl. No. 24768/06, Final Resolution [CM/ResDH\(2011\)143](#)

213. *Reigado Ramos*, Appl. No. 73221/01, Final Resolution [CM/ResDH\(2012\)132](#)

**Vetting procedures:** In 2007, legislation improved the protection of private life in case of security investigations of an employee, and provided for effective remedies in this regard.<sup>214</sup>

**Discrimination as regards the award of custody:** Jurisprudence concerning custody proceedings was changed in order to ensure equal treatment of parents living in homosexual relationships.<sup>215</sup>

**Expropriation:** A new Court Fees Code from 2008 replaced the old system strictly linked to the sums at stake and replaced it with a mixed system of with upper limits far below what could be imposed under the earlier system which had notably led to fees exceeding expropriation compensation awarded.<sup>216</sup>

## Romania

**Detention:** Following reforms in 2003 only a judge is competent to order detention on remand<sup>217</sup> and appeals on points of law against decisions prolonging such detention after committal to trial are possible<sup>218</sup>. Further reforms in 2006 ensured better access to relevant information in the investigation file and respect for the adversarial principle. Other reforms, in 2003 and 2006, ensured the confidentiality of complaints addressed by detainees to public authorities, judicial bodies or international organisations or courts.<sup>219</sup> Adequate conditions for the preparation and distribution of food in accordance with religious beliefs were ensured as from 2013. .<sup>220</sup>

**Legal certainty:** Prosecutors' right to lodge extraordinary nullity appeals in civil matters was abolished in 2003. In 2013 their general competence to intervene in civil proceedings was abolished and interventions limited to proceedings regarding minors, persons lacking legal capacity and missing persons.<sup>221</sup> The provisions allowing prosecutors to lodge extraordinary nullity appeals in criminal matters were repealed in 2004.<sup>222</sup>

**Access to court:** Access to court in civil matters has been improved through increased possibilities to grant exemptions from court fees and simplified procedures for the granting of legal aid, and judicial review of legal aid decisions ensured.<sup>223</sup> Legislative amendments in 2001 clarified that courts remained competent to examine claims vis-à-vis immovable properties wrongfully seized by the State between 1945-1989. In the criminal field prosecutor decisions to discontinue proceedings were subjected to judicial review by a criminal law reform in 2003.<sup>224</sup>

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214. *Antunes Rocha*, Appl. No. 64330/01, Final Resolution [CM/ResDH\(2013\)230](#)

215. *Salgueiro da Silva Mouta*, Appl. No. 3320/96, Final Resolution [CM/ResDH\(2007\)89](#)

216. *Perdigao*, Appl. No. 24768/06, Final Resolution [CM/ResDH\(2011\)243](#)

217. *Nastase-Silivestru*, Appl. No. 74785/01, Final Resolution [CM/ResDH\(2011\)149](#)

218. *Varga*, Appl. No. 73957/01, Final Resolution [CM/ResDH\(2011\)23](#)

219. *Petra*, Appl. No. 27273/95, Final Resolution [CM/ResDH\(2011\)](#)

220. *Vartic No. 2*, Appl. No. 14150/08, Final Resolution [CM/ResDH\(2014\)221](#)

221. *Androne*, Appl. No. 54062/00, Final Resolution [CM/ResDH\(2013\)232](#)

222. *Bota, Sergio Popescu and Precup*, Appl. No. 16382/03+, Final Resolution [CM/ResDH\(2011\)27](#)

223. *Iorga*, Appl. No. 4227/02, Final Resolution [CM/ResDH\(2011\)24](#)

224. *Macovei and Others*, Appl. No. 5248/02, Final Resolution [CM/ResDH\(2011\)21](#)

**Fair trial:** Civilians are no longer be subjected to the jurisdiction of military courts in criminal cases involving both civilians and military.<sup>225</sup> The right to be heard in person at hearing in appeal proceedings was safeguarded in case the accused had not been heard before or had been acquitted.<sup>226</sup> Reforms in 2004 provided detailed rules about the use of undercover agents and of the evidence so gathered, and introduced safeguards, including judicial authorisation, in respect of telephone tapping in criminal proceedings.<sup>227</sup> A reform of 2014 ensures that when “in absentia” proceedings are reopened the person concerned is set free unless ordinary preventive measures apply.<sup>228</sup>

**Former communist secret service registers:** The processing of information contained in the archives of the former communist secret service was transferred to a civilian body, the NCSAS, in 2008. Interested persons can apply for access to and rectification of information contained in the registers and decisions taken are subject to judicial review.<sup>229</sup>

**Freedom of expression:** In 2002 and 2005, prison sentences for insult, and subsequently for defamation were abolished. In 2006, defamation and insult were decriminalised.<sup>230</sup>

**Discrimination and parental leave in the army:** As from 2006, the law provides that women and men have equal rights to parental leave.

**Protection of property:** After a reform in 2013, the mechanism set up to provide redress (restitution or compensation) for property nationalised during the communist regime was accepted as in principle capable of offering appropriate redress.<sup>231</sup>

**Ban on prisoner voting and other complementary penalties:** Following a 2007 ruling by the High Court of Cassation and Justice, courts ceased applying such penalties automatically and determined instead the need for complementary penalties when sentencing.<sup>232</sup> A criminal law reform of 2014 aligns the legal framework to this ruling

## Russian Federation

**Detention:** Legislative reforms and Rulings of the Constitutional Court and the Supreme Court have ensured that, in compliance with Article 5 § 1, detention on remand is always ordered by a court decision and that such decisions contain reasons and the time-limit for detention.<sup>233</sup>

**Legal certainty:** A 2003 reform of the supervisory review procedure in commercial matters brought this procedure in line with the requirements of legal certainty inherent in the Convention. Under the new system, binding and enforceable decisions are only liable to challenge once, before a supreme judicial instance, upon request

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225. *Maszni*, Appl. No. 59892/00, Final Resolution [CM/ResDH\(2013\)168](#)

226. *Niculescu-Dellakeza*, Appl. No. 5393/04, Final Resolution [CM/ResDH\(2014\)242](#)

227. *Constantin and Stoian*, Appl. No. 23782/06+ , Final Resolution [CM/ResDH\(2013\)40](#)

228. *Sancraian*, Appl. No. 71723/10, Final Resolution [CM/ResDH\(2014\)245](#)

229. *Rotaru*, Appl. No. 28341/95, Final Resolution [CM/ResDH\(2014\)253](#)

230. *Dalban* and 4 other cases, Appl. No. 28114/95+, Final Resolution [CM/ResDH\(2011\)73](#)

231. *Draculet* and 83 other cases, Appl. No. 20294/02, Final Resolution [CM/ResDH\(2014\)274](#)

232. *Calmanovici* and 7 other cases, Appl. No. 42250/02, Final Resolution [CM/ResDH\(2014\)13](#)

233. *Bednov*, Appl. No. 21153/02, Final resolution, [CM/ResDH \(2015\)249](#)

by the parties or certain other persons affected. The grounds for seeking review as well as the time allowed to have been restricted.<sup>234</sup>

**Defamation:** In 2005, the Supreme Court adopted guidelines to lower regarding defamation, insisting on the necessity to distinguish between statements of fact susceptible of proof and value judgments, opinions or convictions, and underlining the fact that political figures have decided to appeal to the confidence of the public and accepted to subject themselves to public political debate and that public officials must accept subjection to public scrutiny and criticism, particularly through the media.<sup>235</sup>

**Settling the “Uroshay-90 bonds”:** In 2009, legislation was enacted to establish the procedure necessary for the settlement of the state debt originating in so called “Urozhay-90 bonds”, issued by the Government of the Russian Socialist Federative Soviet Republic (RSFSR) in order to encourage agricultural workers to sell produce to the State in exchange for the right to priority purchasing of consumer goods in high demand. A detailed payment procedure was established immediately thereafter.<sup>236</sup>

**Confiscation:** A legal basis for the confiscation of smuggled goods was introduced in 2006.<sup>237</sup>

## San Marino

**Detention pending extradition:** The risk of arbitrary detention pending extradition was removed following legislative amendments adopted in 2014 providing for an accessible, precise and foreseeable extradition procedure<sup>238</sup>.

**Unfair criminal proceedings:** The combination of functions by the Commissario della Legge, as both investigating and trial judge with ensuing problems of impartiality, was repealed in 2003. The new Code of Criminal Procedure provides for the right of accused persons to be heard in person by the judge at a public hearing in appeal proceedings<sup>239</sup>.

**Excessive length of civil proceedings:** A legislative reform in 2005, introduced a number of organisational changes and procedural amendments, such as time limits for the handling of cases and sanctions for inactivity on the part of the parties<sup>240</sup>.

## Serbia

**Access to court:** A new Cadastre Act of 2009 ensured that judicial review was available against the administrative authorities’ registration decisions.<sup>241</sup>

**Excessive length of criminal proceedings:** Criminal proceedings were accelerated through a number of procedural amendments in 2013, most notably a change

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234. *Arshinchikova*, Appl. No. 73043/01, Final Resolution [CM/ResDH\(2011\)151](#)

235. *Grinberg and Zakharov*, Appl. No. 23472/03+, Final Resolution [CM/ResDH\(2008\)18](#)

236. *Malysh and Others* and 2 other cases, Appl. No. 30209/03+, Final Resolution [CM/ResDH\(2012\)134](#)

237. *Baklanov*, Appl. No. 68443/01, Final Resolution [CM/resDH\(2011\)301](#)

238. *Toniolo*, Appl. No. 44853/10, Final Resolution [CM/ResDH\(2014\)283](#)

239. *Tierce*, Appl. No. 24954/94, Final Resolution [ResDH\(2004\)3](#)

240. *Tierce and Others*, Appl. No. 68700/01, Final Resolution [CM/ResDH\(2011\)3](#)

241. *Backovic*, Appl. No. 47997/06, Final Resolution [CM/ResDH\(2013\)44](#)

implying that the prosecutor had to establish the grounds for indictment already before the trial, and not during the trial as before with ensuing complexities in the conduct of proceedings. A special law dating 2005 provides that criminal proceedings are urgent if minors are victims.<sup>242</sup>

**Protection of correspondence:** Prisoners were guaranteed a right to correspondence in 2009, which could only be limited only by judicial decision.<sup>243</sup>

## Slovak Republic

**Protection of rights in detention:** Authorities are obliged to give priority to detention cases and deal with them promptly. Under the new Code of Criminal Procedure 2005, a detainee is entitled to apply for release at any time. Where the public prosecutor dismisses such an application, he shall immediately submit it to a competent judge, who shall rule on the application without delay.<sup>244</sup> Respect for the adversarial principle has been improved in 2006, including a right to be heard in person by the court deciding detention<sup>245</sup> and a right of access to the investigation file.<sup>246</sup>

**Fair trial:** New rules for courts were introduced in 2006 to prevent that judges select the cases they deal with and that cases are distributed among them randomly.<sup>247</sup>

**Excessive length of proceedings:** The length of civil proceedings was reduced following amendments of the Code of Civil Procedure in 2002, and of the Judges and Lay Judges Act in 2000<sup>248</sup>, as supplemented by a series of further amendments in 2007 and general reinforcement of the judiciary, notably through an increase in the number of judges and a reinforcement of IT tools to assist case management<sup>249</sup>; criminal proceedings were accelerated by measures in the new Code of Criminal Procedure 2006<sup>250</sup>, notably aimed at providing an effective remedy to speed up proceedings, including the pre-trial investigations<sup>251</sup>.

**Public care of children:** The possibility for administrative authorities to order urgent placement in public care until the courts had had time to consider the matter was repealed as unconstitutional in 2002.<sup>252</sup>

**Paternity:** The possibilities of reopening paternity proceedings were increased in 2013, notably where new evidence is available linked with new scientific methods, unavailable at the time (notably DNA tests).<sup>253</sup>

**Domestic violence:** Reforms in 2003 introduced possibilities of prohibiting violent persons from entering premises occupied by a close person or a person in their care

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242. *Ristić*, Appl. No. 32181/08, Final Resolution [CM/ResDH\(2014\)18](#)

243. *Stojanovic, Jovancic and Milosevic*, Appl. No. 34425/04+, Final Resolution [CM/ResDH\(2011\)77](#)

244. *Kučera and Haris*, Appl. No. 48666/99+, Final Resolution [CM/ResDH\(2011\)158](#)

245. *Nestak*, Appl. No. 65559/01, Final Resolution [CM/ResDH\(2009\)136](#)

246. *Lexa*, Appl. No. 34761/03, Final Resolution [CM/ResDH\(2012\)53](#)

247. *DMD Group, A.S.*, Appl. No. 19334/03, Final Resolution [CM/ResDH\(2012\)51](#)

248. *Jori* and 18 other cases, Appl. No. 34753/97+, Final Resolution [ResDH\(2005\)67](#)

249. *Jakub* and 109 other cases, Appl. No. 2015/02+, Final Resolution [CM/ResDH\(2012\)59](#)

250. *Krumpel and Krumpelová*, Appl. No. 56195/00, Final Resolution [CM/ResDH\(2007\)10](#)

251. *Masar*, Appl. No. 66882/09, Final Resolution [CM/ResDH\(2013\)126](#)

252. *Berecova*, Appl. No. 74400/01, Final Resolution [CM/ResDH\(2009\)11](#)

253. *Paulik*, Appl. No. 10699/05, Final Resolution [CM/ResDH\(2013\)195](#)

or if the premises are jointly used by spouses or ex-spouses to exclude the violent one from the right to use the premises.<sup>254</sup> The remedies in case of breach of the statutory duty to protect fundamental rights, life and health, have been reinforced including notably a right to obtain non-pecuniary damages.<sup>255</sup>

## Slovenia

**Protection against ill-treatment and of rights in detention:** Measures were adopted to carry out regular inspections aimed at preventing ill-treatment in detention places. In November 2007, a specialised division in the State Prosecutor's Office was established to investigate allegations of ill-treatment. Slovenian law and judicial practice ensures compensation for unlawful detention.

## Spain

**Detention and retroactive application of criminal law:** A new system of calculation of maximum terms of sentences, the so-called "Parot doctrine" which increased the time to be spent in prison, including for persons convicted before its adoption, was discontinued.<sup>256</sup> The disciplinary sanction of house arrest was abolished in 2007.<sup>257</sup>

**Functioning of justice:** Additional safeguards as regards the composition of military courts and the procedural rules applicable to ensure impartiality were introduced in 2003.<sup>258</sup>

**International child abduction:** Child abduction by a parent, earlier considered as a disobedience, was criminalised as an offence in 2002 thereby allowing the issuing of an international arrest warrant, thus making it easier for Spanish courts to request international action including under the Hague Convention.

## Sweden

**Expulsion and related issues:** The appeal procedure in aliens' cases was changed in March 2006. The former appeal organ, the Aliens Appeal Board, was replaced by special Migration Courts, thus creating a three-level appeal system with the Administrative Court of Appeal in Stockholm as the highest instance. Moreover, a new Aliens Act entered into force at the same time, providing clearer rules as regards residence permits and placing more emphasis on grounds for protection.<sup>259</sup>

**Protection of private life:** In January 2008 a new agency, the Commission on Security and Integrity Protection, started to operate in order to supervise all personal data processing by the Swedish Security Service, notably in response to complaints lodged by individuals. In case irregularities are found, the Commission shall cooperate with competent authorities, notably the State Prosecution Service, the Chancellor of Justice and the Data Inspection Board so that necessary remedial action may be

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254. *E.S. and Others*, Appl. No. 8227/04, Final Resolution [CM/ResDH\(2012\)50](#)

255. *Kontrova*, Appl. No. 7510/04, Final Resolution [CM/ResDH\(2011\)31](#)

256. *Del Rio Prada*, Appl. No. 42750/09, Final Resolution [CM/ResDH\(2014\)107](#)

257. *Dacosta Silva*, Appl. No. 69966/01, Final Resolution [CM/ResDH\(2010\)110](#)

258. *Perote Pellon*, Appl. No. 45238/99, Final Resolution [ResDH\(2005\)94](#)

259. *Bader and Kanbor*, Appl. No. 13284/04, Final Resolution [CM/ResDH\(2010\)112](#)

taken. The Data Inspection Board may order the Security Service to stop processing data and assort such orders with financial sanctions, and, in last resort, apply to the administrative courts to have the data erased.<sup>260</sup> A new provision prohibiting intrusive photography (covert filming in private places) was introduced in 2013.<sup>261</sup>

**Bankruptcy:** Following a 2005 reform, if a bankruptcy decision is quashed, it is henceforth for the creditor applying for bankruptcy to compensate the debtor for bankruptcy costs taken out of the estate, unless the debtor has caused the costs by his own negligence. In addition, the district court decisions on bankruptcy costs can now be appealed.<sup>262</sup>

**Taxation:** Since 2003 the lodging of an appeal to the tax authority or to the court stays the enforcement of taxation decisions concerning tax surcharge (no deposit of security can be required). The tax authority and courts have also received explicit competence to remit or reduce tax surcharges in case of excessive length of proceedings.<sup>263</sup>

## Switzerland

**Expulsion and related issues:** Changes of practice in 2008 ensured that authorisations will be given to spouses awaiting removal and placed in different cantons to join each other and live together, in particular where there is a prolonged impossibility to implement the removal decision.<sup>264</sup>

**International child abduction:** The responses to international child abductions were improved in 2007 in line with the Hague Convention. Return procedures have been accelerated by conferring competence on a single cantonal court and removing other legal procedures at cantonal level; preference is given to the conclusion of friendly settlements in conflicts between parents; decisions on return are combined with concrete enforceable measures; and cantons are required to designate a single authority in charge of enforcement.<sup>265</sup>

**Discrimination in the choice of name:** The gender based discrimination against bi-national couples in their freedom to choose their surname after marriage was abrogated in 2011 so that each spouse has the same right to retain his/her name or choose either the surname of the bridegroom or of the bride.<sup>266</sup>

**Fair trial:** A new federal law regulating the profession of lawyers entered into force in 2002, providing access to a court in all cases of dispute and thus also to a public hearing, including disciplinary proceedings<sup>267</sup>.

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260. *Segerstedt-Wiberg and Others*, Appl. No. 62332/00, Final Resolution [CM/ResDH\(2012\)222](#)

261. *Söderman*, Appl. No. 5786/08, Final Resolution [CM/ResDH\(2014\)106](#)

262. *Stockholms Försäkrings- och Skadeståndsjuridik AB*, Appl. No. 38993/97, Final Resolution [CM/ResDH\(2009\)13](#)

263. *Janosevic*, Appl. No. 34619/97, Final Resolution [CM/ResDH\(2007\)59](#)

264. *Mengesha Kimfe* and 2 other cases, Appl. No. 24404/05, Final Resolution [CM/ResDH\(2011\)302](#)

265. *Bianchi*, Appl. No. 7548/04, final on 22/09/2006, Final Resolution [CM/ResDH\(2008\)58](#)

266. *Losonci Rose and Rose*, Appl. No. 664/06, final on 09/02/2011, Final Resolution [CM/ResDH\(2012\)102](#)

267. *Hurter*, Appl. No. 53146/99, final on 15/03/2006, Final Resolution [CM/ResDH\(2015\)187](#)

**Protection of private life and correspondence:** The legal guarantees applicable when a lawyer, against whom a secret surveillance measure has been taken, is not himself or herself a suspect or accused of an offence, were strengthened in 2002. The new legislation, sets out in detail the conditions under which telephone calls may be intercepted and postal correspondence and telecommunications monitored, the organisation of “monitoring”, the authorities entitled to order a monitoring measure and the procedures to be complied with.<sup>268</sup>

**Taxation:** Changes of practice in 1998 to the effect that tax fines are considered as penalties and thus the sole responsibility of the person having committed the impugned acts (and thus not the responsibility of others, e.g. heirs) were codified in legislation in 2005.<sup>269</sup>

**Political advertising on TV:** Relaxation of the prohibition on political advertising contained in the radio and television legislation.<sup>270</sup>

### “the former Yugoslav Republic of Macedonia”

**Excessive length of proceedings:** Administrative proceedings were accelerated following the adoption of new laws on Courts and on General Administrative Procedure in 2006 and the setting-up of a specialised Administrative Court with jurisdiction for administrative disputes previously decided by the Supreme Court. Furthermore, any request made to administrative authorities will be considered to have been accepted, if the administration fails to respond to that request within a certain deadline (the concept of “tacit authorisation”). Deadlines in administrative proceedings were considerably shortened. Rules on serving documents were simplified. The service of documents in electronic form was introduced. Furthermore, the second-instance authority shall make a decision on the merits under certain circumstances, e.g. in situations when a matter had already been referred back once for re-examination to a first-instance authority.<sup>271</sup>

### Turkey

**Constitutional priority of international HR agreements:** following amendments to the Constitution in 2004 (Article 90§5) the priority of international agreements on fundamental rights and freedoms over ordinary legislation has been ensured.<sup>272</sup>

**Detention:** The maximum periods of detention have successively been diminished<sup>273</sup> and in 2001, the Constitution was amended so as to limit to 4 days the maximum length of police custody before presenting the detainee before a judge except in case of derogation in a state of emergency.<sup>274</sup> As from 2005 detainees see a judge

268. *Kopp*, Appl. No. 23224/94, Final Resolution [ResDH\(2005\)96](#)

269. *E.L., R.L. and J.O.-L.*, Appl. No. 20919/92, Final Resolution [CM/ResDH\(2005\)3](#)

270. *Verein gegen Tierfabriken*, Appl. No. 32772/02, Final Resolution [CM/ResDH\(2010\)113](#)

271. *Dumanovski, Doceovski and Blage ilievski*, Appl. No. 13898/02+, Final Resolution [CM/ResDH\(2011\)81](#)

272. *United Communist Party and 7 other cases*, Appl. No. 19392/92, Final Resolution [CM/ResDH\(2007\)100](#)

273. *Demir and Others*, Appl. No. 21380/93+, Final Resolution [CM/ResDH\(2002\)107](#)

274. *Sakik and Others*, Appl. No. 23878/94+, Final Resolution [CM/ResDH\(2002\)110](#)



within 24 hours in ordinary cases and 3 days in exceptional cases. Courts shall render their decisions within 3 days.<sup>275</sup>

**Fair trial:** Problems of fairness before State security courts<sup>276</sup> contributed to the abolishment of these courts following constitutional amendments in 2004.<sup>277</sup> Juvenile justice was reformed in 2005 with special juvenile courts and the development of other sanctions than deprivation of liberty, which is to be resorted to only in last resort.<sup>278</sup> The fairness of proceedings to obtain compensation for unlawful detention has been improved in the new Code of Criminal Procedure 2005 and oral hearings shall now be held and the notification of the Principle Public Prosecutor's written opinions to the parties is required.<sup>279</sup> The practice of imposing fines through "sentence orders" without trial was abolished in 2004, having been declared unconstitutional by the Constitutional Court.<sup>280</sup>

**Enforcement of access and custody decisions:** Family courts were created in 2003. Failure to abide by access or custody orders was defined as a criminal offence. Sanctions for non-compliance were increased shortly thereafter. The new framework provided that a social worker, a pedagogue, a psychologist or social officer shall be present during enforcement operations.<sup>281</sup>

**Strengthening freedom of expression, notably in the press and media:** A series of legislative reforms have aimed at improving freedom of expression, notably the abrogation in 2003 of Article 8 of the Law against Terrorism which prohibited any action against the indivisible integrity of the State<sup>282</sup>. Article 6§5 of the law against Terrorism was abrogated and thereby the possibility to prohibit the future publication of periodicals in case of breaches of this law.<sup>283</sup>

**Freedom of association:** A series of legislative amendments starting in 1995, and supplemented in 2005 and 2010 have guaranteed the right of civil servants to form and join trade unions with competence to engage in collective bargaining. Dismissal based on membership in a trade union is prohibited.<sup>284</sup> The automatic dissolution of associations following the criminal conviction of one of their members for having carried out activities or made statements against the social aim of the association was abolished in 2004. Constitutional amendments in 2001, followed by amendments to the law on political parties in 2003 ensured that a political party would not be sanctioned on the sole basis of its manifesto or without any evidence of clearly anti-democratic activity. They also introduced a requirement of proportionality,

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275. *Ayaz and Others*, Appl. No. 11804/02+, Final Resolution [CM/ResDH\(2008\)29](#)

276. *Incal*; Appl. No. 22678/93; *Kalem*, Appl. No. 70145/01, Final Resolution [CM/ResDH\(2009\)103](#); *Kizilyaprak*, Appl. No. 9844/02, Final Resolution [CM/ResDH\(2009\)108](#); *Sadak and Others*, Appl. No. 22990/96+, Final Resolution [CM/ResDH\(2004\)86](#)

277. *Gencel*, Appl. No. 4889/0553431/99, Final Resolution [CM/ResDH\(2013\)256](#)

278. *Selcuk*, Appl. No. 21768/02, Final Resolution [CM/ResDH\(2010\)115](#)

279. *Goc* and 48 other cases, Appl. No. 36590/97+, Final Resolution [CM/ResDH\(2011\)307](#)

280. *Arslan*, Appl. No. 75836/01, Final Resolution [CM/ResDH\(2010\)64](#)

281. *Hansen*, Appl. No. 36141/97, Final Resolution [CM/ResDH\(2008\)61](#)

282. *Arslan* and 31 other cases, Appl. No. 23462/94, Final resolution [ResDH\(2006\)79](#)

283. *Urper and Others*, Appl. No. 14526/07, Final Resolution [CM/ResDH\(2014\)130](#)

284. *Demir and Baykara*, Appl. No. 34503/97, Final Resolution [CM/ResDH\(2011\)308](#)

providing recourse to lesser penalties than dissolution (partial or total withdrawal of public financial support, depending on the gravity).<sup>285</sup>

**General remedy:** a right to complain to the Constitutional Court about violations of the Convention was recognised in 2013.<sup>286</sup>

**Compensation to internally displaced:** A law on compensation was adopted in 2004, and revised in 2005, providing for a simplified alternative to judicial proceedings to allow internally displaced persons to obtain directly from the administration compensation for pecuniary damage resulting from terrorism and measures taken against terrorism. 76 compensation commissions were set up under the law in 76 provinces.<sup>287</sup>

## Ukraine

**Legal certainty:** The supervisory review procedure was abolished in June 2001 following a legislative reform which set up a three-level court system.<sup>288</sup>

**Fair trial:** According to the new Code of Civil Procedure 2005, the first instance courts lost the power to filter appeals against their decisions.<sup>289</sup> The new Code also provides a single procedure for delivery of all kinds of summonses, subpoenas or judicial notifications.<sup>290</sup> The need to exhaust non-judicial means before applying to a court was repealed.<sup>291</sup> The administrative offences code was revised in 2008 so as to provide a right to appeal.<sup>292</sup>

**Freedom of expression:** The Law on defamation was amended in 2003 exempting value judgments from liability. State bodies and bodies of local self-government are prohibited from demanding non-pecuniary damages for the publication of false information, although they may demand a right of reply. Officials acting in their personal capacity may still seek to protect their right to their honour and dignity through the courts. The law provides a defence of “conscientious publication” if a journalist acted in good faith and verified the information published.<sup>293</sup>

## United Kingdom

**Protection of children and family:** The Children Act 2004 has improved the protection of children against parental violence, with the exception that punishments may still be administered where any injury suffered is transient or trifling.<sup>294</sup> The House of Lords changed its jurisprudence so that local authorities and social services can now be liable for failing to act to prevent child abuse.<sup>295</sup> Statutory guidance was provided

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285. *United Communist Party*, Appl. No. 19392/92, Final Resolution [CM/ResDH\(2007\)100](#)

286. *Özbek*, Appl. No. 25327/04, Final Resolution [CM/ResDH\(2013\)254](#)

287. *Dogan and Others*, Appl. No. 8803/02, Final Resolution [CM/ResDH\(2008\)60](#)

288. *Agrotehservis and 7 other cases*, Appl. No. 62608/00, Final Resolution [CM/ResDH\(2011\)313](#)

289. *Volovik*, Appl. No. 15123/03, Final Resolution [CM/ResDH\(2010\)219](#)

290. *Strizhak*, Appl. No. 72269/01, Final Resolution [CM/ResDH\(2008\)65](#)

291. *Ponomarenko*, Appl. No. 13156/02, Final Resolution [CM/ResDH\(2011\)35](#)

292. *Gurepka*, Appl. No. 61406, [CM/ResDH\(2010\)85](#)

293. *Ukrainian Media Group*, Appl. No. 72713/01, Final Resolution [CM/ResDH\(2007\)13](#)

294. *A.*, Appl. No. 25599/94, Final Resolution [CM/ResDH\(2009\)75](#)

295. *Z and Others*, Appl. No. 29392/95, Final Resolution [CM/ResDH\(2011\)290](#)

in 2010 to avoid that children be treated at public hospitals without consent<sup>296</sup>, to improve the care services offered by local authorities to avoid unnecessary relocations to family centres or placement in foster care<sup>297</sup>

**Detention in psychiatric hospital:** The law was amended and a new Code of Practice introduced in 2007-2008 to ensure procedural safeguards also for the placement and detention of legally incapacitated, compliant, persons in psychiatric institutions.

**Domestic servitude:** New criminal legislation was adopted in 2010 in England and Wales as well as in Scotland, making the holding of a person in slavery or servitude or requiring the person to perform forced or compulsory labour a criminal offence.<sup>298</sup>

**Disclosure of pictures from surveillance cameras:** Specific provisions were included in the Data Protection Act 1998 and supplemented by the Information Commissioners CCTV Code in 2008 to limit the retention and to restrict disclosure of images to third parties.<sup>299</sup>

**Police registers with DNA profiles:** Legislation requiring the destruction of the vast majority of DNA profiles gathered from persons in respect of whom charges had been dropped or who had been acquitted entered into force in 2013.<sup>300</sup>

**Stop and search orders:** The broad powers granted the police notably through the right to issue so called “Stop and search orders” were circumscribed by new legislation in 2012 which only allows stop and search of peoples and vehicles without special suspicion in exceptional circumstances (where a senior police officer reasonably suspects that an act of terrorism will take place and the measure is necessary to prevent the act).<sup>301</sup>

**Interception of telephone communications:** Legislation providing a regulatory framework for interceptions on private telecommunication networks<sup>302</sup> and providing more detailed and foreseeable regulation of interceptions of other electronic communications<sup>303</sup> was enacted in 2000.

**Discrimination based on sex:** The Civil Partnership Act 2004 provides that same sex relationships are taken into account in an equivalent way to relationships between persons of opposite sex when deciding different benefits.<sup>304</sup> Legal recognition to transsexuals who have taken decisive steps to live fully and permanently in their acquired gender was ensured in 2005<sup>305</sup>, including as regards social security benefits and state pension.<sup>306</sup> Widows and widowers received the same right to social security benefits as from 2001.<sup>307</sup>

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296. *M.A.K. and R.K.*, Appl. No. 45901/05, Final Resolution [CM/ResDH\(2012\)65](#)

297. *A.D. and O.D.*, Appl. No. 28680/06, Final Resolution [CM/ResDH\(2012\)66](#)

298. *C.N.*, Appl. No. 4239/08, Final Resolution [CM/ResDH\(2014\)34](#)

299. *Peck*, Appl. No. 44647/98, Final Resolution [CM/ResDH\(2011\)177](#)

300. *Goggins*, Appl. No. 30089/04+, Final Resolution [CM/ResDH\(2014\)91](#)

301. *Gillan and Quinton*, Appl. No. 4158/05, Final Resolution [CM/ResDH\(2013\)52](#)

302. *Halford*, Appl. No. 20605/92, Final Resolution [CM/ResDH\(2007\)15](#)

303. *Liberty and Others*, Appl. No. 58243/00, Final Resolution [CM/ResDH\(2011\)83](#)

304. *J.M.*, Appl. No. 37060/06, Final Resolution [CM/ResDH\(2012\)231](#)

305. *I. and Christine Goodwin*, Appl. No. 25680/94+, Final Resolution [CM/ResDH\(2011\)175](#)

306. *Grant*, Appl. No. 32570/03, Final Resolution [CM/ResDH\(2011\)173](#)

307. *Blackgrove* and 10 other cases, Appl. No. 2895/07+, Final Resolution [CM/ResDH\(2010\)135](#)



# Appendix 1 – Statistics 2015

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## Introduction

The information presented in this appendix is based on the database of the Department for the execution of judgments of the European Court of Human Rights. In order to rationalise the presentation, the figures of the former sections B.2 (the supervision track – enhanced or standard) and E.2 (nature of cases – leading and repetitive) of the Annual Report 2014 have been merged and are now referenced together under B.3. A brief description of the basic notions underlying the statistics follows below.

This appendix is now divided in five sections:

- ▶ **Section A** provides an **overview of the main developments since 1996 à 2015** (new, pending and closed)
- ▶ **Section B** focuses on **statistics on the classification of cases by the Committee of Ministers**:
  - Number of cases according to their classification: standard or enhanced supervision
    - New cases (*in the course of the year*)
    - Pending cases (*at 31 December*)
    - Cases closed (*during the year*)
  - Number of cases according to their nature: reference or repetitive cases
    - New cases (*in the course of the year*)
    - Pending cases (*at 31 December*)
    - Cases closed (*during the year*)
  - Detailed statistics by State
    - New cases (*in the course of the year*)
    - Pending cases (*at 31 December*)
    - Cases closed (*during the year*)
- ▶ **Section C** covers other statistics relating to the **Committee of Ministers' new working methods**:
  - Main violation themes dealt with under enhanced supervision
  - Main States with cases under enhanced supervision
  - Transfers from one supervision procedure to another
  - Number of action plans/reports received
  - Number of interventions of the Committee of Ministers during the year
  - Contributions of the civil society
- ▶ **Section D** presents statistics on the **execution length of the European Court's judgments**:
  - Leading cases pending
  - Leading cases closed
  - Respect of deadlines of payment of the just satisfaction
- ▶ **Section E** includes a number of **additional statistics related to**:
  - the just satisfaction awarded by the European Court
  - friendly settlements intervened during the year
  - cases decided under Protocol No. 14, Article 28 (1) (b), i.e. by a committee of 3 judges as the underlying questions are already the subject of well-established case-law of the European Court

## Basic notions

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The reform of the Committee of Ministers' working methods in 2011 introduced a prioritisation scheme for the supervision procedure. Under this scheme, the Committee will follow closely, under an **enhanced supervision** procedure, developments in certain types of cases. Among these figure cases implying a need to take urgent individual measures, or deemed by the CM to concern important structural or complex problems, whether the problem has been identified by the Court or the CM itself. Pilot judgments are automatically under enhanced supervision, so are also inter-state cases.

All other cases follow a **standard supervision** procedure. When enhanced supervision is no longer deemed necessary, cases are transferred to standard supervision. Conversely, cases under standard supervision may be transferred to enhanced supervision if deemed appropriate in the light of developments.

The identification of all cases revealing structural problems, whether important or not, commonly called **leading cases** has since the beginning been an essential element of execution supervision. This process has also allowed the identification of **repetitive cases** concerning similar issues, and, at least at the end of the supervision process, cases which eventually turn out to be based on **isolated** errors or shortcomings. For the purposes of statistics regarding new and pending cases, possibly isolated cases are usually included among leading cases. In addition, several interconnected leading cases may be examined together in a single group (see notably Appendix 2)

**Friendly settlements** are included in the group which best corresponds to the terms of the settlement. A settlement with an undertaking to adopt legislative measures will, for example, be identified as "leading".

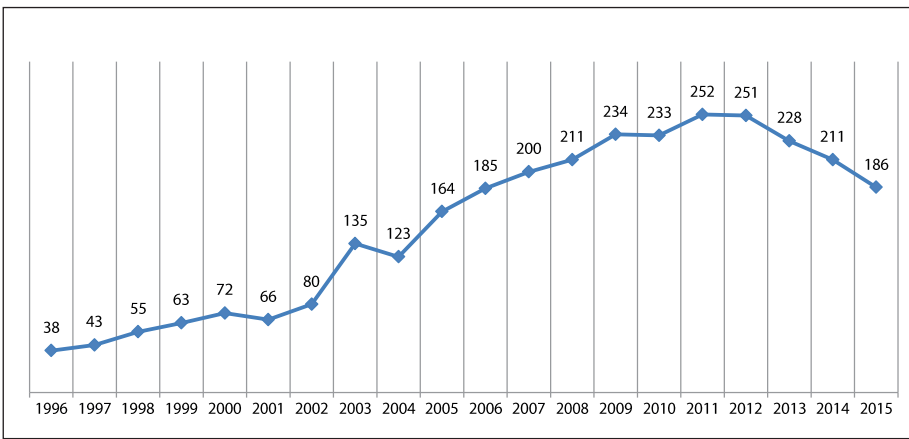
**Note:** For practical reasons, information on judgments which have become final in a specific year may still be incomplete when the statistics are produced. For some judgments/decisions, this information will only arrive and be registered later with some minor consequences for the exactness and comparability of statistics regarding new and pending cases. In addition, as regards the comparability of statistics within a certain year, it must be borne in mind that the new cases, born and closed the same year (151 in 2015 and 200 in 2014), are not included among the "cases pending" at the end of the year.

## A. Overview of developments in the number of cases from 1996 to 2015

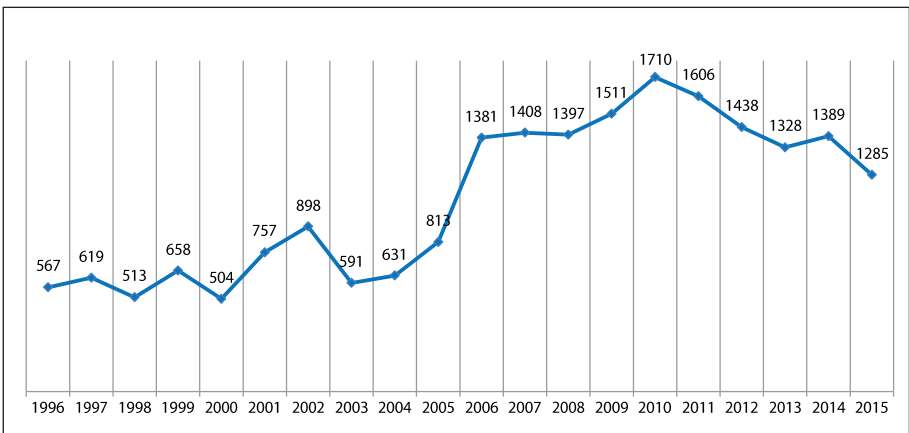
The data presented also include cases where the Committee of Ministers decided itself whether or not there had been a violation under former Article 32 of the Convention (even if this competence disappeared in connection with the entry into force of Protocol No. 11 in 1998, a number of such cases remain pending under former Article 32).

### A.1. Developments in the number of new cases

#### A.1.a. New leading cases

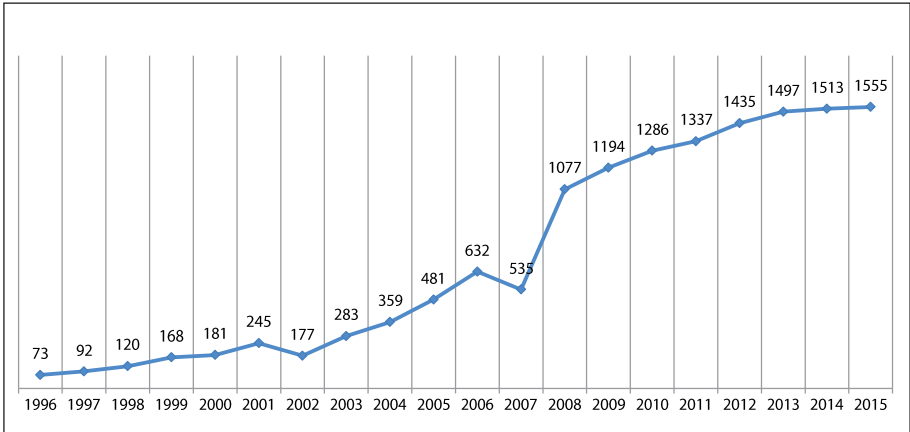


#### A.1.b. Total number of new cases

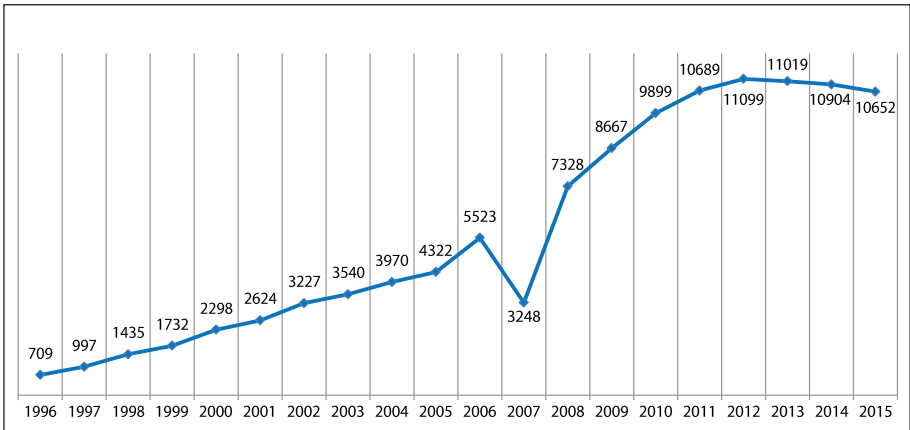


## A.2. Developments in the number of pending cases at the end of the year

### A.2.a. Leading cases pending



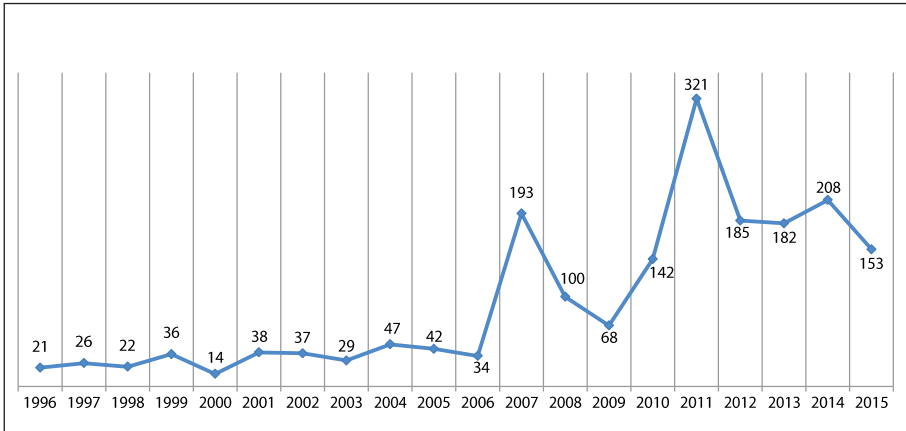
### A.2.b. Total number of pending cases



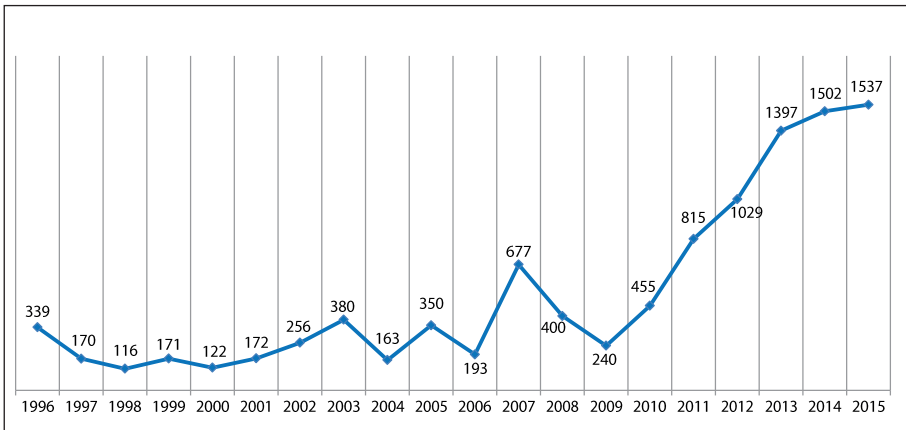


### A.3. Developments in the number of closed cases

#### A.3.a. Leading cases closed



#### A.3.b. Total number of cases closed



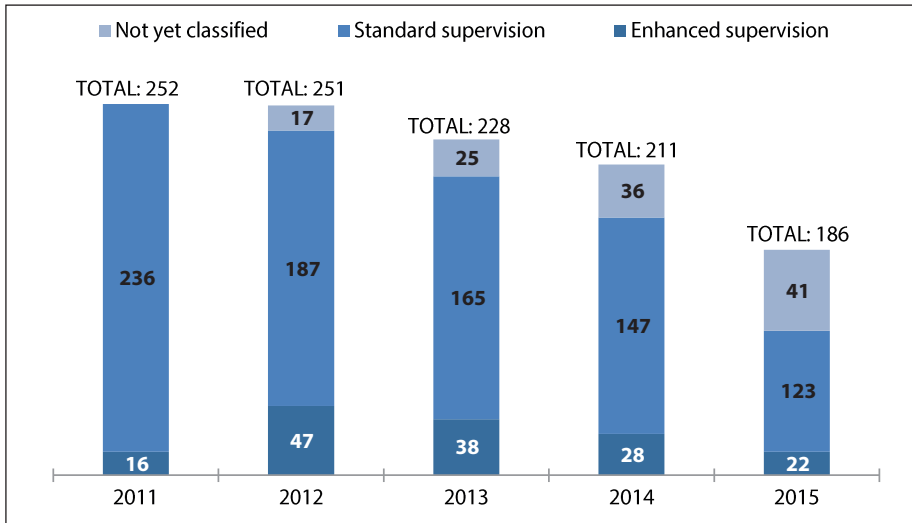
## B. Main statistics relating to the Committee of Ministers' action

Note: The presentation of new cases awaiting classification as leading or repetitive is only provisional awaiting the classification decision.

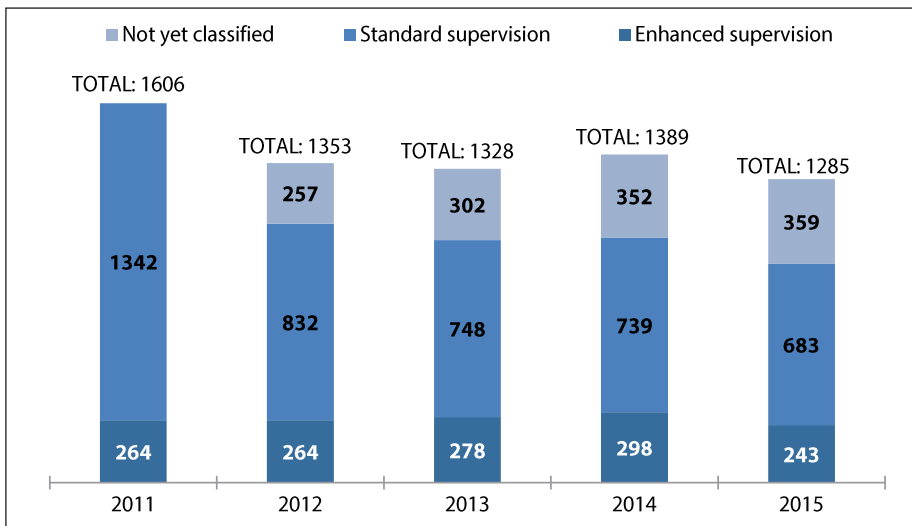
### B.1. Overview of the number of cases according to their classification : enhanced and standard

#### B.1.a. New cases

##### i. New leading cases

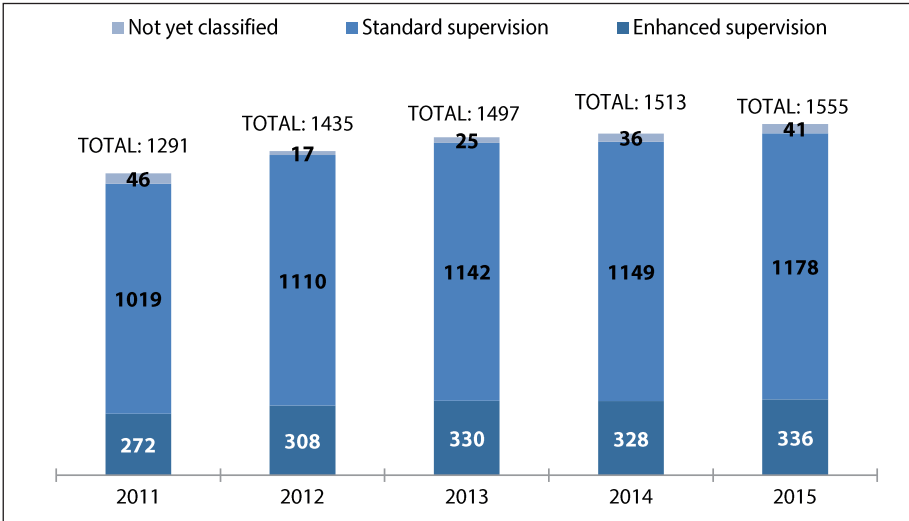


##### ii. Total number of new cases

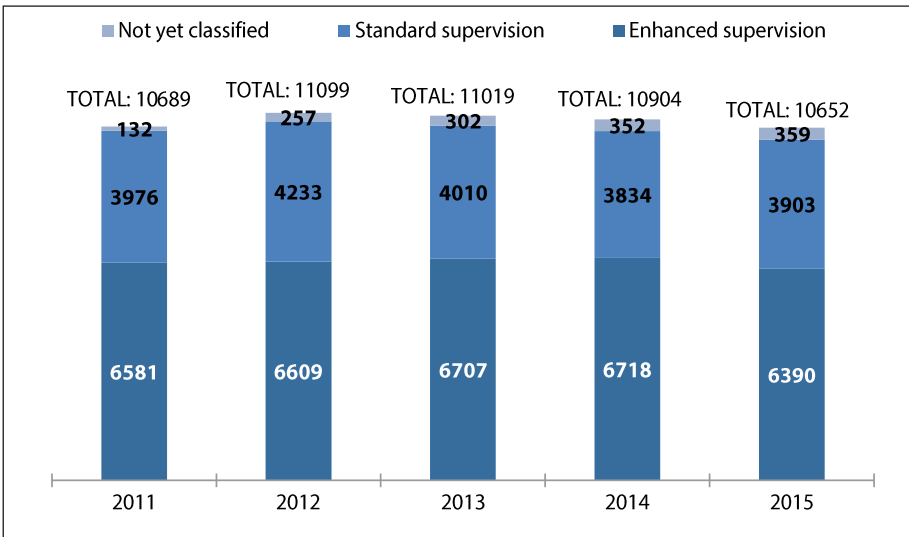


## B.1.b. Pending cases : situation at 31 December

### i. Leading cases pending

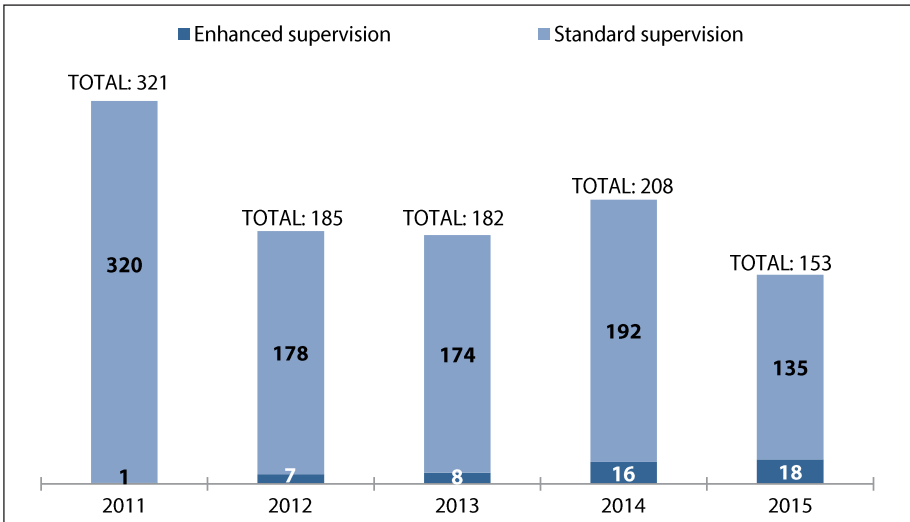


### ii. Total number of pending cases

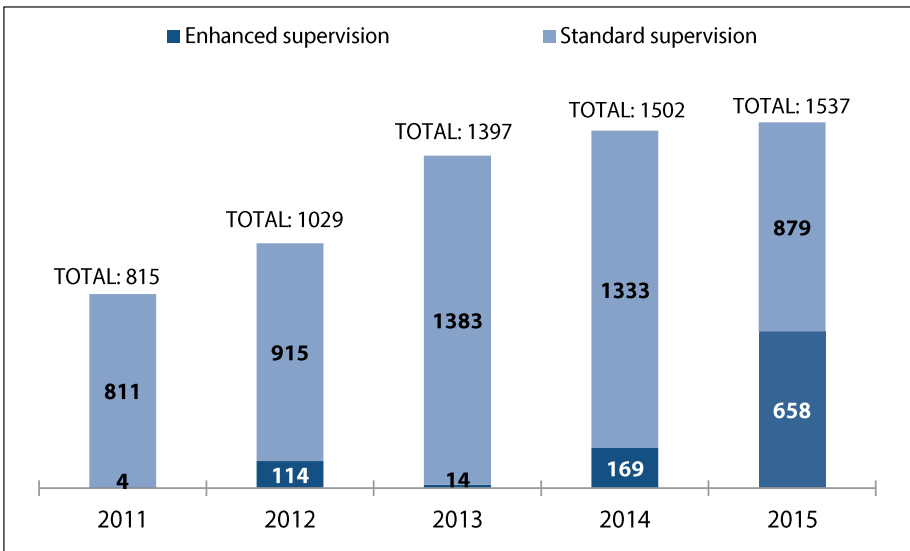


## B.1.c. Cases closed

### i. Leading cases closed

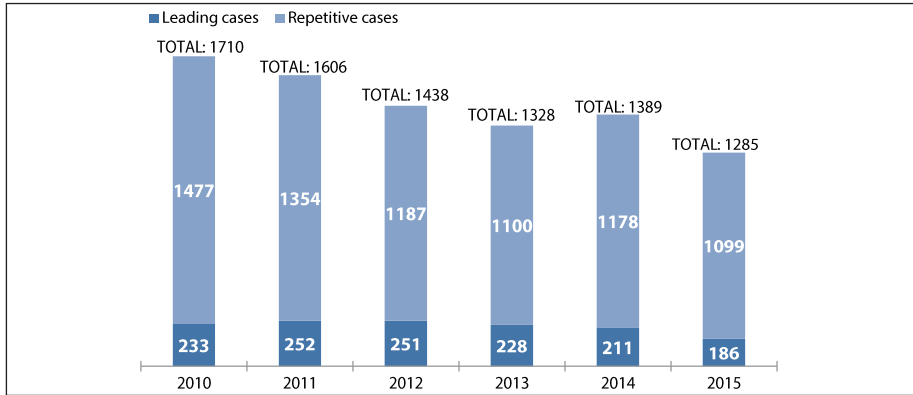


### ii. Total number of cases closed

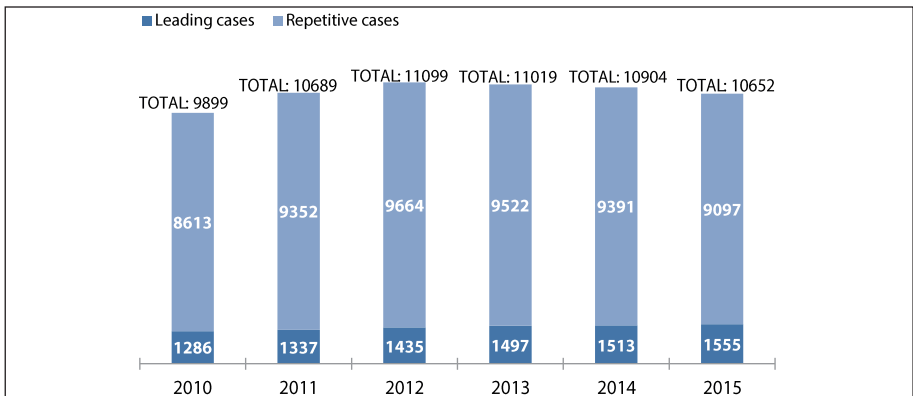


## B.2. Overview of the number of cases according to their nature: leading and repetitive

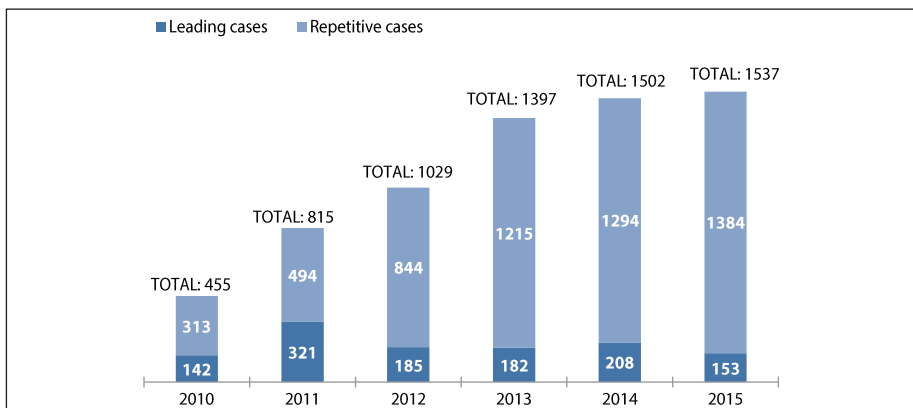
### B.2.a. New cases



### B.2.b. Pending cases



### B.2.c. Cases closed



### B.3. Detailed statistics by State

For the sake of clarity, the figures of the table of the section E.2 and those of the tables of the section B.2 of the Annual report 2014 have been merged, now referred to under section B.3.

#### B.3.a. New cases

State	Leading cases						Repetitive cases						TOTAL						
	Enhanced supervision		Standard supervision		Not yet classified		Total number of leading cases		Enhanced supervision		Standard supervision		Not yet classified		Total number of repetitive cases				
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015			
Albania	1			1	1		2	1	2	3	1	2			5	3	10	11	
Andorra																			
Armenia		1		1		1			5		1					1	5	8	
Austria			2	1		1	2	2			6	5	5			11	5	7	
Azerbaijan	1	2		1			1	3	2	4	13	17	10		32	31	34		
Belgium		2		1				3	8	2	2	11			10	13	16		
Bosnia and Herzegovina			2			1	2	1	2	1	1		1		4	1	2		
Bulgaria	1	2	9	7	3		13	9		6	9	10	4	1	13	17	26		
Croatia			16	8	2	3	18	11			22	23	25	5	47	28	39		
Cyprus														3		3			
Czech Republic			4	2	1		5	2			1			1	1	1	3		
Denmark																			
Estonia			2	1	1	2	3	3			4	1			4	1	4		
Finland			2				2				3	4	1		4	4	4		

State	Leading cases						Repetitive cases						TOTAL					
	Enhanced supervision		Standard supervision		Not yet classified		Total number of leading cases		Enhanced supervision		Standard supervision		Not yet classified		Total number of repetitive cases			
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015		
France	1		10	9	3	1	14	10	1		3	10	4	2	8	12	22	22
Georgia		1	3	3		1	3	5			11	7	1	3	12	10	15	15
Germany	1		1	3		2	2	5	1		1		1		3		5	5
Greece			3	3	3	3	3	6	14	13	34	78	39	35	87	126	90	132
Hungary		1	2	6		1	2	8	26	14	32	61	15	21	73	96	75	104
Iceland												2				2		2
Ireland	1						1										1	
Italy		2	12	4	4	2	16	8	11	2	15	11	10	5	36	18	52	26
Latvia			7	7	1	2	8	9			3	5	2		5	5	13	14
Liechtenstein						1		1										1
Lithuania			6	1		1	6	2				3				3	6	5
Luxembourg				1				1										1
Malta					1	1	1	1				3		2		5	1	6
Republic of Moldova	1		3	3	2		6	3	6	4	6	8	13	5	25	17	31	20
Monaco			1				1										1	
Montenegro				1	1		1	1			1	2	1		2	2	3	3
Netherlands			1	1			1	1			3	2	2		5	2	6	3
Norway			1	1			1	1					1		1		2	1
Poland		1	1	4		4	1	9	4	10	74	80	17	32	95	122	96	131

State	Leading cases						Repetitive cases						TOTAL						
	Enhanced supervision		Standard supervision		Not yet classified		Total number of leading cases		Enhanced supervision		Standard supervision		Not yet classified		Total number of repetitive cases				
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015			
Portugal			3	3		1	3	4	4	10	4	33	22	9	12	52	38	55	42
Romania	3		15	13	7	4	25	17	31	32	48	62	48	22	38	115	118	140	135
Russian Federation	6	1	4	4	2	2	12	7	67	53	31	36	31	35	29	138	113	150	120
San Marino						1		1											1
Serbia	1	1	4		1		6	1	10	11	30	57	30	22	18	89	59	95	60
Slovak Republic	1		5	8	1	2	7	10				12	14	2	12	14	26	21	36
Slovenia	1		3				4		7			11	9	9	2	27	11	31	11
Spain	1			3			1	3				1	2			1	2	2	5
Sweden			2	1			2	1						1		1		3	1
Switzerland			5	3	1		6	3						2	1	2	1	8	4
"the former Yugoslav Republic of Macedonia"			1	5		1	1	6				22	5	9	8	31	13	32	19
Turkey	1	1	10	10	4	2	15	13	43	28	46	92	46	31	54	166	128	181	141
Ukraine	7	6	4	2		1	11	9	25	28	7	9	7	14	13	48	48	59	57
United Kingdom		1	3	1			3	2		1	1	11	1	1	1	12	3	15	5
<b>TOTAL</b>	<b>28</b>	<b>22</b>	<b>147</b>	<b>123</b>	<b>36</b>	<b>41</b>	<b>211</b>	<b>186</b>	<b>270</b>	<b>221</b>	<b>560</b>	<b>592</b>	<b>560</b>	<b>316</b>	<b>318</b>	<b>1178</b>	<b>1099</b>	<b>1389</b>	<b>1285</b>



### B.3.b. Pending cases

State	Leading cases						Repetitive cases						TOTAL					
	Enhanced supervision		Standard supervision		Not yet classified		Total number of leading cases		Enhanced supervision		Standard supervision		Not yet classified		Total number of repetitive cases			
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015		
Albania	9	8	8	10	1		18	18	15	19	5	7		5	20	31	38	49
Andorra			1	1			1	1									1	1
Armenia	4	3	12	8		1	16	12	8	3	10	10			18	13	34	25
Austria			23	21		1	23	22			44	20		5	49	20	72	42
Azerbaijan	12	14	30	31			42	45	33	40	22	52	17	10	72	102	114	147
Belgium	4	6	9	7			13	13	35	20	11	17			46	37	59	50
Bosnia and Herzegovina	5	6	5	4		1	10	11	7	9	6	6	1		14	15	24	26
Bulgaria	26	24	66	65	3		95	89	171	124	55	58	4	1	230	183	325	272
Croatia	3	4	62	63	2	3	67	70	1	2	79	85	25	5	105	92	172	162
Cyprus	2	2	3	2			5	4						3		3	5	7
Czech Republic	1	1	8	6	1		10	7			4	1		1	4	2	14	9
Denmark																		
Estonia			6	6	1	2	7	8			2	3			2	3	9	11
Finland			13	13			13	13			27	29	1		28	29	41	42
France	4	4	28	36	3	1	35	41	1	1	14	25	4	2	19	28	54	69
Georgia	5	6	14	15		1	19	22	2	2	7	11	1	3	10	16	29	38
Germany			15	15		2	15	17			3	3	1	1	4	3	19	20

State	Leading cases						Repetitive cases						TOTAL			
	Enhanced supervision		Standard supervision		Not yet classified		Total number of leading cases		Enhanced supervision		Standard supervision		Not yet classified		Total number of repetitive cases	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Greece	10	9	46	40		3	56	52	196	85	267	130	35	39	502	250
Hungary	3	6	34	36		1	37	43	231	251	48	73	15	21	294	345
Iceland			5	2			5	2			1	3			1	3
Ireland	1	1	1	1			2	2			4	4			4	4
Italy	26	25	48	54	4	2	78	81	2370	2161	164	174	10	5	2544	2340
Latvia			43	48	1	2	44	50			12	13	2		14	13
Liechtenstein						1		1								
Lithuania	2	2	21	21		1	23	24			3	7			3	7
Luxembourg				1				1								
Malta	2	2	7	8	1	1	10	11	1	1	6	9		2	7	12
Republic of Moldova	25	25	49	54	2		76	79	107	113	60	73	13	5	180	191
Monaco																
Montenegro			12	13	1		13	13			3	4	1		4	4
Netherlands		1	9	8			9	9					2		2	
Norway	1		2	3			3	3					1		1	
Poland	10	10	30	21		4	40	35	399	214	47	65	17	32	463	311
Portugal	2	2	8	9		1	10	12	78	82	25	23	9	12	112	117
Romania	21	19	55	53	7	4	83	76	407	445	127	93	22	38	556	576
Russian Federation	54	54	131	141	2	2	187	197	952	1014	300	309	35	29	1287	1352

State	Leading cases						Repetitive cases						TOTAL			
	Enhanced supervision		Standard supervision		Not yet classified		Total number of leading cases		Enhanced supervision		Standard supervision		Not yet classified		Total number of repetitive cases	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
San Marino			1	1		1	2								1	2
Serbia	11	11	21	18	1	33	29	33	45	106	156	22	18	161	194	248
Slovak Republic	2	2	17	23	1	20	27			27	32	2	12	29	49	71
Slovenia	2	1	19	19		21	20	9	15	263	272	9	2	281	302	309
Spain	1	1	14	17		15	18			14	16			14	29	34
Sweden			2	3		2	3					1		1	3	3
Switzerland			15	13	1	16	13					2	1	2	18	14
"the former Yugoslav Republic of Macedonia"	2	2	24	26		26	29			78	86	9	8	87	113	123
Turkey	28	32	136	144	4	168	178	549	585	752	774	31	54	1332	1500	1591
Ukraine	45	50	90	93		135	144	778	813	82	82	14	13	874	1009	1052
United Kingdom	5	3	6	5		11	8	7	10	7		1	1	15	26	19
<b>TOTAL</b>	<b>328</b>	<b>336</b>	<b>1149</b>	<b>1178</b>	<b>36</b>	<b>1513</b>	<b>1555</b>	<b>6390</b>	<b>6054</b>	<b>2685</b>	<b>2725</b>	<b>316</b>	<b>318</b>	<b>9391</b>	<b>10904</b>	<b>10652</b>

### B.3.c. Cases closed

State	Leading cases						Repetitive cases						TOTAL	
	Enhanced supervision		Standard supervision		Total number of leading cases		Enhanced supervision		Standard supervision		Total number of repetitive cases		2014	2015
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Albania	1				1								1	
Andorra														
Armenia		2	3	5	3	7		10	2		2	10	5	17
Austria			2	4	2	4			2	33	2	33	4	37
Azerbaijan										1		1		1
Belgium	1	2	6	3	7	5		16	1	5	1	21	8	26
Bosnia and Herzegovina			4	1	4	1			11		11		15	1
Bulgaria		3	16	9	16	12	1	57	41	10	42	67	58	79
Croatia			5	8	5	8			46	41	46	41	51	49
Cyprus			1	1	1	1							1	1
Czech Republic			5	5	5	5			14	3	14	3	19	8
Denmark									1		1		1	
Estonia			1	2	1	2			5		5		6	2
Finland									7	3	7	3	7	3
France			10	5	10	5			8	2	8	2	18	7
Georgia			5	3	5	3			11	3	11	3	16	6
Germany			5	3	5	3			12	1	12	1	17	4

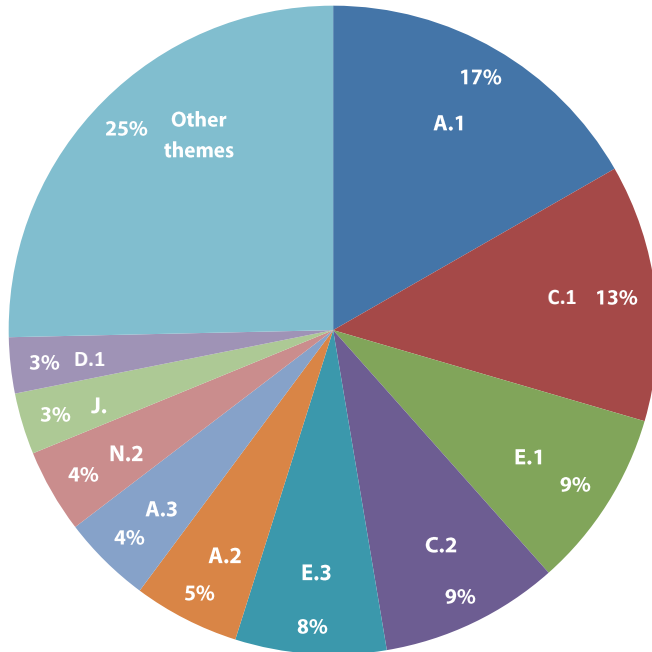
State	Leading cases						Repetitive cases						TOTAL	
	Enhanced supervision		Standard supervision		Total number of leading cases		Enhanced supervision		Standard supervision		Total number of repetitive cases		2014	2015
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Greece			5	10	5	10		128	22	249	22	377	27	387
Hungary				1		1			29	46	29	46	29	47
Iceland				3		3								3
Ireland	1		2		3				5		5		8	
Italy	2	3	8	3	10	6	9	213	4	9	13	222	23	228
Latvia			2	5	2	5				4		4	2	9
Liechtenstein														
Lithuania			2		2				14		14		16	
Luxembourg			2		2				8		8		10	
Malta	1		3		4				2		2		6	
Republic of Moldova			2		2				11	6	11	6	13	6
Monaco			1		1				1		1		2	
Montenegro				1		1			1	2	1	2	1	3
Netherlands			5	2	5	2			6	3	6	3	11	5
Norway			1	2	1	2							1	2
Poland	3	3	20	11	23	14	20	202	313	72	333	274	356	288
Portugal	1		1	2	2	2	30		18	33	48	33	50	35
Romania	2	2	28	22	30	24	83	1	90	98	173	99	203	123

State	Leading cases						Repetitive cases						TOTAL	
	Enhanced supervision		Standard supervision		Total number of leading cases		Enhanced supervision		Standard supervision		Total number of repetitive cases		2014	2015
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Russian Federation			1		1		13	2	31	2	44	3	44	
San Marino			1		1							1		
Serbia		1	3	4	3	5		21		21		24	5	
Slovak Republic			5	3	5	3		26	11	26	11	31	14	
Slovenia									3		3		3	
Spain			3		3			1		1		4		
Sweden			4	1	4	1		1		1		5	1	
Switzerland	1	1		7	1	8						1	8	
"the former Yugoslav Republic of Macedonia"				3		3		16	6	16	6	16	9	
Turkey	2		18	3	20	3	10	379	47	389	47	409	50	
Ukraine			3		3			4	14	4	14	7	14	
United Kingdom	1	1	9	3	10	4		6	8	6	8	16	12	
<b>TOTAL</b>	<b>16</b>	<b>18</b>	<b>192</b>	<b>135</b>	<b>208</b>	<b>153</b>	<b>153</b>	<b>640</b>	<b>744</b>	<b>1294</b>	<b>1384</b>	<b>1502</b>	<b>1537</b>	

## C. Statistics relating to the Committee of Ministers' new working methods

### C.1. Main themes under enhanced supervision (based on the number of leading cases)

The presentation below relates to the main themes under enhanced supervision. The themes correspond to those used in the thematic overview.

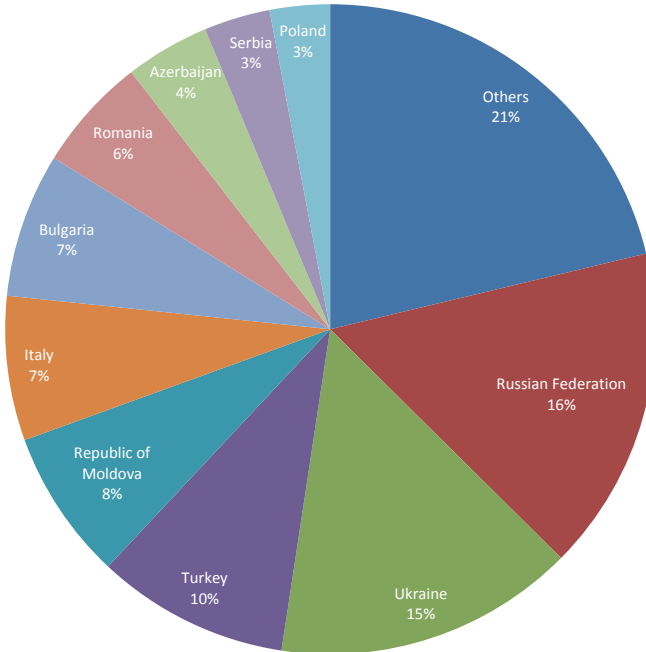


- A.1. Actions of security forces
- C.1. Poor detention conditions
- E.1. Excessive length of judicial proceedings
- C.2. Unjustified detention and related issues
- E.3. No or delayed enforcement of domestic judicial decisions
- A.2. Positive obligation to protect the right to life
- A.3. Ill-treatment - specific issues
- N.2. Disproportionate restrictions to property rights
- J. Freedom of expression and information
- D.1. Expulsion or refusal of residence permit
- Others themes

## C.2. Main States with cases under enhanced supervision (based on the number of leading cases)

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This presentation shows the distribution of main structural and/or complex problems.



## C.3. Transfers from one supervision procedure to another

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**Transfers to enhanced supervision:** In 2015, 6 leading cases/groups of cases concerning 3 States (Albania, Hungary, Turkey), were transferred from standard to enhanced supervision. In 2014, 2 groups of leading cases concerning 2 States (Bulgaria and Poland) were transferred from standard to enhanced supervision.

**Transfers to standard supervision:** In 2015, 5 leading cases/groups of cases, concerning 4 States (Norway, Republic of Moldova, Russian Federation, United Kingdom), were transferred from enhanced to standard supervision. In 2014, 9 leading cases or groups of cases, concerning 5 States (Bosnia and Herzegovina, Germany, Greece, Hungary and Italy), were transferred from enhanced to standard supervision.

## C.4. Action plans / Action reports

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From 1st January to 31st December 2015, the Committee of Ministers received 236 action plans and 350 action reports. For the same period in 2014, 266 action plans (229 in 2013) and 481 action reports (349 in 2013) had been submitted to the Committee of Ministers.



In 2015, 56 reminder letters were addressed to 20 States (60 in 2014) concerning 103 cases/groups of cases (103 in 2014). For 90 of these cases/groups of cases (68 in 2014), an action plan/report has been sent to the Committee of Ministers before the end of the year.<sup>308</sup>

Year	Action plans received	Action reports received
2015	236	350
2014	266	481
2013	229	349
2012	158	262
2011	114	236

## C.5. Number of cases/groups of cases with a Committee of Ministers decision

In 2015, 25 States<sup>309</sup> had cases included in the Order of Business of the Committee of Ministers for detailed examination (26<sup>310</sup> in 2014) – initial classification issues excluded; this, out of a total of 31 States with cases under enhanced supervision (31 in 2014).

### C.5.a. Number of interventions of the Committee of Ministers<sup>311</sup>

Year	Number of interventions of the CM during the year	States concerned	Number of States with cases under enhanced supervision
2015	108	25	31
2014	111	26	31
2013	123	27	31
2012	119	26	29
2011	97	24	26
2010	75	21	-

308. According to the new working methods, when the six-month deadline for States to submit an action plan / report has expired and no such document has been transmitted to the Committee of Ministers, the Department for the execution of judgments sends a reminder letter to the delegation concerned. If a member State has not submitted an action plan / report within three months after the reminder, and no explanation of this situation is given to the Committee of Ministers, the Secretariat is responsible for proposing the case for detailed consideration by the Committee of Ministers under the enhanced procedure (see CM/Inf/DH(2010)45final, item IV).

309. 2015 : Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, France, Georgia, Greece, Hungary, Italy, Lithuania, Norway, Poland, Republic of Moldova, Romania, Russian Federation, Serbia, Slovenia, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom.

310. 2014 : Albania, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Poland, Republic of Moldova, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom.

311. The figures presented in the 2014 Annual report have been slightly revised following a harmonisation of practice, notably so that cases directed against two countries are now counted twice, one time for each country concerned.

### C.5.b. Details on the frequency of interventions of the Committee of Ministers

Year	2015	2014	2013	2012
Cases / groups of cases examined	64	68	76	67
Examined four times or more	4	6	6	6
Examined three times	10	5	5	9
Examined twice	9	11	14	11
Examined once	41	46	51	41

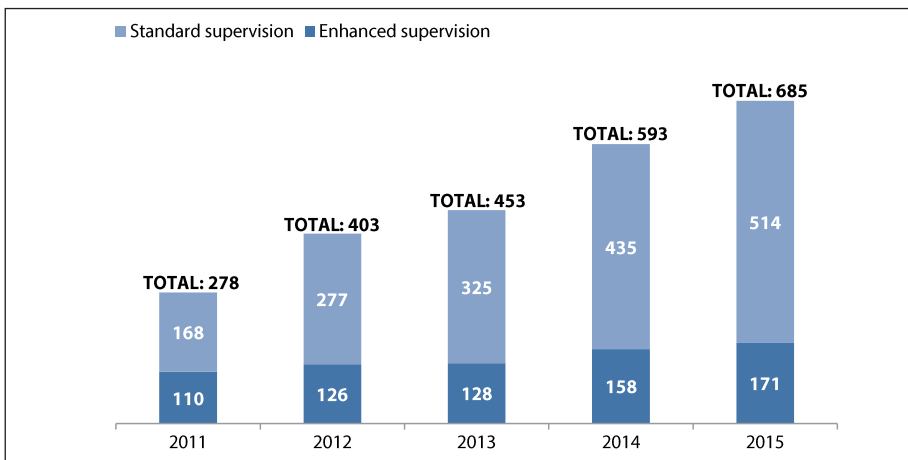
### C.6. Contributions from civil society

In 2015, 81 contributions from NGOs and NHRI (National Human Rights Institutions) were received and disseminated by the Committee of Ministers, concerning 21 States. In 2014, this number was 80 concerning 21 States. In 2013, this number was 81 concerning 18 States. In 2012 and 2011, this number was 47 concerning respectively 16 and 12 States.

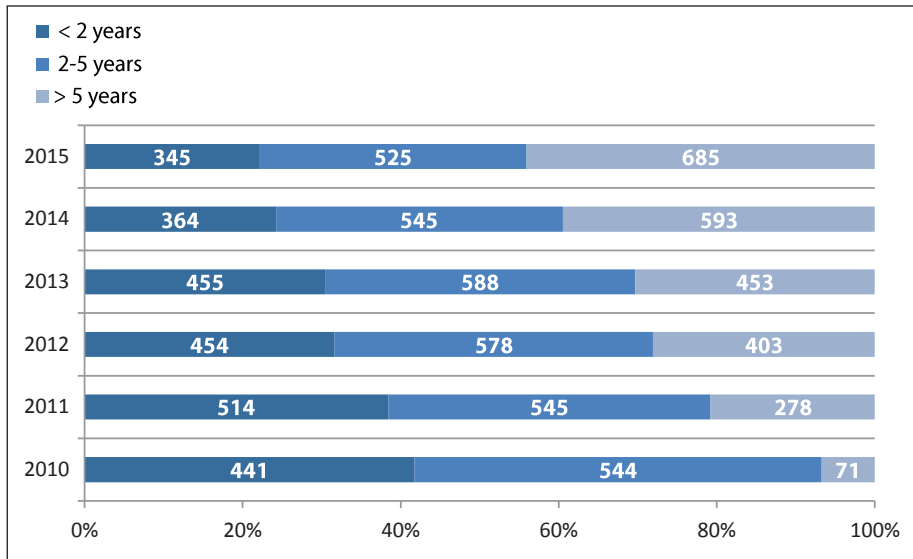
## D. Length of execution of the Court's judgments

### D.1. Leading cases pending

#### D.1.a. Leading cases pending for more than five years



### D.1.b. Length of execution of leading cases pending



### D.1.c. Length of execution of leading cases pending – by State

State	ENHANCED SUPERVISION						STANDARD SUPERVISION					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Albania	1	1	3	2	5	5		2	5	2	3	6
Andorra									1	1		
Armenia		1	3	1	1	1		1	9	6	3	1
Austria							5	3	10	8	8	10
Azerbaijan	2	3	3	1	7	10	13	1	8	19	9	11
Belgium		2	3	2	1	2		1	4	4	5	2
Bosnia and Herzegovina	1	1	3	2	1	3	2	1	3	3		
Bulgaria	2	3	11	7	13	14	13	17	27	18	26	30
Croatia		1	2	2	1	1	20	19	22	20	20	24
Cyprus	1		1	1		1			1		2	2
Czech Republic					1	1	6	5	2	1		
Denmark												
Estonia							5	2	1	4		
Finland							2	2	3	2	8	9
France	2	1	2	3			14	17	12	17	2	2
Georgia		1	3	2	2	3	4	6	4	2	6	7
Germany							4	5	11	9		1

State	ENHANCED SUPERVISION						STANDARD SUPERVISION					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Greece	2		3	4	5	5	3	4	11	6	32	30
Hungary	1	2	1	3	1	1	8	9	20	19	6	8
Iceland									2	1	3	1
Ireland	1	1							1			1
Italy	3	2	7	9	16	14	15	19	12	10	21	25
Latvia							17	17	12	19	14	12
Liechtenstein												
Lithuania			1	1	1	1	10	6	8	10	3	5
Luxembourg								1				
Malta	2			2			3	1	2	4	2	3
Republic of Moldova	3		6	7	16	18	5	8	17	11	27	35
Monaco												
Montenegro							4	2	7	10	1	1
Netherlands		1					1	1	5	3	3	4
Norway			1				2	2		1		
Poland		1	3	3	7	6	3	5	13	7	14	9
Portugal					2	2	4	5	3	3	1	1
Romania	4	2	7	9	10	8	18	19	18	17	19	17
Russian Federation	10	7	16	18	28	29	17	12	45	42	69	87
San Marino											1	1
Serbia	2	1	3	3	6	7	7	3	7	7	7	8
Slovak Republic	1	1	1	1			6	13	11	10		
Slovenia	1		1	1			4	3	6	7	9	9
Spain	1	1					3	3	9	10	2	4
Sweden							1	2	1	1		
Switzerland							9	6	4	5	2	2
"the former Yugoslav Republic of Macedonia"			1	1	1	1	4	5	10	7	10	14
Turkey	5	5	6	6	17	21	19	19	44	37	73	88
Ukraine	13	11	17	24	15	15	13	6	43	44	34	43
United Kingdom	2	1	2		1	2	4	1	1	3	1	1
<b>TOTAL</b>	<b>60</b>	<b>50</b>	<b>110</b>	<b>115</b>	<b>158</b>	<b>171</b>	<b>268</b>	<b>254</b>	<b>435</b>	<b>410</b>	<b>446</b>	<b>514</b>

## D.2. Leading cases closed

### D.2.a. Length of execution of leading cases closed – by State

State	ENHANCED SUPERVISION						STANDARD SUPERVISION					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Albania					1							
Andorra												
Armenia				1		1		1	4	1	1	
Austria							1		1	1		3
Azerbaijan												
Belgium				1	1	1	4		1		1	3
Bosnia and Herzegovina							2	1			2	
Bulgaria				2		1	3	2	9	4	4	3
Croatia							3	4	2	3		1
Cyprus									1			1
Czech Republic							2	4	2	1	1	
Denmark												
Estonia								2			1	
Finland												
France							7	2	2	2	1	1
Georgia							3	1		2	2	
Germany								1	5	2		
Greece							3	2	2	3		5
Hungary										1		
Iceland												3
Ireland			1				1				1	
Italy			1	1	1	2	1	1	3	2	4	
Latvia								2	1	1	1	2
Liechtenstein												
Lithuania							1		1			
Luxembourg							1				1	
Malta			1				1		1		1	
Republic of Moldova											2	
Monaco							1					
Montenegro										1		
Netherlands							1	1	3	1	1	
Norway							1	2				
Poland			2		1	3	3	1	12	2	5	8

State	ENHANCED SUPERVISION						STANDARD SUPERVISION					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Portugal					1			1	1			1
Romania					2	2	13	9	6	4	9	9
Russian Federation											1	
San Marino									1			
Serbia				1			1	3	2	1		
Slovak Republic							3	1	2	2		
Slovenia												
Spain							1		1		1	
Sweden							3	1	1			
Switzerland		1	1					5				2
“the former Yugoslav Republic of Macedonia”								1		1		1
Turkey			2						6		12	3
Ukraine									1		2	
United Kingdom	1			1			6	3	1		2	
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>8</b>	<b>7</b>	<b>7</b>	<b>10</b>	<b>67</b>	<b>50</b>	<b>69</b>	<b>38</b>	<b>56</b>	<b>47</b>

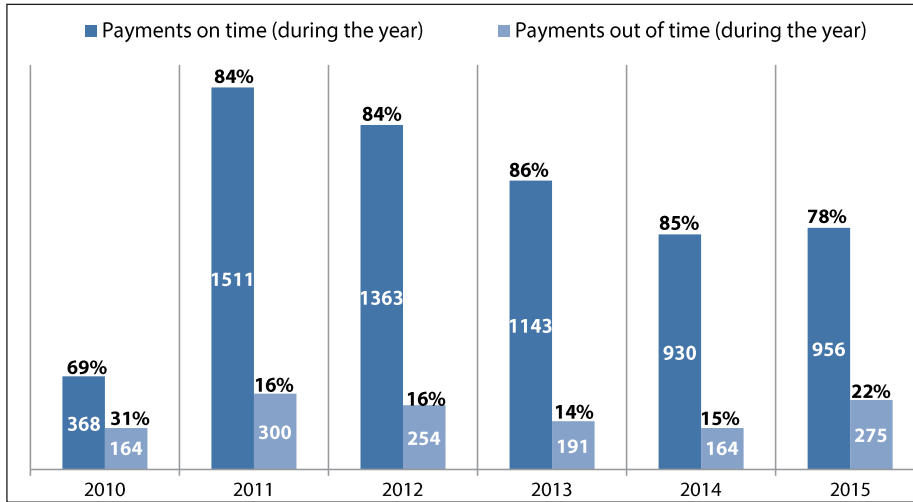
**D.2.b. Average length of execution of leading cases closed – by State (based on the number of years)**

State	ENHANCED SUPERVISION		STANDARD SUPERVISION		GENERAL AVERAGE	
	2014	2015	2014	2015	2014	2015
Albania	5,6				5,6	
Andorra						
Armenia		5,4	3,4	4,0	3,4	4,4
Austria			2	7,0	2	7
Azerbaijan						
Belgium	6,2	6,8	3,1	8,2	3,5	7,6
Bosnia and Herzegovina			3,6	1,7	3,6	1,7
Bulgaria		6,9	3,9	4,1	3,9	4,8
Croatia			2,3	2,5	2,3	2,5
Cyprus			3,7	9,3	3,7	9,3
Czech Republic			2,4	1,5	2,4	1,5
Denmark						

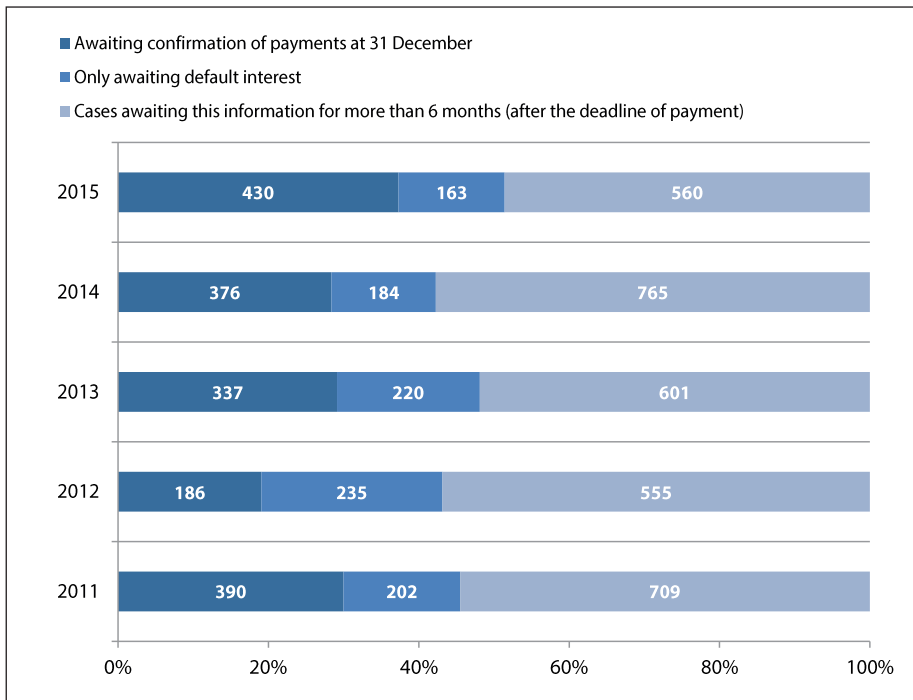
State	ENHANCED SUPERVISION		STANDARD SUPERVISION		GENERAL AVERAGE	
	2014	2015	2014	2015	2014	2015
Estonia			6,9	1,1	6,9	1,1
Finland						
France			2,3	3,6	2,3	3,6
Georgia			3,5	2,9	3,5	2,9
Germany			3,6	2	3,6	2
Greece			2	6,6	2	6,6
Hungary				2,5		2,5
Iceland				8,6		8,6
Ireland	4		6,9		5,9	
Italy	4,6	8,6	5,3	3,1	5,2	5,9
Latvia			4,4	4	4,4	4
Liechtenstein						
Lithuania			3,1		3,1	
Luxembourg			5,7		5,7	
Malta	2,1		4,3		3,8	
Republic of Moldova			8,3		8,3	
Monaco			0,9		0,9	
Montenegro				2		2
Netherlands			4,1	1,8	4,1	1,8
Norway			1,6	1,5	1,6	1,5
Poland	4,7	12,8	5,2	6	5,1	7,5
Portugal	8		3,5	4,4	5,8	4,4
Romania	8,1	7,3	3,8	4	4,1	4,3
Russian Federation			9,7		9,7	
San Marino			2		2	
Serbia		2,5	2,4	1,9	2,4	2
Slovak Republic			1,8	2,3	1,8	2,3
Slovenia						
Spain			4,4		4,4	
Sweden			1,3	1,4	1,3	1,4
Switzerland	2,3	0,6		2,9	2,3	2,7
“the former Yugoslav Republic of Macedonia”				3,2		3,2
Turkey	3,9		6,5	8,4	6,2	8,4
Ukraine			7,4		7,4	
United Kingdom	1,2	2,6	3,8	0,8	3,5	1,2
<b>TOTAL</b>	<b>4,8</b>	<b>7,2</b>	<b>4,1</b>	<b>4,1</b>	<b>4,1</b>	<b>4,5</b>

## D.3. Respect of payment deadlines

### D.3.a. Respect of payment deadlines – overall statistics : 2010-2015



### D.3.b. Information on payments made : 2010-2015





### D.3.c. Respect of payment deadlines by State : 2014-2015

State	Respect of payment deadlines									
	Payments within deadline (during the year)		Payments outside deadline (during the year)		Cases only awaiting default interest		Cases awaiting confirmation of payments at 31 December		... including cases awaiting this information for more than six months (outside payment deadline)	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Albania				2		12	13	14	12	7
Andorra										
Armenia	1	2		3				1		
Austria	10	10		3			7	1	3	
Azerbaijan	4	19	1	1			56	68	42	44
Belgium	5	8	2		2	4	14	18	14	12
Bosnia and Herzegovina	4		5	1			3	3	3	2
Bulgaria	21	26	7	6			7	3	2	2
Croatia	57	44			1	1	16	8	1	1
Cyprus	1	2						1		
Czech Republic	16	3					2	3		2
Denmark										
Estonia	9	2								
Finland	9	1	2	1			6	8	5	4
France	8	4	11	6	1		8	15	1	9
Georgia	13	12		2			3	5	2	2
Germany	4	4					1	1		
Greece	24	52	18	66	1	17	74	57	34	15
Hungary	67	75	1	1	2	2	20	26	11	
Iceland		4					2		2	
Ireland	3									
Italy	11	1	15	9	11	13	102	95	79	75
Latvia	11	16					2			
Liechtenstein								1		
Lithuania	6	7								
Luxembourg										
Malta	5	4	4	1			1		1	
Republic of Moldova	30	24	1	1			10	2		

State	Respect of payment deadlines									
	Payments within deadline (during the year)		Payments outside deadline (during the year)		Cases only awaiting default interest		Cases awaiting confirmation of payments at 31 December		... including cases awaiting this information for more than six months (outside payment deadline)	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
Monaco	1									
Montenegro	4	4			1	1	1			
Netherlands	4	6					2			
Norway	2	1		1			1			
Poland	147	74	1		2	2	38	73	16	8
Portugal	25	21	3	2		4	4	27	1	8
Romania	117	89	14	16	1		46	54	18	19
Russian Federation	30	95	27	109	13	15	236	126	186	74
San Marino								1		
Serbia	15	51	27	3	2	1	93	103	60	65
Slovak Republic	21	18					1	15		1
Slovenia	26	10	3	1	1		10	6	2	4
Spain	1	1	5	1			5	6	5	5
Sweden	2	2								
Switzerland	6	5					5		3	
“the former Yugoslav Republic of Macedonia”	11	32					27	14	14	10
Turkey	177	202	2	11	109	64	165	66	107	56
Ukraine	5	23	15	28	30	27	160	168	141	135
United Kingdom	17	2						1		
<b>TOTAL</b>	<b>930</b>	<b>956</b>	<b>164</b>	<b>275</b>	<b>184</b>	<b>163</b>	<b>1141</b>	<b>990</b>	<b>765</b>	<b>560</b>

## E. Additional statistics

### E.1. Just satisfaction

#### E.1.a. Development of just satisfaction awarded : 2010-2015

Year	Total awarded (euros)
2015	53 766 388
2014	2 039 195 858
2013	135 420 274
2012	176 798 888
2011	72 300 652
2010	64 032 637

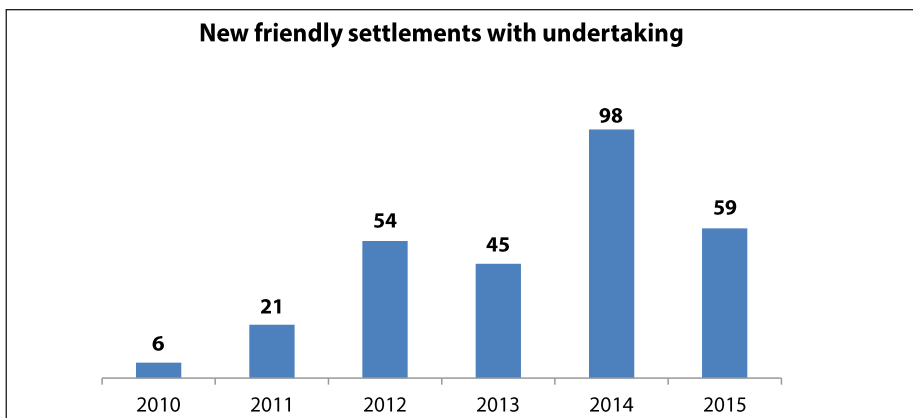
#### E.1.b. Just satisfaction awarded by State : 2014-2015

State	Total awarded (euros)	
	2014	2015
Albania	8 224 100	9 410 000
Andorra	0	0
Armenia	6 030	234 820
Austria	235 126	75 135
Azerbaijan	289 583	311 950
Belgium	147 500	276 188
Bosnia and Herzegovina	16 663	28 700
Bulgaria	209 317	263 402
Croatia	458 795	394 187
Cyprus	0	8 796 391
Czech Republic	9 781	39 745
Denmark	0	0
Estonia	39 876	86 502
Finland	37 783	54 442
France	312 097	240 631
Georgia	113 500	184 652
Germany	64 021	57 937
Greece	1 745 055	2 642 829
Hungary	750 015	1 652 285
Iceland	0	12 450
Ireland	115 000	0
Italy	29 540 589	4 099 111
Latvia	1 319 122	84 047
Liechtenstein	0	1 520
Lithuania	39 340	132 233
Luxembourg	0	0

State	Total awarded (euros)	
	2014	2015
Malta	217 000	542 250
Republic of Moldova	411 432	227 339
Monaco	0	0
Montenegro	51 750	19 726
Netherlands	85 261	12 320
Norway	158 000	12 500
Poland	456 269	885 458
Portugal	750 540	829 942
Romania	2 538 767	7 940 726
Russian Federation	1 879 542 229	4 916 117
San Marino	0	18 000
Serbia	2 697 399	736 100
Slovak Republic	170 026	2 610 630
Slovenia	424 988	125 631
Spain	24 000	72 105
Sweden	20 000	2 000
Switzerland	89 880	29 415
"the former Yugoslav Republic of Macedonia"	301 240	139 145
Turkey	99 849 159	4 578 020
Ukraine	7 684 574	966 357
United Kingdom	50 050	23 450
<b>TOTAL</b>	<b>2 039 195 858</b>	<b>53 766 388</b>

## E.2. Friendly settlements

A friendly settlement with undertaking implies a defendant State commitment to adopt individual or general measures in order to address and prevent future similar violations.



Year	New friendly settlements without undertaking	New friendly settlements with undertaking	TOTAL New friendly settlements
2015	534	59	593
2014	501	98	599
2013	452	45	497
2012	495	54	549
2011	544	21	564
2010	227	6	233

### E.3. Cases whose merits are already covered by well-established case-law of the Court (hereafter “WECL” cases - Article 28§1b) and Friendly Settlements (Article 39§4)

State	Cases judged under Protocol No. 14		Friendly Settlements (Art. 39§4)		TOTAL	
	“WECL” cases Article 28§1b		2014	2015	2014	2015
	2014	2015				
Albania	2	5		5	2	10
Andorra						
Armenia						
Austria	3	2	8	2	11	4
Azerbaijan		3	22	19	22	22
Belgium		2	1		1	2
Bosnia and Herzegovina	3			1	3	1
Bulgaria			7	4	7	4
Croatia	4		36	22	40	22
Cyprus						
Czech Republic			1	1	1	1
Denmark						
Estonia	2			1	2	1
Finland	1		1		2	
France		3	3	1	3	4
Georgia			15	12	15	12
Germany		1	1		1	1
Greece	27	23	38	83	65	106
Hungary	33	31	31	61	64	92
Iceland						

State	Cases judged under Protocol No. 14		Friendly Settlements (Art. 39§4)		TOTAL	
	"WECL" cases Article 28§1b		2014	2015	2014	2015
	2014	2015				
Ireland						
Italy	17	5	9	8	26	13
Latvia		1		4		5
Liechtenstein						
Lithuania						
Luxembourg						
Malta				2		2
Republic of Moldova	2	3	9	1	11	4
Monaco						
Montenegro			2	1	2	1
Netherlands			4	2	4	2
Norway						
Poland	12	6	81	110	93	116
Portugal	12	5	39	30	51	35
Romania	2	10	51	63	53	73
Russian Federation	30	24	24	17	54	41
San Marino						
Serbia	6	12	75	42	81	54
Slovak Republic	2		9	20	11	20
Slovenia	24	4	1	1	25	5
Spain				1		1
Sweden						
Switzerland						
"the former Yugoslav Republic of Macedonia"	3	1	24	10	27	11
Turkey	8	11	84	56	92	67
Ukraine	13	13	11	12	24	25
United Kingdom		2	11	1	11	3
<b>TOTAL</b>	<b>206</b>	<b>167</b>	<b>598</b>	<b>593</b>	<b>804</b>	<b>760</b>

## Appendix 2 – Main cases or groups of cases pending

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(Classification by State at 31 December 2015)

The table below is limited to cases originating in **individual applications**.

**Interstate cases** are presented in the “Thematic overview” (Appendix 5).

**The structural and/or complex problems presented in the table** below have been identified either directly by the European Court in its judgments or by the Committee of Ministers in the course of the supervision process<sup>312</sup>. The corresponding cases or groups of cases are, in principle, dealt with under enhanced supervision. The table also comprises recent “pilot” judgments, as these should automatically be classified under enhanced supervision. An overview of “pilot” judgments and cases with indications of relevance for execution (under Article 46) regarding structural problems is presented in Appendix 4.

**The cases/groups presented may be at different stages of execution**, some may be approaching closure, whilst others may be at the beginning of the execution process. In certain cases, the CM has adopted a decision during the year, some others have known some developments such as the presentation of an action plan/action report or bilateral contacts with a view to submitting an action plan/action report. Finally, in other cases, clarifications are expected through other judgments/decisions of the Court.

A detailed review of the decisions and interim resolutions adopted by the CM in the course of its supervision of execution and brief indications of the nature of other developments are presented in the “Thematic overview”.

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312. The fact that some cases/groups have engendered relatively few repetitive cases does not lessen the importance of underlying structural problems, as the violations established may nevertheless have a great potential to generate repetitive cases (notably so “pilot” judgments), and/or because of the general importance of the problem at issue.

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Albania	Caka (group)	44023/02	08/03/2010	6	Unfair criminal proceedings (see Appendix 5, page 185)
	Driza (group) Manushaqe Puto and Others – pilot judgment	33771/02 604/07	02/06/2008 17/12/2012	12	Various problems linked to the restitution of property (see Appendix 5, page 176)
	Dybeku Groni	41153/06 25336/04	02/06/2008 07/10/2009	2	Poor detention conditions in prison and unlawful detention; disrespect of Rule 39 indication (see Appendix 5, page 136)
	Luli and Others	64480/09	01/07/2014	1	Excessive length of civil proceedings and absence of a remedy in that respect (see Appendix 5, page 165)
	Puto (group)	609/07	22/11/2010	7	Non-enforcement of judicial decisions in general (see Appendix 5, page 176)
	Ashot Harutyunyan	34334/04	15/09/2010	3	Inadequate medical care in detention; practice of placing accused in a metal cage during trial (see Appendix 5, page 136)
	Chiragov and Others	13216/05	16/06/2015	1	Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties in Nagorno-Karabakh and the surrounding territories – lack of effective remedies (see Appendix 5, page 208)
Armenia	Virabyan	40094/05	02/01/2013	1	Ill-treatment and torture in police custody and ineffective investigations (see Appendix 5, page 121)



State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation
Azerbaijan	Insanov	16133/08	14/06/2013	1	Unfair criminal and civil proceedings; inhuman and degrading detention conditions (see Appendix 5, page 138)
	Ilgar Mammadov	15172/13	13/10/2014	1	Imprisonment for reasons other than those permitted by Article 5, namely to punish the applicant for having criticised the government (see Appendix 5, page 186)
	Mahmudov and Agazade (group)	35877/04	18/03/2009	2	Unjustified convictions for defamation and/or unjustified use of imprisonment as a sanction for defamation; arbitrary application of antiterror legislation (see Appendix 5, page 199)
	Muradova (group)	40984/07	04/10/2010	3	Excessive use of force by the police against journalists during demonstrations, and lack of an effective investigation (see Appendix 5, page 122)
	Namat Aliyev (group)	22684/05	02/04/2009	9	Various breaches connected with the right to stand freely for elections, and the control of the legality of decisions by electoral commissions (see Appendix 5, page 214)
	Sargsyan	18705/06	08/07/2010	1	Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties and relatives' graves in the disputed area near Nagorno-Karabakh on the territory of Azerbaijan – lack of effective remedies (see Appendix 5, page 208)
	L. B. (group)	40167/06	16/06/2015	12	Detention for long periods in institutions which do not offer the care and support required by a specific psychiatric condition (see Appendix 5, page 138)
	Trabelsi	22831/08	02/01/2013	1	Extradition of the applicant to the United States, where he risks an irreducible life sentence; disrespect of Rule 39 indication (see Appendix 5, page 222)
	Belgium		140/10	16/02/2015	

Note: The state of execution can be found in Appendix 5 - Thematic overview

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Belgium	Vasilescu	64682/12	20/04/2015	1	Structural problem concerning overcrowding and conditions of detention in prisons (see Appendix 5, page 139)
	Čolić (group)	1218/07	28/06/2010	11	Non-enforcement of final judgments ordering the state to pay certain sums in respect of war damage (see Appendix 5, page 177)
Bosnia and Herzegovina	Đokić	6518/04	04/10/2010	2	Inability for members of the former Yugoslav People's Army ("YPA") to repossess their pre-war apartments in the aftermath of the war in Bosnia and Herzegovina (see Appendix 5, page 207)
	Mago and Others	12959/05	24/09/2012		
	Maktouf and Damjanović	2312/08	17/07/2013	1	War crimes cases: retroactive application of new criminal law with more severe sanctions (see Appendix 5, page 190)
	Sejdić and Finci (group)	27996/06	22/12/2009	1	Ethnic-based discrimination on account of the ineligibility of persons non-affiliated with one of the "constituent peoples" (Bosnians, Croats or Serbs) to stand for election to the House of Peoples (the upper chamber of Parliament) and the Presidency (see Appendix 5, page 215)
Bulgaria	Association for European Integration and Human Rights and Ekimdzhiiev (group)	62540/00	30/01/2008	7	Insufficient guarantees against the arbitrary use of the powers assigned by the law on special surveillance means; absence of an effective remedy (see Appendix 5, page 191)
	C.G. and Others (group)	1365/07	24/07/2008	7	Shortcomings of the judicial review of expulsion and deportation of foreign nationals based on national security grounds (see Appendix 5, page 157)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Bulgaria	Kehayov (group) Neshkov and Others – <i>pilot judgment</i>	41035/98	18/04/2005	24	Poor detention conditions in prisons and remand centres; absence of an effective remedy (see Appendix 5, page 140)
	Nachova and Others (group)	43577/98	06/07/2005	8	Excessive use of fire-arms or force by police officers during arrests; ineffective criminal investigations into offences committed by police officers or private individuals (see Appendix 5, page 122)
	Velikova (group) S.Z	41488/98 29263/12	04/10/2000 03/06/2015	27 1	Placement in social care homes of persons with mental disorders: lawfulness, judicial review, conditions of placement; also impossibility for partially incapacitated persons to request the restoration of their legal capacity (see Appendix 5, page 148)
	Stanev	36760/06	17/01/2012	2	Unjustified refusals to register an association aiming at achieving “the recognition of the Macedonian minority in Bulgaria” (see Appendix 5, page 202)
	UMO Ilinden and Others	59491/00	19/04/2006	1	Eviction of persons of Roma origin, on the basis of a legislation not requiring an adequate examination of the proportionality of the measure (see Appendix 5, page 191)
	UMO Ilinden and Others No. 2	34960/04	08/03/2012	1	Failure to carry out an effective police investigation into a racist attack on a Roma person (see Appendix 5, page 217)
	Croatia	Yordanova and Others  Šečić  Skendžić and Krzrnarić (group) Jularić	25446/06  40116/02  16212/08 20106/06	24/09/2012  31/08/2007  20/04/2011 20/04/2011	1  1  3

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Croatia	Statileo	12027/10	10/10/2014	1	Restrictions for rented flats subject to a special tenancy scheme (see Appendix 5, page 209)
Cyprus	M.A.	41872/10	23/10/2013	1	Lack of effective remedy with automatic suspensive effect in deportation proceedings and absence of speedy review of lawfulness of detention) (see Appendix 5, page 158)
Czech Republic	D.H.	57325/00	13/11/2007	1	Discriminatory assignment of children of Roma origin to special schools for children with special needs or suffering a mental or social handicap (see Appendix 5, page 217)
France	M.K.	19522/09	18/07/2013	1	Collection and retention of fingerprints, taken in the context of criminal investigations including in the absence of decision to prosecute (see Appendix 5, page 195)
	Mennesson	65192/11	26/09/2014	1	Refusal to grant legal recognition in France to parent-child relationships that have been legally established in the United States between children born as a result of surrogate motherhood and the French couples who had recourse to this method (see Appendix 5, page 194)
Georgia	Aliev	522/04	13/04/2009	1	Degrading treatment on account of the detention conditions in prison (see Appendix 5, page 124)
	Gharibashvili (group)	11830/03	20/10/2008	6	Ineffective investigations into allegations of excessive use of force by the police (see Appendix 5, page 124)
	Identoba and Others	73235/12	12/08/2015	1	Lack of protection against homophobic attacks during a demonstration (see Appendix 5, page 202)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Greece	Beka-Koulocheri (group)	38878/03	06/10/2006	21	Failure or considerable delay in the enforcement of final domestic judgments and absence of effective remedies (see Appendix 5, page 178)
	Bekir-Ousta and Others (group)	35151/05	11/01/2008	3	Refusal to register or dissolution of associations from the Muslim minority in Thrace (see Appendix 5, page 203)
	Makaratzis (group)	50385/99	20/12/2004	11	Degrading treatment by police/port authorities; lack of effective investigations (see Appendix 5, page 125)
	M.S.S. (group)	30696/09	21/01/2011	13	Shortcomings in the examination of asylum requests, including risks involved in case of direct or indirect return to the country of origin; poor detention conditions of asylum seekers and absence of adequate support when they are no longer detained; absence of an effective remedy (see Appendix 5, page 162)
	Rahimi (group)	8687/08	05/07/2011	3	
	Nisiotis (group)	34704/08	20/06/2011	10	Inhuman and degrading treatment on account of poor detention conditions in prisons (see Appendix 5, page 141)
	Siasios and Others	30303/07	04/09/2009	6	
	Horváth and Kiss	11146/11	29/04/2013	1	Discriminatory assignment of children of Roma origin to schools for children with mental disabilities (see Appendix 5, page 219)
	Istvan Gabor and Kovacs (group)	15707/10	17/04/2012	7	Overcrowded pre-trial detention facilities (see Appendix 5, page 141)
	Varga and Others – pilot judgment	14097/12+	10/06/2015		
Hungary	Timár (group)	36186/97	09/07/2003		
	Gazso – pilot judgment	48322/12	16/10/2015	248	Excessive length of proceedings (see Appendix 5, page 170)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Ireland	O'Keefe	35810/09	28/01/2014	1	Failure during the 1970s to protect children in Church-run schools and lack of effective remedy (see Appendix 5, page 135)
	Agrati and Others	43549/08	28/11/2011	9	Retrospective application of legislation to calculate the length of service of school staff (see Appendix 5, page 183)
Italy	Cestaro	6884/11	07/07/2015	1	Ill-treatment by police forces; inadequate criminal legislation punishing acts of torture and lack of the necessary deterrent effect to prevent similar violations (see Appendix 5, page 126)
	Ceteroni (group)	22461/93	15/11/1996	2067	Longstanding problem of excessive length of civil (including bankruptcy proceedings), criminal and administrative proceedings; problems related to the functioning of the domestic remedy put in place in 2001: insufficient amounts and delays in the payment of compensation, excessively lengthy compensation proceedings (see Appendix 5, page 171)
	Luordo (group)	32190/96	17/10/2003	25	
	Mostacciolo and Gaglione (group)	64705/01 45867/07	29/03/2006 20/06/2011	163	
	Abenavoli (group)	25587/94	02/09/1997	118	
	Costa and Pavan	54270/10	11/02/2013	1	Inconsistency in the Italian legal system in the field of medically-assisted procreation (see Appendix 5, page 193)
	Di Sarno and Others	30765/08	10/04/2012	1	Prolonged inability of the authorities to ensure the proper functioning of the waste collection, treatment and disposal service in Campania and lack of an effective remedy in this respect (see Appendix 5, page 198)
M.C. – pilot judgment	5376/11	03/12/2013	1	Legislative provision annulling retrospectively the annual reassessment of a supplementary component of an allowance for accidental contamination through blood transfusion (HIV, hepatitis...) (see Appendix 5, page 209)	

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Italy	Sharifi and Others	16643/09	21/01/2015	1	Collective expulsion of asylum seekers to Greece, lack of access to asylum procedure and risk of deportation to Afghanistan (see Appendix 5, page 164)
	L.	27527/03	31/03/2008	1	Lack of legislation relating to gender reassignment medical treatment (see Appendix 5, page 198)
Lithuania	Paksas	34932/04	06/01/2011	1	Permanent and irreversible disqualification from standing for election to Parliament as a result of his removal from presidential office following impeachment proceedings (see Appendix 5, page 216)
	Suso Musa (group)	42337/12	23/07/2013	3	Various problems related to detention pending asylum proceedings, notably lack of effective and speedy remedies (see Appendix 5, page 164)
Malta	Corsacov (group)	18944/02	04/07/2006	28	Ill-treatment and torture during police detention; ineffective investigations; absence of an effective remedy (see Appendix 5, page 126)
	Eremia (group)	3564/11	28/08/2013	4	Failure to provide protection from domestic violence (see Appendix 5, page 192)
Republic of Moldova	Genderdoc-M	9106/06	12/09/2012	1	Unjustified bans on gay marches; lack of an effective remedy; discrimination on grounds of sexual orientation (see Appendix 5, page 203)
	Luntre	2916/02	15/09/2004	55	Non-enforcement or delayed enforcement of domestic judgments (see Appendix 5, page 178)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Republic of Moldova	Paladi (group)	39806/05	10/03/2009	3	Poor conditions of detention in facilities under the authority of the Ministries of the Interior and of Justice, including lack of access to adequate medical care; absence of an effective remedy (see Appendix 5, page 142)
	Becciev (group)	9190/03	04/01/2006	11	
	Ciorap (group)	12066/02	19/09/2007	22	
Netherlands	Şarban (group)	3456/05	04/01/2006	27	Violations mainly related to unlawful detention on remand (lawfulness, duration, justification) (see Appendix 5, page 150)
	Jaloud	47708/08	20/11/2014	1	Shortcomings in the Netherlands' system for administering military criminal justice following the killing of a person during an operation involving Dutch military personnel in Iraq (see Appendix 5, page 127)
	Al Nashiri	28761/11	16/02/2015	2	Various violations related to secret rendition operations (see Appendix 5, page 160)
Poland	Dzwonkowski (group)	46702/99	12/07/2007	8	Ill-treatment inflicted by the police and lack of effective investigation (see Appendix 5, page 127)
	Fuchs (group)	33870/96	11/05/2003	82	Excessive length of judicial administrative, criminal and civil proceedings; absence of an effective remedy (see Appendix 5, page 173)
	Bak (group)	7870/04	16/04/2007	37	
	Majewski (group)	52690/99	11/01/2006	68	
	Rutkowski and Others – pilot judgment	72287/10	07/10/2015	1	Deprivation of liberty of a juvenile in the framework of correctional proceedings without a specific court order and lack of adequate judicial review thereof (see Appendix 5, page 150)
	Grabowski	57722/12	30/09/2015	1	



State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation
					<i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
	Horych (group)	13621/08	17/07/2012	4	Duration and severity of conditions under "dangerous detainees" regime (see Appendix 5, page 143)
	Kaprykowski (group)	23052/05	03/05/2009	9	Inhuman and degrading treatment in remand centres and prisons, mainly due to lack of adequate medical care (see Appendix 5, page 143)
Poland	Kedzior (group)	45026/07	16/01/2013	2	Unlawful placement in social care homes and deprivation of legal capacity (see Appendix 5, page 151)
	Orchowski (group)	17885/04	22/01/2010	8	Poor detention conditions in prisons, particularly due to overcrowding (see Appendix 5, page 144)
	P. and S.	57375/08	30/10/2012	1	Problems of access to abortion for minors victims of rape, confidentiality of personal data and detention (see Appendix 5, page 194)
Portugal	Martins Castro (group) Oliveira Modesto (group)	33729/06 34422/97	10/09/2008 08/09/2000	33 52	Excessive length of civil proceedings; ineffectiveness of the compensatory remedy (see Appendix 5, page 173)
	Association "21 December 1989" and Others (group)	33810/07	28/11/2011	7	Ineffectiveness of investigations into violent crackdowns in 1989 on anti-government demonstrations (see Appendix 5, page 128)
Romania	Barbu Angheliescu No. 1 (group)	46430/99	05/01/2005	33	Inhuman and degrading treatment or torture by the police in particular during arrests and detention; ineffective investigations, including concerning possible racist motives (see Appendix 5, page 128)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation
Romania	Bragadireanu (group)	22088/04	06/03/2008	110	Overcrowding and poor conditions in police detention facilities and prisons, including failure to secure adequate medical care and lack of an effective remedy (see Appendix 5, page 144)
	Bucur and Toma	40238/02	08/04/2013	1	Conviction of a whistle-blower for having disclosed information on the illegal secret surveillance of citizens by the intelligence service; lack of safeguards in the statutory framework governing secret surveillance (see Appendix 5, page 200)
	Centre for Legal resources on behalf of Valentin Câmpeanu	47848/08	17/07/2014	1	Lack of appropriate judicial protection and medical and social care of vulnerable mentally disabled persons in psychiatric hospital (see Appendix 5, page 135)
	Enache	10662/06	01/07/2014	1	Detention regime of prisoners classified as "dangerous" (see Appendix 5, page 145)
	Nicolau (group)	1295/02	03/07/2006	53	Excessive length of civil and criminal proceedings; absence of an effective remedy (see Appendix 5, page 174)
	Stoianova and Nedelcu (group)	77517/01	04/11/2005	29	
	Săcăleanu (group)	73970/01	06/12/2005	34	Failure or significant delay in enforcing judgments against the State (see Appendix 5, page 179)
	Străin (group)	57001/00	30/01/2005	181	Ineffectiveness of the mechanism set up to afford restitution or compensation for properties nationalised during the communist period (see Appendix 5, page 207)
	Maria Atanasiu – pilot judgment	15204/02	17/04/2008		
	Ticu (group)	24575/10	01/01/2014	2	Inadequate management of psychiatric conditions of detainees in prison (see Appendix 5, page 146)

Note: The state of execution can be found in Appendix 5 - Thematic overview

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation
<p style="text-align: center;"><i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i></p>	Aleksyev	4916/07	11/04/2011	1	Repeated bans on gay marches; lack of effective remedies; discrimination on grounds of sexual orientation (see Appendix 5, page 221)
	Anchugov and Gladkov	11157/04	09/12/2013	1	Ban on prisoners' voting (see Appendix 5, page 147)
	Catan and Others	43370/04	19/10/2012	1	Violation of the right to education of children and parents from Moldovan/Romanian language schools in the Transnistrian region of the Republic of Moldova (see Appendix 5, page 213)
	Garabayev (group)	38411/02	30/01/2008	50	Various violations related to extradition and expulsion including abductions and illegal transfers of persons protected by judicial decisions; in some cases, disrespect of Rule 39 indications (see Appendix 5, page 223)
	Kalashnikov (group) Ananyev and Others - pilot judgment	47095/99 42525/07	15/10/2002 10/04/2012	140	Poor conditions of detention, mainly in remand centres; absence of an effective remedy (see Appendix 5, page 147)
	Khashiyev and Akayeva (group)	57942/00+	06/07/2005	214	Violations resulting from, or relating to, anti-terrorist operations in the Northern Caucasus, mainly in the Chechen Republic (particularly unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property); ineffective investigations and absence of effective domestic remedies (see Appendix 5, page 129)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation
Russian Federation	Kim	44260/13	17/10/2014	1	Lack of judicial review of the lawfulness of detention of aliens pending administrative removal and poor detention conditions (see Appendix 5, page 165)
	Klyakhin (group)	46082/99	06/06/2005	181	Different violations of Article 5 mainly related to detention on remand (lawfulness, procedure, length) (see Appendix 5, page 152)
	Mikheyev (group)	77617/01	26/04/2006	69	Torture and ill-treatment by the police and ineffective investigations (see Appendix 5, page 131)
	Timofeyev (group) Gerasimov and Others - pilot judgment	58263/00 29920/05	23/01/2004 01/10/2014	257	Failure or serious delay on the part of the state and municipal authorities in abiding by final domestic judicial decisions concerning in-kind obligations; absence of effective remedies (see Appendix 5, page 179)
	Ališić and Others - pilot judgment	60642/08	16/07/2014	1	Failure by the governments of Slovenia and Serbia as successor States of the SFRY to repay "old" foreign-currency savings deposited outside Serbia and Slovenia (see Appendix 5, page 211)
	EVT Company (group)	3102/05	21/09/2007	50	Non-enforcement of final court and administrative decisions, including against "socially-owned" companies (see Appendix 5, page 181)
Serbia	Grudić	31925/08	24/09/2012	1	Suspension of payment of pensions earned in Kosovo* (see Appendix 5, page 212)
	Zorica Jovanović	21794/08	09/09/2013	1	Continuing authorities' failure to provide information as to the fate of new-born babies alleged to have died in maternity wards (see Appendix 5, page 196)

\* All reference to Kosovo in this document, whether the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Slovenia	Ališić and Others - pilot judgment	60642/08	16/07/2014	1	Failure by the governments of Slovenia and Serbia as successor States of the SFRY to repay "old" foreign-currency savings deposited outside Serbia and Slovenia (see Appendix 5, page 211)
	Mandić and Jović (group)	5774/10	20/01/2012	17	Poor conditions of detention due to overcrowding and lack of effective remedy (see Appendix 5, page 146)
Slovak Republic	Bittó and Others	30255/09	28/04/14	1	Unjust limitations of the use to property through a rent control scheme (see Appendix 5, page 212)
	Labsi	33809/08	24/09/2012	1	Expulsion notwithstanding risk of ill-treatment and disrespect of Rule 39 indications (see Appendix 5, page 225)
Spain	A.C. and Others	6528/11	22/07/2014	1	Risk of ill-treatment on account of lack of automatic suspensive effect of appeals against decisions to deny international protection taken in the framework of an accelerated procedure (see Appendix 5, page 158)
"the former Yugoslav Republic of Macedonia"	El-Masri	39630/09	13/12/2012	1	Abduction, unlawful detention, torture and inhuman and degrading treatment during and following a "secret rendition" operation to CIA (see Appendix 5, page 159)
Turkey	Ahmet Yildirim	3111/10	18/03/2013	1	Restriction of access to Internet (see Appendix 5, page 201)
	Bati and Others (group)	33097/96	03/09/2004	108	Ill-treatment by the police and the gendarmerie; ineffective investigations (see Appendix 5, page 132)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Turkey	Inçal (group)	2267/93	09/06/1998	111	Unjustified interferences with freedom of expression, owing notably to criminal convictions by state security courts (see Appendix 5, page 201)
	Nedim Sener	38270/11	08/10/2014	1	Unjustified detention of investigative journalists (see Appendix 5, page 153)
	Opuz	33401/02	09/09/2009	1	Failure to provide protection domestic violence (see Appendix 5, page 192)
	Oya Ataman (group)	74552/01	05/03/2007	45	Ill-treatment as a result of excessive force used during demonstrations, ineffective investigations (see Appendix 5, page 205)
	Soyler	29411/07	20/01/2014	1	Ban on the convicted prisoners' voting right (see Appendix 5, page 153)
	Afanasyev (group) / Kaverzin	38722/02 23893/03	05/07/2005 15/08/2012	37	Ill-treatment/torture by police and lack of effective investigation (see Appendix 5, page 146)
Ukraine	Kharchenko (group)	40107/02	10/05/2011	33	Unlawful arrests, unlawful and lengthy detention on remand, lack of court order for detention between the end of investigation and trial (see Appendix 5, page 153)
	Lutsenko	6492/11	19/11/2012	2	Circumvention of legislation by prosecutors and judges in the context of criminal investigations in order to restrict liberty for reasons other than those permissible under the Convention (see Appendix 5, page 188)
	Tymoshenko	49872/11	30/07/2013		
	Svetlana Naumenko (group) Merit (group)	41984/98 66561/01	30/03/2005 30/06/2004	200 68	Excessive length of civil and criminal proceedings; absence of an effective remedy (see Appendix 5, page 174)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Date of final judgment	Number of cases pending before the Committee of Ministers	Violation <i>Note: The state of execution can be found in Appendix 5 - Thematic overview</i>
Ukraine	Nevmerzhitsky / Yakovenko / Melnik / Logvinenko / Isayev (groups)	54825/00	12/10/2005	17 15 / 5 7 / 11	Conditions of detention and medical care issues (see Appendix 5, page 147)
	Oleksandr Volkov	21722/11	27/05/2013	1	Serious systemic problems as regards to the functioning of the Ukrainian judiciary (see Appendix 5, page 189)
	Vyerentsov	20372/11	11/07/2013	1	Deficiencies in the legislation and administrative practices governing the right of freedom of assembly (see Appendix 5, page 205)
	Zhovner (group) Yuriy Nikolayevich Ivanov – pilot judgment	56848/00 40450/04	29/09/2004 15/01/2010	419	Long-standing problem of non-enforcement of domestic judgments, mostly delivered against the State or State enterprises; absence of effective remedies (see Appendix 5, page 181)
	Al-Skeini and Others	55721/07	07/07/2011	1	Unsatisfactory investigations into deaths caused by, or involving, British soldiers in Iraq in 2003, when the United Kingdom was an occupying power there (see Appendix 5, page 133)
	Hirst No. 2 Greens and M.T. – pilot judgment	74025/01 60041/08	06/10/2005 11/04/2011	4	Ban on the convicted prisoners' voting right (see Appendix 5, page 154)
United Kingdom	McKerr (group)	28883/95	04/08/2001	8	Deaths involving security forces in Northern Ireland in the 1980s and 1990s: shortcomings in subsequent investigations (see Appendix 5, page 133)





## Appendix 3 - Main cases closed by final resolution during the year

The table below comprises a selection of cases closed in 2015 by final resolution. The summaries of the final resolutions are presented in Appendix 5 – Thematic overview.

State	Case	Application No.	Judgment final on	Violation
Armenia	Khachatryan	31761/04	01/03/2010	Non-enforcement of a domestic judgment ordering a private company, mainly owned by the State, the payment of salary arrears (see Appendix 5, page 177)
	Kirakosyan	31237/03+	04/05/2009	Poor conditions of administrative detention, ordered without adequate time and facilities to prepare any defence; lack of a right of appeal (see Appendix 5, page 137)
	Minasyan and Semerjyan	27651/05+	23/09/2009 (merits) 07/09/2011 (just satisfaction)	Unlawful deprivation of property rights (see Appendix 5, page 206)
Austria	Rambauske	45369/07	28/04/2010	Excessive length of civil and criminal administrative proceedings and lack of an effective remedy (see Appendix 5, page 166)
	Sporer	35637/03	03/05/2011	Discriminatory treatment of fathers of children born out of wedlock in custody proceedings (see Appendix 5, page 217)
Belgium	Dumont	49525/99	28/07/2005	Excessive length of civil and criminal proceedings (see Appendix 5, page 166)
	Entreprises Robert Delbrassinne S.A.	49204/99	01/10/2004	Excessive length of civil proceedings before the State Council (see Appendix 5, page 167)
	M.S.	50012/08	30/04/2012	Forced return to Iraq without diplomatic assurances that the applicant would not be victim of inhuman or degrading treatment on his return (see Appendix 5, page 155)

State	Case	Application No.	Judgment final on	Violation
Bosnia and Herzegovina	Avdic and Others	28357/11	19/02/2014	Denial of access to a court due to the rejection of a constitutional appeal (see <i>Appendix 5, page 175</i> )
Bulgaria	Al-Nashif and Others	50963/99	20/09/2002	Lack of protection against arbitrariness in expulsion proceedings based on national security grounds (see <i>Appendix 5, page 156</i> )
	D.M.T. and D.K.I.	29476/06	24/10/2012	Impossibility for a suspended police officer to have a paid employment pending criminal proceedings against him (see <i>Appendix 5, page 185</i> )
	Dimitrov and Hamanov - pilot judgment Finger - pilot judgment	48059/06+ 37346/05	10/08/2011 10/08/2011	Excessive length of criminal and civil proceedings and lack of effective remedies thereof (see <i>Appendix 5, page 167</i> )
Croatia	Hrdalo MaravićMarkeš	23272/07	27/12/2011	Unfair administrative proceedings due to the impossibility to have knowledge and to comment on the response submitted by the other party (see <i>Appendix 5, page 182</i> )
		70923/11	09/04/2014	
Czech Republic	Budrevich	65303/10	23/01/2014	Lack of effective remedy to challenge expulsion order to Belarus (see <i>Appendix 5, page 158</i> )
	Buishvili	30241/11	25/01/2013	Lack of judicial proceedings allowing the release of an asylum seeker (see <i>Appendix 5, page 162</i> )
	Kummer	32133/11	25/10/2013 (merits) 25/06/2014 (just satisfaction)	Degrading treatment in police custody due to unjustified use of handcuffing (see <i>Appendix 5, page 123</i> )
	Milan Sýkora	23419/07	22/02/2013	Unlawful detention in psychiatric hospital of a person deprived of legal capacity (see <i>Appendix 5, page 148</i> )
Estonia	Jaeger	1574/13	31/10/2014	Body search carried out in full view of other detainees in violation of privacy (see <i>Appendix 5, page 153</i> )

State	Case	Application No.	Judgment final on	Violation
Estonia	Ovsjannikov	1346/12	20/05/2014	Unlawful detention due to the lack of access to the criminal file and the material presented by the prosecutor to the court (see <i>Appendix 5, page 149</i> )
France	El Shennawy	51246/08	20/04/2011	Ill-treatment due to repeated, unjustified and filmed strip-searches; lack of effective remedy (see <i>Appendix 5, page 123</i> )
Georgia	Klaus and Yuri Kiladze	7975/06	02/05/2010	Deficient legal framework granting compensation to nationals who sustained various forms of political persecution and oppression in the former Soviet Union between 1921 and 1990 (see <i>Appendix 5, page 209</i> )
Greece	Diamantides No. 2 (group)	71563/01	19/08/2005	Excessive length of criminal and civil proceedings and lack of effective remedy thereof (see <i>Appendix 5, page 169</i> )
	Michelioudakis - pilot judgment	54447/10	03/07/2012	
	Konti-Arvaniti (group)	53401/99	10/07/2003	
	Glykantzi - pilot judgment	40150/09	30/10/2012	
	Manios (group)	70626/01	11/06/2004	Excessive length of administrative proceedings, notably before the Council of State (see <i>Appendix 5, page 169</i> )
Vassilios Athanasiou and Others - pilot judgment	50973/08	21/03/2011		
	Matrakas and Others	47268/06	07/02/2014	Failure of the Greek authorities to ensure the recovering of the maintenance payments (see <i>Appendix 5, page 178</i> )
Iceland	Vordur Olafsson	20161/06	27/07/2010	Unjustified restriction of freedom not to join an association due to the imposition of a statutory obligation to pay a levy on industrial activities (see <i>Appendix 5, page 203</i> )

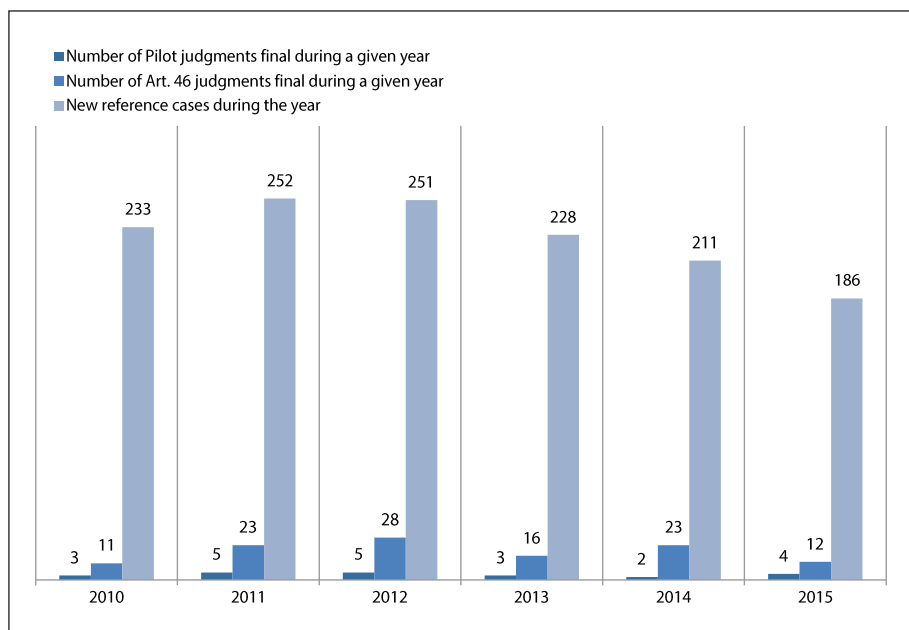
State	Case	Application No.	Judgment final on	Violation
Italy	A.C. (group)	27985/95	19/03/1997	Excessive length of civil proceedings (see <i>Appendix 5, page 171</i> )
	Andreoletti (group)	29155/95	15/05/1997	Excessive length of divorce and legal separation proceedings (see <i>Appendix 5, page 171</i> )
	Ben Khemais	246/07	06/07/2009	Risk of ill-treatment in case of expulsion; non-compliance with an interim measure ordered by the European Court (see <i>Appendix 5, page 223</i> )
	Dhahbi	17120/09	08/07/2014	Difference in treatment; refusal to grant family allowance to foreign nationals (see <i>Appendix 5, page 220</i> )
	Godelli	33783/09	18/03/2013	Inability of a child abandoned at birth to gain access to non-identifying information on his/her origins or to make request for the mother to waive confidentiality (see <i>Appendix 5, page 195</i> )
Latvia	Bannikov	19279/03	11/06/2014	Excessive length of pre-trial detention (see <i>Appendix 5, page 150</i> )
Netherlands	Van der Velden	21203/10	31/10/2012	Unlawful extension of a committal to a custodial clinic (see <i>Appendix 5, page 150</i> )
Norway	Vilnes and Others	52806/09	24/03/2014	Failure to inform the applicants on the use of decompression tables, enabling them to assess the risks to their health and safety (see <i>Appendix 5, page 196</i> )
Poland	Bączkowski and Others	1543/06	24/09/2007	Unlawful interference with freedom of assembly due to the refusal to grant permission for a march and meetings to protest against homophobia (see <i>Appendix 5, page 204</i> )
	Kudła	30210/96+	26/10/2000	Excessive length of civil and criminal proceedings and lack of effective remedy thereof (see <i>Appendix 5, page 173</i> )

State	Case	Application No.	Judgment final on	Violation
Poland	Plonka	20310/02	30/06/2009	Denial of a fair trial due to confessions made in the absence of a lawyer, without any evidence that the applicant has waived her right to legal representation (see Appendix 5, page 186)
	Róžański	55339/00	18/08/2006	Lack of protection of family life due to the inability of a putative father to seek legal paternity by means of a procedure directly accessible to him (see Appendix 5, page 197)
Romania	Antofie	7969/06	25/06/2014	Lack of access to court; intended legal action declared void on the ground of non-payment of the stamp duty (see Appendix 5, page 175)
	Beian (group)	30658/05	06/03/2008	Unfairness of civil proceedings due to inconsistency in the domestic courts' case-law (see Appendix 5, page 184)
	Ciobanu	4509/08	09/10/2013	Unlawful detention for non-consideration of a house arrest period spent abroad (see Appendix 5, page 151)
	Ieremeiov No. 1	75300/01	24/02/2010	Unjustified interferences with freedom of expression (see Appendix 5, page 200)
	Ignaccolo-Zenide	31679/96	25/01/2000	Lack of protection of family life due to the non-enforcement of a court decision ordering two children abducted to Romania be returned to their mother (see Appendix 5, page 197)
	Tănase	62954/00	26/08/2009	Destruction of houses belonging to Roma villagers due to discrimination against them, amounting to life conditions contrary to Article 3 (see Appendix 5, page 221)
Russian Federation	Bednov	21153/02	01/09/2006	Detention on remand in the absence of a court decision (see Appendix 5, page 151)

State	Case	Application No.	Judgment final on	Violation
Serbia	Momčilović	23103/07	02/07/2013	Denial of a fair trial due to unlawful composition of the Supreme Court's bench (see Appendix 5, page 184)
Switzerland	A.A.	58802/12	07/04/2014	Risk of ill-treatment in case of deportation to Sudan (see Appendix 5, page 161)
	Tarakhel	29217/12	04/11/2014	Risk of ill-treatment in case of expulsion of an Afghan asylum seeking family (see Appendix 5, page 161)
"the former Yugoslav Republic of Macedonia"	Atanasovski (group)	36815/03	14/04/2010	Denial of a fair trial and excessive length of labour proceedings (see Appendix 5, page 183)
	Bajaldžiev	4650/06	25/01/2012	Denial of a fair trial due to a lack of impartiality of the Supreme Court (see Appendix 5, page 184)
Turkey	Özerman and Others	3197/05	20/01/2010	Unjustified interference with property due to the lack of any compensation for expropriation (see Appendix 5, page 213)
United Kingdom	M.M.	24029/07	29/04/2013	Indefinite retention and disclosure of data regarding a police caution for child abduction (see Appendix 5, page 196)

## Appendix 4 – New judgments with indications of relevance for the execution

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## A. Pilot judgments final in 2015

State	Case	Application No.	Judgment final on	Nature of indications given by the Court in the operative part of the judgment
Bulgaria	Neshkov and Others	36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13	01/06/2015	<p><i>Systemic and structural problem: inhuman and degrading treatment arousing from overcrowded detention facilities and poor material conditions of detention and hygiene; lack of effective remedies thereof; both preventive and compensatory (Articles 3 and 13) (see Appendix 5, page 140)</i></p> <p><b>GM:</b> The Court recalled that it is incumbent on the Contracting States to organise their penitentiary systems in ways that ensure compliance with Article 3 of the Convention. In this regard, the Court noted that the need for additional measures in order to bring conditions of detention in Bulgaria in line with the Convention requirements was repeatedly highlighted in reports and recommendations of the CPT and the Committee of Ministers. The Court also mentioned the McManus report of 2014 on the Bulgarian penitentiary system. While recalling that it is not within its remit to indicate how the respondent State should organise its penal and penitentiary systems, the Court noted that the above-mentioned reports and recommendations highlighted a number of possible approaches that could be considered by the Bulgarian authorities as potential solutions to the problem of overcrowding: e.g. construction of new correctional facilities, reduction of the number of persons serving custodial sentences etc. As regards material conditions and hygiene, the Court held that the only way to tackle this issue is either by carrying out major renovation works or by replacing unsuitable prison buildings with new ones. In order to put an end to conditions of detention which result in inhuman or degrading treatment, this should be done without delay.</p> <p>A combination of effective remedies in respect of poor conditions of detention that have both preventive and compensatory effects is to be set up within 18 months from the date the judgment became final.</p>



State	Case	Application No.	Judgment final on	Nature of indications given by the Court in the operative part of the judgment
Hungary	Varga and Others	14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13	10/06/2015	<p><i>Recurrent structural problem: Conditions of detention amounting to inhuman or degrading treatment in various detention facilities resulting from a malfunctioning of the penitentiary system and insufficient legal and administrative safeguards against them (Article 3 and Article 13 in conjunction with Article 3) (see Appendix 5, page 141).</i></p> <p><b>GM:</b> The Court recalled that it is incumbent to the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees. In this regard, the Court recalled its constant position that the most appropriate solution to tackle the problem of overcrowding in detention facilities would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures and minimising recourse to pre-trial detention. It also recalled the recommendation of the Committee of Ministers inviting States to encourage prosecutors and judges to use as widely as possible alternatives to detention and redirect their criminal policy towards reduced use of imprisonment.</p> <p>As regards remedies available to challenge detention conditions, the Court concluded that the national authorities should promptly provide an effective remedy, both preventive and compensatory in nature and guaranteeing genuinely effective redress for Convention violations originating in prison overcrowding. While no specific time-limit for implementing the proposed suggestions was set, a time-frame for the adoption of the necessary general measures should be produced by the Government within six months from the date on which the judgment became final.</p>

State	Case	Application No.	Judgment final on	Nature of indications given by the Court in the operative part of the judgment
Hungary	Gazso	48322/12	16/10/2015	<p><i>Structural problem: excessive length of civil proceedings and absence of an effective preventive remedy or redress for the damage created (Article 6§1 and Article 13 in conjunction with Article 6§1) (see Appendix 5, page 170).</i></p> <p><b>GM:</b> The State was requested to introduce, at the latest within one year from the date the judgment became final, an effective domestic remedy to addressing the problem of protraction of proceedings. While recalling that a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution, the Court stressed that States can choose between a remedy to expedite the proceedings and one offering compensation or a combination of both.</p> <p>The Court decided to adjourn for one year the examination of any similar new cases.</p>

State	Case	Application No.	Judgment final on	Nature of indications given by the Court in the operative part of the judgment
Poland	Rutkowski and Others	72287/10, 13927/11 and 46187/11 (and 591 other applications)	07/10/2015	<p><i>Systemic and structural problem: excessive length of proceedings and persistent lack of sufficient redress - despite the introduction of a legal remedy in 2004 and general measures adopted in execution of a previous Grand Chamber judgment aiming at the simplification and acceleration of the proceedings; the transfer of some responsibilities from judges to non-judicial officers; and the transfer of some cases traditionally examined by the courts to other legal professions, for instance public notaries (Articles 6§1 and 13) (see Appendix 5, page 172)</i></p> <p><b>GM:</b> The Court welcomed those developments, but noted that the scale and complexity of the problem required to implement large-scale legislative and administrative actions. As regards Article 6 §1, the Court abstained from indicating any specific measures, noting that the Committee of Ministers was better placed to monitor the measures needed. As regards possibilities for redress, the Court was not persuaded that the 2013 resolution by the Polish Supreme Court had put an end to the previous defective practice. Indeed, it has not yet been established that the lower courts have put it into practice. In addition, in 2013 and 2014 there had been an increased inflow of repetitive cases before the Court involving length of proceedings and insufficient compensation at national level. The Court decided to communicate pending applications to the Government and to allow a two-year time limit for affording redress to all victims – by way of, for example, friendly settlements.</p>

## B. Judgments with indications of relevance for the execution (under Article 46) final in 2015<sup>313</sup>

Note: If the judgment has already been classified, the corresponding supervision procedure is indicated.

State	Case	Application number	Judgment final on	Nature of indications given by the Court
Belgium	Vasilescu	64682/12	20/04/2015	<p>New problem: detention conditions in Anvers and Merksplas Prisons (see Appendix 5, page 139) – enhanced supervision</p> <p><b>GM:</b> Referring to the CPT's report which stressed that in 2012 the problem of overcrowding in prisons continued to aggravate over the last years in Belgium, the Court recommended that defendant State adopts general measures to guarantee to the detainees such conditions of detention that comply with Article 3 of the Convention. The Court had also indicated that a remedy should be made available to detainees to stop an alleged violation or allow an improvement of the detention conditions of the persons concerned.</p>
Bosnia and Herzegovina	Đurić and Others	79867/12 79873/12 80027/12 80182/12 80203/12 and 115/13	20/04/2015	<p>Support for the execution of the Čolić judgment (see Appendix 5, page 177) – enhanced supervision</p> <p><b>GM:</b> "The Court [...] considers that the respondent State should amend the settlement plan within a reasonable time-limit, preferably within a year, of the date on which the present judgment becomes final. In view of the lengthy delay which has already occurred, [...] a more appropriate enforcement interval should be introduced. In that respect, [...] the interval proposed by the initial settlement plan, in October 2012 [...], was far more reasonable, at the time it was introduced. In any event, [...] in the cases in which there had already been a delay of more than ten years, the judgments need to be enforced without further delay.</p> <p><b>IM:</b> [...] the respondent State should also undertake to pay default interest at the statutory rate in the event of a delay in the enforcement of judgments in accordance with the settlement plan as amended following this judgment."</p>

313. The texts followed by an asterisk (\*) are translated by the Department for the execution of Judgments of the Court (\*)

State	Case	Application number	Judgment final on	Nature of indications given by the Court
Bulgaria	S.Z.	29263/12	03/06/2015	Support for the execution of the Velikova and Anguelova groups of cases (see Appendix 5, page 122) – enhanced supervision <b>IM/GM:</b> The Court stated that “the various deficiencies found in an important number of cases reveal the existence of a systemic problem concerning the ineffectiveness of investigations in Bulgaria.” It also considered “that the domestic authorities, in cooperation with the Committee of Ministers, are best placed to identify the various reasons of the systemic problem related to the ineffectiveness of investigations and to decide on the specific general measures required to prevent similar violations in future, with a view to avoiding impunity and preserving the Rule of law and the trust of public opinion and victims in the judiciary”.*. Support for the execution of the M.S.S. group of cases (see Appendix 5, page 122) – enhanced supervision <b>GM:</b> The Court made a number of recommendations as regards the general measures required in order to improve the conditions of detention.
Greece	AL.K.	63542/11	11/03/2015	New structural problem: inadequate criminal legislation as regards punishment of torture and lack of the necessary deterrent effect to prevent other similar violations of Article 3 (see Appendix 5, page 126) – enhanced supervision <b>GM:</b> The Court deemed it “necessary that the Italian legal system establishes adequate legal tools capable of adequately sanctioning persons responsible for acts of torture or other ill-treatment under Article 3, and to prevent them from benefiting of measures that are in contradiction with the Court’s case-law”.*. Support for the execution of the Ciorap group of cases (see Appendix 5, page 142) – enhanced supervision <b>GM:</b> The Court indicated that “the State must make available to the justiciable an adequate and effective mechanism, allowing to the domestic competent authority to examine the substance of claims related to poor detention conditions and to award an appropriate and sufficient remedy”. “As regards the domestic remedies to be adopted”, the Court recalled “that as regards the detention conditions, the ‘preventive’ and ‘compensatory’ remedies must coexist in a complementary manner”.*.
Italy	Cestaro	6884/11	07/07/2015	
Republic of Moldova	Shishanov	11353/06	15/12/2015	

State	Case	Application number	Judgment final on	Nature of indications given by the Court
Poland	Grabowski	57722/12	30/09/2015	<p>New problem: Deprivation of liberty of a juvenile in the framework of correctional proceedings without a specific court order and lack of adequate judicial review thereof (see <i>Appendix 5, page 150</i>) – enhanced supervision</p> <p><b>GM:</b> “The respondent State should undertake legislative or other appropriate measures with a view to eliminating the practice which developed under section 27 of the Juvenile Act as applicable at the relevant time and ensuring that each and every period of the deprivation of liberty of a juvenile is authorised by a specific judicial decision. These measures should be capable of remedying both violations of the Convention established by the Court in the present case”.</p>
Portugal	Sociedade de Construções Martins & Vieira, Lda and Others	56637/10	30/01/2015	<p>Support for the execution of the Martins Castro and Alves Correia de Castro case (see <i>Appendix 5, page 173</i>) – enhanced supervision</p> <p><b>GM:</b> “The present case discloses a general problem which may give rise to similar applications. The nature of the violation found under Article 6 § 1 of the Convention suggests that for the proper execution of the present judgment, the respondent State would be required to review the suspension rules applicable to fiscal criminal proceedings in accordance with the conclusions herein [...]. The Court reiterates that such a review must secure the right to a trial within a reasonable time guaranteed by Article 6 § 1 of the Convention”.</p>
Russian Federation	Amirov	51857/13	20/04/2015	<p>Support for the execution of the Kalashnikov group of cases (see <i>Appendix 5, page 147</i>) – enhanced supervision</p> <p><b>IM:</b> “[...] in order to redress the effects of the breach of the applicant’s rights, the authorities should admit him to a specialised medical facility where he would remain under constant medical supervision and would be provided with adequate medical services corresponding to his needs. Nothing in this judgment should be seen as an obstacle to his placement in a specialised prison medical facility if it is established that the facility can guarantee the requisite level of medical supervision and care. The authorities should regularly re-examine the applicant’s situation, including with the involvement of independent medical experts.”</p>

State	Case	Application number	Judgment final on	Nature of indications given by the Court
<p><b>Russian Federation</b></p>	<p><b>Mamazhonov Mukhitdinov</b></p>	<p>17239/13 20999/14</p>	<p>23/03/2015 19/10/2015</p>	<p>Support for the execution of the Garabayev group of cases (see <i>Appendix 5, page 223</i>) – enhanced supervision</p> <p><b>IM:</b> “[...] the Court find it indispensable for the Russian Federation to vigilantly pursue the criminal investigation into the applicant’s disappearance and to take all further measures within its competence in order to put an end to the violations found and make reparations for their consequences.”</p> <p><b>GM:</b> “[...] having regard to the present case the Court finds it important to state that in Savriddin Dzhurayev it approvingly mentioned “the recent significant development of the domestic jurisprudence undertaken by the Supreme Court of the Russian Federation in its Ruling no. 11 of 14 June 2012”. The Ruling was considered as the tool allowing the judiciary to avoid such failings as those criticised in that judgment and further develop emerging domestic case-law that directly applies the Convention requirements through judicial practice. Despite finding in the present case that the Supreme Court itself fell short of applying its Ruling no. 11 of 14 June 2012 [...], the Court still maintains its opinion that a genuine and rigorous application of that Ruling by all Russian courts is capable of improving domestic remedies in extradition and expulsion cases.”</p>
<p><b>Ukraine</b></p>	<p><b>Chanyev</b></p>	<p>46193/13</p>	<p>09/01/2015</p>	<p>Support for the execution of the Kharchenko group of cases (see <i>Appendix 5, page 153</i>) – enhanced supervision</p> <p><b>GM:</b> The Court recalled that in Kharchenko case in which it “noted that it regularly found “violations of Article 5 § 1 (c) of the Convention as to the periods of detention not covered by any court order, namely for the period between the end of the investigation and the beginning of the trial”, the issue was considered to stem from legislative lacunae”. As the new Code of Criminal Procedure contains a similar shortcoming, the Court considered “that the most appropriate way to address the violation was to amend the relevant legislation without delay, in order to ensure compliance of domestic criminal procedure with the requirements of Article 5.”</p>

State	Case	Application number	Judgment final on	Nature of indications given by the Court
United Kingdom	McDonnell	19563/11	09/03/2015	<p>Support for the execution of the McKerr group of cases (see Appendix 5, page 133) – enhanced supervision</p> <p><b>GM:</b> The Court recalled its findings under Article 46 as regards investigative delay in its McCaughey and Hemsworth judgments and that the present inquest delay was excessive and its root causes were similar to those in McCaughey and Hemsworth. It further required that “the State takes, as a matter of some priority, all necessary and appropriate measures to ensure, in the present case and in similar cases concerning killings by the security forces in Northern Ireland where inquests are pending, that the procedural requirements of Article 2 are complied with expeditiously”.</p>



# Appendix 5 – Thematic overview of the most important developments occurred in the supervision process in 2015

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

### A.1. Actions of security forces

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#### ARM / Virabyan

Application No. 40094/05, judgment final on 02/01/2013, enhanced supervision (see Appendix 2)

» **Ill-treatment in police custody:** Torture of the applicant in police custody and failure to carry out an effective investigation, including into allegations of politically motivated ill-treatment; violation of the presumption of innocence (Articles 3, 6§2, and Article 14 taken in conjunction with Article 3)

**CM decision:** In the light of the new information and of the updated action plan submitted by the authorities, the CM resumed consideration of this case at its DH meeting in June 2015. It noted with interest, as regards the measures taken with respect to the applicant, the reopening of the criminal proceedings and of the investigation into the applicant's allegations of ill-treatment. In that regard, the CM invited the authorities, on the one hand, to conduct the proceedings without delay and in full respect of the principle of presumption of innocence and, on the other hand, to ensure that the investigation is conducted in an effective, independent, adequate and objective manner which should be aimed *inter alia* at examining the possible political motives for the applicant's ill-treatment. The CM also requested to be updated on the progress of the re-opened proceedings and investigation, including the concrete steps that have been taken to address the shortcomings indicated by the Court.

With respect to general measures, the CM noted the criminalisation of torture by public officials in the draft amendments to the Criminal Code, and the safeguards against ill-treatment foreseen in the draft Criminal Procedure Code and invited the authorities to indicate the next steps and time-table for the adoption of those draft texts, also encouraging their rapid adoption. It was however concerned that, according to reports, ill-treatment by the police continued to persist and invited the authorities to take further practical steps to eliminate torture and ill-treatment. Having acknowledged the continued awareness raising efforts of the police in this respect, the CM recalled that the police forces should be regularly reminded by their hierarchy, at all levels, that ill-treatment is not tolerated and that abuses will be punished. It also considered that the creation of the Special Investigative Service (SIS) is an important step forward and invited the authorities to indicate the measures

taken or envisaged to ensure that the SIS is fully effective. Finally, having noted with satisfaction the abolition of the relevant provisions in the CPC that led to the violation of the principle of the presumption of innocence, the CM considered that no further measures appear necessary in this respect.

#### ■ **AZE / Muradova (group)**

Application No 22684/05, judgment final on 02/07/2009, enhanced supervision  
(see Appendix 2)

” **Police force against journalists:** excessive use of force by the police, notably against journalists, during authorised and unauthorised demonstrations by the opposition parties; lack of effective investigations (Article 3 - substantive and procedural limbs, Article 10)

**Developments:** Since the CM’s last detailed examination of this group of cases in June 2013, information remains awaited from the authorities on the reopening of the investigations and on the developments thereof, as well as on measures taken by the authorities to ensure that these investigations fully comply with the Convention requirements and the Court’s case-law. Is also being awaited a consolidated and updated action plan on the measures taken or envisaged to prevent excessive use of force by law enforcement officials during demonstrations, notably to the exercise of journalistic activity, and to ensure that effective investigations into allegations of ill-treatment are carried out without delay.

#### ■ **BGR / Velikova (group) - BGR / Nachova and Others**

Application Nos. 41488/98 and 43577/98, judgments final on 04/10/2000 and on 06/07/2005, enhanced supervision  
(see Appendix 2)

” **Excessive use of force by the police:** death and/or ill-treatments occurred under the responsibility of law enforcement agents between 1993 and 2004, failure to provide timely medical care in police custody; excessive use of force during arrests and lack of an effective investigation of the alleged abuses; lack of domestic remedy to claim damages (Articles 2, 3 and 13)

**Action Plans:** In addition to the already provided information in November 2014 and following a series of bilateral consultations, the Bulgarian authorities provided updated action plans and additional information in January and February 2016, on both individual and general measures. This information remains to be assessed. Meanwhile, the authorities undertook to keep the CM informed of any future developments in these cases, notably as regards the adoption of legislative amendments to the Military Police Act and of complex measures to prevent ill-treatment by the law-enforcement agents, as well as on individual measures.

#### ■ **BGR / S.Z.**

Application No. 29263/12, judgment final on 03/06/2015, enhanced supervision  
(see Appendix 2)

” **Systemic problem:** ineffective criminal investigations (Article 3 – procedural limb)

**Action plan:** In response to the problem identified by the European Court in this judgement under Article 46, an action plan (DD(2016)32) was provided by the Bulgarian authorities in January 2016. The information presented is under assessment.

### ■ CRO / Skendžić and Krznarić (group)

Application No. 16212/08, judgment final on 20/04/2011, enhanced supervision  
(see Appendix 2)

» **Crimes committed during the Croatian Homeland War:** lack of an adequate, effective and independent investigation into crimes committed during the Croatian Homeland War (1991-1995) (Article 2 - procedural limb)

**Action plan:** In response to the CM's decision of September 2014, the Croatian authorities provided an updated action plan in July 2015. The information presented is being assessed.

### ■ CZE / Kummer

Application No. 32133/11, judgment final on 25/10/2013, [CM/ResDH\(2015\)227](#)  
(see Appendix 3)

» **Degrading treatment in police custody** due to unjustified use of restraints; lack of effective investigations thereof (Article 3)

**Final resolution:** The just satisfaction awarded by the Court was paid to the applicant. Re-examination of the closed cases was carried out by the Supreme State Prosecutor, focusing on the question whether the investigation at hand had been conducted duly. Considering that the accused police officer had already been found guilty and punished in the context of disciplinary proceedings, the Supreme State Prosecutor considered that the re-opening of the criminal investigation would be in breach of the *ne bis in idem* principle.

However, legislative and practical measures were adopted so as to prevent future similar violations. Since the establishment on 1 January 2012 of the General Inspection of the Security Forces, this authority is responsible for investigating criminal acts committed by, *inter alia*, police officers. In addition, the Constitutional court now applies more detailed scrutiny in its case-law with respect to the requirement of adequate investigation under Article 2 and 3 of the European Convention.

The translated judgment and its summary was incorporated in the police educational schemes and published on the intranet site of the Police. A seminar for police officers of the Region of the South Moravia, on the relevant standards of the CPT and the case-law of the European Court pertaining to the treatment of detainees in police cells, was organised in October 2014 by the Office of the Public Defender of Rights. Finally, the binding instruction of the Police President no. 159/2009 was amended, stressing that any restriction of one's freedom of movement may be used solely if it is justified by the necessity to forestall the dangerous conduct of the person concerned which cannot be achieved by any less restrictive means.

### ■ FRA / El Shennawy

Application No. 51246/08, judgment final on 20/04/2011, [CM/ResDH\(2015\)77](#)  
(see Appendix 3)

» **Degrading treatment due to repeated full body searches** filmed and without any pressing need to ensure security or to prevent disorder and the commission of crime; lack of effective remedy in this regard (Articles 3 and 13)

**Final resolution:** The just satisfaction awarded to the applicant for non-pecuniary damage and for costs and expenses was paid.

As regards general measures, Law No. 2009/1436 of 24 November 2009 and its implementing decree No. 2010/1634 of 23 December 2010 regulate the conduct of body searches and the modalities for such controls, now governed by the principles of necessity and proportionality. As such, Article 57 of the law requires adapting the nature and frequency of the search to the circumstances of prison life and personality of detainees. Furthermore, Circular No. 282 of 7 July 2009 clarified, *inter alia*, the prohibition of such searches' video recording.

In terms of remedies in the matter, the State Council has recognized in its case-law the possibility to challenge body search measures by way of an urgent recourse (governed by Article L.521-2 of the Code of Administrative Justice).

### ■ GEO / Aliev

Application No. 522/04, judgment final on 13/04/2009, enhanced supervision  
(see Appendix 2)

” **Ineffective investigation into a rebellion in prison:** Lack of investigation into the use of force by state agents during a rebellion in prison; degrading treatment on account of conditions of detention in prison (Article 3 – procedural and substantive limbs)

**Developments:** The applicant is no longer detained and the moral damage caused by the conditions of detention was covered by the just satisfaction awarded by the European Court. Information is still awaited on measures taken by the authorities in view of investigating the facts impugned by the Court under Article 3 of the Convention.

As to the medical treatment in prison, this issue was dealt with under the *Ghavitadze* group (concerning medical treatment in prison) and closed by Final Resolution [CM/ResDH\(2014\)209](#). As to the possibility to complain about poor conditions of detention, a new remedy has been put in place after the entry into force of the new Penitentiary Code (cf. judgment *Goginashvili v. Georgia* (47729/08) of 04/10/2011).

The general measures regarding effective investigations are examined in the *Gharibashvili* group of cases.

Following a discussion of this case in June 2015, the authorities committed to provide updated information. The Secretariat sent a reminder letter in September 2015. An updated action plan/report remains awaited.

### ■ GEO / Gharibashvili (group)

Application No. 11830/33, judgment final on 29/10/2008, enhanced supervision  
(see Appendix 2)

” **Lack of effective investigations into breaches of the right to life or into ill-treatment** (procedural limb of Articles 2 and 3, substantial limb of Article 3)

**CM decision:** The Georgian authorities had been urged by the CM in September 2014 to submit a comprehensive action plan on the work in progress and/or achieved with

a view to addressing all the deficiencies identified by the European Court. An updated action plan was received for the case *E nukidze and Girgvliani* on 20 January 2015.

The CM resumed consideration of this group of cases in March 2015.

As regards the individual measures, information were received from Georgian authorities in the *E nukidze and Girgvliani* case, notably concerning the developments in the reopened investigation and the applicants' involvement in the proceedings. The CM invited the authorities to keep it informed of future developments, ensuring that they demonstrate that the ongoing procedures are in compliance with the Convention. However, the CM did not receive any information following its request of September 2014 on the investigations that were reopened in the cases of *Khaindrava and Dzamashvili*, *Tsintsabadze*, *Gharibashvili*, *Mikiashvili* and *Dvalishvili*. Accordingly, the CM called upon the authorities to provide without further delay this information, ensuring that they provide explanations of how these re-opened investigations are in line with Convention requirements, and of how the institutional independence of investigating bodies is ensured. In any cases of this group, the CM reiterated its call upon the Georgian authorities to ensure that the re-opened and incomplete investigations are carried out promptly and with reasonable expedition, and to keep the CM informed of the progress and of the outcome of all investigations and, where relevant, of all later judicial/disciplinary actions.

As far as general measures are concerned, the CM noted with interest the information provided in the updated action plan concerning the *E nukidze and Girgvliani* case, and invited the authorities to provide clarifications on the possibility of appealing decisions refusing or revoking the status of victim in the framework of a criminal investigation, as well as on training measures established by the High School of Justice of Georgia. The CM also called upon the authorities to intensify their efforts to remedy the deficiencies in domestic legislation regarding the requirements of impartiality of investigative bodies, in investigations to which Articles 2 and 3 of the Convention apply.

Finally, the CM reiterated its call to the Georgian authorities so that they submit, without further delay and before 1 June 2015, a comprehensive action plan on the work in progress and/or completed with a view to addressing all the deficiencies identified by the Court in this group of cases at all stages of proceedings (investigative and judicial). This action plan shall include a thorough analysis of the necessary general measures to fight impunity and prevent similar violations.

An updated action plan was received on 3 June 2015.

### ■ GRC / Makaratzis (group)

Application No. 50385/99, judgment final on 20/12/2004, enhanced supervision (see Appendix 2)

” **Ill-treatment by law enforcement officers:** ill-treatment by police authorities and coastguards amounting to torture and lack of effective investigations (Article 3, substantial and procedural limbs)

**CM decision:** Resuming consideration of this group of cases in September 2015, the CM assessed the action report submitted on 9 July 2015.

As regards general measures, the CM noted with interest the measures taken to improve internal police investigations on complaints about acts giving rise to a risk to life or ill-treatment by law enforcement officers. In this regard, in the light of the findings of the European Court in this group of cases regarding the lack of effective investigations, it also stressed the importance of the functioning of the “Office for addressing incidents of arbitrariness” instituted by the Law 3938 of 2011. Therefore, it urged the Greek authorities to take, as soon as possible, all the necessary steps to make this Office operational. In order to draw conclusions on the effectiveness of the investigations carried out, the CM invited the authorities to keep it updated on the effective functioning of the Office and to provide statistical data on the outcome of its investigations about ill-treatment by law enforcement officers.

As regards individual measures, the CM invited the authorities to provide information on the work of the above-mentioned Office in respect of the reopening of investigations in the cases where violations were found by the European Court.

### ■ ITA / Cestaro

Application No. 6884/11, judgment final on 07/07/2015, enhanced supervision  
(see Appendix 2)

” **Inadequate criminal legislation to prevent and punish torture and ill-treatment:** inhuman and degrading treatment by the police and inadequate criminal legislation punishing such acts; lack of the necessary deterrent effect to prevent other similar violations of Article 3 (Article 3 - substantial and procedural limbs)

**Developments:** An action plan/report proposing measures addressing the structural problem identified by the Court in this judgment under Article 46 is being awaited. To this end, bilateral consultations are underway.

### ■ MDA / Corsacov (group)

Application No. 18944/02, judgment final on 04/07/2006, enhanced supervision  
(see Appendix 2)

” **Ill treatment by the police and ineffective investigations:** ill-treatment and torture in police custody, including with a view to extorting confessions; lack of effective investigations and remedy; violations of right to life in police custody and ineffective investigations (Articles 2 and 3 - substantial and procedural limbs, Article 13)

**Developments:** In September 2014, the CM noted as regards individual measures the partial progress achieved in certain cases thank to the investigations carried out and urged the authorities to speedily finalise other pending investigations, encouraged them to reopen the investigations in other cases, irrespective of the applicants’ initiatives, and asked them to be informed of all relevant developments.

As regards general measures, the CM was notably satisfied with the important legislative changes introduced by the Moldovan authorities, aiming at fighting impunity and reinforcing guarantees against ill-treatment and invited them to evaluate their concrete impact and to provide detailed statistics, notably on the number of torture complaints, the number of cases sent to trial and of the convictions or sentences imposed.

In the light of the above, updated information with respect to both individual and general measures is awaited.

### ■ **NDL / Jaloud**

Application No. 47708/08, judgment final on 20/11/2014, enhanced supervision  
(see Appendix 2)

” **Shortcomings in the investigation into the death of an Iraqi civilian**, who died in Iraq in April 2004 in an incident involving Netherlands Royal Army personnel (Article 2 – procedural limb)

**Action plan:** In response to the Court’s judgment in this case, the Dutch authorities provided in action plan in May 2015 with information on individual and general measures. According to the authorities, given the time passed since the incident, a fresh investigation into the facts would not be realistic. They have indicated however, that the Dutch Code of Criminal Procedure provides for the possibility to request a fresh prosecution, but that the applicant has not availed himself of this possibility.

As to the general measures, the authorities informed that a Committee of independent experts has evaluated the Dutch administration of military criminal justice concerning military personnel deployed abroad and issued a report in 2006 with recommendations for improving legislation, policies and procedures in this respect. A working group was tasked with the implementation of these recommendations. In 2010, an examination of the implementation and effectiveness of the recommendations was presented to parliament.

A revised action plan, provided by the Dutch authorities in October 2015 ([DH-DD\(2015\)902](#)), is being assessed.

### ■ **POL / Dzwonkowski (group)**

Application No. 46702/99, judgment final on 12/07/2007, enhanced supervision  
(see Appendix 2)

” **Ill-treatment by the police between 1997 and 2006 and ineffective investigations** (Article 3 substantial and procedural limbs)

**Action plan:** After the delivery by the Court of its *Przemysk* judgment (Application No. 22426/11, final on 17/12/2013) suggesting that the above issue appears to disclose a structural problem requiring adequate general measures to be taken, the CM transferred this group under the enhanced supervision procedure in December 2014. In response, the authorities provided, in April 2015, updated information, notably on the situation of investigation proceedings in certain cases. As to the general measures, the authorities indicated a number of legislative changes, as well as changes of practice; for example, the issuing of guidelines by the Prosecutor General in June 2014 “on conducting proceedings into crimes related to deprivation of life and inhuman and degrading treatment or punishment allegedly committed by Police officers or other officials”. The impact of all reforms put in place remains to be assessed.

### ■ ROM / Association “21 December 1989” and Others (group)

Application No. 33810/07, judgment final on 28/11/2011, enhanced supervision  
(see Appendix 2)

” **Anti-government demonstrations - delayed investigations:** significant delay in the conduct of investigations into the violent crackdown on anti-government demonstrations in December 1989 and in early 1990s, which resulted in a risk of statutory limitation; lack of safeguards under Romanian law applicable to secret surveillance measures in the event of any alleged threat to national security (Article 2 - procedural limb, Article 6§1, Article 8)

**Developments:** The reforms carried out previously are described in AR 2013 – 2014.

The Romanian authorities provided in June and November 2015 information on both individual and general measures with respect to certain cases of this group. In their communication of November, the authorities have notably indicated that on 14 October 2015, the prosecutor’s office attached to the High Court of Cassation and Justice (military section) decided to terminate the investigation in the case of *Association “21 December 1989” and Others*, as it found that a number of circumstances, including the status of limitation, prevented it to pursue the prosecution in this case. This decision was challenged by the civil parties before the High Court of Cassation and Justice. The applicant Mrs Vlase also submitted a number of communications, the most recent dated of 25 November 2015, complaining about the lack of progress in the investigations notwithstanding the European Court’s judgment and, latterly, about the decision of the military prosecutor’s office to terminate the investigations. This information is under assessment.

### ■ ROM / Barbu Angheliescu No. 1 (group)

Application No. 46430/99, judgment final on 05/01/2005, enhanced supervision  
(see Appendix 2)

” **Death or ill-treatment resulting from actions of the police:** excessive use of force by the police resulting in death or ill-treatment and lack of effective investigations and effective remedy; in some cases - racially motivated ill-treatment; ineffective investigations into possible racial motives (Articles 2 and 3 substantive and procedural limbs, Article 13, Article 14 taken in conjunction with Articles 3 and 13)

**Developments:** A new legislative framework considered being crucial for the prevention of ill-treatment and the effectiveness of the investigations was put in place in 2014. More specifically, the new Law on the execution of custodial sentences and measures (Law No. 254/2013) – in force since February 2014 – introduced inter alia new provisions on the fundamental safeguards against ill-treatment and the medical examination of persons placed in police custody or in detention. The rules for the implementation of this Law, currently under adoption, will further detail these safeguards. Having regard to these developments, an updated action plan in this group is under preparation and will be submitted to the CM as rapidly as possible.



## ■ RUS / Khashiyev and Akayeva (group) - RUS / Isayeva - RUS / Abuyeva and Others

Application Nos. 57942/00, 57950/00 and 27065/05, judgments final on 06/07/2005, 06/07/2005 and 11/04/2011, enhanced supervision, Interim Resolution CM/ResDH(2015)45 (see Appendix 2)

” **Anti-terrorist operations in the Chechen Republic:** unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, lack of effective investigations into the alleged abuses and absence of effective domestic remedies, failure to co-operate with the European Court, unlawful search, seizure and destruction of property (Articles 2, 3, 5, 6, 8 and Article 14 of Protocol No. 1)

**CM Decisions:** The CM’s assessment of developments (including notably awareness raising and training measures for the military and security forces and certain regulatory changes) was given in an Interim Resolution of December 2011 (CM/ResDH(2011)292). Additional assessments were provided by the Court in its *Aslakhanova and Others* judgment of December 2012 (final on 29 April 2013) in particular as regards measures to clarify the fate of missing persons and care for the relatives.

When examining the comprehensive strategy presented in response to these developments in 2013, the CM urged, in line with the Court, the authorities to consider, in view of the absence of progress of the criminal investigations, the creation of a single, high-level, body mandated with the search for missing persons and the allocation of the necessary resources required for large-scale forensic and scientific work within a centralised and independent mechanism. The authorities were also urged to further improve the procedures for payment of compensation to victims’ families. The CM also reiterated its concerns about the application of amnesty legislation in certain situations and highlighted, more generally, the necessity to set clear timeframes for the implementation of the different elements of the new comprehensive strategy.

In September 2014, the CM decided, in light of the action plan provided in July 2014 and the need to make rapid progress in the search for missing persons, to focus on this last issue and insisted in view of the continued absence of signs of progress in criminal investigations, that the authorities take the necessary measures to create the single and high level body called for. A revised action plan to respond to the CM’s concerns was provided in December 2014.

When examining the situation in March 2015, the CM noted the measures adopted to improve the effectiveness of investigations and the search for missing persons, but regretted deeply that these had not brought any significant results in the establishment of the fate of the disappeared.

The CM thus adopted a new interim resolution (CM/ResDH(2015)45), strongly urging the authorities to take the measures necessary to create the above mentioned single and high-level body. In parallel, the CM adopted a decision inviting the authorities to provide information on the concrete work carried out by the different forensic institutions referred to, including more detailed information as regards the staff and functioning of the Forensic Examination Bureau of the Ministry of Healthcare of the Chechen Republic. The decision also asked for certain additional information with respect to the general statistics provided on the fate of missing persons.

As regards criminal investigations, the CM invited the Russian authorities to provide information on the cases where criminal proceedings had been terminated

or which had resulted in refusals to initiate criminal proceedings. As to statutes of limitation, the CM urged the authorities to take measures to ensure that domestic law and practice concerning the applicability of such statutes take into account the Convention standards as regards the prosecution and punishment of persons responsible for grave breaches of fundamental human rights. In this context, the CM also asked for information on the qualifications given by investigators, following the Court's judgments, to disappearance cases. The CM further reiterated its call to obtain detailed information on the additional investigation conducted in the *Isayeva and Abuyeva and Others* cases.

A further action plan was submitted in July 2015. The plan and intervening progress was examined in December 2015.

The CM noted the information that 163 DNA samples from unidentified bodies had been received from the Chechen Republic concerning the *Khashiyev* group of cases and asked for additional clarifications as to the origin of the samples, the location of the bodies and the circumstances in which certain bodies had been found. The CM also asked more generally for additional information as to steps taken to locate, secure and exhume mass graves or burial sites in the region.

It was with profound regret that the CM noted that no information had been provided in response to its Interim Resolution. It thus strongly urged the authorities, once again, to take the measures necessary to create a single and high-level body mandated with the search for persons reported as missing as a result of counter-terrorist operations in the North Caucasus.

As regards criminal investigations and the issue of prescription periods, the CM invited the authorities to consider whether, in line with the findings of the Court in the *Aslakhanova and Others* judgment, aggravated kidnapping should be re-qualified as aggravated murder, so that domestic courts will be able to decide not to apply the ordinary prescription periods. The CM also invited the authorities to provide their comments on a draft law providing that criminal investigations should henceforth be terminated if no perpetrator has been identified within the relevant prescription period (earlier investigations continued and it was for the accused to raise the objection of prescription).

As to the results of criminal investigations in individual cases, the CM found that the shortcomings identified by the Court had been addressed in three cases (in *Trapeznikova* in full and in *Abdurashidova* to the best possible extent and that no further measures were required in the *Taziyeva and others* case).

As a consequence of the decision to include, as demanded by the authorities, also a number of cases concerned with violations relating to the period after 2006, the CM invited the authorities to provide information also on the progress achieved in the investigations in these cases.

The CM finally noted with interest that there has been a reduction in the number of kidnappings committed in the region and invited the Russian authorities to confirm that, as a result of the measures taken so far, enforced disappearances involving State agents had ceased to occur in the region.

## **RUS / Mikheyev (group)**

Application No. 77617/01, judgment final on 26/04/2006, enhanced supervision  
(see Appendix 2)

» **Ill-treatment by the police and lack of effective investigations:** torture or inhuman and degrading treatment in police custody with a view to extracting confessions and lack of effective investigations; irregular arrest and detention in police custody, including unacknowledged detention; use in criminal proceedings of confessions obtained in breach of Article 3 and lack of an effective remedy to claim compensation for ill-treatment suffered (Articles 3, 5 §1, 6§1 and 13)

**CM decision:** The action plans submitted in 2010 and 2013 in response to the violations found referred to a number of measures: notably a new law on the police, improvement of prosecutor supervision and also of the monitoring carried out by civil society, improved effectiveness of investigations into abuse (setting up of the Investigative Committee of the Russian Federation and creation of specialised investigation units), improvements in the Code of Criminal Procedure, improvement of judicial control of investigations and different training and awareness raising measures.

When examining the situation in 2014, the CM had found that a global assessment of progress achieved required further statistical data, as well as more detailed information on a number of issues. It had invited the authorities to deliver, at a high political level, a clear and firm message of “zero tolerance” as regards torture and ill-treatment, to further improve safeguards and to reinforce judicial control over investigations. The problem of the expiration of limitation periods, in particular in case of torture committed by state agents, had been raised as well as that of use of evidence obtained in breach of Article 3. As regards individual measures, the CM had noted with grave concern that no tangible progress had been made in the majority of cases and allegations of intimidation in the *Tangiyev* case to prevent the applicant from seeking the re-opening of the impugned criminal proceedings (involving the use of evidence obtained through torture) – see for more details AR 2014.

When assessing, in March 2015, the new action plan of December 2014, the CM reiterated its concerns regarding the absence of progress in the conduct of investigations. In the *Tangiyev* case, the CM noted, however, that the applicant had been granted a re-trial in which the confession obtained through ill-treatment was declared unlawful and not presented to the jury.

As regards general measures, the CM called anew for a firm and clear zero tolerance message at a high political level. It welcomed the recent regulatory and legislative changes, notably to the instructions for the police to improve supervision and reporting at police stations and to the law on detention on remand to better guarantee the right of detainees to communicate with the Court (notably through their lawyers). The CM encouraged the authorities to continue their efforts aimed at ensuring in practice the effectiveness of existing safeguards against ill-treatment and at improving instructions and training (focusing on modern methods of investigation and questioning). The CM also asked for information on measures taken or planned to ensure that credible allegations of ill-treatment are duly and impartially investigated. In this context information was also sought on reporting practices within the prosecutor’s offices and the internal security departments of the Ministry of the

Interior, and on statistics on complaints received by the Investigative Committee of the Russian Federation and ensuing investigations and their results. The authorities were further invited to reinforce the relevant legislative framework to ensure that abuses by law enforcement agents are examined speedily so as to avoid impunity as a result of the application of limitation periods. As regards judicial review of investigations and the use during trial of confessions obtained under duress, the CM noted with interest the recent initiatives undertaken by the Supreme Court.

### **TUR / Batı (group)**

Application No. 33097/96, judgment final on 03/09/2004, enhanced supervision  
(see Appendix 2)

#### **]] Ineffectiveness of national procedures for investigating alleged abuses by members of the security forces** (Articles 2, 3, and 13)

**CM decision:** When resuming its examination of the case in December 2015, the CM first recalled and welcomed the measures taken so far, both in the context of the CM's initial examination of the present problem in the context of the group devoted to the "action of security forces" (now the Aksoy group) and since the setting up of the present group in 2004. It noted, in particular, that:

- ▶ administrative authorisation for prosecution of members of security forces is no longer required in case of torture, aggravated torture and causing intentional bodily harm;
- ▶ sentences related to torture and aggravated torture were increased and prescription periods were lifted or extended;
- ▶ the Constitutional Court and the Court of Cassation delivered judgments in accordance with the relevant case-law of the European Court;

The current legislation needed, however, further reinforcement and/or effective implementation to ensure that investigations are carried out in compliance with Convention standards, and the CM therefore urged the Turkish authorities to:

- ▶ to remove remaining ambiguities regarding the requirement of administrative authorisation;
- ▶ to take specific measures to ensure that public prosecutors conduct effective investigations and conclude them within a reasonable time and that that domestic courts comply fully with the procedural requirements of Articles 2 and 3;
- ▶ to ensure that members of security forces are suspended from their duties while proceedings against them for crimes that fall within the scope of Articles 2 and 3 are pending, and that lenient sentences are not imposed by applying the relevant provisions on discretionary mitigation;
- ▶ to provide examples of domestic case-law which indicate that the standard set by the Constitutional Court regarding the characterisation of facts concerning crimes of torture and ill-treatment are applied consistently and regarding the execution of Constitutional Court judgments, in particular whether a fresh investigation or a retrial should be carried out in case of violations of the kind here at issue;

- ▶ to consider all necessary measures to ensure that suspension of sentences, postponement of pronouncement of a decision and prescription periods are not applicable to sentences imposed on members of security forces when they are convicted on account of crimes as in the present group of cases;

### ■ UK / Al-Skeini and Others

Application No. 55721/07, judgment final on 07/07/2011, enhanced supervision  
(see Appendix 2)

” **Lack of independent and effective investigation into deaths of Iraqi nationals during occupation of southern Iraq by British Armed Forces:** failure to carry out adequate and effective investigation into deaths of the applicants’ relatives in the course of operations conducted by UK Armed Forces in Iraq (Article 2, procedural limb).

**CM decision:** In December 2015, the CM recalled that the European Court, in its finding of procedural violations of Article 2, criticised the lack of independence of the investigations into the deaths of the applicants’ relatives in Iraq as well as, in the fifth applicant’s case, a failure to conduct an independent examination, accessible to the victim’s family and to the public, of the broader issues of State responsibility for the death.

As regards general measures, the CM welcomed the measures taken by the authorities to establish specialised investigative processes to conduct investigations into deaths either caused by, or involving, British soldiers. In this regard, it noted with satisfaction the restructuring of the Iraqi Historic Allegations Team (IHAT) in response to domestic judgments to make it fully independent, and the establishment of Iraqi Fatality Investigations so as to ensure that the investigations are accessible to the victim’s families and the public and are able to examine broader issues of State responsibility.

The CM further welcomed the fact that the progress of the IHAT and Iraqi Fatality Investigations are under close and active judicial supervision and considered that this supervision is a robust and effective safeguard ensuring their efficiency and good functioning.

As regards individual measures, the CM noted that the investigations in all the individual cases in this judgment are carried out by those specialised bodies, are underway and making progress.

Encouraging the authorities to ensure that these bodies continue their work, including on the individual cases in this judgment, the CM decided to continue its supervision of this case under the standard procedure.

### ■ UK / McKerr (group) – UK / McCaughey and Others – UK/ Collette and Michael Hemsworth

Applications Nos. 28883/95, 43098/09, 58559/09, judgments final on 04/08/2001 and 16/10/2013, enhanced supervision  
(see Appendix 2)

” **Actions of security forces in Northern Ireland in the 1980s and 1990s:** shortcomings in investigations 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 (Article 2, procedural limb).

**CM decisions:** In June 2014, the CM had expressed serious concern that the investigations in some cases were still outstanding. Moreover, while welcoming the proposal to create a single investigative mechanism (the Historical Investigations Unit – “HIU”) and strongly encouraging the authorities to use all necessary means to pursue it, the CM had urged the authorities to, in the meantime, complete the reform work of the current system so that the Police Ombudsman and the Historical Enquiries Team could carry out their work as effectively as possible. Finally, additional information on the timetable and concrete steps planned for the review of Northern Ireland coronial law had been requested, this review aimed at addressing the causes of the excessive delay in inquest proceedings.

In March 2015, the CM noted with interest the December 2014 Stormont House Agreement and welcomed the announcement therein to establish an independent single investigative body (the HIU). This Investigations Unit will take over the investigations into legacy cases, currently carried out by the Police Ombudsman and by the Historical Enquiries Team, and will, inter alia, have full policing powers and dedicated family support staff. The CM also welcomed the announcement in the Stormont House Agreement that appropriate steps will be taken to improve the way legacy inquests function. In this regard, the CM underlined the importance of ensuring a concrete follow-up to this announcement to ensure that the legacy inquest process can provide access to sufficiently effective investigations within an acceptable timeframe. The CM finally urged the authorities to use all necessary means to ensure the implementation of these announcements in the Stormont House Agreement proceeded according to a clear timetable.

Resuming examination of the general measures in December 2015, the CM noted the outcome of recent talks in Northern Ireland on the implementation of the Stormont House Agreement, and strongly encouraged the authorities to introduce legislation into Parliament, on an agreed basis, in order to establish the HIU. The said legislation should guarantee the HIU's independence both in law and in practice enabling it to conduct effective investigations which are sufficiently accessible to the victims' families. To this end, the CM invited the authorities to engage with all relevant stakeholders to ensure that their views are taken into account in the legislation to be introduced.

As far as legacy inquests are concerned, the CM encouraged full implementation of the measures already underway to speed up the proceedings and the establishment of the Legacy Unit within the coroners' service as soon as possible. The CM also invited the authorities to submit information on the measures proposed to resolve delays in the disclosure process and to conduct, without any further delay, the review and modernisation of coronial law.

As regards individual measures, the CM noted that, subsequent to the Committee's decision to close its supervision of the individual measures in 2009, the United Kingdom had held a further review into the death of Mr Finucane, namely the de Silva review, which identified new information which had not previously been investigated. The CM noted with satisfaction that the new information is currently under

consideration by the Police Service of Northern Ireland (PSNI) and that, following this review, the Director of Public Prosecutions (Northern Ireland) (the DPP(NI)) will be invited to determine whether the earlier decision in 2007 not to prosecute needs to be reviewed in light of any evidence which might become available. Noting the applicant's request for the reopening of the individual measures, the CM decided, in the light of the ongoing domestic litigation in relation to Mr Finucane's case, to resume consideration of reopening the individual measures once the PSNI and DPP(NI) review had concluded. In this respect, the CM invited the authorities to take all measures to ensure that this review is completed as quickly as possible.

Finally, the CM recalled that the completion of the other outstanding investigations in the group is linked to the progress made under the general measures and underlined the need to take those measures without further delay.

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

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### ■ ROM / Centre for Legal resources on behalf of Valentin Campeanu

Application No. 47848/08, judgment final on 17/7/2014, enhanced supervision  
(see Appendix 2)

” **Medical care of an orphan in a psychiatric facility:** Placement of a HIV positive orphan with severe mental disabilities, following his release from public care upon turning 18, in a psychiatric hospital under appalling conditions leading to his untimely death shortly afterwards; failure to carry out an effective investigation into the circumstances surrounding his death; failure to secure and implement an appropriate legal framework that would ensure access of persons with mental disabilities to independent representation, thus allowing examination of their complaints by an independent authority (Articles 2 and 13)

**Action plan:** In response to the findings of the European Court in this judgment, notably under Article 46 of the Convention, the Romanian authorities presented, on 29 January 2015, an action plan in this case. Afterwards, discussions were held in Bucharest, on 16 April 2015, between the Department for the execution of judgments and the Romanian authorities directly involved in the execution of this judgment. In the light of these exchanges, a revised action plan is awaited.

## A.3. Ill-treatment – specific situations

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### ■ IRL / O’Keeffe

Application No. 35810/09, judgment final on 28/1/2014, enhanced supervision  
(see Appendix 2)

” **Failure to protect children against sexual abuse:** responsibility of the State for the sexual abuse of the applicant in 1973 by a lay teacher in a National School owned and managed by the Catholic Church: the state had entrusted the management of the primary education to National Schools, without putting in place any mechanism of effective State control against the risks of such abuse; absence of effective remedies (substantive limb of Article 3 in conjunction with Article 13)

**Action plan:** The authorities submitted a series of action plans in 2014 and 2015 which were discussed in bilateral consultations in November 2015. The most recent action plan was submitted on 28 January 2016 and is under assessment.

The authorities have developed and improved the child protection arrangements in Ireland since the 1970s via a number of specific guidelines to schools. In January 2014, the Child and Family Agency, a dedicated State agency responsible for improving safety, wellbeing and outcomes for children, was established. A number of legislative amendments were adopted in 2015 to put key elements of the national child protection guidance on a statutory basis. The authorities have also initiated a review by an inter-departmental committee to assess the extent to which the issues identified in the judgment have been addressed by these measures. The State Claims Agency has been authorised to review school abuse cases to identify cases that come within the parameters of the judgment and make settlement offers where appropriate.

## B. Prohibition of slavery and forced labour

## C. Protection of rights in detention

### C.1. Poor detention conditions

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#### ■ ALB / Dybeku - ALB / Grori

Application Nos. 41153/06 and 25336/04, judgments final on 02/06/2008 and 07/10/2009, enhanced supervision

(see Appendix 2)

” **Inadequate medical care in prison for seriously ill prisoners, amounting to ill-treatment:** delays in the provision of health care; incompatibility of conditions of detention with the state of health; failure to prescribe adequate medical treatment; non-compliance with the European Court’s interim measure regarding the transfer of the applicant to a civilian hospital (*Grori*) (Articles 3, 5§1 and 34)

**Action report:** In response to the CM’s request of September 2014, the Albanian authorities transmitted in July 2015 an action report ([DH-DD\(2015\)768](#)) with additional information, notably as regards the prevention of undue delays in the provision of medical assistance in prisons, the timely examination of complaints concerning medical care, the existence under the new legal framework of an explicit prohibition to detain mentally-ill prisoners in the same cells with healthy inmates. This information is being currently assessed and bilateral consultations are under way in view of submission of a comprehensive action plan.

#### ■ ARM / Ashot Harutyunyan (group)

Application No. 34334/04, judgment final on 15/09/2010, enhanced supervision

(see Appendix 2)

” **Poor medical care in prison amounting to ill-treatment; practice of placing and keeping the applicants in cage during court hearings** without any real security risk amounting to degrading treatment (Article 3)



**Action plan:** In April 2015, the Armenian authorities transmitted an action plan providing information on individual and general measures taken and envisaged to ensure compliance with the European Court’s judgments in this group of cases. According to the action plan, following a set of reforms introduced after these judgments, cages have been removed from the Armenian courts. As to the problem of adequate medical care in prisons, a set of reforms, including legislative ones, accompanied notably by training measures, have already taken place and others are foreseen. Bilateral consultations are under way to assess the impact of the measures adopted in order to present an updated action plan/report addressing the remaining issues.

#### ■ ARM / Kirakosyan (group)

Application No. 31237/03+, judgment final on 04/05/2009, [CM/ResDH\(2015\)169](#)  
(see Appendix 3)

” **Poor conditions of administrative detention** without adequate time and facilities to prepare any defence and without any right of appeal (Article 3, Article 6 § 1 combined with Article 6 § 3 (b), Article 2 of Protocol No. 7)

**Final resolution:** The violations found by the Court in the present group of cases were addressed and the just satisfaction awarded was paid to the applicants.

As regards administrative detention, it was abolished following the amendment of the Code of Administrative Offences on 16 December 2005, as well as the inadequate and confusing legal provision regarding the right to appeal. The current procedural legislation gives full fair trial guarantees: adoption of the new Code of Administrative Procedure entered into force on 7 January 2014 (providing, *inter alia*, for the right to present evidence and take part in its examination, to benefit from the free assistance of an interpreter, to file a motion in order to get more time and facilities for the preparation of the defence).

Concerning the poor conditions of detention, a large scale refurbishment programme was initiated in all police holding areas in December 2004, supported by the adoption of a Penitentiary Code on 24 December 2004. The police detention facilities renovation programme adopted by the State permitted the improvement of the material conditions of detention, in particular sanitary conditions.

With a view to monitoring the State practice in the field of detention conditions, control mechanisms were set up as part of a National Preventive Mechanism (NPM) involving civil society representatives and national human rights institutions.

A public monitoring of penitentiary institutions and detention facilities is carried out by the Office of the Human Rights Defender and other groups. They are entitled to unrestricted access to these institutions and facilities to examine the content of documents, the situation of the institution and to meet inmates in privacy. They have the possibility of solving the issues raised through a direct cooperation with the administration of places of deprivation of liberty.

Moreover, activities of the administration of places of deprivation of liberty are also subject to an internal control, which means that complaints can be brought before the superior authorities of the administration.

Finally, a prosecutorial control is ensured by the Prosecutor's Office, in its power to supervise the legality of the punishments and other measures of restraint. It can render binding and enforceable decisions within a reasonable short time period via an urgent procedure.

As part of compensatory remedies, amendments to the Civil Code introduced the possibility of obtaining monetary compensation for ill-treatment as non-pecuniary damage.

Education and professional trainings were organised for ensuring the Convention standards awareness-raising.

#### ■ AZE / Insanov

Application No. 16133/08, judgment final on 14/06/2013, enhanced supervision  
(see Appendix 2)

” **Inhuman and degrading detention conditions and unfair criminal and civil proceedings:** unlawful domestic courts' refusal to ensure the applicant's (a former Minister of Health Care) personal attendance of hearings in civil proceedings concerning the detention conditions and the alleged lack of adequate medical assistance; impossibility to question witnesses about decisive evidence, insufficient opportunities to consult a lawyer in confidential setting; detention in inhuman and degrading conditions (Articles 3, 6§1 and Article 6§1 taken together with Article 6§3(c) and (d))

**CM decision:** When resuming its examination of this case in September 2015, the CM strongly urged the authorities to respond to the applicant's complaints concerning his conditions of detention, to ensure that these are in accordance with Article 3, and to keep the CM informed in that respect. It also urgently requested information on the progress of the applicant's reopened civil proceedings concerning his detention conditions and noted the re-opening of the criminal proceedings as a significant step towards erasing the consequences of the violation of Article 6 of the Convention. It invited, however, the authorities to confirm that the proceedings were attended by witnesses identified by the European Court as necessary to ensure the fairness of the trial, that the applicant (or his representative) was able to question those witnesses, and also to explain in detail how the applicant was able to consult with his lawyers in a confidential setting during the trial.

As to the general measures, the CM invited the authorities to identify the measures required to remedy Article 6 violations. As regards the conditions of detention, the CM considered it encouraging that Baku Detention Facility No. 1 was demolished and replaced, and that the sanitary facilities criticised by the Court in Penal Facility No. 13 have recently been renovated. It also invited the authorities to provide further information on the current situation of prison overcrowding, in order to make a full assessment of the situation and decided to resume consideration of this case in March 2016.

#### ■ BEL / L.B. (group)

Application No. 22831/08, judgment final on 02/01/2013, enhanced supervision  
(see Appendix 2)

” **Prison facility unsuited for psychiatric pathologies:** continuing detention of persons suffering from mental disorders in detention facilities unable to provide

adequate care; lack of effective remedy to challenge detention conditions (Article 5§1; Articles 3 and 5§4)

**CM decision:** In June 2015, the CM examined the progress achieved in the execution of this group of cases in the light of the action plan submitted by the authorities on 10 February 2014.

Some applicants remaining in detention in prison psychiatric wings, the CM underlined that, even if individual measures are linked to the general measures aiming at addressing a structural problem, Belgium should nevertheless endeavour to remedy the violations found against the applicants. In this regard, the CM invited the authorities to specify if the applicants had benefited from the general measures already adopted, and if interim measures had been taken for the applicants still detained in prison psychiatric wings.

As regards general measures, the CM noted with interest the measures already adopted and underlined the importance of decisive action with a view to resolving the structural problem of the prolonged detention of internees in prison psychiatric wings (problem which is directly related to the lack of effectiveness of remedies before the Commissions for Social Defence, whose powers are notably limited by the absence of places in specialised institutions).

Accordingly, the CM invited the authorities to submit additional information on the measures adopted/envisaged and their concrete effects, and notably on the results of consultations and studies undertaken at the national level with a view to better targeting the required action.

As regards the effectiveness of the judicial remedy, the CM invited Belgian authorities to specify if consistent case-law exist today at a federal level, through which the judge recognises himself/herself as competent to review the appropriateness of the detention facility (which was not the case at the time of these cases).

The CM invited the authorities to submit a revised action plan including a timetable presenting the next steps envisaged for the execution of this group of cases, at the latest by 1 September 2015. A revised action plan was provided on 2 September 2015.

### ■ BEL / Vasilescu

Application No. 64682/12, judgment final on 20/04/2015, enhanced supervision  
(see Appendix 2)

” **Prison overcrowding**, hygiene problems and ageing infrastructure in prisons in Belgium (Article 3)

**Action plan:** The applicant is no longer detained since 22/10/2012 and the just satisfaction awarded by the Court was paid. The action plan of 4/02/2016 informs of the publication of the judgment in the data base of the Court of cassation and of its dissemination among the central penitentiary administration. It indicates notably the measures taken by the Belgian authorities to fight against prison overcrowding and improve the conditions of detention in prisons, namely the expected opening of three new prisons, the closing in June 2015 of the cell track of prison in Merksplas and the segregated placement of smoking and non-smoking detainees. As regards

the provision of an effective remedy for the detainees, the authorities have indicated a number of measures taken to improve the effectiveness of the already existing remedies (application for interim measures and reparatory remedy).

### ■ **BGR / Kehayov (group) - BGR / Neshkov and Others (pilot judgment)**

Applications Nos. 41035/98 and 36925/10+, judgments final on 18/04/2005 and 01/06/2015, enhanced supervision  
(see Appendix 2)

” **Investigative detention facilities and prisons:** cases mainly concerning inhuman and degrading treatment due to overcrowding and poor sanitary and material conditions; lack of appropriate medical care; lack of effective remedies (Article 3, Article 13 taken in conjunction with Article 3, Articles 5, 6§§1, 3(e), 8 and 13)

**CM decision:** For earlier developments see notably AR 2014. In the light of the information provided in the updated action plans of December 2014, July and August 2015 and taking into consideration the Neshkov and Others pilot-judgment delivered by the Court, the CM resumed consideration of this group of cases in September 2015. At that meeting, the CM noted with concern that the ongoing systemic problems in terms of overcrowding and poor material conditions of detention in the Bulgarian penitentiary system has compelled the Court to adopt a pilot judgment and the CPT a public statement. Considering, however, the submitted action plan as being a step in the right direction, the CM urged the authorities to frame and implement a comprehensive long-term strategy to combat overcrowding and improve detention conditions. Noting also that this strategy must indicate the expected outcomes for each of the planned measures and a timetable for their implementation, the CM invited the authorities to finalise this strategy in close consultation with the Secretariat.

The CM has further underlined that it is important that effective domestic remedies are in place by the deadline set in the *Neshkov and Others* pilot judgment, i.e. by 1 December 2016 and invited the authorities to inform it of the progress made in preparing the legislative framework for their implementation. Noting moreover that improving conditions of detention and reducing prison overcrowding are vital for ensuring the proper functioning of the remedies, in particular the preventive remedy, the CM invited the authorities to inform it of the progress made also in this area.

Concerning the overcrowding, the CM noted that there was a reduction in the prison population over the past two years and invited the authorities to rapidly adopt the planned reforms, aimed at creating wider opportunities for initial placement in open prisons and the use of non-custodial measures. Likewise, the authorities were urged to improve rapidly the material conditions of detention, by carrying out the necessary urgent repairs and by ensuring sufficient funding. The CM also called for a rapid adoption of measures ensuring that inmates receive proper medical care and that there are sufficient health professionals. In addition, the authorities were invited to ensure adequate levels of prison staff, so as to improve access to out-of-cell activities. Furthermore, the Bulgarian authorities were invited to continue to make use of all the opportunities for co-operation that the Council of Europe has to offer.

Having noted that no further individual measures were necessary in 19 older cases, the CM invited the authorities to provide additional information on the outstanding issues

relating to individual measures in the recent cases and requested additional information on the general measures taken following the *Harakchiev and Tolumov* judgment.

### ■ GRC / Nisiotis (group)

Application No. 34704/08, judgment final on 20/06/2011, enhanced supervision  
(see Appendix 2)

” **Prison overcrowding:** inhuman and degrading treatment by reason of poor conditions in which the applicants were held in Ioannina prison, mainly because of severe overcrowding (Article 3)

**CM decision:** For earlier developments see notably AR 2013-2014. When resuming examination of this group in March 2015, the CM recalled the Court’ indication under Article 46 in the *Samaras and Others* judgment that a drastic and rapid intervention of the authorities is required to bring the conditions of detention [in the Ioannina prison] in line with the requirements of Article 3, in order to avoid further similar violations. Recalling that, in the *Nisiotis* judgment, the Court observed that prison overcrowding appears to be a structural problem, present in a large number of Greek prisons. In the light of the above, the authorities were urged to vigorously pursue their efforts in view of substantially reducing the occupancy rate in the Ioannina prison, and inform the CM of the progress made in this respect.

As regards the structural problem of overcrowding, the CM noted with interest the updated information on measures taken to develop alternatives to imprisonment, which had produced some positive results, and to improving conditions of detention. Considering, in the light of the statistics received, that overcrowding remained a matter of serious concern, the CM urged the Greek authorities to enhance their efforts to draw up a comprehensive strategy providing a lasting and sustainable solution to the problem, guided by the various relevant CM’ recommendations in this field and the advice of specialised bodies of the Council of Europe. Finally, the authorities were invited to provide updated information on the impact of this strategy on the reduction of the prison population (both remand and sentenced prisoners) as compared with the official prison capacity, and on the current situation of the applicants in the cases of *Tsokas* and *Athanasίου*. Following this decision, under the Law 4322/2015, the Ministry of Justice, Transparency and Human Rights took additional measures aimed at decreasing and modulating the number of the prisons population, releasing and housing under electronic surveillance prisoners suffering from serious illness, and improving conditions of detention in general.

### ■ HUN / Istvan Gabor and Kovacs - HUN / Varga and Others (pilot judgment)

Applications Nos. 15707/10 and 14097/12, judgments final on 17/04/2012 and 10/06/2015, enhanced supervision  
(see Appendix 2)

” **Overcrowding in pre-trial detention:** Inhuman and degrading treatment during pre-trial detention from 01/2008 to 06/2010 in Szeged Prison due to the overcrowded conditions of detention, notably multi-occupancy cells under 4 square meters ground surface per person; statutory restrictions on the frequency and duration of family visits during pre-trial detention (Articles 3 and 8)

**CM decision:** The pilot judgment *Varga and Others* was rendered by the Court on 10 March 2015. The Hungarian authorities submitted an action report on 25 March 2015. Once the pilot judgment became final, the authorities submitted an action plan on 3 July 2015.

In September 2015, the CM recalled the Hungarian authorities their obligation under the abovementioned pilot judgment to “produce, under the supervision of the CM, within six months from the date on which this judgment becomes final, a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention”.

Welcoming the authorities’ commitment to present the time frame before 10 December 2015, the CM strongly encouraged them to respect this deadline. In this regard, the CM underlined that any arrangements and measures, in order to be fully effective, need to be underpinned by a comprehensive strategy capable of addressing the structural problem of overcrowding. Consequently, it urged the authorities to intensify their efforts in this respect, taking into account the various relevant recommendations of the CM in this field and the relevant CPT’s recommendations and standards.

As regards the conditions of detention under special security regimes, the CM invited the authorities to provide information on the measures taken in order to address the violations found in this domain and the lack of effective remedy to challenge the security classification. The CM also asked for information on the exact content of the amended legislation on family visits in pre-trial detention and on the domestic remedies available in case of denial of requests for visits.

As regards individual measures, the CM invited the authorities to submit urgently information on the applicants’ current situation in the cases of *Szél, Fehér* and *Varga and Others*.

Considering the time-limit set by the Court in its pilot judgment, the CM decided to examine this case at the latest in March 2016.

An updated action plan was submitted on 14 December 2015.

#### ■ **MDA / Becciev (group) - MDA / Ciorap (group) - MDA / Paladi**

Application Nos. 9190/03, 12066/02 and 39806/05, Judgments final on 04/01/2006, 19/09/2007 and 10/03/2009, Enhanced supervision  
(see Appendix 2)

” **Poor detention conditions amounting to degrading treatment:** poor detention conditions in penitentiary establishments under the authority of the Ministries of the Interior (*Becciev* group) and of Justice (*Ciorap* group), lack of access to medical care in detention and lack of effective remedy; (Articles 3 and 13, and Article 5 §§3 and 4); other violations (Articles 3, 8, 34, 6§1, 5§§1, 3 and 4)

**Developments:** When examining these groups of cases in December 2013, the CM, inter alia, strongly encouraged the Moldovan authorities to make rapidly progress in their reflection concerning the setting up of preventive remedies, by taking full benefit of the technical co-operation which was proposed to them in the framework of the specific Human Rights Trust Fund Project (HRTF project). In July 2014, the authorities had participated in a multilateral round-table, held in Strasbourg, where they had had

the opportunity to share their experience concerning the compensatory remedies. While advancement appeared to happen on compensatory remedies, no progress had been made in the introduction of preventive remedies. A study visit to Italy was then organised in February 2015 within the HRTF Project, focusing on the preventive remedies and the reduction of sentences as a compensatory remedy. In April 2015, a working group, in charge with addressing the issue of introducing an effective domestic remedy in respect of poor conditions of detention, was set up by the Minister of Justice. The Department for the execution of judgments and Council of Europe experts met with this working group in Chisinau in June 2015 to discuss the modalities of the remedies. On 15 September 2015, the European Court delivered a judgment in the case of Shishanov with specific indications under Article 46, notably that authorities should, without delay, put in place an effective preventive and compensatory remedy, or a combination of remedies, concerning inadequate conditions of detention in Moldova. The Moldovan authorities committed to submit an updated action plan.

### ■ POL / Horych (group)

Application No. 13621/08, judgment final on 17/07/2012, enhanced supervision  
(see Appendix 2)

” **Special detention regime for “dangerous detainees”:** application to “dangerous detainees” of strict prison measures (placement in solitary confinement in high-security cells, constant monitoring, deprivation of adequate mental and physical stimulation) between 2001 and 2012; extended duration of the application of that regime (Articles 3 and 8)

**CM decision:** For earlier developments refer to AR 2014 and 2013. When resuming consideration of these cases in June 2015, the CM noted with interest, with regard to the general measures taken, the continuing decrease of the number of dangerous detainees, which now also have the possibility to challenge their classification before the domestic courts. The CM noted that further legislative amendments were under way in view of eliminating the automatic classification of certain categories of detainees and requested in this respect a timetable and update on progress of this legislative process. It reiterated furthermore its earlier request for clarification of the current practices concerning handcuffing, use of solitary confinement and strip-searches and asked the authorities to explain in detail how these practices will be affected by the legislative amendments under consideration. The authorities were also urged to provide information on conditions for family visits to dangerous detainees outside Gdansk and Krakow detention centres. In conclusion, the CM invited the authorities to submit the outstanding information regarding the timetable for the legislative amendments along with clarification of their intended impact in practice before end of June 2015, as well as an updated action plan by the end of 2015, to allow a full assessment of this group of cases. An action report was submitted by the authorities on 16 February 2016.

### ■ POL / Kaprykowski (group)

Application No. 23052/05, judgment final on 03/05/2009, enhanced supervision  
(see Appendix 2)

” **Inadequate medical care in prison:** structural problem of prison hospital services – ill-treatment due to lack of adequate medical care (Article 3)

**Action plan:** For earlier developments refer to previous AR (2013-2014).

A specific project, dedicated to the issue of medical care in prisons in Poland has been developed through the Human Rights Trust Fund (HRTF 18). In the framework of this project, experts' visits to Poland took place in November 2013 and a workshop with the Polish authorities was organized in Strasbourg in April 2015. Subsequently, an updated action plan was submitted in September 2015, notably indicating the general measures taken and envisaged. The submitted information is being assessed.

### ■ POL / Orchowski (group)

Application No. 17885/04, judgment final on 22/10/2009, enhanced supervision  
(see Appendix 2)

» **Prison overcrowding:** inhuman and degrading treatment resulting from inadequate detention conditions in prisons and remand centres, due in particular to overcrowding, aggravated by the precarious hygienic and sanitary conditions and the lack of outdoor exercise (Article 3)

**Developments:** After the examination by the CM of this group of cases in March 2013, the Polish authorities have submitted an action report in July 2014, notably in response to point 6 of the CM's decision. The inclusion of some elements necessary to complete the action report were raised with the authorities, notably the functioning of the electronic surveillance system as an alternative to imprisonment, the measures addressing situation of vulnerable prisoners, and the application of the preventive remedy. These elements were also discussed during the Department's visit to Warsaw in October 2015. An updated action report integrating all the above elements is awaited.

### ■ ROM / Bragadireanu (group)

Application No. 22088/04, judgment final on 06/03/2008, enhanced supervision  
(see Appendix 2)

» **Overcrowding and poor detention conditions:** overcrowding and poor material and hygiene conditions in prisons and police detention facilities, inadequacy of medical care and several other dysfunctions regarding the protection of prisoners' rights; lack of an effective remedy (Articles 3 and 13)

**CM decision:** For previous developments in this group see AR 2014 and 2013. Resuming consideration of this group in March 2015, in the light of revised Action plan submitted in October 2014, the CM noted with interest the measures taken by the authorities, as part of the reform of the State's criminal law policy, and encouraged them to monitor the real impact of the reform on the number of persons in detention. The CM also noted the measures taken to improve the material conditions in detention facilities and invited the authorities to intensify their efforts in this field. It has considered however that, given the severity of overcrowding in penitentiary facilities, the legislative measures adopted in the context of the above-mentioned reform do not appear capable of leading to a lasting solution to this problem within a reasonable period and consequently, urged the authorities to rapidly identify and implement appropriate additional measures to reach this objective.



Having noted further that the reform maintained the system of detention on remand in police detention facilities notwithstanding the fact that a part of these facilities are structurally unsuitable to detention, the CM underlined the extreme urgency to remedy the structural deficiencies affecting these facilities. Pending the achievement of this objective, the authorities were invited to adopt measures aimed at keeping to a minimum the length of detention in the facilities that are unsuitable for detention. Noting moreover that the current procedures do not provide adequate and effective remedies for complaints related to overcrowding and material conditions of detention, the CM invited the authorities to rapidly ensure the existence of such remedies in domestic law. In conclusion, the CM requested that by 1 June 2015 be provided information on the strategy envisaged for the implementation of these judgments and strongly encouraged the authorities to draw inspiration in this respect from the solutions proposed in the framework of the relevant project of the Human Rights Trust Fund.

### ■ ROM / Enache

Application No. 10662/06, judgment final on 01/07/2014, enhanced supervision  
(see Appendix 2)

” **Special detention regime for “dangerous” detainees:** classification of the applicant, sentenced to life imprisonment for murder, as “dangerous” prisoner, resulting in long periods of de facto solitary confinement and systematic handcuffing outside the cell, against the background of poor overall detention conditions; lack of information contesting the allegation that the authorities pressured him to withdraw his application before the European Court (Articles 3 and 34)

**Action Plan:** Information on individual measures was transmitted on 20/11/2014 indicating that the applicant henceforth shares his cell with other detainees and is no longer classified as “dangerous”. An action plan was submitted on 20 January 2015, followed by an information note on general measures of 16 June 2015, indicating that a new Law on the execution of custodial sentences and measures (Law No. 254/2013, in force since 1 February 2014) set the general framework for the new regime applicable to the former category of “dangerous prisoners” (henceforth, “prisoners who pose a risk to the safety of the penitentiary facility”). Information on the relevant provisions of this Law was also provided.

After a preliminary assessment of the above information, in November 2015, the Department for the execution of judgments invited the authorities to provide further details on the applicant’s situation, as well as on the framework set under Law No. 253/2013 as regards the conditions for applying the above-mentioned regime, the initial assessment and the reassessment of the application of this regime, the rules on the accommodation of the prisoners classified under this regime, the out-of-cell activities available to these prisoners and the restraint measures that can be applied to them. The authorities were also invited to provide information on the measures adopted and/or envisaged in response to the violation of Article 34 the Court found in this case. A revised action plan, providing clarification on the points highlighted above, is therefore awaited.

## ■ ROM / Țicu – ROM / Gheorghe Predescu

Application Nos. 24575/10 and 19696/10, judgments final on 01/01/2014 and 25/05/2014, enhanced supervision  
(see Appendix 2)

” **Ill-treatment of detainees with psychiatric condition:** placement of the applicants in ordinary detention facilities severely overcrowded; lack of adequate medical care in prison and in penitentiary hospitals; failure to ensure constant psychiatric supervision or assistance and counselling to help accepting and dealing with the illness; lack of investigation in the alleged repeated acts of violence suffered from other prisoners in the Iași prison; inaction of the Prosecutor’s office despite being informed by the prison administration (Article 3 procedural and substantial limbs)

**CM decision:** For information on earlier developments see AR 2014. At its meeting in June 2015, the CM resumed consideration of this group of cases to assess the information on the individual measures transmitted by the authorities on 27 March 2015. The CM noted the assurances given by the Romanian authorities that the applicants were provided with medical care and the detention conditions were adapted to their health situation and subject to a follow-up to ensure their compatibility with the Convention requirements. In this respect, the authorities were encouraged to adopt promptly any other necessary measure. In the light of the above, the CM considered that the applicants’ current situation no longer required urgent individual measures and decided to continue the examination of these cases in the light of the additional information expected by the end of June 2015, both on the general measures required for the execution of these judgments and on the assessment by the competent authorities of the possibility to open an investigation into the acts of violence Mr Țicu alleged to have suffered at the Iași prison.

## ■ SVN / Mandić

Application No. 5774/10, judgment final on 20/01/2012, enhanced supervision  
(see Appendix 2)

” **Overcrowding in prison:** degrading treatment on account of poor conditions of detention in overcrowded Ljubljana prison and lack of an effective remedy (Articles 3 and 13)

**Developments:** Bilateral contacts have continued (see AR 2014) with a view to addressing the last outstanding issues for the finalisation of the new action plan. The plan is expected in the near future.

## ■ UKR / Afanasyev (group) - UKR / Kaverzin

Application Nos. 38722/02 and 23893/03, judgments final on 05/07/2005 and 15/08/2012, enhanced supervision  
(see Appendix 2)

” **Ill-treatment in various detention facilities - absence of effective investigations:** use of physical or psychological force, mostly in order to obtain confessions and lack of effective investigations into such complaints and of an effective remedy; systematic handcuffing; in some cases, inadequate medical assistance; irregularities in detention on remand; excessive length of proceedings and lack of effective remedies; non-enforcement of judicial decisions; unfair trial (Article 3, Article 5§§1,3, and 5, Article 6§§1 and 3, Article 13, and Article 1 of Protocol No. 1)

**Developments:** Following a series of bilateral consultations and events held in Kyiv and Strasbourg in 2015, notably with the representatives of the General Prosecutor’s office, progress was achieved with respect to individual measures: the investigations in individual cases of the present group have been instituted and/or reactivated. As regards general measures, the work was concentrated around the draft law “On the State Bureau of Investigations”, which was adopted by the Ukrainian Parliament on 12 November 2015 and signed by President on 14 January 2016. This Law received a globally positive assessment from the Council of Europe’s experts and shall enter into force by 1 March 2016.

■ **UKR / Nevmerzhitsky (group) - UKR / Yakovenko (group) - UKR / Melnik (group) - UKR / Logvinenko (group) - UKR / Isayev (group)**

Applications Nos. 54825/00, 15825/06, 72286/01, 13448/07 and 28827/02, judgments final on 12/10/2005, 25/01/2008, 28/06/2006, 14/01/2011 and 28/08/2009, enhanced supervision (see Appendix 2)

” **Poor detention conditions:** violations resulting mainly from poor detention conditions, inadequate medical care in various police establishments, pre-trial detention centres and prisons; lack of an effective remedy; other violations: unacceptable transportation conditions; unlawful detention on remand; abusive monitoring of correspondence by prison authorities, impediments in lodging a complaint with the Court; excessively lengthy proceedings (Articles 3, 5 §§1, 4 et5, 6§1, 8, 34, 38§1(a) and 13)

**Developments:** Following a series of bilateral consultations and events that took place in 2014 and 2015 under HRTF 18 project “Implementing judgments concerning conditions of detention”, the Ukrainian authorities undertook to elaborate and submit to Parliament a draft law relating to the introduction in the Ukrainian legal system of preventive and compensatory remedies to challenge the conditions of detention. The authorities undertook to inform the CM about any further developments.

■ **RUS / Kalashnikov (group) - RUS / Ananyev and Others (pilot judgment)**

Applications Nos. 47095/99 and 42525/07, judgments final on 15/07/2002 and 10/04/2012, enhanced supervision (see Appendix 2)

” **Poor detention conditions in remand centres (SIZO):** poor conditions of detention (acute lack of personal space, shortage of sleeping places, unjustified restrictions on access to natural light and air etc.) in various remand centres pending trial and lack of effective remedies (Articles 3 and 13)

**Developments:** Important measures to improve detention conditions were adopted in the wake of the Kalashnikov judgment – see notably interim resolutions [ResDH\(2003\)123](#) and [CM/ResDH\(2010\)35](#). However, even if both the CM and the European Court had noted perceptible trends towards an improvement of the situation, including developments of the Supreme Court’s practice aiming at reinforcing the capacity of the courts to take preventive action in response to complaints regarding detention conditions, and an increasing attention paid to the problems by the respondent State at the highest level, the situation remained preoccupying and the Court adopted in 2012 a pilot judgment in the Ananyev case. This judgment stressed the necessity of a binding time frame in which to make available a

combination of effective remedies having compensatory and preventive effect. The deadline indicated was October 2012. A detailed action plan was also submitted within the deadline and welcomed by the CM. Important progress in the implementation of the action plan, both as regards the setting up of effective remedies and in the handling of repetitive applications, was noted by the CM in June 2014. A new action plan submitted on 10/8/2015 - [DD\(2015\)862](#) - indicated that a new system of significantly improved remedies was adopted on 8 March 2015 through the adoption of the new Code of Administrative procedure.

## C.2. Unjustified detention and related issues

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### ■ BGR / Stanev

Application No. 36760/06, judgment final on 17/01/2012, enhanced supervision  
(see [Appendix 2](#))

” **Placement in a psychiatric institution and inhuman conditions of detention:** unlawful placement in a psychiatric institution, lack of judicial review and impossibility to obtain redress; inhuman and degrading conditions of detention (2002 and 2009) and lack of an effective remedy in this respect; lack of possibility to request before a court the restoration of legal capacity (Article 5§§1-4-5, Articles 3, 13 and 6§1)

**Action plan:** In response to the findings of the European Court in this judgment, the Bulgarian authorities provided an action plan in November 2014 and updated it with additional information in February, March and June 2015. Information provided concerned in particular measures taken by the authorities in view of erasing consequences of the violation of the applicant’s rights under Articles 5 and 6 of the Convention, as well as on general measures taken and foreseen to prevent new similar violations in future. This information is being assessed.

### ■ CZE / Milan Sýkora

Application No. 23419/07, judgment final on 22/02/2013, [CM/ResDH\(2015\)227](#)  
(see [Appendix 3](#))

” **Unlawful detention in a psychiatric hospital of a person deprived of legal capacity:** lack of safeguards against arbitrariness and judicial review of the detention; deficiencies in the procedure depriving the applicant of legal capacity (Article 5 §§ 1 and 4, Article 8)

**Final resolution:** The applicant has been released from detention and is no longer deprived of his legal capacity. Moreover, just satisfaction awarded under the head of non-pecuniary damage was paid.

In order to prevent similar violations and to provide safeguards against arbitrariness, the new Act no. 292/2013 on Special Judicial Proceedings entered into force on 1 January 2014. Under it, a healthcare institution which admits a patient against his will must inform the competent court within twenty-four hours about the involuntary placement of such person in that institution. Moreover, if it fails to do so, the patient whose legal capacity has been restricted can file a motion for the initiation of proceedings in which a competent court will promptly review the lawfulness of that person’s involuntary admission, even if his guardian consented to such admission.

Further, the new Act provides that the competent court must see and hear each person whose legal capacity it considers restricting.

In this regard, the new Civil Code provides that this court must make the necessary efforts to determine the person's opinion. The Civil Code also provides that, if the healthcare institution fails to respect its obligations under the new above-mentioned Act, the individual concerned can initiate proceedings to get compensation for the unlawfulness of the psychiatric hospital's actions.

### ■ EST / Ovsjannikov

Application No. 1346/12, judgment final on 20/05/2014, [CM/ResDH\(2015\)136](#)  
(see Appendix 3)

» **Unlawful detention** due to the lack of access to the criminal file and the material presented by the prosecutor to the court deciding on the applicant's remand in custody and the lawfulness of his continued detention (Article 5 § 4)

**Final resolution:** Following the amendments of the Code of Criminal Procedure, in force since 1 July 2014, suspects have the right to request access to any evidence which is essential in order to discuss whether an arrest warrant is justified and for contesting detention and taking into custody in court (§ 34 (2) of the Code of Criminal Procedure). Such a request is decided upon by a prosecutor whose decision can be appealed against to a court.

### ■ LVA / Bannikov (group)

Application No. 19279/03, judgment final on 11/06/2014, [CM/ResDH\(2015\)137](#)  
(see Appendix 3)

» **Excessive length of pre-trial detention:** lack of sufficient grounds to justify the applicant's continued detention (Article 5 § 3)

**Final resolution:** On 1 October 2005, the provisions of the Latvian Code of Criminal Procedure governing the application of pre-trial detention were replaced by the Criminal Procedure Law. This law notably introduced position of investigative judges whose primary duty is to ensure observance of human rights during the pre-trial stage of criminal proceedings. Further, it provides that detention orders are subject to regular judicial review at two levels of jurisdiction: in this regard, a mandatory periodic control over the applied pre-trial detention is to be carried out every two months by the investigative judge.

Subsequent amendments of the abovementioned law, entered into force on 1 July 2012, provide for the review of the detention after convicting judgment of the first instance court. The appellate court has authority to review the necessity for continuous detention when appellate proceedings are not expected to commence within two months from the date the appellate court received the criminal case file.

Last amendments of this law, entered into force on 27 October 2013, explicitly sets out the rights of, *inter alia*, persons who have been deprived of their liberty.

### ■ MDA / Şarban (group)

Application No. 3456/05, judgment final on 04/01/2006, enhanced supervision  
(see Appendix 2)

” **Pre-trial detention:** unlawfulness; continuing detention despite higher court’s decision quashing the detention order; lack of relevant and sufficient reasons for ordering or extending detention; impossibility to obtain release pending trial; failure to ensure a prompt examination of the lawfulness of the detention; non-confidentiality of lawyer-client communications; various breaches of the principle of equality of arms; (Articles 5 §§1, 3 and 4; also Article 3 and 34)

**Developments:** Previous developments in this group of cases have been described in earlier Annual Reports (2009 -2014). In response to the CM’s decision of December 2014, notably inviting the Moldovan authorities to provide additional information on a series of outstanding issues, an updated action plan was provided in October 2015. The presented information is being assessed.

### ■ NLD / Van der Velden

Application No. 21203/10, judgment final on 31/10/2012, CM/ResDH(2015)91  
(see Appendix 3)

” **Unlawful extension of a committal to a custodial clinic** (so-called “TBS” order) beyond the statutory limit of four years without appropriate reasons given in the judgment (Article 5 § 1)

**Final resolution:** The applicant was release after termination of his committal order on 29 August 2011. The National Consultative Committee of Criminal Law Sector decided to adapt internal procedure to ensure that committal orders will contain appropriate reasons. In addition, when a court imposed a TBS order, the judgment will have to indicate whether that order is being imposed in relation to a violent offence. If so, sufficient reasons are necessary to justify the imposition of a TBS order that is not subject to a maximum duration.

On 12 February 2013, the Supreme Court delivered a leading judgment, detailing the conditions to be satisfied in order for the deprivation of liberty to be lawful, in accordance with the European Court’s judgments.

The State Secretary for Security and Justice asked the Council for the judiciary to identify any cases requiring further attention, since the court that imposed the order may have given insufficient reasons for imposing a TBS order in relation to a violent crime. A TBS Task Force was thus created, producing a list of 111 cases requiring such further attention: for each of these cases, the national courts will now have to determine whether the TBS order can be extended after four years.

### ■ POL / Grabowski

Application No. 57722/12, judgment final on 30/09/2015, enhanced supervision  
(see Appendix 2)

” **Unlawful deprivation of liberty of a juvenile** in the framework of correctional proceedings without a specific court order and lack of adequate judicial review thereof (Article 5 §§1 and 4)

**Developments:** The Court indicated under Article 46 of the Convention that Poland should undertake legislative or other appropriate measures with a view to eliminating the practice which developed under the Juvenile Act as applicable at the relevant time and ensuring that each and every period of the deprivation of liberty of a juvenile is authorised by a specific judicial decision. An action plan / report in this regard is awaited.

### ■ POL / Kedzior (group)

Application No. 45025/07, judgment final on 16/01/2013, enhanced supervision  
(see Appendix 2)

” **Judicial review of the placement / maintaining in a social care home:** Lack of judicial review of the placement and maintaining in a social care home; impossibility to independently challenge the continued institutionalisation, given the deprivation of legal capacity (Article 5§§1 and 4, Article 6§1)

**Developments:** An NGO (Helsinki foundation for Human Rights) submitted information in August 2015, notably an assessment of the situation with respect to general measures required in this case. In response to the Court’s judgments in this group of cases, the Polish authorities submitted their action plan on 2 December 2015, notably a detailed description of the individual measures taken as well as indications on the general measures adopted and envisaged. This information is being assessed.

### ■ ROM / Ciobanu

Application No. 4509/08, judgment final on 09/10/2013, [CM/ResDH\(2015\)28](#)  
(see Appendix 3)

” **Unlawful detention for non-consideration of a house arrest period spent abroad:** Unforeseeable application of domestic law and degrading conditions of detention at the Police station Galati in Bucharest (Articles 5§1 and 3)

**Final resolution:** The new Code of Criminal Procedure, entered into force in February 2014, provides custodial house arrest and the deduction of the house arrest period from the period of imprisonment. The new Penal Code, in force since February 2014, provides for the deduction of any deprivation of liberty, including the assignment at home from a prison sentence. The issues related to conditions of detention are examined in the Bragadireanu group of cases, currently under the CM’s supervision.

### ■ RUS / Bednov

Application No. 21153/02, judgment final on 01/09/2006, [CM/ResDH\(2015\)249](#)  
(see Appendix 3)

” **Detention on remand in the absence of a court decision** or of a reasoned court decision; absence of time-limit for the extensions of the detention period; detention hearings conducted in the absence of the applicants and their counsel; failure to examine complaints against detention on remand orders. (Article 5 §§1 and 4)

**Final resolution:** The CM was provided information regarding a series of legislative reforms and Rulings of the Constitutional Court and the Supreme Court ensuring that detention on remand is always ordered by a court decision and that such decisions contain reasons and time-limit for the detention, that hearings on detention

on remand are always conducted in the presence of the accused and his counsel and that complaints against detention orders are always examined by courts. Further questions regarding detention on remand continue to be examined within the framework of the Klyakhin group.

### **RUS / Klyakhin**

Application No. 46082/99, judgment final on 06/06/2005, enhanced supervision  
(see Appendix 2)

” **Different violations related to detention on remand:** absence of a court decision or absence of any reasons for detention on remand in a court decision ; failure to provide information on the reasons for arrest; domestic courts’ failure to adduce relevant and sufficient reasons to justify the extension of pre-trial detention ; excessive length of the judicial review of the lawfulness of detention ; failure to examine the applicants’ complaints against detention orders; hearing conducted in the absence of the applicant and his counsel; absence of an enforceable right to receive compensation in case of violations of Article 5 (Articles 5§§1, 2, 3, 4 and 5)

**CM Decision / Final resolution:** A number of legislative reforms undertaken in 2008-2013 have aimed at addressing the violations of Article 5 found in the present group of cases. These reforms have been supplemented by awareness raising measures and important guidance provided by the Constitutional and Supreme Courts.

When examining the group in December 2015, the CM welcomed the efforts made and the positive statistics provided which demonstrated a considerable reduction of recourse to detention on remand and increased use of alternative measures.

It noted that further individual measures were not necessary in most of the cases and that the question appeared settled also in two of the four cases involving also violations of Article 6. However, it noted that further measures appeared necessary in the two other cases, the *Khodorkovskiy and Lebedev* case in view of the Court’s finding that the impugned damage award had no basis in domestic law and in the *Pichugin* case where the CM indicated that it was important to explore other avenues than reopening of proceedings if this measure was no longer possible.

In the light of the positive developments as regards general measures responding to the violations of Article 5, the CM decided to close its examination of a number of cases relating to problems already solved, i.e. all violations of Article 5§1, except those related to the lack of clarity of the law relating to extensions of detention to allow the studying of the case file where legislative amendments were under way; all violations of Article 5§4 except for those related to excessively lengthy appeal proceedings.

As to the remaining violations related to Article 5, the CM invited the authorities to provide information on further progress achieved, including as regards repeated extension of detention to study case files, lengthy appeal proceedings, failure to adduce relevant and sufficient reasons to justify continued detention on remand and the absence of an enforceable right to receive compensation in case of violations of Article 5.

Progress as regards the adoption of general measures relevant for other violations found in this group continues to be followed in pertinent groups of cases.



### ■ UKR / Kharchenko (group)

Application No. 40107/02, judgment final on 10/05/2011, enhanced supervision  
(see Appendix 2)

” **Detention on remand:** structural problem of unlawfulness and excessive length of detention on remand, as well as lack of adequate judicial review of the lawfulness of detention, mainly due to the deficiencies in legislation and practice. (Articles 5§§1-5)

**Developments:** Bilateral consultations with the Ukrainian authorities continued in 2015. Given the European Court’s Article 46 judgment in the case of Chanyev (final on 9 January 2015), finding that the new Code of Criminal Procedure still has not resolved the issue of detention without a court order during the period of time between the end of investigation and the start of court hearing of a case, the authorities undertook to submit a comprehensive and updated action plan notably as regards the impact of the new Code in practice and on possible further legislative measures.

## C.3. Detention and other rights

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### ■ EST / Jaeger

Application No. 1574/13, judgment final on 31/07/2014, [CM/ResDH\(2015\)120](#)  
(see Appendix 3)

” **Violation of one’s privacy** in the course of a body search carried out in a stairwell in full view of other detainees (Article 8)

**Final resolution:** Special constructions in the Tartu Prison have been completed in order to guarantee the privacy of the prisoners and exclude any possibility of the existence of feeling of disrespect.

### ■ TUR / Nedim Sener

Application No. 38270/11, judgment final on 08/10/2014, enhanced supervision  
(see Appendix 2)

” **Unjustified detention of investigative journalists** on account of accusations by the domestic authorities of aiding and abetting a criminal organization due to the involvement in publication of certain books; impossibility to consult the case-file to challenge effectively the detention on remand; chilling effect of the unjustified lengthy pre-trial detention on the right to freedom of expression (Article 5 §§3-4, Article 10)

**Action plan:** An Action Plan was received on 3/8/2015 and bilateral consultations are underway concerning the outstanding issues.

### ■ TUR / Söyler

Application No. 29411/07, judgment final on 20/1/2014, enhanced supervision  
(see Appendix 2)

” **Prisoners’ voting rights:** Automatic and indiscriminate ban for any person found guilty of an intentional offence to vote, irrespective of the nature and gravity of the offence (Article 3 of Protocol N° 1)

**Action plan:** In their Action plan and the additional information submitted respectively on 3 December 2014 and 20 October 2015, the Turkish authorities indicated

that measures aimed at preventing similar violations are under way. In this context, the Supreme Electoral Council has issued five separate decisions between June 2013 and September 2015, allowing certain prisoners (notably, those convicted for negligent offences, released on probation or conditional release or subject to suspended sentences) to vote in the elections held in 2014 and 2015. These decisions however concern the elections for which they were issued and do not constitute a general remedy for the violation found by the Court.

Information on the measures envisaged to entitle prisoners to vote in all future elections is awaited.

### ■ **RUS / Anchugov and Gladkov**

Application No. 11157/04, judgment final on 9/12/2013, enhanced supervision (see Appendix 2)

” **Prisoners’ voting rights:** Blanket ban on voting imposed automatically on the applicants due to their status as convicted offenders detained in prison (violation of Article 3 of Protocol No. 1).

**Developments:** A communication from the Government explaining the complexity of the problems – notably constitutional problems - identified and the first measures adopted in response to the new judgment was received on 10 October 2014. In June 2015, the authorities indicated that the execution of this case was closely linked to certain pending proceedings before the Constitutional Court DD(2015)640. Following the Constitutional Court judgment of 14 July 2015, a special procedure was enacted enabling the Government Agent to submit applications to the Constitutional Court in case execution raised questions under the Constitution. Such an application was lodged in February 2016.

### ■ **UK / Hirst No. 2 - UK / Greens and M.T (pilot judgment)**

Application Nos. 74025/01 and 60041/08, judgments final on 06/10/2005 and 11/04/2011, enhanced supervision, Interim Resolution ResDH(2015)251 (see Appendix 2)

” **Voting rights of convicted prisoners:** blanket ban on voting imposed automatically on convicted offenders serving their sentences (Article 3 of Protocol No. 1)

**CM decisions / Interim Resolution:** The CM continued to follow closely the developments with a view to finding a solution to the general problems revealed by the *Hirst No. 2* judgment and considering the additional indications given by the Court in the pilot judgment in the *Greens and M.T.* case. In March 2014, the CM had welcomed the recommendation of the parliamentary committee of December 2013, in charge with examining the legislative proposals on prisoner voting rights, that all prisoners serving sentences of 12 months or less should be entitled to vote and that the existing blanket ban should not be re-enacted. However, in September 2014, no bill had been introduced to Parliament at the start of its 2014-2015 session as recommended, and the CM urged the authorities to introduce such a bill as soon as possible and to inform it once this has been done.

Resuming consideration of these cases in September 2015, the CM expressed its appreciation for the presence of the Minister for Human Rights and the assurances presented of the United-Kingdom’s support for the European Convention on Human

Rights. In spite of its repeated calls for the introduction of a Bill to Parliament as recommended by the parliamentary committee, the CM expressed profound regret that the blanket ban on the right of convicted prisoners in custody to vote remains in place. In this regard, it reiterated its serious concern about the on-going delay in the introduction of such a Bill leading to repetitive violations of the Convention (*Firth and Others* and *McHugh and Others*).

The CM further reiterated, notwithstanding the *Delvigne* case of the Court of Justice of the European Union<sup>314</sup>, its call upon the United Kingdom authorities to introduce a Bill to Parliament without further delay and to inform it as soon as this has been done. It finally decided to resume consideration of these cases in December 2015 and instructed the Secretariat, in the event that no Bill was introduced to Parliament in the meantime, to prepare a draft interim resolution.

The CM thus adopted a new interim resolution ([ResDH\(2015\)251](#)) in December 2015, expressing profound concern that the blanket ban on the right of convicted prisoners in custody to vote remains in place. It called upon the authorities to follow up their commitment to continuing high-level dialogue on this issue leading to the presentation of concrete information on how the United-Kingdom intends to abide by the judgment in compliance with Article 46 of the Convention.

The CM further noted the authorities' commitment to report regularly on the steps taken and achieved in this respect, and decided to resume consideration of these cases in the light of those reports at the latest in December 2016.

## D. Issues related to expulsion / extradition

### D.1. Expulsion or refusal of residence permit

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#### **BEL / M.S.**

Application No. 50012/08, judgment final on 30/04/2012, [CM/ResDH\(2015\)84](#)  
(see [Appendix 3](#))

**» Forced return to Iraq despite the risk of ill-treatment:** failure of Belgium authorities to obtain diplomatic assurances from the Iraqi authorities stating that the applicant, who was subject to an arrest warrant in Iraq on the basis of anti-terrorism laws, would not be victim of inhuman or degrading treatment on his return; periods of unlawful detention in the absence of judicial decision (Article 3, 5 §§ 1 and 4)

**Final resolution:** Sums awarded to the applicant for costs and expenses were paid on his counsel's account. In spite of efforts made by Belgium authorities, they did not obtain information from organisations in Iraq and the applicant's counsel permitting to determine that the applicant is actually facing a risk resulting from elements known by the authorities when the applicant was returned to Iraq.

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314. CJEU, *Thierry Delvigne v. Commune de Lesparre-Médoc and Préfet de la Gironde*, 6 October 2015, case C-650/13. In this case, the CJEU ruled that Article 39(2) and the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State which excludes, by operation of law, from those entitled to vote in elections to the European Parliament persons who, like the applicant in the main proceedings, were convicted of a serious crime and whose conviction became final before 1 March 1994.

As regards general measures, the law of 15 December 1980 was amended by the law of 19 January 2012, pursuant to the European Directive 2008/115/EC<sup>315</sup>. This law provides that expulsion of an alien can be postponed, if this expulsion would breach the principle of *non-refoulement*. Further, in case of impossibility to expel, preventive alternative measures to detention can be adopted in order to avoid the alien's escape.

In order to explain the competence *ratione loci* of domestic courts, the information sheet at the disposal of residents of closed reception centres has been clarified, in order to inform them of the proceedings to be followed to lodge an application for release, and of the competent jurisdiction for such an application.

### ■ BGR / Al-Nashif and Others (group)

Application No. 50963/99, judgment final on 20/09/2002, CM/ResDH(2015)44  
(see Appendix 3)

” **Lack of protection against arbitrariness in expulsion proceedings based on national security grounds:** failure of the authorities to ensure independent supervision of the measures taken against the applicant; lack of effective possibility to challenge the deportation order; failure to inform the applicant promptly of the reasons for his arrest; lack of judicial review of the lawfulness of the detention pending deportation (Articles 8 and 13, Article 5 §§ 2 and 4)

**Final resolution:** As regards individual measures, all the applicants who were detained pending expulsion have been released, and the compensation awarded by the European Court as non-pecuniary damage has been paid.

As regards the possibility to appeal against expulsion orders based on national security grounds, as from 2003 the Supreme Administrative Court changed its case-law and started examining such appeals, admitting being bound by the Convention in this respect. This practice was subsequently enshrined in section 46 of the Aliens Act in April 2007. The modalities of control provided in sections 42(4) and 44(2) of the same act require the authorities, before deciding to expel an alien residing permanently in Bulgaria, to take into account his personal and family situation, his level of integration and the strength of his connections with the country of origin.

Concerning the possibility to challenge the lawfulness of the detention pending expulsion, it was introduced by a legislative reform in 2009 and 2013: time-limits for the detention of aliens pending expulsion were established, obligation for the courts to review the lawfulness and necessity of continued detention at six-month intervals and upon request of the detainee or on their own motion.

The outstanding questions related to the functioning of the remedies in the area of expulsion of foreigners based on national security considerations are entirely taken up in the cases from the *C.G. and Others* group which remain under the supervision of the CM.

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315. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

## ■ BGR / C.G. and Others (group)

Application No. 1365/07, judgment final on 24/07/2008, enhanced supervision  
(see Appendix 2)

” **Shortcomings in the judicial control in the area of expulsion or deportation based on national security grounds:** lack of adequate safeguards in deportation proceedings and shortcomings of judicial control (insufficient review of the relevant facts and lack of judicial control of the proportionality of the expulsion measure, non-compliance with the principle of adversarial proceedings, and lack of publicity of judicial decisions); lack of suspensory remedy in case of risk of ill-treatment in the destination country; different violations related to the applicants’ detention pending the implementation of the expulsion measures (unlawful detention and unjustified extension) (Article 1 of Protocol No. 7 and Articles 8, 5§1(f), 5§4, 3 and 13)

**CM decision:** For earlier developments refer to AR 2014 and 2013. The CM resumed consideration of this group of cases in March in the light of the Action Plan submitted by the authorities on 9 January 2015. With respect to individual measures, the CM noted that no further measures are required in the case of Kaushal and Others, as well as in the cases of M. and Others and Madah and Others. It invited the authorities to submit information also on the possibility of re-examining the restrictive measures against the applicant C.G. and on any other measure taken or envisaged. It took note of the authorities’ intention to provide a copy of the judgment confirming the measures against Mr Amie, in order to allow the assessment of individual measures by the CM and granted their request for confidentiality concerning this judgment. It also invited the authorities to suspend the applicant’s expulsion pending the assessment of the individual measures in this case.

As to the general measures, the CM welcomed the positive developments in the practice of the Supreme Administrative Court and the legislation relating to detention pending expulsion, whilst noting that certain indications given by the European Court in 2011 still awaited implementation. In this respect, it called upon the authorities to introduce, without further delay, a remedy with automatic suspensive effect, where an arguable claim about a substantial risk of death or ill-treatment in the destination country is made in a legal challenge against expulsion and to ensure that the destination country is mentioned in a legally binding act and that every change of the destination country is amenable to appeal.

The CM has further invited the authorities to ensure that the expulsion based on public order considerations is not implemented before the foreigner had been able to exercise his rights under Article 1 of Protocol No. 7, unless the circumstances of the case require it and invited them, in addition, to ensure that the contents of judgments concerning expulsion orders based on national security considerations are made public, as far as possible. In conclusion, the CM invited the authorities to inform it, before the end of June 2015, of the progress achieved and encouraged their close co-operation with the Secretariat concerning the other outstanding questions in this group of cases, as identified in the information document [CM/Inf/DH\(2012\)3rev](#), in particular concerning the violations of Article 5 of the Convention.

## ■ CYP / M.A

Application No. 41872/10, judgment final on 23/10/2013, enhanced supervision  
(see Appendix 2)

” **Arbitrary deportation:** decision taken in 2010 to deport the applicant to Syria despite the fact his asylum claim was pending, entailing his subsequent detention; absence of an effective remedy with automatic suspensive effect to challenge the erroneous deportation decision; also absence of effective and speedy review of the lawfulness of detention (Article 5§§1 and 4, Article 13 in conjunction with Articles 2 and 3)

**Action plan:** The applicant was granted refugee status in Cyprus on 29 April 2011 and released from detention on 3 May 2011.

The authorities have provided a series of Action Plans, most recently in December 2015. It indicated that the authorities have passed legislation to establish an Administrative Court which is expected to be operational in early 2016. Legislative amendments are also underway to establish a maximum time limit within which the judicial review of the lawfulness of detention must be conducted and to introduce an automatically suspensive remedy when an individual alleges that their expulsion would violate Articles 2 and/or 3 of the Convention.

## ■ CZE / Budrevich

Application No. 65303/10, judgment final on 23/01/2014, [CM/ResDH\(2015\)135](#)  
(see Appendix 3)

” **Lack of effective remedy to challenge expulsion order to Belarus:** lack of close and rigorous scrutiny of a claim of a real risk of ill-treatment in asylum proceedings (Article 13 combined with Article 3)

**Final resolution:** The subsidiary protection of the applicant was extended until 24 June 2017 and will have the possibility to apply for a further extension of this protection. Thus, the applicant will have access to proceedings in which his claim of a risk of ill-treatment will again be assessed.

## ■ ESP / A.C. and Others

Application No. 6528/11, judgment final on 22/07/2014, enhanced supervision  
(see Appendix 2)

” **International protection requests:** lack of an effective remedy, with automatic suspensive effect to challenge decisions denying international protection taken in the framework of an accelerated procedure on account of risk to life or risk of ill-treatment in case of return to the country of origin (Article 13 taken in conjunction with Articles 2 and 3)

**Developments:** In their preliminary information provided on 8 July 2014, i.e. even before the European Court’s judgment become final, the Spanish authorities indicated that in respect of some of the applicants the proceedings were terminated, whereas with respect to other applicants the proceedings were pending before the domestic courts and examined under ordinary procedure, which entailed an automatic suspensive effect against any expulsion decision. The authorities have also indicated that none of the applicants was expelled.

As regards the general measures, according to the newly established case-law of the Supreme Court, as of March 2013, the accelerated procedure may only be used by strictly applying the legal criteria, as the ordinary procedure should be the rule.

After bilateral consultations with the Execution Department, the Spanish authorities submitted, in November 2015, an action report completing the earlier transmitted information. This report is being assessed.

### ■ MKD / El-Masri

Application No. 39630/09, judgment final on 13/12/2012, enhanced supervision  
(see Appendix 2)

» **Secret “rendition” operation to CIA agents:** German national, of Lebanese origin, victim of a secret “rendition” operation during which he was arrested, held in isolation, questioned and ill-treated in a Skopje hotel for 23 days, then transferred to CIA agents who brought him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months (Articles 3, 5 and 13, the latter also in conjunction with Article 8)

**CM Decisions:** For earlier developments see AR 2013-2014. When continuing the examination of this case in March 2015, the CM recalled that although the judgment became final in December 2012 the action plan was provided with considerable delay, on 25 February 2015. In the continued absence of information concerning the reopening of the investigation into the facts of this case, the CM urged the authorities to carry out a fresh investigation bringing those responsible to justice. It also took note of the general measures set out in the action plan and instructed the Secretariat to assess them by June.

In June, the CM stressed that most of the measures set out in the action plan were not addressing the root causes of the issues identified in the Court’s judgment, namely the blatant disregard of the legal framework governing the actions of State agents and were therefore not capable of preventing similar violations. In addition, the CM expressed its grave concern as to the continuing lack of information on the reopening of the investigation, emphasised the importance of a fresh investigation and the necessity of making available all relevant documents to the investigation authorities. It also reiterated its call to the authorities to take concrete and tangible steps with a view to bringing the responsible individuals to justice.

When resuming consideration of this case in December, the CM regretted, however, that due to the passage of time, the criminal investigation into the facts of this case has become time-barred and that other measures were therefore necessary to provide redress to the applicant. In this respect, the CM noted that the authorities envisage setting up an *ad hoc* commission capable of elucidating the relevant facts, establishing the responsibility of the individuals involved and recommending further measures to ensure that full redress is provided to the applicant. In conclusion, the CM invited the authorities to ensure that the facts of the case are established and to provide, as soon as possible following the elections in 2016, information on the appointment, independency and impartiality of the members of the *ad hoc* commission and its capacity to carry out an effective investigation into the facts of this case, as well as on outstanding general measures.

## **POL / Al Nashiri - POL/ Husayn (Abu Zubaydah)**

Applications Nos. 28761/11 and 7511/13, judgments final on 16/02/2015, enhanced supervision (see Appendix 2)

” **Secret “rendition” operation to CIA agents:** complicity of Polish authorities in the CIA High-Value Detainees Programme, that enabled the US authorities, in 2002, to secretly detain, torture and ill-treat the applicants in a CIA detention facility in Stare Kiejkuty in Poland, and to transfer them from its territory in 2003 despite the existence of a real risk that they would be subjected to treatment contrary to Article 3, or could face a flagrant denial of justice, or that the applicant (*Al Nashiri*) would be exposed to death penalty (Article 2, Article 3 - procedural and substantial limbs, Articles 38, 5 and 8, Article 13 in conjunction with Articles 5 and 8, Article 6§1 and Article 1 of Protocol No. 6)

**CM decisions:** As soon as these cases become final, they were placed under the CM’s enhanced supervision and examined for the first time in March 2015. At that meeting, the CM expressed its deep concern, in the light of indications from the European Court, that the trial of Mr Al Nashiri before a Military Commission, in which he faces capital charges, was set to begin on 2 September 2014 and that the risk he will face the death penalty therefore continues, and called upon the Polish authorities to urgently seek assurances from the United States’ authorities that Mr Al Nashiri will not be subjected to the death penalty. The CM also expressed its deep concern that both applicants risk a flagrant denial of justice since Mr Al Nashiri faces trial by Military Commission which could use evidence obtained under torture and since Mr Husayn has been detained without charge since 2002 and if charged, may face trial in similar proceedings and called upon the Polish authorities to urgently seek assurances that the applicants are not exposed to such flagrant denials of justice. The Polish authorities were also invited to fully and regularly inform the CM of all the developments, both in relation to their contacts with the United States authorities and the applicants’ situation.

At its meeting in June, in the light of information provided by the Polish authorities in May, the CM noted with satisfaction their prompt action with a view to requesting from the United States’ authorities diplomatic assurances that Mr Al Nashiri would not be subjected to the death penalty, and that neither applicant would be exposed to a flagrant denial of justice and strongly encouraged the Polish authorities to follow up their requests and invited them anew to fully inform the CM of all developments, in particular concerning the response of the United States’ authorities to the requests and the current situation of the applicants.

In September, when resuming consideration of the urgent individual measures in the light of the updated action plan provided by the Polish authorities in August, the CM expressed its serious concern about the lack of response to the above requests of the authorities and urged them to continue their efforts to obtain the necessary assurances from the United States’ authorities, by taking all possible steps in this respect and inform the CM of all developments. The Committee also invited the Secretary General of the Council of Europe to transmit the present decision to the Permanent Observer of the United States to the Council of Europe.



The CM pursued examination of these cases in December in the light of the updated information provided by the authorities on 20 November 2015. While expressing profound concern about the persistent lack of response to the authorities' earlier requests, the CM urged the United States' authorities to respond without further delay. As regards the investigation under the individual measures, the CM called upon the Polish authorities to inform it of the next steps envisaged in light of the United States authorities' refusal of the outstanding requests for legal assistance. The CM has furthermore recalled that the Polish public has a legitimate interest in being informed about the investigation, and invited the authorities to explain how they intend to inform the public about the investigation and its results, and also ensure that the applicants' representatives have appropriate access to the case files.

As regards the general measures, the CM considered that most of the measures set out in the action plan do not address the root causes of the issues identified in the Court's judgments, namely the blatant disregard of the legal framework governing the actions of State agents, and therefore urged the authorities to address these issues. In conclusion, the CM decided to resume consideration of the individual measures in these cases at their forthcoming meeting in March 2016 and also invited the authorities to provide updated information concerning the general measures in good time for their meeting in June 2016.

#### ■ SUI / A.A

Application No. 58802/12, judgment final on 07/04/2014, [CM/ResDH\(2015\)95](#)  
(see *Appendix 3*)

” **Risk of ill-treatment in case of deportation to Sudan:** assessment of genuineness of the applicant's post-flight political activities and the resulting risk (Article 3).

**Final resolution:** In August 2014, a new decision was delivered by the Federal Administrative Court, recognizing the applicant as a refugee and providing him with provisional residence right (permanent residence cannot be granted for refugees where a right to remain is granted for post-flight persecution reasons). Change of practice of the Federal Administrative Court in 2013 recognizing that post-flight activities in loci could also lead to risk of ill-treatment.

#### ■ SUI / Tarakhel

Application No. 29217/12, judgment final on 04/11/2014, [CM/ResDH\(2015\)96](#)  
(see *Appendix 3*)

” **Risk of treatment contrary to Article 3 in case of an Afghan asylum seeking family's return to Italy under Dublin II Regulation,** without the authorities having first obtained individual guarantees from Italy that the applicants would be cared in a manner adapted to the age of the asylum-seeking children and that the family would be kept together (Article 3).

**Final resolution:** On 04/11/2014, the Federal Migration Office suspended returns to Italy under Dublin II Regulation for all asylum-seeking families with children, including the return of the applicants. Individual guarantees and detailed and reliable information about the specific reception facility and the physical conditions

of their accommodation, and the question of whether the family would be kept together, were requested by Italy. Until those assurances are given, no removal of asylum-seeking families is envisaged.

## D.2. Detention in view of expulsion / extradition

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### ■ CZE / Buishvili

Application No. 30241/11, judgment final on 25/01/2013, CM/ResDH(2015)98  
(see Appendix 3)

” **Denial of access to proceedings allowing ordering the release of an asylum seeker:** inability of the court reviewing the lawfulness of an asylum seeker’s detention to order his/her release (Article 5§4)

**Final resolution:** The new law No. 101/2014, which entered into force on 24 June 2014, amended the legal framework related to the asylum and residence of aliens on the territory of Czech Republic. It provides that the revocation by a court of the decision of the Ministry of the Interior refusing the entry of an alien on the territory (and thus ordering his/her detention at the reception centre in the transit zone of the airport) entails the immediate release of the alien and his/her transfer to an asylum centre within the Czech territory.

### ■ GRC / M.S.S. – GRC / Rahimi

Applications Nos. 30696/09 and 8687/08, judgments final on 21/01/2011 and 05/07/2011, enhanced supervision  
(see Appendix 2)

” **Transfer by Belgium of asylum seekers to Greece under Dublin II regulation:** concerning Greece: degrading conditions of detention and subsistence once in Greece, special problems with regard to unaccompanied minors, deficiencies in the Greek asylum procedure and risk of expulsion, without any serious examination of the merits of asylum applications or access to an effective remedy (Articles 3 and Article 13 in conjunction with Articles 2 and 3)

**CM decisions:** Closing its supervision of the *M.S.S.* case with respect to Belgium in December 2014, the CM had called upon the Greek authorities to intensify their efforts and to inform it on measures taken in order to implement their strategy ensuring not only the sustainable and undisrupted operation of open reception facilities but also the provision of services to all asylum seekers who are entitled to them.

When resuming consideration of these cases in March 2015, the CM invited the Greek authorities to provide information on the applicants’ current situation, notably on the outcome of the asylum proceedings in respect of those who had filed an asylum application.

With respect to the asylum procedure, the CM took note with interest of the recently established asylum services (Asylum Service, Appeals Authority, First Reception Service) and their positive impact on the effectiveness of the asylum procedure. However, it encouraged the authorities to ensure the sustainability of past achievements and to pursue the implementation of the measures envisaged in the action plan with respect to the first reception of asylum-seekers and the asylum procedure, in co-operation with all relevant stakeholders. It further invited the authorities to

conclude the necessary steps to guarantee the right to free legal aid and to eliminate the backlog of asylum applications lodged before 7 June 213.

With respect to the conditions of detention, while noting with interest that third country nationals subject to deportation are no longer detained at police stations and that conditions of detention in pre-return centres have been improved, the CM urged the authorities to take all necessary measures to improve the conditions of detention and ensure access to medical and psychological care in all facilities (in particular in the special holding facilities at Athens airport, Fylakio and Petrou Ralli). The CM further invited the authorities to ensure that the remedy to challenge conditions of detention of asylum seekers and irregular migrants is effective in practice, and to provide information on the developments of the relevant domestic case-law.

As far as unaccompanied minors are concerned, the CM called upon the authorities to ensure, as a matter of priority, the full protection of their rights on the basis of an effective guardianship system. In this regard, the CM urged the authorities to take all necessary measures so that alternatives to detention are sought for all unaccompanied minors, taking into account “the best interest of the child”. However, in the case of their exceptional detention, measures must be taken to ensure that they are detained separately from adults and under conditions appropriate to their vulnerable situation, whilst at the same time all efforts are made to release them and to secure their placement in appropriate care.

In June 2015, the CM welcomed the commitment of the authorities to treat the situation of unaccompanied minors as a matter of priority, but strongly encouraged them to pursue their efforts to translate their commitment into an effective and sustainable guardianship system for such minors. In this regard, the CM noted with interest that the authorities were currently considering the proposals of the commission in charge with reviewing the legislative framework on the guardianship of unaccompanied minors. Therefore, it invited them to provide detailed information on the concrete steps now undertaken, including the content of the proposed legislative measures and the indicative calendar for the completion of the work undertaken. Pending, the CM called upon the authorities to adequately and effectively preserve and protect the rights and interests of third country unaccompanied minors and to inform it accordingly.

In December 2015, the CM welcomed the creation of the new administrative authority for immigration, responsible for all issues concerning the reception of asylum seekers, and the drafting of the new action plan. It also took note of the increase of the accommodation capacity and the envisaged further increase thereof, and called upon the authorities to keep it informed and to intensify their efforts to implement their strategy ensuring sustainable and undisrupted operation of open reception facilities and provision of services to all asylum seekers who are entitled to them. To this end, all reception facilities shall meet adequate standards in line with the requirements of the European Convention and of the European Union law, as set out in the *M.S.S.* judgment.

As regards the specific situation of unaccompanied minors, the CM took note of the data regarding their accommodation, and strongly invited the authorities to pursue their efforts, so that in the procedure of best interest determination for minors, all

unaccompanied minors are immediately referred to special accommodation centres and assisted by specialised personnel. The CM also invited the authorities to provide updated information on the concrete steps taken to this effect.

The CM decided to resume consideration of all other issues regarding the living conditions of asylum seekers and unaccompanied minors at the latest in December 2016.

### ■ ITA / Sharifi and Others

Application No. 16643/09, judgment final on 21/01/2015, enhanced supervision  
(see Appendix 2)

” **Indiscriminate collective expulsions:** Collective expulsion of aliens to Greece, risk of deportation to Afghanistan and lack of access to asylum procedure (Article 4 of Protocol No. 4, Article 3, Article 13 combined with Article 3 of the Convention and with Article 4 of Protocol No. 4).

**Action plan:** An action plan was submitted by the Italian authorities on 23 July 2015. It is under assessment.

### ■ MLT / Suso Musa (group)

Application No. 42337/12, judgment final on 09/12/2013, enhanced supervision  
(see Appendix 2)

” **Arbitrary and unlawful detention of asylum seekers during different periods between 2007 and 2013 :** excessive delay in the examination of asylum request and inadequate detention conditions; detention continued after the deportation ceased to have prospects of success; lack of effective and speedy remedy to challenge the lawfulness of detention (Articles 5 § 1 (f) and § 4, Article 3)

Under Article 46 the Court indicated, that Malta must secure in its domestic legal order a mechanism which allows individuals challenging the lawfulness of their immigration detention to obtain a determination of their claim within Convention-compatible time-limits; ensure an improvement in the conditions of detention and limit detention periods so that they remain connected to the ground of detention applicable in an immigration context.

**Action plan:** The individuals have been released from detention.

In response to the CM's invitation to the authorities in its decision of December 2014, the Maltese authorities submitted an updated action plan on 30 March 2015. Certain outstanding issues were discussed with the Maltese authorities in Malta in May 2015, who then submitted a revised action plan on 30 June 2015. Further bilateral consultations were held in December 2015.

Meanwhile, the practice of systematic detention is no longer pursued and an individual assessment as to the necessity of detention in each case is conducted instead. A number of administrative measures were taken to increase the speed with which asylum applications are decided and to facilitate the deportation of failed asylum seekers (including increased staff, training and targeted time tables). Detention conditions have been improved to ensure that they are appropriate for asylum seekers. Legislative amendments are underway so that, *inter alia*, asylum applicants must be released from

detention after nine months; and the Immigration Appeals Board should hear challenges to detention in a Convention compatible manner (reviews must be decided within 7 days and detainees will have access to legal aid and other procedural safeguards).

### **RUS / Kim**

Application No. 44260/13, judgment final on 17/10/2014, enhanced supervision  
(see Appendix 2)

” **Detention of stateless persons for breach of residence regulations:** arbitrary detention because the grounds for detention did not remain valid for the whole period due to the lack of a realistic prospect of the applicant’s removal; lack of judicial review of the lawfulness of detention; poor conditions of detention in the detention centre for aliens in St Petersburg, designed for short-term detention (notably because of overcrowding, inadequate hygienic facilities and insufficient outdoor exercise) (Articles 3 and 5§§1, 4)

**Developments :** Considering the special circumstances identified in the judgment, the Court made specific indications under Article 46 in order to execute this judgment: a mechanism should be introduced allowing individuals to bring proceedings for the examination of the lawfulness of their detention pending expulsion in the light of the developments in the expulsion proceedings; detention periods, should be limited so that they remained connected to the ground of detention applicable in an immigration context. In addition, the applicant, being stateless and without fixed residence and no identity documents, was at risk of a new round of prosecution for breach of the residence regulations following his release. Steps should thus be taken to prevent him from being re-arrested and put in detention for offences resulting from his status as a stateless person.

In their action plan of 19 May 2015 - [DD\(2015\)527](#) - the authorities indicated that the Court order providing for the applicant’s administrative removal was no longer enforceable as a result of statutory time limits and that no criminal proceedings or removal or deportation proceedings were pending against the applicant. At the moment there was thus no risk of his administrative removal. As to general issues related to the administrative removal of aliens in irregular situation reference was made to the Action plan submitted in the *Alim* case against the Russian Federation. As regards the issues related to detention and detention conditions, information about relevant legislative amendments would be submitted later.

## **E. Access to an efficient functioning of justice**

### **E.1. Excessive length of judicial proceedings**

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#### **ALB / Luli and Others (group)**

Application No 4480/09, judgment final on 01/07/2014, enhanced supervision  
(see Appendix 2)

” **Lengthy civil proceedings:** failure of the judicial system to manage properly a multiplication of proceedings on the same issue; lack of remedy (Article 6 § 1)

**Action Plan:** To respond to the Court’s findings under Article 46 on serious deficiencies in the domestic legal proceedings in Albania, the authorities provided an action plan (DH-DD(2015)171) in January 2015. Bilateral consultations are under way in view of submission of a comprehensive action plan.

### ■ AUT / Rambauske

Application No. 45369/07, judgment final on 28/04/2010, CM/ResDH(2015)222  
(see Appendix 3)

#### ” Excessive length of civil and criminal administrative proceedings and lack of effective remedy thereof (Article 6 § 1 and Article 13)

**Final resolution:** The Austrian administrative court system has been reorganised through the adoption of the Administrative Jurisdiction Amendment Act of 2012, which entered into force on 1 January 2014. Accompanying laws were also adopted within the framework of the Administrative Jurisdiction Implementation Act of 2013. A Regional Administrative Court has been created in every province (“Land”) and two Administrative Courts of first instance have been put in place at federal level. The Supreme Administrative Court and the Constitutional Court serve as courts of last resort regarding alleged unlawfulness and alleged breaches of the constitution respectively.

As regards the available remedies, two new legal remedies were established: an application against the administration’s failure to decide, and a request for acceleration of the proceedings pending before the Administrative Courts of first instance.

Statistics were submitted by the authorities, stating the effective reduction of the Supreme Administrative Court’s and the Constitutional Court’s workload, as well as the effective decrease in length of administrative proceedings.

### ■ BEL / Dumont (group)

Application No. 49525/99, judgment final on 28/07/2005, CM/ResDH(2015)245  
(see Appendix 3)

#### ” Excessive length of criminal and civil proceedings; lack of effective remedy in this regard (*Raway and Wera* case) (Articles 6 § 1 and 13)

**Final resolution:** Law of 26 April 2007 “amending the Judicial Code in order to combat judicial backlog” was adopted so as to shorten the length of judicial proceedings, to speed up exchanges of arguments between parties, and to ensure a better control on delays for the judges to take a decision. Sanctions were also provided for parties using proceedings for obvious delaying or abusive purposes, as well as for judges exceeding the legally-established time-limit for deliberation without sufficient grounds.

Further, the law of 1 December 2013 amended the judicial districts of the country in order to improve the management methods for a better efficiency of justice, to ensure the harmonisation of quality case-law, to decrease the judicial backlog and ensure more proximity with citizens.

As regards the remedies for contesting the excessive length of judicial proceedings, a compensatory remedy was set up, based on Articles 1382 and 1383 of the Civil Code,

which appears to be applicable in criminal proceedings. In addition, Article 21<sup>ter</sup> of the preliminary title of the Code of Criminal Procedure provides for the possibility to obtain a finding for exceeding the reasonable deadline for prosecuting, and to get from the judge a conviction by mere declaration of guilt or the determination of a lower sentence than the one provided by law.

It has to be noted that the budget of the Ministry of Justice was increased over the last years, and that relevant statistics were provided by the authorities illustrating the positive impact of the measures adopted.

Considering the significant progress achieved as regards the length of proceedings in Belgium, the CM decided to close its supervision of 17 cases of the *Dumont* group concerned by this progress, and to pursue the examination of the outstanding issues in the context of the remaining cases under its supervision (see the *Bell* group of cases).

### ■ BEL / *Entreprises Robert Delbrassinne S.A.*

Application No. 49204/99, judgment final on 01/10/2004, [CM/ResDH\(2015\)132](#)  
(see *Appendix 3*)

» **Excessive length of civil proceedings** before the Council of State, mainly arising from the unexplained period of time taken by the auditor at the Council of State to submit his/her report (Article 6 § 1)

**Final resolution:** The competencies, the organisation and the functioning of the Council of State were reformed by law of 15 September 2006, also creating the Aliens Litigation Council in charge with resorbing and controlling the Council of State's judicial backlog in this field. Among the relevant measures can be cited, *inter alia*, the extension of cases which can be dealt with by a single judge, the introduction of a screening procedure in cassation proceedings, as well as the attribution to the Auditorat of a role of automatic selection of applications for annulment and suspension. This law also provided for the implementation of a "backlog resorption plan", which led in 2013 to the full resorption of the historical backlog.

Remedies in place, based on Articles 1382 and 1383 of the Civil Code, permitted the award of compensations in cases related to the excessive length of proceedings before the Council of State.

### ■ BGR / *Dimitrov and Hamanov (pilot judgment)* – BGR / *Finger (pilot judgment)*

Applications Nos. 48059/06 and 37346/05, judgments final on 10/08/2011, [CM/ResDH\(2015\)154](#)  
(see *Appendix 3*)

» **Excessive length of civil and criminal proceedings;** lack of effective remedy (Articles 6 § 1 and 13)

**Final resolution:** The cases of *Finger* and *Dimitrov and Hamanov* and the 54 other cases closed by a final resolution are part of a wider systemic problem of excessive length of judicial proceedings in Bulgaria. In 2015, the CM considered that the measures taken by the Bulgarian authorities in response to the pilot judgments *Dimitrov and Hamanov* and *Finger* had led to the introduction of effective compensatory remedies. Also, the CM considered that the measures taken so far to expedite judicial proceedings had allowed the elimination of the main recurrent causes for delays

highlighted in these judgments. As a consequence, the examination of these two pilot judgments, as well as of 54 other cases, was closed by the CM.

As regards reparation for excessive length of judicial proceedings, two types of compensatory remedies were established.

First, an administrative compensatory remedy entered into force on 1 October 2012, a procedure free of charge for the claimants, which can be brought against acts, actions or omissions of judicial authorities breaching the right to have a case heard and decided within a reasonable time. Further, this remedy can be brought for delays arising from the overloading of the judicial system as a whole. It is only available for judicial proceedings that have already ended, within six months after the end of these proceedings.

In addition to this administrative compensatory remedy, a judicial compensatory remedy is available under the State and Municipalities Responsibility for Damage Act 1998, which remedy entered into force on 15 December 2012. This claim can be brought during the proceedings, and after them once the administrative compensatory remedy is exhausted.

As regards preventive remedies aiming at speeding up judicial proceedings in civil cases, where the court does not take a procedural step in due time, a party may, at any stage of the proceedings, make a request for an appropriate time-limit to be fixed for that procedural step to be taken.

These compensatory and acceleratory remedies are enshrined in an overall reform aiming at ensuring trial within a reasonable time: analysis and distribution of the workload of the courts, improvement of working conditions and recruitment of staff. Moreover, a new Code of Civil Procedure, which entered into force in 2008, reduced the number of hearings necessary for the resolution of a case (because of the discipline required from parties and judges in the area of evidence-gathering). Also, a new Code of Criminal Proceedings entered into force in 2006, making short procedures more widely applicable. Amendments were introduced in 2010 and 2012, namely to limit the unjustified referrals of cases to the stage of the pre-trial investigation and to the lower courts.

The Committee of Ministers noted in its final resolution the commitment of the Bulgarian authorities to pursue their efforts in the area of length of proceedings, in the context of the *Kitov* and *Djangozov* groups which remain under its supervision. These efforts will have to focus, in particular, on the issues of lengthy proceedings before the overburdened courts, delays at the stage of the pre-trial investigation and the lack of an effective acceleratory remedy in criminal matters.

#### **■ BGR / Kitov (group) - BGR / Djangozov (group)**

Application Nos. 37104/97 and 45950/99, Judgments final on 03/07/2003, 08/10/2004, enhanced supervision

(see Appendix 2)

**]] Excessive length of civil (*Djangozov* group) and criminal proceedings (*Kitov* group); lack of effective remedies** (Articles 6§1 and 13)



**Developments:** In their revised action plan of 22 June 2015 (DH-DD(2015)672), the authorities expressed their commitment to pursue their efforts in order to improve the situation in certain overloaded courts. They also expressed their intention to take further measures and to submit further information on the outstanding issues as regards the excessive length of criminal and civil proceedings, the delays during pre-trial investigations, the referrals of cases to the stage of pre-trial investigation during trial or to the lower courts, and the lack of effective acceleratory remedies in criminal proceedings compliant with the Convention's requirements. This revised action plan is currently being implemented.

■ **GRC / Diamantides No. 2 (group) - GRC / Michelioudakis (pilot judgment) - GRC / Konti-Arvaniti (group) - GRC / Glykantzi (pilot judgment)**

Applications Nos. 71563/01, 54447/10, 53401/99 et 40150/09, judgments final on 19/08/2005, on 03/07/2012, on 10/07/2003 and 30/10/2012, [CM/ResDH\(2015\)231](#)  
(see Appendix 3)

” **Excessive length of civil and criminal proceedings;** lack of effective remedy  
(Articles 6 § 1 and 13)

**Final resolution:** The compensatory remedy introduced by the Law No. 4239/2014, in force since 20 February 2014 made it possible to establish a special remedy for all domestic proceedings.

Concerning the excessive length of criminal proceedings, the reforms carried out allowed to accelerate the proceedings and also to relieve criminal courts, notably through the setting up of a single judge to deal with cases in Assize court, or the re-classification of certain offences into contraventions leading to statutory limitations for certain offences.

As regards the excessive length of civil proceedings, the introduction by Law n° 4335/2015 of the new Code of procedure *inter alia*: replaced the oral proceedings in the first instance - the so-called “ordinary” proceeding – by, in principle, written proceedings; established, for appeals in cassation, a council of three members to decide of the immediate rejection of inadmissible or manifestly ill-founded applications; introduced the mediation; set up a computerised system providing for an electronic filing of the pleadings, observations, etc.

The judiciary system has been rationalised and accelerated by way of two presidential decrees Nos. 120/2014 and 136/2014, having respectively amended the distribution of cases among the chambers of the Court of cassation and reorganised the distribution of vacant posts for judges assigned to criminal and civil jurisdictions of the state.

■ **GRC / Manios (group) - GRC / Vassilios Athanasiou (pilot judgment)**

Applications Nos. 70626/01 and 50973/08, judgments final on 11/06/2004 and 21/03/2011, [CM/ResDH\(2015\)230](#)  
(see Appendix 3)

” **Administrative proceedings:** structural problem of excessive length of administrative proceedings before the administrative courts and the Council of State; lack of effective remedies (Article 6 § 1 and 13)

**Final resolution:** Measures aimed at rationalising the judicial proceedings and at ensuring a better administration of justice have been adopted.

In this respect, the development of the practice of “pilot process” or “model process” by the Council of State, as provided by Article 1 of the Law 3900/2010, has allowed a significant increase in the number of accelerated proceedings *in camera* before the administrative tribunals and appellate administrative courts: there has been an increase of the number of judgments rendered *in camera* following a “pilot” judgment by the Council of State, but also an increased processing of manifestly inadmissible appeals through the accelerated procedure *in camera*.

Consequently, there has been an acceleration of processing of the applications by the administrative justice system, but also a decrease of the average duration of litigations. For example, in 2013, more than a third of pending cases before the Council of State have been dealt with *in camera*.

As regards the remedies available, the effectiveness of the preventive and compensatory remedies provided for by the Law 4055/2012 has already been recognised by the European Court in its decision *Techniki Olympiaki A.E.* (40547/10).

#### ■ HUN / Tímár (group)

Application No. 36186/97, judgment final on 09/07/2003, enhanced supervision (see Appendix 2)

#### ” Excessive length of civil and criminal proceedings and lack of an effective remedy (Articles 6§1 and 13)

**CM decision:** Resuming consideration of this group of cases in March 2015, the CM invited the Hungarian authorities to provide it with an update on the current state of those proceedings still pending at the domestic level and on the measures taken to accelerate them.

As regards general measures, the CM noted that in its recent *Barta and Drajkó* case, the European Court, under Article 46 of the Convention, indicated that the respondent State should take all appropriate steps, preferably by amending the existing range of legal remedies or creating new ones, to secure genuinely effective redress for violations similar to the ones at stake in the present group of cases. In this respect, the CM noted with interest the Hungarian authorities’ acknowledgment that general measures are required for the execution of the present group of cases and urged them to intensify their efforts to this regard in order to reduce the length of domestic proceedings and to introduce effective domestic remedies in compliance with the Convention’s standards.

Concerning the introduction of effective domestic remedies, in their action plan of 9 January 2015, the Hungarian authorities had stated that decisions on whether to introduce new remedies by a separate law or to integrate their elaboration into the on-going process of drafting new codes of criminal and civil procedure would be taken by March 2015. In this respect, the CM invited them to provide information on the exact content of the decisions announced for March 2015 and a calendar setting out concretely the next steps envisaged for the execution of this group of cases, by the end of April 2015.

The Hungarian authorities submitted updated action plans on 28 May 2015 and, following the pilot judgment rendered by the European Court in the *Gazsó* case (see Appendix 4), on 14 December 2015.

### ■ ITA / A.C. (group)

Application No. 27985/95, judgment final on 19/03/1997, [CM/ResDH\(2015\)247](#)

(see Appendix 3)

#### ” Excessive length of civil proceedings (Article 6 § 1)

**Final resolution:** While the more general problem of excessive length of proceedings before civil courts is dealt with in the context of the *Ceteroni* group of cases which remains under the CM's supervision, information was provided by the Italian authorities showing that 27 First Instance Courts, qualified as the best performing in Italy, have succeeded over the past years in reducing the average length of civil proceedings and the backlog of proceedings.

### ■ ITA / Andreoletti (group)

Application No. 29155/95, judgment final on 15/05/1997, [CM/ResDH\(2015\)246](#)

(see Appendix 3)

#### ” Excessive length of divorce and legal separation proceedings (Article 6 § 1)

**Final resolution:** The just satisfaction awarded by the Court has been paid.

As regards the average length of divorce and legal separation proceedings, promising results were obtained by the First Instance Courts and the Courts of Appeal. These results will be consolidated through the implementation of the recently adopted measures, such as the introduction in 2014 of an alternative dispute resolution mechanism, the envisaged setting-up of specialised sections for family cases within the First Instance Court and the majority of the Courts of Appeal, and the simplification of the procedure before these sections.

The more general problem of excessive length of proceedings before civil courts is dealt with in the context of the *Ceteroni* group of cases which remains under the CMs' supervision.

### ■ ITA / Mostacciuolo (group) - ITA / Gaglione

Application Nos. 64705/01 and 45867/07, judgments final on 29/03/2006 and 20/06/2011, enhanced supervision

(see Appendix 2)

#### ” Excessive length of judicial proceedings and problems related to the effectiveness of remedies: long-standing problem concerning civil, criminal and administrative courts, as well as bankruptcy proceedings; problems relating to the compensatory remedy – Pinto (insufficient amount and delay in payment of awards and excessively lengthy proceedings) (Articles 6§1, 8, 13, Article 1 of Protocol No. 1, Article 3 of Protocol No. 1 and Article 2 of Protocol No. 4)

**CM decision / Final resolution:** Following the bilateral contacts held in 2014, the CM resumed consideration of items raised in these cases at its meeting in September 2015. It noted then with satisfaction that the Italian jurisdictions now consistently

award, under the “Pinto” Law, compensation that is compliant with the European Court’ case-law and decided to close the supervision of the 34 cases relating exclusively to this issue and adopted the Final Resolution [CM/ResDH\(2015\)155](#).

As regards the delay in the payment of the “Pinto” compensation, the CM noted with interest the measures adopted by the Italian authorities under the “Pinto” Law, which allocate substantial extra funds in 2015-2017 to the Ministry of Justice for the payment of compensation and provide additional human resources. Having noted that these measures are such as to stop the influx of new repetitive applications before the Court concerning delays in the payment of such compensation, the CM invited the authorities to keep it informed of the impact of these measures on the payment of both the arrears stemming from the application of the “Pinto” Law and the newly allocated sums. The CM also invited them to provide information on the situation with regard to the payment of compensation by the other ministries concerned.

As regards the length of “Pinto” proceedings, the CM took note of the additional information provided at the meeting on the impact of the simplified procedure introduced in 2012 to reduce the length of “Pinto” proceedings, and indicated that it remained to be assessed thoroughly.

Having further noted, as regards reform of the “Pinto” remedy, the measures introduced in 2013 in the functioning of the Ministry of Justice budget to overcome the budgetary limit imposed in the “Pinto” Law, the CM invited the authorities to explain what the future of these measures is and how the problem of the statutory budgetary limit will be resolved in the long term. It further invited them to provide information on the financing of the “Pinto” compensation to be paid by the other ministries concerned.

The CM also noted the information provided at the meeting on the establishment of a working group in January 2015, responsible for studying the issues raised by the 2012 reform of the “Pinto” Law which are still relevant (in particular delay in the payment of the compensation; excessive length of “Pinto” proceedings; access to the “Pinto” remedy made conditional upon the termination of the main proceedings and no possibility for compensation for proceedings that have lasted six years or less) and called upon the authorities to inform the CM of the measures already taken or envisaged in this context.

#### **■ POL / Bak – POL / Majewski – POL / Rutkowski and Others (pilot judgment)**

Application Nos. 7870/04, 52690/99 and 72287/10, judgments final on 16/04/2007, 11/01/2006 and 07/10/2015, enhanced supervision

(see Appendix 2)

**]] Excessively lengthy civil and criminal proceedings:** excessive length of criminal (*Bak* group) and civil (*Majewski* group) proceedings and lack of an effective remedy in this respect (Articles 6§1 and 13)

**CM decision:** In response to the findings of the Court, notably in the Rutkowski and others pilot judgment, the Polish authorities provided an action plan and updated information in May, September and October 2015, on measures taken and envisaged to address the problem of lengthy proceedings in civil and criminal cases.

In December 2015, the CM considered that the situation concerning the length of proceedings in Poland appears mixed, with the emergence of some positive trends

but no impact on the backlog of cases. The authorities were therefore invited to provide the CM with information on the impact of the measures recently adopted and the follow-up given, along with complete statistics allowing a full assessment of the situation. The CM also recalled that in *Rutkowski* pilot judgment, the European Court confirmed that the 2004 Act (as reformed in 2009) had all the features of an effective remedy in law, criticising only its functioning in practice, and decided to adopt the Final Resolution CM/ResDH(2015)248 in 205 cases in this group which concerned the absence of any remedy. The CM noted that the authorities intend to improve the practice of domestic courts through the publication and dissemination of the European Court's judgments and systematic judicial training and invited them to further amend the 2004 Act and strongly encouraged them to bring forward their proposed amendments.

### ■ POL / Fuchs (group)

Application No. 33870/96, judgment final on 11/05/2003, enhanced supervision  
(see Appendix 2)

» **Excessive length of proceedings before administrative courts and bodies** and lack of an effective remedy in this respect (Article 6§1 and 13)

**Action plan:** With a view to discussing issues raised in this group of cases, bilateral consultations took place in Warsaw in December 2014 and October 2015. An updated action plan was submitted in meantime, in April 2015. A revised action plan/report is awaited.

### ■ POL / Kudla (group)

Application No. 30210/96, judgment final on 26/10/2000, CM/ResDH(2015)248  
(see Appendix 3)

» **Excessive length of civil and criminal proceedings and lack of effective remedy thereof** (Articles 6 and 13)

**Final resolution:** A wide range of legislative and organisational measures have been adopted by the authorities since 2007 to combat the excessive length of judicial proceedings. A remedy to complain against the excessive length of proceedings was introduced in 2004 and reformed in 2009. In its pilot-judgment *Rutkowski* and others, the European Court confirmed this remedy as effective remedy in law, revealing only some lacunae in its functioning in practice. Further measures to reduce the length of proceedings and secure improvements in the functioning of the remedy will be examined in the context of the *Bąk* group of cases (criminal proceedings) and the *Majewski* group of cases (civil proceedings).

### ■ PRT / Oliveira Modesto and Others (group) - PRT / Martins Castro and Alves Correia de Castro

Application Nos. 34422/97 and 33729/06, judgments final on 08/09/2000 and 10/06/2008, enhanced supervision  
(see Appendix 2)

» **Excessive length of judicial proceedings** revealing structural problems in the administration of justice (*Oliveira Modesto* group - Article 6§1 and Article 1 of Protocol No. 1); lack of an effective compensatory remedy (action in tort against the State) for excessively lengthy proceedings (*Martins Castro* group - Article 13)

**Developments:** The issue of lengthy proceedings has been closely followed by the CM, which has adopted two interim resolutions to support the execution process in this group (interim resolutions (2007)108 and (2010)34). After the detailed examination of Oliveira Modesto group in March 2013, the Portuguese authorities submitted in May 2013 an extensive impact assessment of the measures adopted until 2010 and a description of more recent legislative and non-legislative measures. This additional information has been examined during the bilateral contacts with the Department for the execution of judgments and as a result further extensive clarifications and statistics were submitted by the authorities in January 2015. The Department sent its comments to the authorities indicating the need to submitting a consolidated action plan or report including additional statistical information on the flow of cases and the average length of proceedings.

On 22 December 2014, the authorities indicated that the European Court communicated a new case raising problems similar to those in *Martins Castro* group, and asking the authorities to submit observations regarding the effectiveness of the tort law action invoked in their previous submissions. In a judgment delivered on 29 October 2015 the Court held that following the development of the domestic case law, the tort law action constitutes since 2013 an effective compensatory remedy against excessive length of proceedings (*Valada Matos das Neves v. Portugal* judgment).

#### ■ ROM / Nicolau (group) - ROM / Stoianova and Nedelcu (group)

Application Nos.1295/02 and 77517/01, judgments final on 3/7/2006 and 4/11/2005, enhanced supervision  
(see Appendix 2)

#### ” Excessive length of civil and criminal proceedings and absence of effective remedies (Article 6 and 13, Article 1 of Protocol N° 1)

**Action plan:** The extensive preparatory work of 2010 saw major developments through the adoption of new Codes of Civil and Criminal Procedure, which entered into force respectively on 15 February 2013 and 1 February 2014. Shortly afterwards, the Court rendered its judgment in the Vlad case, final on 26 February 2014 in which it welcomed the general measures adopted, but underlined that further measures should be taken in order to achieve complete compliance with Articles 6, 13 and 46 of the Convention (notably by amending the existing range of remedies or adding new ones). In response, a revised action plan has been submitted on 19 January 2016 and is under assessment.

#### ■ UKR / Naumenko Svetlana (group) - UKR / Merit (group)

Applications Nos. 41984/98 and 66561/01, judgments final on 30/03/2005 and 30/06/2004, enhanced supervision  
(see Appendix 2)

#### ” Excessive length of civil (*Svetlana Naumenko*) and criminal (*Merit*) proceedings; lack of effective remedies in this respect (Articles 6§1 and 13)

**Action plan:** Information on measures taken and envisaged to solve the problem of lengthy judicial proceedings in Ukraine has been provided by the authorities in the updated action plan submitted on 20 January 2015. It provides, notably, statistical

information on the length of judicial proceedings in civil and criminal cases for the years of 2012, 2013 and first half of 2014. The plan also refers to the active position of the High Specialised Court of Ukraine for Civil and Criminal Cases which has adopted on 17 October 2014 the Resolution “On Specific Issues of Compliance with Reasonable Time Requirement in Consideration of Civil, Criminal Cases and Cases on Administrative Offences”, which impact in practice remains to be confirmed. During the bilateral consultations, the authorities undertook to provide additional information, notably on further improvement of the judicial practice as to the length of both criminal and civil proceedings.

## E.2. Lack of access to a court

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### ■ BIH / Avdic and Others

Application No. 28357/11+, judgment final on 19/02/2014, [CM/ResDH\(2015\)170](#)  
(see Appendix 3)

” Denial of access to a court on account of the rejection of the applicants’ constitutional appeals because the Constitutional Court could not reach a required majority of five judges to take a decision (Article 6 § 1)

**Final resolution:** The reopening of the impugned proceedings was granted by the Constitutional Court, which examined the constitutional complaints at the merits and adopted subsequent decisions.

The new Rules of the Constitutional Court were adopted in April 2014 in order to avoid similar violations. According to Article 42 of these Rules, if judges cannot reach a majority, the vote of the President of the Constitutional Court, or his/her substitute, shall carry a weight of two votes and thus prevail. In addition, the Constitutional Court also took measures aimed at ensuring reopening of the proceedings before it, should the European Court find a violation of the right of access to a court in the context of proceedings before the Constitutional Court : in this event the affected party will be entitled to request the Constitutional Court within three months (at the latest within six months) to reopen the proceedings and re-examine its decision.

### ■ ROM / Antofie

Application No. 7969/06, judgment final on 25/06/2014, [CM/ResDH\(2015\)27](#)  
(see Appendix 3)

” Denial of access to court: Intended legal action declared void by a domestic court on the ground of non-payment of the stamp duty ordered without examination of the applicants’ concrete financial situation (Article 6§1)

**Final resolution:** Emergency Ordinance No. 51/2008 on judicial assistance in civil matters, as amended by Law No. 76/2012, provides different forms of public judicial aid, i.e. the grant exemptions, reductions or postponement for payment of court fees and stamp duties and specifies reasons for refusal (e.g. abusive demand, disproportionate cost compared to the value of the subject matter, request another purpose than to defend legitimate interest).

## E.3. No or delayed enforcement of domestic judicial decisions

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### ■ ALB / Driza (group) - ALB / Manushaqe Puto and Others (pilot judgment)

Application Nos. 33771/02, 604/07+, judgments final on 02/06/2008 and 17/12/2012, enhanced supervision, Interim Resolution CM/ResDH(2013)115  
(see Appendix 2)

” **Restitution of nationalised properties:** failure to enforce final administrative and judicial decisions relating to the restitution of, or compensation for properties nationalised under the communist regime, and lack of effective remedies (Articles 6§1, 13 and Article 1 of Protocol No. 1)

**CM Decisions:** For previous developments see AR 2013-2014. When resuming consideration of this group in June 2015, the CM welcomed the Albanian authorities' commitment to solve the important structural problem at stake, notably the presentation in this respect, on 1 April 2015, of the draft law on compensation and/or restitution of property, and the close consultations, particularly in Tirana on 23 April 2015, held with the Department for the Execution of judgments. Having also noted the careful review of all legal and financial implications, as well as the estimation of the overall cost of compensation made by the authorities in view of identifying the necessary legislative changes, the CM invited the authorities to submit explanations and additional information on the solutions proposed in the draft law, as well on the other outstanding issues identified in the Secretariat's memorandum (H/Exec(2015)16).

In December, the CM noted with satisfaction that the above-mentioned law appears to be a very positive step towards putting an end to the longstanding failure to compensate or return property to former owners, and requested information on its entering into force. Since some detailed aspects of the new scheme will be governed by by-laws, the CM requested the texts of these by-laws in view of their comprehensive assessment. It also invited the authorities to explain what evaluation maps will serve as a basis for calculation of compensation under the new scheme and what is the exact methodology of their preparation. While encouraging the authorities not sparing technical and logistical infrastructure, as well as human and financial resources, in view of ensuring that the compensation scheme is effective and expeditious, and that all legal deadlines and commitments are respected, the CM underlined the significance of adequate and reactive monitoring of the implementation of the law.

For a thorough assessment of the progress achieved in the implementation of the law and the means provided to ensure the effectiveness of the mechanism put in place, the CM requested the authorities to provide, by 30 January 2016, an updated action plan.

### ■ ALB/ Puto and Others (group)

Application No 609/07, judgment final on 22/11/2010, standard supervision  
(see Appendix 2)

” **Non-enforcement of judicial decisions in general, lack of an effective remedy**  
(Article 6 § 1 of Article 13 and Article 1 of Protocol No. 1)



**Developments:** In addition to the initially submitted action plan of 2013, the authorities provided an updated action plan (DH-DD(2016)39) in September 2015 (with information about on-going legislative reforms). This information is being assessed.

### ■ ARM / Khachatryan

Application No. 31761/04, judgment final on 01/03/2010, CM/ResDH(2015)37

(see Appendix 3)

” **Non-enforcement of a final domestic judgment** ordering a private company, whose majority shareholder was the State, to pay amounts to the applicants for salary arrears, amounting to the impairment of the right to court and a disproportionate interference with the right to peaceful enjoyment of possessions (Article 6 § 1 and Article 1 of Protocol No. 1)

**Final resolution:** The amount of just satisfaction awarded by the European Court as regards pecuniary and non-pecuniary damages has been paid to the applicants.

Concerning the execution of domestic judgments, both electronic governance systems of the judiciary and the Compulsory Enforcement Service (CES) have been linked together: the CES henceforth has an automatic access to the copy of judgments entered into force. Therefore, the execution is expedited and simplified, since there will be no need of getting a writ of execution and presenting it to the CES for the execution of the judgment.

Concerning the available remedies for contesting certain legal and administrative acts, the new Code of Administrative Procedure (CAP) entered into force on 7 January 2014, providing that both natural and legal persons were entitled to exercise the right of judicial protection against state and local self-government bodies, the legal normative and administrative acts, actions and omissions of them. Moreover, a special Administrative Court and an Administrative Court of Appeal were created in 2008 and 2010 respectively. The judicial acts of the Administrative Court of Appeal can be challenged before the Chamber of Civil and Administrative Cases of the Court of Cassation. Precise, effective and fully regulated administrative proceedings are also ensured by Article 191 of the CAP, prescribing the list of normative legal acts that can be contested before the Administrative Court.

### ■ BIH / Čolić and Others - BIH / Runić and Others

Application Nos. 1218/07+ and 28735/06, judgments final on 28/06/2010 and on 04/06/2012, enhanced supervision

(see Appendix 2)

” **Non-enforcement of final judgments ordering the state to pay certain sums in respect of war damages** (Article 6§1 and Article 1 of Protocol No. 1)

**Developments:** Following the European Court’s judgment in Čolić and Others, in 2012, Republika Srpska introduced a settlement plan which envisaged the enforcement of final judgments ordering payment of war damages in cash within 13 years starting from 2013 and the payment of €50 in respect of non-pecuniary damage. In 2013, the enforcement time-frame was extended to 20 years. In its judgment in the case of Đurić and Others (Application no. 79867/12 +, final on 20 April 2015) the Court examined the adequacy of the new settlement plan and considered the newly

proposed time-frame of 20 years too long in the light of the lengthy delays which had already occurred and thus not in accordance with Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

An action plan taking into account the findings of the Court in the *Đurić and Others* judgment is awaited.

#### ■ GRC / Beka-Koulocheri (group)

Application No. 38878/03, judgment final on 06/10/2006, enhanced supervision  
(see Appendix 2)

” **Non-enforcement or delayed enforcement of domestic judicial decisions (mostly judgments ordering the lift of expropriation);** lack of an effective remedy  
(Article 6§1, Article 1 of Protocol No. 1, Article 13).

**Action plan:** In response to the CM's decision of December 2014, the Greek authorities provided an updated action plan in November 2015. The information refers notably to developments occurred with respect to individual and general measures in cases of this group. This information is being under assessment.

#### ■ GRC / Matrakas and Others

Application No. 47268/06, judgment final on 07/02/2014, CM/ResDH(2015)173  
(see Appendix 3)

” **Failure of the authorities to ensure the recovery of maintenance payments**  
in the context of the New York Convention of 1956 on the recovery abroad of maintenance (Article 6§1)

**Final resolution:** The just satisfaction awarded for non-pecuniary damage and costs and expenses was paid. The various proceedings for the recovery of maintenance payments were closed.

The recovery of maintenance between member States of the European Union is regulated by the Regulation (EC) No. 4/2009 of the Council of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. This regulation provides for the removal of the *exequatur* for countries bound by the Protocol on the Law Applicable to Maintenance Obligations of 2007 (“Protocol of the Hague”). Therefore, a judicial decision issued in a member State of the European Union will be enforceable without the requirement of an *exequatur*.

#### ■ MDA / Luntre and Others (group)

Application No. 2916/02, judgment final on 15/09/2004, enhanced supervision  
(see Appendix 2)

” **No or delayed enforcement of final domestic judgments:** Failure or substantial delay in the enforcement of final domestic judicial decisions most of which were delivered against the State or State companies and the lack of any effective remedy in this respect; violations of the right to respect for property (Articles 6 § 1 and 13, Article 1 of Protocol No. 1)

**CM decision:** The violations in these cases, which became final between 2004 and 2011, occurred as a result of the ineffectiveness of the former bailiff system (in particular in decisions delivered against private debtors) and/or the unavailability of budgetary funds for the enforcement of judgment debts against the State.

The CM resumed consideration of this group in June to take stock of the measures adopted so far. With respect to individual measures, the Moldovan authorities were urged to ensure that all the judgments in this group are enforced without delay or to find *ad hoc* solutions for their enforcement and to inform the CM of the concrete measures taken to this end.

As to the general measures, the CM noted the significant measures taken to resolve the problem of non-enforcement of judgments, notably the introduction in 2011 of a new bailiff system and the reform of the system of allocation of budgetary funds, ensuring full and timely enforcement of court judgments. The authorities were encouraged to ensure that these measures are effectively implemented, and were furthermore requested to provide statistical information on the number of decisions enforced since the entering into force of the above measures, on the number of unenforced decisions as well as on average duration of the enforcement process.

#### ■ ROM / Sacaleanu (group)

Application No. 73970/01, judgment final on 06/12/2005, enhanced supervision  
(see Appendix 2)

” **Failure of the administration to abide by final court decisions:** failure or significant delay of the Administration or of legal persons under the responsibility of the State in abiding by final domestic court decisions (Articles 6§1 and/or Article 1 of Protocol No. 1)

**Developments:** In its judgment in the case of Fondation Foyers des Élèves de l'Église Réformée et Stanomirescu (final on 7 April 2014), the Court gave a number of additional indications of relevance for the execution of this group of cases. In a communication of 16 December 2014, the Romanian authorities indicated that the Government had tasked an interdepartmental working group with identifying the legislative and/or administrative measures required to ensure prompt compliance by the administration with final court decisions. In order to provide a comprehensive solution to this problem, the working group requested from all public bodies countrywide reports on the status of implementation of final court decisions rendered against them, together with indications on obstacles encountered in this process. The work of the working group is in progress and the authorities are expected to provide updated information in this respect.

#### ■ RUS / Gerasimov and Others (pilot judgment)

Application No. 29920/05, judgment final on 01/10/2014, enhanced supervision  
(see Appendix 2)

” **Non-enforcement of judicial decisions concerning different obligations in kind, lack of effective remedies:** failure or serious delay by the State and municipal authorities in abiding by final domestic judicial decisions concerning different

obligations in-kind, such as housing or the issuance of documents; lack of an effective domestic remedy (Article 6§1, Article 1 of Protocol No. 1 and Article 13)

**CM decisions:** Under the Court's pilot judgment, the authorities were to set up, by 1 October 2015 and in co-operation with the CM, an effective domestic remedy in case of the non-enforcement of domestic decisions concerning obligations in-kind, and to grant redress, by 1 October 2016, to applicants in similar cases already lodged with the Court.

When the CM examined the case in March 2015, it welcomed the rapid and positive response provided by the authorities, including draft amendments to the Compensation Act 2010 promptly prepared by the Ministry of Justice with a view to extending its scope to obligations in-kind (it is recalled that this Act was adopted at the time in response to the *Burdov* pilot judgment of May 2009 which concerned non-enforcement of monetary obligations). The CM encouraged the authorities to achieve compliance within the deadlines set by the Court and invited them to transmit rapidly a comprehensive action plan. The CM also invited them to closely co-operate with the Secretariat in their legislative reform efforts and to consider taking full benefit of the technical assistance that the Council of Europe could provide through its co-operation programmes with the Russian Federation.

The action plan was submitted in July 2015 and its content was noted with interest at the September meeting. The CM notably found that all individual measures had been taken, except in the *Grinko* case where they were still under way, and noted with interest the efforts to resolve the 483 similar applications pending before the Court and to set up an effective remedy. The authorities were encouraged to complete their work within the deadlines set by the Court.

In December 2015, the CM could note with satisfaction that the draft law introducing the above-mentioned amendments to the 2010 Compensation Act, if adopted as presented, would meet the call for an effective remedy covering also obligations in kind. Considering that the deadline fixed by the Court had expired on 1 October 2015, the CM encouraged the authorities to deploy all their efforts to ensure that the amendments entered into force on 1 January 2016, as envisaged in Article 3 of the draft law. The CM further encouraged them to make the required budgetary appropriations to ensure an effective implementation of the compensation decisions under the amended Compensation Act. As to the handling of pending applications, the CM noted with satisfaction the draft transitional provisions which allowed applicants with pending applications at the European Court to claim compensation from the domestic courts within six months of the law's entry into force.

As finally regards the need for a preventive remedy, the CM invited the authorities to clarify whether the remedy under the Code of Administrative Proceedings will function as an acceleratory remedy also for cases concerning delayed enforcement of the State's obligations in-kind.

## ■ SER / EVT Company (group)

Application No. 3102/05, judgment final on 21/09/2007, enhanced supervision  
(see Appendix 2)

### ” Non-enforcement of decisions rendered against socially-owned companies:

non-enforcement of final court or administrative decisions, mainly concerning socially-owned companies, implying also interferences with the right to peaceful enjoyment of property and the right to respect for family life; lack of an effective remedy (Articles 6 § 8 and 13, Article 1 Protocol No. 1)

**Developments:** Bilateral contacts have continued in 2015 with a view to the presentation of an updated action plan/report, notably in the light of the positive developments of domestic remedies, in particular before the Constitutional Court (see AR 2014). A number of outstanding questions remain, including payment of commercial debts contracted by socially-owned companies and confirmed by domestic decisions (see *Kin-Stib and Majkic* subgroup) and the debts of municipalities (*Rafailovic and Stevanovic*).

## ■ UKR / Zhovner (group) - UKR / Yuriy Nikolayevich Ivanov (pilot judgment)

Application Nos. 56848/00 and 40450/04, judgments final on 29/09/2004 and 15/01/2010, enhanced supervision  
(see Appendix 2)

” **Non-enforcement of domestic judicial decisions:** failure or serious delay by the administration in abiding by final domestic judgments and lack of effective remedies; special “moratorium” laws providing excessive legal protection against creditors to certain companies (Articles 6§1, 13 and Article 1 of Protocol No. 1)

**CM decisions:** When assessing the situation in December 2014 (see AR 2013 and 2014 for a description of the situation up to that date), the CM had noted, as regards individual measures, that in a large number of cases, the just satisfaction awarded by the Court had still not been paid, that default interest remained outstanding in certain other cases, and that the domestic judicial decisions had not been enforced in other cases.

As regards general measures, the CM had noted that the measures adopted so far (including the extension in 2013 of the remedy set up in 2012 also to “old” judgment debt, i.e. incurred before 1 January 2013) had not prevented similar violations, and had encouraged the authorities to explore all possibilities for co-operation which the Council of Europe could offer.

Pursuing its supervision in June 2015, the CM recalled that the problem of non-enforcement or delayed enforcement of domestic judicial decisions persists in Ukraine for more than a decade, notwithstanding the guidance given by the Court and the CM over the years, notably through five interim resolutions adopted by the CM and the Court’s pilot judgment in the case *Yuriy Nikolayevich Ivanov*; the CM noted that the European Court continued to communicate *Ivanov*-type cases to the Government of Ukraine.

In the light of the situation, the authorities were invited to complete their efforts to solve outstanding individual measures. As regards general measures, the remedy introduced in 2013 appeared not to have solved the enforcement problems at issue and an alternative payment scheme was now being envisaged. The CM expressed concern

that this scheme, if not carefully designed, could run contrary to the authorities' efforts to introduce an effective remedy and requested further information on the details of the scheme. The CM stressed that the envisaged scheme could not, in any case, be applied to the payment of the just satisfaction awarded by the Court, which should be done exclusively according to the terms and during the time-limits set by the Court.

In September, the CM invited the Ukrainian authorities to systematise the information provided with respect to the payment of just satisfaction, in close co-operation with the Secretariat, so that concrete progress achieved could be assessed, and to provide a calculation of still outstanding debt. As regards general measures, the CM noted with interest the efforts made to overcome the longstanding problem at issue, while noting with grave concern that the progress achieved so far had not produced the results expected and that large numbers of applications were still pending before the Court.

The CM therefore strongly urged the Ukrainian authorities to take additional and resolute measures with a view to finding a long term viable solution to the problem, including by further efforts to ensure sufficient funding to honour outstanding judgment debt and, in view of the gravity of the situation, reiterated its invitation to the Ukrainian authorities to explore all possibilities of co-operation the Council of Europe can offer.

As regards the "alternative bond payment scheme" proposed, the CM called upon the Ukrainian authorities to work in close co-operation with the Secretariat in order to ensure that it complies with the Convention standards and stressed the necessity of ensuring that the scheme preserves the unconditional obligation of the State to pay just satisfaction awarded by the Court. It thus invited the authorities to provide by 1 December 2015 the text of the relevant regulations together with comments on the scope of persons benefiting from the scheme and the planned manner of its implementation.

## E.4. Non-respect of the final character of court judgments

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## E.5. Unfair judicial proceedings – civil rights

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### ■ CRO / Hrdalo - CRO / Maravić Markeš

Applications Nos. 23272/07 and 70923/11, judgments final on 19/02/2014 and 10/08/2011, [CM/ResDH\(2015\)60](#)  
(see Appendix 3)

” Unfair administrative proceedings due to a breach of the principle of equality of arms: lack of possibility for the applicants to have knowledge of and to comment on the response submitted by the other party in the context of administrative proceedings (Article 6 § 1)

**Final resolution:** In the Maravić Markeš case, the applicant requested the reopening of the impugned administrative proceedings. The High Administrative Court granted her request, annulled its previous decision, and adopted a new final judgment, thus ensuring respect of the principle of equality of arms.

The deficient legislation at the origin of the shortcomings identified by the European Court in its judgments was amended, and the new Administrative Disputes Act entered into force on 1 January 2012. According to its Article 6, administrative courts are obliged to give each party an opportunity to comment on the claims and observations of the other party and on all factual and legal issues of the case.

Administrative courts and the Constitutional Court aligned their practice with the Convention standards regarding equality of arms.

#### ■ ITA / Agrati and Others (group)

Application No. 43459/08, judgment final on 28/11/2011, just satisfaction judgment final on 08/03/2012, enhanced supervision

(see Appendix 2)

” **Unjustified retrospective application of legislation:** Retrospective application of legislation to on-going judicial proceedings to calculate the length of service of school staff, in breach of their right to a fair trial and in the detriment of the right to respect of their possessions (Article 6§1 and Article 1 of Protocol No. 1)

**Developments:** The action plan submitted in February 2013 was assessed and comments were sent to the Italian authorities. Bilateral consultations are underway to obtain information on the individual measures in all the cases of this group and on the general measures. In this context, the authorities have been invited to provide further information, given the growing numbers of this type of cases before the CM and in the light of the recent jurisprudence of the Italian Constitutional Court which does not appear to be aligned with that of the European Court on the retrospective application of legislation to pending proceedings.

#### ■ MKD / Atanasovski (group)

Application No. 36815/03, judgment final on 14/04/2010, [CM/ResDH\(2015\)152](#)

(see Appendix 3)

” **Denial of a fair trial and excessive length of civil and labour proceedings:** failure of domestic courts to provide explanation as to why the applicants' cases had been decided contrary to the already existing case-law (Article 6 § 1)

**Final resolution:** The Special Department for Case-law was established within the Supreme Court with a view to provide consistency and to follow the case-law in order to ensure uniformity in the application of the laws by the courts. This Department adopted a plan for monitoring the case-law and the working program.

In order to prevent diverging case-law, several measures were taken:

- ▶ Regular publication by the Supreme Court of newsletters and collections of court decisions.
- ▶ Holding of regular meetings between appellate courts, during which the issues concerning diverging case-law are discussed.

A workshop for consistency of the court practice regarding the Civil Procedure Act was organised on 17 and 18 November 2014, where it was agreed to hold meetings between judges of the appellate courts and judges of the Supreme Court.

## ■ MKD / Bajaldžiev

Application No. 4650/06, judgment final on 25/01/2012, [CM/ResDH\(2015\)189](#)  
(see *Appendix 3*)

” **Denial of a fair trial:** lack of objective impartiality in that the bench of the Supreme Court included a judge who had presided the Court of Appeal’s bench dealing with the same case; excessive length of civil proceedings (Article 6 § 1)

**Final resolution:** On 2 April 2013, the Civil Department of the Supreme Court adopted an Opinion concerning the impartiality of judges, which is binding on the Supreme Court and introduces the requirements to apply Article 6 § 1 of the Convention within the context of the impartiality of judges whenever judges are called to apply Article 64 § 1 of the Civil Proceedings Act of 2005. This article 64 § 1 provides that a judge or a lay judge is deemed unable to attend his/her judicial duty if there are other circumstances which raise doubts as regards his/her impartiality.

The measures aiming at speeding up the judicial proceedings are examined in the context of the *Atanovici* group of cases which remains under the CMs’ supervision.

## ■ ROM / Beian (group)

Application No. 30658/05, judgment final on 06/03/2008, [CM/ResDH\(2015\)04](#)  
(see *Appendix 3*)

” **Unfairness of civil proceedings:** Inconsistency in the domestic courts’ case-law; absence of a mechanism ensuring uniform interpretation of applicable legal provision and case-law coherence; discriminatory treatment of persons in the same position (Articles 6§1 and Article 14)

**Final resolution:** To promote unitary judicial practice, the new Code of Civil Proceedings of 2013 introduced amendments for appeals in the interest of the law and the possibility for the High Court of Cassation and Justice to give preliminary rulings on request of one of its sections, an appeal court or tribunal. If a new question of interpretation arises pending trial, the courts of appeal and the tribunals may request the HCCJ’s ruling on the issue to be given within three months, while the pending trial is suspended. The ruling is compulsory for the requesting jurisdiction as from the date of its pronouncement and for the other jurisdictions as from the date of the publication in the Official Journal. The efficiency of this mechanism is confirmed by the high number of preliminary actions brought before the HCCJ: During 2013/2014, 14 preliminary actions in the civil field and 26 in criminal field.

The Superior Council of Magistracy in its decision No. 46/2007 introduced monthly meetings of the judges of each tribunal and quarterly meetings of all judges of a Court of Appeal.

## ■ SER / Momčilović

Application No. 23103/07, judgment final on 02/07/2013, [CM/ResDH\(2015\)64](#)  
(see *Appendix 3*)

” **Denial of the right to a fair trial in civil proceedings due to unlawful composition of the Supreme Court’s bench:** Instead of the prescribed panel of seven judges, the Supreme Court dealt with the applicant’s appeal in a panel of five judges (Article 6)



**Final resolution:** The new Civil Procedure Act 2013 provides for the Supreme Court of Cassation to decide in chambers composed of three judges. In 2007, the possibility of a constitutional complaint was introduced, which offers an effective domestic remedy to challenge a deficient composition of a court.

## E.6. Unfair judicial proceedings – criminal charges

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### ■ ALB / Caka (group)

Application No. 44023/02, judgment final on 08/03/2010, enhanced supervision  
(see Appendix 2)

” **Procedural irregularities – defence rights:** unfair criminal proceedings - failure to secure the appearance of certain witnesses and to have due regard to the testimonies given in favour of the applicant; lack of convincing evidence justifying criminal conviction; insufficient guarantees of criminal proceedings in absentia; denial of the right to defend oneself before the Court of Appeal and the Supreme Court; use of incriminating statements obtained as a result of torture (Article 6 §§1, 3, 3(c) and 3(d) , Article 3)

**Action Plan:** Responding to the CM's request of March 2014, the authorities transmitted two action plans in April 2015 (DD(2015)489 and DD(2015)491), providing inter alia information on individual measures, notably on the applicants' situation after the reopening of the impugned proceedings. As to the general measures, the authorities provided information on the consolidation of the domestic practice of reopening of proceedings, as well as on a number of legal initiatives aiming to address, in particular, lack of access to court in judgments in absentia and the issue of failure of the domestic courts to summon the defendant or witnesses in applicant's favour. The authorities informed that proposals for amendments to the Code of Criminal Procedure are being examined by the Special Parliamentary Committee on the Justice System Reform.

### ■ BGR / D.M.T. and D.K.I

Application No. 29476/06, judgment final on 24/10/2012, CM/ResDH(2015)193  
(see Appendix 3)

” **Lack of a fair trial and absence of protection of privacy:** impossibility for a suspended police officer to have a paid employment pending criminal proceedings and lack of effective remedy in this respect; lacking information of the applicant of the nature and the cause of the accusation and lack of adequate time and facilities for the preparation of his defence, after adoption by the Supreme Court of Cassation of a new legal categorization of the facts of the case (Articles 8 and 13, 6§3(a) and (b), in conjunction with Article 6§1 as well as Articles 6 and 13).

**Final Resolution:** The amount awarded to the applicant by the Court for non-pecuniary damage was paid, and the retrial was ordered by the Supreme Cassation Court on 7 May 2014. The appeal judgment was subsequently repealed by the Supreme Court of Cassation, which sent the case to the military court.

As regards the general measures, regulations in place at the time were reformed by the Law on the Ministry of the Interior in 2006 (replaced by a law with the same title in 2014). The exercise of a commercial activity or employment for officials of the Ministry of the Interior remains prohibited. However, in the event of suspension of duties

during criminal proceedings, it is open to the agent concerned to resign, except during disciplinary proceedings for gross misconduct. Legislation provides timeframes to conclude a disciplinary procedure rapidly without possibility to suspend disciplinary proceedings pending the outcome of criminal proceedings for the same facts.

The issue of excessive length of criminal proceedings is examined in the *Kitov* group of cases, and the lack of remedies in this respect as part of *Dimitrov and Hamanov* pilot judgment (see Appendix 3).

### ■ POL / Plonka

Application No. 20310/02, judgment final on 30/06/2009, [CM/ResDH\(2015\)235](#)  
(see Appendix 3)

” **Denial of a fair trial:** the applicant’s initial confession made in the absence of a lawyer had a bearing on her conviction, while there was no evidence of her having expressly waived her right to legal representation (Article 6 § 3(c) in conjunction with 6 § 1)

**Final resolution:** Proceedings were reopened and discontinued following the applicant’s death. On 1 January 2015 an amendment to the Code of Criminal Procedure entered into force, improving the system of the appointment of a counsel for the defence, not only by modifying prerequisites for the mandatory defence but also rules governing the appointment process in order to guarantee effective access to a lawyer also at the initial stages of the proceedings. The Minister of Justice’s Ordinance on the manner of ensuring to an accused assistance of a legal counsel appointed ex officio of 27 May 2015 – entered into force on 1 July 2015 – provides detailed information on the rules governing the establishment of a list of possible ex officio lawyers and the request for appointment of such lawyer submitted by the suspect or the body conducting an investigation. The Ordinance of the Minister of Justice on the manner of ensuring to an accused assistance of a legal counsel in accelerated proceedings of 23 June 2015 provides for a simplified legal counsel appointment procedure. Guidelines No. 3 of the Chief Police Commander of 15 February 2012 contain detailed rules on the conduct of investigation-examination activities by the police officers.

## E.7. Limitation on use of restrictions on rights

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### ■ AZE / Ilgar Mammadov

Application No. 15172/13, judgments final on 13/10/2014, enhanced supervision  
(see Appendix 2)

” **Imprisonment of a political opponent for reasons other than those permitted by Article 5, namely to punish him for having criticised the government**  
(Article 18 combined with Article 5, Article 5 §§ 1(c) and 4, Article 6 § 2)

**CM decisions / Interim resolutions:** For earlier developments in this case see AR 2014. In reply to the CM’s calls on the authorities to ensure the applicant’s release without delay and to take any necessary action with regard to the applicant’s health condition, the authorities provided, after the December 2014 meeting, information limited to an indication that the applicant had received treatment and that his health condition was satisfactory. When resuming consideration of this case in March 2015 in the light of all above, the CM adopted an Interim Resolution - [CM/ResDH\(2015\)43](#)

by which it insisted again that the authorities ensure the applicant's release without further delay. It noted in this regard, that the applicant's appeal against his conviction was still pending before the Supreme Court, and was deeply concerned by the fact that the Supreme Court has postponed its consideration *sine die*. As to the general measures required for the compliance with this judgment, the CM requested the authorities to provide, without delay, concrete and comprehensive information on the measures taken and/or planned to avoid that criminal proceedings are instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor's office, as well as to prevent new violations of the presumption of innocence by the Prosecutor's office and members of the government.

When pursuing the examination in June, the CM noted with very serious concern that despite its earlier calls, the authorities had still not either secured this release or reported any other progress in the adoption of the necessary individual measures, notably as regards the examination of the applicant's appeal by the Supreme Court. Faced with this situation, the CM initiated a new call, this time to the highest State authorities, to act without further delay to ensure by all appropriate means the immediate release of the applicant as well as the adoption of other necessary measures. Furthermore, the CM underlined the urgency of obtaining information on the general measures envisaged to avoid any circumvention of legislation by prosecutors and/or judges for purposes other than those prescribed, as well as to prevent new violations of the presumption of innocence.

In July, information was received from the applicant's representative indicating, on the one hand, that the applicant had been subject to physical assaults by fellow detainees, an intimidation allegedly orchestrated by prison administration and, on the other hand, that more than 200 days after the first hearing, there was still no progress regarding his appeal to the Supreme Court. Reacting to this news, the Secretary General of the Council of Europe addressed the Azerbaijani Minister of Justice by letter of 3 August 2015, requesting a thorough investigation into the above circumstances and recalling the necessity to comply with the Court's judgment in the present case. On 5 August, the Azerbaijani Governmental Agent before the European Court of Human Rights wrote to the Secretariat, to contest the applicant's allegations and bring assurances as to the applicant's health condition and security. On 17 August, the Minister of Justice replied to the Secretary General of the Council of Europe, informing that a thorough investigation, with the participation of independent experts, was carried out into the circumstances referred to by the applicant, and that "no assault nor any other degrading treatment took place".

When resuming consideration of this case in September, the CM adopted a second Interim Resolution ([CM/ResDH\(2015\)156](#)), in which it deplored that the applicant had still not been released. It also expressed concerns about the situation of Khalid Bagirov, who was the applicant's representative until his licence was suspended. Moreover, the CM expressed its deepest concern in respect of the lack of adequate information on the general measures envisaged to avoid any circumvention of legislation for purposes other than those prescribed, which represented a danger for the respect of the rule of law and exhorted the authorities to resume the dialogue with the Committee in order to achieve rapid and concrete progress in the execution of this judgment. In view of the situation, the CM underlined the obligation of

every member State of the Council of Europe to comply with its obligations under Article 3 of the Statute of the Council of Europe which provides: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council [of Europe] ..". Finally, the CM called on the authorities of the member States and the Secretary General to raise the applicant's situation with the highest authorities in Azerbaijan in order to get him released and invited the observer States to the Council of Europe and international organisations to do the same.

In December, given the continued detention of the applicant, the CM insisted anew on his release and on the need for the Azerbaijani authorities to respond as a matter of urgency to all Rule 9 submissions concerning the applicant's situation. The CM noted that the Supreme Court of Azerbaijan had finally decided the appeal but had ordered only a partial cassation, and that the applicant remained detained. The CM urged then the authorities to translate into Azerbaijani the decisions and resolutions of the CM and to disseminate them to all the authorities concerned, including the referring court, namely the Sheki Court of Appeal. In the absence of any information on the general measures taken or envisaged the CM reiterated its call upon the Azerbaijani authorities to provide, without delay, concrete and comprehensive information on the measures taken and/or envisaged to avoid that criminal proceedings are instituted without a legitimate basis and to ensure effective judicial review of such attempts by the Prosecutor's office. The CM also reiterated its call on the authorities of the member States and the Secretary General to raise the applicant's situation with the highest authorities in Azerbaijan in order to get him released, as well as their invitation to the observer States to the Council of Europe and international organisations to do the same. In conclusion, the CM agreed to resume consideration of the individual measures in March 2016 and, in the event that the applicant has not been released before then, to consider the possibility of including a discussion on his situation on the agenda of each regular and Human Rights meeting of the CM, until such time as he is released.

#### ■ **UKR / Lutsenko - UKR / Tymoshenko**

Application Nos. 6492/11 and 49872/11, judgments final on 19/11/2012 and on 30/07/2013, enhanced supervision  
(see Appendix 2)

” **Unlawful detention on remand and use of detention for other reasons than those permissible under Article 5** in the context of criminal proceedings engaged against the applicants (2011); inadequate scope and nature of judicial review of the lawfulness of detention; lack of effective opportunity to receive compensation (Article 5§§1, 4 and 5, and Article 18 in conjunction with Article 5)

**Developments:** In 2015, the execution of these judgments was concentrated around the ongoing reform of the General Prosecutor's Office, the setting up of the State Bureau of Investigation and the National Anticorruption Bureau. The Council of Europe participated actively in these reforms, notably through its projects specifically dedicated to these matters (the projects "Support to the Criminal Justice Reform in Ukraine" and "Strengthening the system of judicial accountability in Ukraine").

## E.8. Organisation of the judiciary

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### ■ UKR / Agrokompleks

Application No. 23465/03, judgments final on 08/03/2012 and 09/12/2013 (just satisfaction), enhanced supervision  
(see Appendix 2)

” **Interference by the executive and the legislature with the judiciary’s independence:** lack of independence and impartiality of the domestic courts hearing an insolvency case brought against a big, largely state-owned, oil company (including persistent attempts by the executive and the legislature to intervene and lack of internal judicial independence as the President of the Higher Arbitrage Court gave direct instructions to his deputies to reconsider a particular ruling), excessive length of the proceedings due to the authorities attempts to have the amount awarded diminished after the final ruling (1997-2004) and breach of the principle of legal certainty due to the quashing of the final judicial decision, the mere size of the sum awarded being disguised as a newly discovered circumstance (Article 6 § 1, Article 1 of Protocol N° 1).

**CM decision:** When examining the case in September 2015, the CM noted with satisfaction the payment by the Ukrainian authorities of 13.5 million euros, i.e. the first of the two instalments allowed for the payment of the just satisfaction of 27 million euros. The authorities were invited to take the necessary measures to ensure the payment of the second instalment within the time-limit established, as well as to settle any possible outstanding issues relating to the payment of the default interest. In this connection the authorities were also invited to provide specific information on the possibility they had referred to of reopening the proceedings given the fact that the respondent oil company (LyNOS) in the domestic proceedings had been liquidated.

As regards the structural problems revealed, the CM invited the authorities to provide information on the measures taken and/or envisaged with a view to ensuring internal judicial independence and encouraged them to take full benefit of all co-operation opportunities offered by the Council of Europe in this respect. The CM further invited the authorities to consider the possibility of taking additional measures, notably of a legislative nature, so as to better circumscribe the revision of final decisions on the basis of newly discovered circumstances. The authorities were invited to provide a comprehensive and updated action plan by 1 December 2015, addressing both individual and general measures. An updated action plan was submitted on 8 December 2015.

### ■ UKR / Oleksandr Volkov

Application No. 21722/11, judgment final on 27/05/2013, enhanced supervision  
(see Appendix 2)

” **Unlawful dismissal of a Supreme Court judge:** unlawful dismissal of the applicant from his post as a judge of the Ukrainian Supreme Court in June 2010, serious systemic problems concerning the functioning of the Ukrainian judiciary, notably as regards the system of judicial discipline (Articles 6§1 and 8)

**CM decisions:** Following the adoption by the CM of four decisions in the course of 2014, and noting that despite the efforts deployed by the Ukrainian authorities the applicant had still not been reinstated in his functions, an interim resolution was adopted by the CM in December 2014.

Following this interim resolution, the Ukrainian Parliament repealed the resolution which had ordered the applicant's revocation by means of a new resolution adopted on 25 December 2014 (Resolution 60-VIII). As a result, the applicant was reintegrated in his post according to this resolution and by order of the President of the Supreme Court. The CM, resuming consideration of this case in March 2015, welcomed the applicant's reinstatement to his post of judge of the Supreme Court. However, the CM invited the Ukrainian authorities to transmit an updated and comprehensive action plan on the general measures envisaged to ensure the reform of the judiciary in line with the Convention standards. In this regard, the CM invited the authorities to take full benefit of all co-operation opportunities offered by the Council of Europe.

The CM adopted a new decision in June 2015.

The question of the just satisfaction for non-pecuniary damages being reserved by the European Court, the CM decided to resume consideration of any remaining individual measures after the Court has rendered its judgment on this question, since the urgent individual measure required has already been taken.

As regards general measures, the CM noted with interest the analysis provided by the authorities in their updated action plan of 9 April 2015. This analysis deals with issues identified by the Court in this case which were already addressed, in particular through the recent law "On Ensuring the Right to Fair Trial", but also with issues which still remain to be resolved. However, the CM stressed that the reform of the Constitution is essential to a full execution of the present judgment in order to restructure the institutional basis of the system of judicial discipline. Consequently, the CM encouraged the Ukrainian authorities to ensure that rapid advances are made in this constitutional reform and to keep it informed about all relevant developments.

The CM concluded its decision by welcoming the authorities' active participation in the co-operation activities offered by the Council of Europe, and by encouraging them to continue this way.

## F. No punishment without law

### BIH / Maktouf and Damjanović

Application No. 2312/08+, judgment final on 18/07/2013, enhanced supervision  
(see Appendix 2)

]] **Retrospective application of more stringent criminal law:** retrospective application by the domestic jurisdictions of criminal law laying down heavier sentences for war crimes (the 2003 Criminal Code of Bosnia and Herzegovina), instead of the 1976 Criminal Code of the Socialist Federative Republic of Yugoslavia applicable at the time of their commission of these crimes (Article 7)

**Developments:** In response to the CM's decision of December 2013, the authorities transmitted in October 2014 an Action Report, providing further information on developments in the reopened criminal proceedings as well as on the new case-law of the Constitutional Court of Bosnia and Herzegovina in war crime cases. During 2015 bilateral consultations continued and the authorities envisage presenting an updated action plan/report.

## G. Protection of private and family life

### G.1. Home, correspondence and secret surveillance

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#### ■ BGR / Association for European Integration and Human Rights and Ekimdzhev

Application No. 62540/00, judgment final on 30/04/2008, enhanced supervision  
(see Appendix 2)

” **Insufficient guarantees against abuse of secret surveillance measures:** deficiencies of the legal framework on functioning of secret surveillance system; lack of effective remedy against abuse of secret surveillance measures (Articles 8 and 13)

**Developments:** In response to the CM's decision of March 2013, the Bulgarian authorities adopted in 2013 and 2015 a series of legislative reforms. These reforms comprised notably further limitation of the use of special surveillance means to investigate or to prevent serious criminal offences, the imposition of a time-limit for conservation of data stored for the sake of protection of national security. It also concerns the transfer of competence of application of special surveillance means from the Ministry of Interior to a new Agency operating under the direct responsibility of the Council of Ministers, and the establishment in 2013 of the National Bureau for control of special surveillance, which under certain conditions, can inform the persons concerned that they have been subject to illegal secret surveillance measures. The authorities still need to provide an updated action plan/report in order to address all the issues identified in the information document CM/Inf/DH(2013)7, endorsed by the CM.

#### ■ BGR / Yordanova and Others

Application No. 25446/06, judgment final on 24/07/2012, enhanced supervision  
(see Appendix 2)

” **Eviction of persons of Roma origin:** planned eviction of unlawful occupants, of Roma origin from an unlawful settlement in Sofia where many of them had lived for decades with the authorities' acquiescence, on the basis of a legislation not requiring any examination of proportionality of the removal orders (potential violation of Article 8 in the event of enforcement of the removal order)

**Action plan:** Additional information on taken and planned general measures, mainly awareness-raising activities and steps to prepare recommendations for the amendment of the domestic legislation/practice has been provided by the authorities in June 2015. The authorities undertook to keep the CM informed of the future developments.

## G.2. Domestic violence

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### ■ MDA / Eremia and Others (group)

Application No. 3564/11, judgment final on 28/08/2013, enhanced supervision  
(see Appendix 2)

” **Domestic violence:** failure by the authorities to take effective measures to protect the applicants from ill-treatment from their husband/ex-husbands; the authorities’ repeated condoning of domestic violence, on account of the manner in which they had handled the applicants’ cases, reflecting a discriminatory attitude towards them as women (Articles 3, 8 and 14)

**CM decision:** For earlier developments see AR 2014. In the light of the updated information provided by the Moldovan authorities, the CM resumed consideration of these cases in December. With regard to individual measures, it noted the authorities’ proactive attitude and the absence of new incidents of violence against the applicants. It also noted the authorities’ commitment to continue the close supervision of the applicants’ individual situation and considered that no further urgent individual measures were required. Information on the developments in the reopened investigation in the T.M. and C.M. case was however required.

As to the general measures, the CM noted the legislative, institutional, capacity building and awareness raising measures taken between 2012 and 2015 to prevent and combat domestic violence and gender-based discrimination, and encouraged the Moldovan authorities to continue their efforts. It invited them to provide, preferably for the period between 1 January 2011 and 31 December 2015, statistical data and information reflecting the way various authorities tackled in practice the problem of domestic violence (e.g. the number of registered complaints of domestic violence, the number of requests for protection orders submitted, the average time for examination by domestic courts of the requests for protection orders and for execution of these orders by competent authorities, etc.).

In conclusion, the Moldovan authorities were invited to consider signing and ratifying the Istanbul Convention on preventing and combatting violence against women and domestic violence.

### ■ TUR / Opuz

Application No. 33401/02, judgment final on 09/09/2009, transfer to enhanced supervision  
(see Appendix 2)

” **Inadequate measures to protect against domestic violence:** Failure of the police to react to warnings of violence by the husband against his wife and her mother, with the result that the mother was eventually killed; inadequate investigations into the killing and ill-treatment, inadequate legal framework to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for the victims; general and discriminatory judicial passivity in face of domestic violence against women creating a climate conducive to such violence (Articles 2, 3 taken alone and in conjunction with Article 14)



**CM Decision / Transfer:** When examining the situation in March 2015, the CM requested updated information on the applicant's situation, notably as regards the continuation of protective measures in face of continuing threat from her former husband.

As to general measures, the CM noted the measures taken between 2005 and 2010 to prevent domestic violence, including the establishment of a special national action plan, legislative, capacity building and awareness-raising measures. However, the CM noted that these measures had been reported inadequate, leading to a serious delay in the implementation of the measures required to execute the present judgment. Even if the CM welcomed Turkey's ratification in 2012 of the Convention on preventing and combatting violence against women and domestic violence (the Istanbul Convention of 2011), it stressed the need for additional measures. The CM invited thus the authorities to carry out a detailed assessment of the results achieved so far and to provide updated information, including the results of this assessment, on the further measures envisaged and/or taken.

On the basis of the considerations above, the CM decided to transfer this case to the enhanced supervision procedure.

### G.3. Abortion and procreation

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#### ■ ITA / Costa and Pavan

Application No. 54270/10, judgment final on 11/02/2013, enhanced supervision  
(see Appendix 2)

#### ” Access to medically-assisted procreation for persons with genetic diseases:

inconsistency in the legislative system in the field of medically-assisted procreation. Thus, on one hand, the relevant legislation prevents the applicants, healthy carriers of cystic fibrosis, to have access to medically-assisted procreation and, in this context, to an embryo screening in order to procreate a child who is not affected by this disease; on the other hand, when a foetus is affected by the same pathology, the law authorizes the termination of pregnancy on medical grounds (Article 8)

**Action plan:** In addition to the action plan transmitted in February 2014, the Italian authorities provided additional information, in May 2015, on both general and individual measures. As to the individual measures, the authorities have indicated that at the applicants' request, the Rome court of first instance issued on 23/09/2013 an injunction ordering the Rome public health agency (Azienda sanitaria locale A) to perform the medical procedures at issue (medically-assisted procreation with embryo screening) either directly or through other specialised structures. After a first cycle of medically-assisted procreation failed in 2014, the applicants were – as of the date of this information –undergoing a second cycle.

With respect to general measures, the authorities indicated that the constitutionality of the provisions at issue of Law No. 40 of 19 February 2004 on the medically-assisted procreation had been challenged before the Constitutional Court. On 14 May 2015, this Court ruled that the provisions at issue were unconstitutional. Once the decision published, these provisions were invalidated. The Italian authorities are now

expected to indicate whether now, as a consequence of the Constitutional Court decision, the couples in a similar situation to that of the applicants' are in practice granted access to the medical procedures at issue or whether a legislative intervention is required to regulate the conditions for such access.

#### ■ POL / P. and S.

Application No. 57375/08, judgment final on 30/01/2013, enhanced supervision  
(see Appendix 2)

” **Information on abortion:** Failure in 2008 to provide effective access to reliable information on the conditions and procedures to be followed in order to access lawful abortion; unwarranted disclosure of the applicants' personal data to the public by the hospital eventually carrying out the lawful abortion; unjustified 10-day detention in a juvenile shelter to convince the applicant not to abort (Articles 3, 5 and 8).

**Developments:** The authorities submitted an action plan in November 2013. Several NGO's submitted comments (Center for Reproductive Rights (New York), the Federation for Women and Family Planning (Warsaw) and Amnesty International), in response to which the Government furnished a number of additional explanations, notably in October 2014. Bilateral consultations continued afterwards and an updated action plan/report is awaited.

### G.4. Use, disclosure or retention of information in violation of privacy

#### ■ FRA / Mennesson - FRA / Labassee

Application Nos. 65192/11 and 65941/11, judgments final on 26/09/2014, enhanced supervision  
(see Appendix 2)

” **Recognition in France of surrogate children:** lack of legal recognition in France of parent-child relationships legally established in the United States between children born as a result of a surrogacy agreement and the couples – French nationals living in France (Article 8)

**Action plans:** The French authorities submitted action plans in March 2015 concerning the Mennesson and Labassee judgments. Besides the payment of the just satisfaction awarded by the Court (with default interest where required), certificates of French nationality were delivered to the Mennessons' and Labassee's children, respectively on 18 and 19 February 2015; the last legal obstacles to these measures having been lifted by the Council of State in a decision of 12 December 2014. Information is awaited on other individual measures taken or envisaged.

As to the general measures, five interdepartmental meetings were held between September and December 2014. This led to the Minister of Justice's decision to request the participation of experts in order to clarify the possible solutions opened to the French authorities to execute these judgments. Furthermore, in its judgment of 3 July 2015, the Court of cassation's Plenary Assembly considered that the refusal to transcribe on the civil register the birth certificate of a child born from surrogacy with at least one of his parents being French cannot be motivated by the fact that the birth was the result of such process. The theory of fraud cannot defeat the

transcription of a birth certificate mentioning both the father who did the recognition of paternity and the mother who gave birth.

Information is awaited on general measures taken or envisaged.

### ■ FRA / M.K.

Application No. 19522/09, judgment final on 18/07/2013, enhanced supervision (see Appendix 2)

” **Collection and retention of fingerprints:** unjustified interference with the right to respect for private life due to the collect and retention of fingerprints in the context of an investigation for book theft, which ended in a decision not to prosecute the applicant (Article 8)

**CM decision:** In December 2015, the CM noted with satisfaction that the applicant’s fingerprints collected as part of the disputed proceedings had been deleted and considered that no further individual measure was necessary.

As regards general measures, the CM noted with interest that the draft modification of the decree on the national fingerprint database provides appropriate responses to the European Court’s judgment. Indeed, this decree limits the collection of fingerprints to facts relating to serious crimes and major offences, introduces a distinction between convicted persons and those who are not, and offers new possibilities for the deletion of fingerprints.

While noting that the decree should be adopted by the end of 2015 and enter into force in March 2017, the CM invited the French authorities to keep it informed that this timetable is respected. The new decree was effectively adopted in December 2015.

### ■ ITA / Godelli

Application No. 33783/09, judgment final on 18/03/2013, CM/ResDH(2015)176 (see Appendix 3)

” **Inability of a child abandoned at birth to gain access to information on his/her origins:** lack of proportionality between the child’s interests and the biological mother’s ones who wished to have her identity confidential; inability to check the current will of the mother (Article 8)

**Final resolution:** The applicant obtained the right to know the identity of his/her biological mother, following the Trieste juvenile court’s judgment. In its judgment of 18 November 2013, the Constitutional Court declared Article 177§2 of the legislative decree No. 196 of 2003 as unconstitutional. This article provided for the inability of a child abandoned at birth to gain access to information on his/her birth mother, without granting the judge the possibility to verify the current mother’s will.

A draft law was approved by the Chamber of Deputies. The Italian authorities commit themselves that this draft law will soon be approved by the Senate. Pending, domestic judges can already, thanks to the abovementioned Constitutional Court’s judgment, decide to look for the biological mother in order to verify her current will.

## ■ NOR / Vilnes and Others

Application No. 52806/09, judgment final on 24/03/2014, [CM/ResDH\(2015\)81](#)

(see *Appendix 3*)

### ” Failure by the State to fulfil the positive obligation to respect for family life

by ensuring that the applicants, divers engaged in diving operations in the North Sea at different times from 1965 to 1990, received essential information regarding the use of decompression tables enabling them to assess the related risks to their health and safety (Article 8)

**Final resolution:** The just satisfaction awarded by the Court in relation to non-pecuniary damage was paid to the applicants. The Ministry of Labour and Social Affairs decided that other divers and the survivors of deceased divers (around 250 persons concerned) in a similar situation are entitled to compensation in the same amount.

## ■ SER / Zorica Jovanovic

Application No. 21794/08, judgment final on 09/09/2013, enhanced supervision

(see *Appendix 2*)

” **Fate of new-born “missing babies”:** continuing failure by the authorities to provide credible information to the applicant as to the fate of her son, allegedly deceased in a maternity ward in 1983: his body was never transferred to her and she was never informed of where he had allegedly been buried. In addition, his death was never properly investigated and officially recorded (Article 8)

**CM decision:** The CM resumed its consideration of the case in December 2015 in the light of the efforts deployed by the authorities to put in place a remedy for parents affected and the outstanding issues identified, notably in the CM’s decision of December 2014 (see AR 2014). The CM expressed concern that the deadline of 9 September 2014 set by the Court to secure the establishment of a mechanism aimed at providing individual redress to parents of “missing babies” had expired more than a year earlier and, whilst noting the steps taken, the CM insisted on the need to adopt as a matter of priority all necessary measures and to address the issues left outstanding in the draft law so as to fully take into account the indications in the Court’s judgment.

## ■ UK / M.M.

Application No. 24029/07, judgment final on 29/04/2013, [CM/ResDH\(2015\)221](#)

(see *Appendix 3*)

” **Unlawful interference with private life:** indefinite retention and disclosure of data regarding a police caution for child abduction received by the applicant following a family dispute; insufficient safeguards in the system to ensure that data relating to private life will not be disclosed. (Article 8)

**Final resolution:** Details relating to the applicant have been removed from the Northern Ireland Criminal History database. In England and Wales, statutory amendments came into force on 29 May 2013 introducing a filtering mechanism so that old and minor cautions and convictions are no longer automatically disclosed on a criminal record certificate. Disclosure is only made after taking into account the seriousness and age of the offence, the age of the offender and the number of offences committed. Further statutory amendments have come into

force allowing individuals to apply to an independent monitor. Similar statutory amendments came into effect in Northern Ireland in April 2014. The Justice Act (Northern Ireland) 2015 (“the 2015 Act”), amended the Police and Criminal Evidence (Northern Ireland) Order 1989 to create a statutory power for the recording of cautions and other diversionary disposals on the Northern Ireland criminal history database. The regime in Scotland does not allow for the automatic disclosure of “alternatives to prosecution” (the equivalent of cautions in England and Wales), which are removed from system after a period of either two or three years. For certain serious sexual and violent offences, information can be retained for up to an additional two years after an application to a court by the chief police officer.

## G.5. Placement of children in public care, custody and access rights

### ■ POL / Róžański

Application No. 55339/00, judgment final on 18/08/2006, [CM/ResDH\(2015\)209](#)  
(see *Appendix 3*)

” **Lacking protection of family life** due to inability of a putative father to seek legal paternity by means of a procedure directly accessible to him; introduction of such a procedure at the discretion of the authorities; absence in domestic law of any guidelines on the exercise the authorities’ discretion; no steps taken by authorities to establish the actual circumstances of the case. (Article 8)

**Final resolution:** Proceedings on the ineffectiveness of another man’s paternity recognition brought by the applicant are still pending. Following an amendment of article 84 of the Family and Guardianship Code (in force since 19 July 2004), presumed fathers may bring actions to establish paternity directly before the courts. However, neither a mother nor a presumed father may initiate proceedings to establish paternity after a child died or reached majority. In such situations, proceedings may be brought at the prosecutor’s discretion. An amendment in the Family Code of 13 June 2009 introduced two conditions for a prosecutor to initiate such proceedings: the child’s welfare or the protection of the public interest.

### ■ ROM / Ignaccolo-Zenide

Application No. 31679/96, judgment final on 25/01/2000, [CM/ResDH\(2015\)185](#)  
(see *Appendix 3*)

” **Lacking protection of family life:** failure to enforce a court decision based on the Hague Convention ordering that two children unlawfully abducted to Romania by their father be returned to their mother, a French national, who had custody rights over them. (Article 8)

**Final resolution:** Law no. 369/2004 (amended on 25/06/2014) on the implementation of the Hague Convention was adopted by the Parliament on 15/09/2004, with a view to enhancing the efficiency of proceedings concerning the return of abducted children. Among the measures adopted figure the establishment of a unique jurisdiction (the Bucharest tribunal for children and family issues) competent to deal with requests for the return of children under the Hague Convention, and the establishment of a procedure through which the court may impose a deterrent fine on a parent who refuses voluntarily

to fulfil his or her obligation to return a child or to allow visiting rights. The new Civil Procedure Code also provides a specific enforcement procedure of judgments relating to minors. Moreover, under Law No. 272/2004 on the protection and promotion of the rights of the child, the child has a right to maintain personal relations and direct contacts with his parents, the exercise of these rights being established by a judicial authority. This right is also acknowledged for a child whose parents usually live in different countries.

## G.6. Gender identity

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### ■ LIT / L.

Application No. 27527/03, judgment final on 31/03/2008, enhanced supervision  
(see Appendix 2)

” **Private life - gender reassignment:** lack of implementing legislation regulating the conditions and the procedure for gender reassignment and the change of entries in official documents (Article 8)

**CM decision:** In September 2014, the CM had transferred this case into the enhanced supervision procedure, noting that all efforts made to enact the legislation necessary to address the violation found by the European Court had been unsuccessful.

Resuming consideration of this case in March 2015, the CM noted that the applicant's individual situation had been resolved and, consequently, decided to close the examination of the individual measures in this case.

As regards general measures however, while noting with interest the establishment of a working group led by a high-level government official in order to ensure the full execution of the Court's judgment, the CM noted with concern the lack of information as to when the said group will conclude its work and when the required legislative reform will be brought before Parliament and adopted.

Thus, the CM renewed its urgent call for concrete results without further delay and invited the Lithuanian authorities to provide updated information by 31 July 2015.

An updated action plan was received on 31 July 2015.

## H. Protection of the environment

### ■ ITA / Di Sarno and Others

Application No. 30765/08, judgment final on 10/04/2012, enhanced supervision  
(see Appendix 2)

” **Region polluted by uncollected waste:** prolonged inability of the authorities to ensure the proper functioning of the waste collection, treatment and disposal services in Campania in breach of the right to respect for private life and home, and lack of an effective remedy in this respect (Article 8 – substantive limb, Article 13)

**Developments:** Following the bilateral contacts engaged in 2013, the authorities submitted an Action Plan in April 2014, indicating that further information should follow within shortly. Bilateral consultations are underway to this end.

## I. Freedom of religion

## J. Freedom of expression and information

### — AZE / Mahmudov and Agazade – AZE / Fatullaev

Application Nos. 35877/04 and 40984/07, judgments final on 18/03/2009 and 04/10/2010, enhanced supervision, Interim Resolutions [CM/ResDH\(2013\)199](#), [CM/ResDH\(2014\)183](#) and [CM/ResDH\(2015\)250](#) (see *Appendix 2*)

» **Excessive sanctions limiting freedom of expression:** use of prison sentences for defamation and arbitrary application of criminal legislation to sanction journalists (Articles 10, 6§1 and 6§2)

**CM decisions / Interim resolution:** The responses to the problems raised in these cases have been closely followed by the CM. In view of the absence of progress, the CM adopted a first interim resolution in 2013 ([CM/Res/DH\(2013\)199](#)) expressing a number of concerns and also a decision in June 2014 stressing that freedom of expression constitutes one of the fundamental foundations of a democratic society and one of the basic conditions for its progress (for an overview of earlier developments see AR 2011-2014).

In the light of subsequent developments in Azerbaijan, a further interim resolution was adopted in September 2014 ([CM/ResDH\(2014\)183](#)). In the follow up decision in December 2014, the CM indicated that tangible results were urgently needed, notably: progress in the adoption of the legislative proposal submitted by the Plenum of the Supreme Court aimed at reducing the possibility to use prison sentences in defamation cases in line with the case-law of the Court and in taking action to solve the problem of arbitrary application of criminal legislation to limit freedom of expression.

When the CM examined the situation in June 2015, it reiterated once more its concerns as regards the arbitrary application of criminal laws to restrict freedom of expression, and deplored the absence of any response to its latest decision, as well as the absence of any progress, including on the advancement in the adoption of necessary legislative amendments concerning defamation.

It exhorted the authorities to fully cooperate with the CM and to deploy all their efforts to adopt the necessary measures to eliminate the causes of the violations found and, in this context, called anew on the authorities to seize the opportunities offered by the Action Plan of the Council of Europe for Azerbaijan.

Moreover, the CM strongly deplored the fact that no information was provided on the criminal charges or on the reasons for the recent conviction of Mr. Intigam Aliyev, the applicants' representative in the case of *Mahmudov and Agazade*, to seven and a half years' imprisonment, and reiterated its request to receive this information without delay.

In view of the continued absence of information on measures taken or planned, the CM recalled in September anew the importance of freedom of expression in a democratic society and reiterated its concerns as regards the absence of any adequate response to the problem of the arbitrary application of criminal law to restrict this

freedom, as well as the absence of clarifications concerning the charges, and the reasons for the conviction of Mr. Intigam Aliyev. The CM exhorted the authorities to resume the dialogue.

In face of the continued absence of tangible progress, the CM adopted, at the December meeting, a third Interim Resolution (CM/ResDH(2015)250) recalling its previous decisions and resolutions. It deplored that, notwithstanding the undertakings given by the authorities in 2014, the necessary amendments to the law on defamation had not been introduced and stressed anew the importance of freedom of expression, and that efficient guarantees against arbitrary application of criminal legislation are capital for the respect of the Rule of Law. Deep concerns were expressed about the criminal conviction of Mr. Intigam Aliyev. The CM exhorted once again the authorities to resume the dialogue and to adopt without further delay measures demonstrating their determination to solve the problems revealed, in particular that of the arbitrary application of criminal legislation to limit freedom of expression.

### ■ ROM / Bucur and Toma

Application No. 40328/02, judgment final on 08/04/2013, enhanced supervision  
(see Appendix 2)

#### ” Conviction of a whistle blower and lack of safeguards in the national security

**related legislation:** Public disclosure by an employee of Romanian Intelligence Service (the “SRI”) (1996) of information on illegal telephone tapping made by the SRI department where he worked, entailing his conviction, in last instance by the Supreme Court of Justice on 13 May 2002, to a suspended sentence of two years’ imprisonment for having unlawfully collected and disclosed classified information (Article 10); lack of statutory safeguards applicable to secret surveillance measures in the event of any alleged threat to national security (Article 8)

**Action Plan:** Preliminary information on legislative changes carried out was received on 16 April 2014 and an action plan on 13 May 2014. Additional information with respect to both individual and general measures remains awaited.

### ■ ROM / Ieremeiov No. 1

Application No. 75300/01, judgment final on 24/02/2010, CM/ResDH(2015)213  
(see Appendix 3)

” **Unjustified interferences with freedom of expression** for opinions expressed on issues of public interest; unfairness of criminal proceedings on account of the appellate courts overturning of acquittals without hearing evidence of the accused or allowing them to prepare and present their defence; failure to implement a final judicial decision ordering restitution of nationalized property (Articles 10; 6 §1; 1 of Protocol No. 1)

**Final resolution:** In 2006, the Parliament repealed the Criminal Code provisions incriminating insult and defamation. In January 2007, the Constitutional Court found this decriminalisation to be unconstitutional. Subsequently, the Prosecutor General lodged an appeal in the interest of the law with the High Court of Cassation and Justice. On 18 October 2010, the High Court confirmed the decriminalisation. This ruling was binding for all domestic courts. Insult and defamation are not



listed as offences in the new Penal Code, which entered into force on 1 February 2014. Measures concerning violations of Article 6§1, i.e. the lack of hearing and the absence of motivation of judgments, were examined respectively in the context of the *Constantinescu* (CM/ResDH(2011)29) and *Albina* (CM/ResDH(2010)181) cases. Measures concerning Article 1 of Protocol No. 1 are examined in *Atanasiu et Poenaru*.

### ■ TUR / Ahmet Yildirim

Application No. 3111/10, judgment final on 18/03/2013, enhanced supervision  
(see Appendix 2)

” **Restriction of access to Internet:** domestic court order blocking access to Google Sites, “host websites”, in the context of criminal proceedings brought against a third person who owned a website hosted by Google Sites; as a result of this blocking order, access to the applicant’s website, also hosted by Google Sites, was also blocked (Article 10)

**Developments:** For earlier developments see AR 2014. An action plan/report, addressing the issues raised by the Court’s judgment and in the CM’s decision adopted in September 2014 is awaited.

### ■ TUR / Inçal (group) - TUR / Gözel and Özer (group)

Application Nos. 22678/93, 43453/04, 14526/07, judgments final on 09/06/1998, 06/10/2010 and 20/01/2010, enhanced supervision  
(see Appendix 2)

” **Freedom of expression:** different violations of the freedom of expression on account of criminal convictions under different legislative provisions for statements, articles, books, publications etc., which did not incite to hatred or violence (Article 10)

**CM decision:** The complex problems revealed by these groups of cases have been addressed by constitutional amendments and numerous legislative initiatives as well as by important efforts to develop, through training and awareness raising, the practices of courts and prosecutors – see notably interim resolutions (2001)106 and (2004)38. These efforts have allowed the closure of certain aspects of the problem, notably those relating to the application of Articles 8 and 6§5 of the Anti-Terror law as these provisions have been abrogated – see as regards the former the above mentioned interim resolution and the final resolution (2006)79 in 32 cases against Turkey and as regards the latter the final resolution (2014)130 in the *Ürper* group. However, they have not been considered to fully meet the requirements of the Convention (see also AR 2014).

In order to further assist in the solution of the complex problems raised, a cooperation program to improve freedom of expression started in 2013 with high level participation and support from the HRTF.

Progress achieved, as noted by the CM in June 2014, has included notably amendments to the Anti-Terrorism Law and the Criminal Code to restrict the scope of certain provisions relating to incitement to hatred and violence and improvements in the integration of the Convention requirements in court practice. The CM nevertheless found a need for further measures, notably to revise Article 301 of the Criminal Code and to further improve court practice.

When resuming consideration of outstanding questions in June 2015, the CM noted that the criminal records of the applicants in 70 out of 100 cases had been erased from their criminal records and invited the authorities to erase also the criminal records in the remaining cases.

As regards general measures, the CM reiterated its call for a revision of Article 301 of the Criminal Code without delay but noted with satisfaction the ongoing positive trend in improving the manner domestic courts apply Convention. In this respect, the CM stressed the important role played by the Constitutional Court in setting precedents following the recognition of the right to individual application in September 2012, and invited the authorities to provide information on the practice of this court in terms of the implementation of the European Court's case law. The authorities were finally invited to provide comparable statistical information demonstrating that there is a decrease in the number of indictments lodged under Article 216 of the Criminal Code and Article 7 of Anti-Terrorism Law as well as in the number of convictions imposed.

## K. Freedom of assembly and association

### ■ BGR / United Macedonian Organisation Ilinden and Others (Nos. 1 and 2) (group)

Applications Nos. 59491/00 and 34960/04, judgments final on 19/04/2006 and on 08/03/2012, enhanced supervision  
(see Appendix 2)

” **Refusals to register an association:** unjustified refusals of the courts to register an association aiming at achieving “the recognition of the Macedonian minority in Bulgaria”, based on the one hand on considerations of national security, protection of public order and the rights of others (alleged separatist ideas) and on the other hand on the constitutional prohibition for associations to pursue political goals (Article 11)

**Action plan:** At its meeting of December 2014, considering that the awareness-raising measures have not been sufficient to prevent new refusals to register UMO Ilinden, the CM decided to transfer the examination of these cases under the enhanced procedure. In response to this decision, the authorities transmitted an action plan in October 2015, indicating *inter alia* that a legislative reform is pending before the Parliament. The authorities undertook to keep the CM informed of the future developments.

### ■ GEO / Identoba and Others

Application No. 73235/12, judgment final on 12/08/2015, enhanced supervision  
(see Appendix 2)

” **Violent attacks on LGBT marches by counter-demonstrators:** Lack of protection against homophobic bias-motivated attacks during the demonstration marking the International Day Against Homophobia in May 2012; lack of an effective investigation into allegations of ill-treatment (Article 3 taken in conjunction with Article 14); the authorities' failure to ensure that the march took place peacefully, by containing

homophobic and violent counter-demonstrators (Article 11 taken in conjunction with Article 14)

**Developments:** An action plan / report is awaited indicating the measures envisaged or taken by the authorities, to redress as far as possible the applicants' situation and to prevent similar violations in future.

#### ■ **GRC / Bekir-Ousta (group)**

Application No. 35151/05, judgment final on 11/01/2008, enhanced supervision  
(see Appendix 2)

” **Refusal to register or dissolution of associations:** refusal to register or dissolution of associations on the ground that they were considered by the courts to be a danger to public order as they promoted the idea of the existence of an ethnic minority in Greece as opposed to the religious minority provided by the Lausanne Treaty (Article 11)

**Developments:** The CM supervises execution of this group of cases since January 2008 (for previous developments, refer to AR 2010-2014).

Information remains awaited, notably on individual measures in response to the CM's call upon the Greek authorities in its Interim Resolution CM/ResDH(2014)84.

#### ■ **ISL / Vörður Ólafsson**

Application No. 20161/06, judgment final on 27/07/2010, [CM/ResDH\(2015\)200](#)  
(see Appendix 3)

” **Violation of the right not to join an association** due to the statutory obligation to pay a levy on industrial activities to the Federation of Icelandic Industries ; lack of transparency and accountability, vis-à-vis non-members, as to the use of the revenues from this levy (Article 11)

**Final resolution:** The Act No. 124/2010 of 22 September 2010 abolished the Act No. 134/1993, and therefore the Industry Charge, as of 1 January 2011. The European Court approach regarding that kind of violation was adopted by the Icelandic Supreme Court in its case-law.

#### ■ **MDA / Genderdoc-M**

Application No. 9106/06, judgment final on 12/09/2012, enhanced supervision  
(see Appendix 2)

” **Ban on gay march:** unjustified ban of a demonstration organised to encourage the adoption of laws for the protection of sexual minorities from discrimination; no effective remedy in the absence of any guarantee that appeal decisions intervene before the planned event; discrimination as the sole justification given related to the homosexual orientation of the demonstration (Article 11 and Articles 13 and 14 in conjunction with Article 11)

**CM decision:** The CM resumed consideration of this case in September, to assess the updated action plans of March 2014 and July 2015 and to identify the outstanding questions. It then encouraged the Moldovan authorities, as regards the individual measures, to continue taking all necessary measures so that the applicant NGO can

exercise its right to peaceful assembly without undue restrictions and that adequate security protection is provided to it when necessary.

As regards general measures, the CM noted with satisfaction the legislative reforms, notably the lifting of the requirement to seek authorisation from the authorities to exercise the right to peaceful assembly as well as the removal of the local authorities' power to ban public events. It also welcomed the adoption of the Anti-discrimination Law as well as the creation of the Anti-discrimination Council and requested information on its monitoring work.

The CM further invited the Moldovan authorities to provide information as to how it ensured, when a court bans a public event or changes its time or place, that subsequent appeal proceedings are concluded before the event at issue or the appeal court intervenes in time (e.g. through interim orders). It also requested information on the number of notifications for holding events similar to the one in the present judgment, preferably submitted between 1 June 2008 and 1 June 2015, and the number of court disputes between the local authorities and the organisers in such cases, as well as on their outcome. Explanations as to why notifications on small scale events are being made to the authorities were also requested. Noting the different measures taken to adequately protect the demonstrators, the CM asked for detailed information on these measures and encouraged the continuation of efforts in providing security protection to demonstrators against counter demonstrators in public events similar to the one in the present case.

### ■ POL / *Bączkowski and Others*

Application No. 1543/06, judgment final on 24/09/2007, [CM/ResDH\(2015\)234](#)  
(see *Appendix 3*)

” **Unlawful interference with freedom of assembly** due to the authorities' arbitrary refusal of requests to hold demonstrations against minorities' discrimination; lack of an effective remedy thereof; discriminatory treatment since the refusal was based on a negative opinion expressed publicly by the Warsaw Mayor (Article 11, Article 13 in conjunction with Article 11, Article 14 in conjunction with Article 11)

**Final resolution:** Provisions of the Road Traffic Act, requiring from organisers of events to obtain permission for the organisation of assemblies, lost their force as of 2/02/2006 due to the Constitutional Court's finding that it was incompatible with the Constitution. A new Assemblies Act entered into force on 13/10/2015, which provides: the notice on the planned assembly is to be transmitted to the municipal authorities no sooner than 30 days and no later than 6 days in advance of the date; municipal authorities are obliged to issue a decision 96 hours before the planned date of the assembly; until 24 hours after publication of a banning decision on authorities' website under the Bulletin of Public Information appeals can be lodged to the Regional Court, which has to decide on it within 24 hours. The Regional Court's order can be appealed to the Court of Appeal within 24 hours. The final order of the Court of Appeal has to be executed immediately.

## ■ TUR / Oya Ataman (group)

Application No. 74552/01, judgment final on 05/03/2007, enhanced supervision  
(see Appendix 2)

” **Repression of peaceful demonstrations:** violations of the right to freedom of peaceful assembly and/or ill-treatment of the applicants on account of the excessive force used to disperse peaceful demonstrations; in some cases, failure to carry out an effective investigation into the allegations of ill-treatment and lack of an effective remedy in this respect (Articles 3, 11 and 13)

**CM decision:** The present group of cases was transferred under enhanced supervision in September 2013 as the different orders issued to law enforcement officers following the first Court judgments to ensure proportionate interventions did not yield necessary results. Execution was shortly thereafter included in the general “Action plan for the Prevention of Violations of the European Convention on Human Rights” of February 2014.

When examining the situation in September 2014, the CM had noted progress made but had concluded that further information was needed on a number of points, including individual measures, the content of the new proposed “Meetings and Demonstrations Marches Act”, the procedures in force to review the necessity, proportionality and reasonableness of any use of force after a demonstration is dispersed as well as further statistical information on investigations and their results.

When resuming examination in March 2015, the CM noted with concern, as regards the individual measures, that the legislation introduced in April 2013, allowing the reopening of investigations, was not applicable to the majority of the cases in the *Oya Ataman* group and, therefore, urged the Turkish authorities to find other means to carry out fresh investigations into the applicants’ allegations of ill-treatment.

As regards general measures, the CM urged the authorities to intensify their efforts to amend the relevant legislation, in particular the “Meetings and Demonstrations Marches Act” (No. 2911) and to ensure an assessment of the necessity of interfering with the right to freedom of assembly, in particular in situations where demonstrations are held peacefully and do not represent a danger to the public order. The CM also requested the authorities to consolidate the regulations concerning the conduct of law enforcement officers, including the standards for the use of force, during demonstrations in order to ensure that any force used is proportionate. A remedy should also be made for an adequate *ex post facto* review of the necessity, proportionality and reasonableness of any such use of force. Measures should in addition be taken to ensure that authorities and courts act promptly and diligently in carrying out investigations and criminal proceedings, in compliance with Convention standards, and in such a way as to ensure the accountability of all, including senior law enforcement officers.

## ■ UKR / Vyerentsov

Application No. 20372/11, judgment final on 11/07/2013, enhanced supervision  
(see Appendix 2)

” **Legislative lacuna regarding the right to peaceful assembly:** Absence of clear and foreseeable legislation laying down the rules for the organising and holding of a

peaceful assembly (applicant sentenced to 3 days of administrative detention in 2010 for organising and holding a peaceful demonstration); different violations of the right to a fair trial (Articles 11, 7, 6§§1, 3(b)-(c)-(d))

**CM decision:** The applicant's conviction in violation of Article 7 was quashed by the Supreme Court on 3 March 2014. The CM has repeatedly stressed the urgency, pending the adoption of the necessary legislative framework to regulate the right to freedom of peaceful assembly, of ensuring that administrative practice is brought into conformity with the Convention principles.

When resuming the examination of progress made in December 2015, the CM noted with concern that the required general measures still remained to be taken. It noted, nevertheless, with interest that a draft law "On Guarantees of the Right to Freedom of Peaceful Assembly" was submitted to Parliament on 7 December 2015 and invited the authorities to provide this draft law with a view to its assessment.

In this connection, it was noted that the Council of Europe Action Plan for Ukraine 2015-2017 envisages assistance to the Ukrainian authorities in the drafting and adoption of the legal framework for public assemblies, as well as with its implementation. The CM therefore encouraged the Ukrainian authorities to make full use of this opportunity. It was also noted that the recent Action Plan for the implementation of the National Human Rights Strategy provides that a law on freedom of assembly will be adopted by Parliament by the end of 2016.

In view of the situation, the CM called upon the Ukrainian authorities to ensure through appropriate interim measures that, pending the adoption of the required legislative framework, the implementation of the relevant legislation and the court practice are aligned with Convention principles. It also noted that the continued absence of a clear and foreseeable legislative framework exposed both applicants to the risk of administrative sanctions, should they organise new demonstrations.

## L. Right to marry

## M. Effective remedies – specific issues

## N. Protection of property

### N.1. Expropriations, nationalisations

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#### ARM / Minasyan and Semerjyan (group)

Application No. 27651/05+, judgment final on 23/09/2009 (merits) and 07/09/2011 (just satisfaction), CM/ResDH(2015)191  
(see Appendix 3)

]] **Unlawful deprivation of property rights:** deprivation of ownership right under conditions that were not prescribed by law but only by government decrees; unforeseeable and arbitrary termination of the right of use of accommodation ordered by domestic courts relying on inapplicable legal rules (Article 1 of Protocol No. 1)

**Final resolution:** A new law on “Expropriation for the Needs of Society and the State” was adopted on 27 November 2006. It regulates the entire expropriation procedure and provides foreseeable, accessible and precise legal framework for the protection of property rights (ownership right and right to use of accommodation). Pursuant to this law, the constitutional basis for alienation of property is the prevailing public interest, and the constitutional requirements are a procedure prescribed by law and a prior equivalent compensation. The prior equivalent compensation is defined and calculated following the Law on Evaluation provisions.

#### ■ BIH / Đokić - BIH / Mago

Applications Nos. 6518/04 and 12959/05, judgments final on 04/10/2010 and 24/09/2012, enhanced supervision  
(see Appendix 2)

” **Deprivation of occupancy rights over military apartments:** inability of members of the army of the former Yugoslavia (mainly Serbs of the former Yugoslav People’s Army) to obtain the restitution of their military apartments (some formally bought by their owners others originally possessed by virtue of special occupancy rights), taken from them in the aftermath of the war in Bosnia and Herzegovina, or to receive alternative accommodation or compensation reasonably related to the market value of the apartments instead (Article 1 of Protocol No. 1)

**Developments:** In January 2014, the authorities provided an updated Action Plan in the *Đokić* case, indicating both the individual and general measures undertaken and envisaged. Bilateral consultations continued in 2015 with respect to the additional information required with respect to individual and general measures necessary in these cases. An action plan/ report is awaited.

#### ■ ROM / Străin and Others (group) - ROM / Maria Atanasiu and Others (pilot judgment)

Application Nos. 57001/00 and 30767/05, judgments final on 30/11/2005 and 12/01/2011, enhanced supervision  
(see Appendix 2)

” **Property nationalised during the Communist regime:** Sale by the State of nationalised property, without securing compensation for the legitimate owners; delay in enforcing, or failure to enforce, judicial or administrative decisions ordering restitution of the nationalised property or payment of compensation in lieu (Article 1 of Protocol No. 1 and Article 6§1)

**Action Plan:** The earlier developments in this group are described notably in AR 2014.

Cases concerning situations covered by the new reparation mechanism (*Preda* pilot judgment) were closed by Final Resolution CM/ResDH (2014)274 at the CM’s meeting in December 2014. At that meeting, the CM also decided to continue, notably in the framework of the pilot judgment *Maria Atanasiu and Others*, to monitor the developments concerning the effective functioning of the reparation mechanism and invited the authorities to provide it with information on outstanding issues identified by the Court in the *Preda* judgment.

In response to the above decisions, in their communications of March and June 2015, the authorities indicated that a reflection was taking place at the domestic

level and provided information on the progress achieved in the implementation of the new reparation mechanism.

On 6 November 2015, three NGOs that have submitted to the CM a communication under Rule 9§2, questioned the compliance of the new reparation mechanism with the European Court's indications in the pilot judgment and its effectiveness. Responding to this communication on 25 November 2015, the Romanian authorities provided updated information on the status of implementation of the new reparation mechanism, which, in their view, demonstrates that this mechanism is effective. This information is under assessment.

## N.2. Disproportionate restrictions to property rights

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### ■ ARM / Chiragov and Others

Application No. 13216/05, Judgment final on 16/06/2015, enhanced supervision  
(see Appendix 2)

” **Right to home:** Denial of the right of return to home and property from which the applicants were forced to flee in 1992 during the Armenian-Azerbaijan conflict over Nagorno-Karabakh, and lack of compensation for ensuing losses (continuing violations of Article 1 Protocol 1, Article 8 and Article 13)

The European Court indicated that “pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment”.

The Court reserved the question of the application of Article 41.

**Developments:** An action plan is awaited.

### ■ AZE / Sargsyan

Application No. 40167/06, judgment final on 16/06/2015, enhanced supervision  
(see Appendix 2)

” **Right to home:** Denial of the right of return to home, property and graves from which the applicant was forced to flee in 1992 during the Armenian-Azerbaijan conflict over Nagorno-Karabakh and lack of compensation for ensuing losses (continuing violations of Article 1 Protocol 1, Article 8 and Article 13)

The Court indicated that “pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicant and others in his situation to have their property rights restored and to obtain compensation for the loss of their enjoyment”.

The Court reserved the question of the application of Article 41.

**Developments:** In their reply of 30 July 2015 to a communication transmitted by an NGO (Legal Guide), the Azerbaijani authorities undertook to provide an action plan at one of the next meetings of the CM. An action plan is awaited.



## ■ CRO / Statileo

Application No. 12027/10, judgment final on 10/10/2014, enhanced supervision  
(see Appendix 2)

» **Legislation concerning the protected lease:** Obligation under protected tenancy legislation for landlord to let property for indefinite period without adequate rent (Article 1 of Protocol No. 1)

**Action plan:** In response to the Court's findings in this judgment under Article 46, the authorities provided an action plan in June 2015. The information presented is being assessed.

## ■ GEO / Klaus and Yuri Kiladze

Application No. 7975/06, judgment final on 02/05/2010, [CM/ResDH\(2015\)41](#)  
(see Appendix 3)

» **Deficient legal framework granting compensation to nationals who sustained various forms of political persecution and oppression** on the territory of the former Soviet Union between 1921 and 1990; lack of implementing legislation defining the amount and modalities of payment of the relevant compensation (Article 1 of Protocol No. 1)

**Final resolution:** The Law of 11 December 1997 and the Code of Administrative Procedure were amended in order to allow the victims of repression to benefit from the right guaranteed by Article 9 of that Law. Therefore, the victims of Soviet political repression and their first generation heirs were entitled to submit the applications for monetary compensation.

The determination of the appropriate amount of compensation was initially the sole competence of the Tbilisi City Court, resulting in the granting of compensation in 6914 cases. However, further amendments were adopted on 31 October 2014, setting an amount of compensation legally determined, and extending the territorial jurisdiction of the national courts.

## ■ ITA / M.C. and Others (pilot judgment)

Application No. 5376/11, judgment final on 03/12/2013, enhanced supervision  
(see Appendix 2)

» **Retroactive legislation:** legislative provision retroactively cancelling the annual adjustment of the supplementary part of an allowance paid in respect of accidental contamination during blood transfusions (HIV, hepatitis...) (Article 6§1, Article 1 of Protocol No. 1 alone and taken in conjunction with Article 14)

**CM decision:** Resuming consideration of this case in December 2015, the CM recalled that it concerns the impossibility for persons accidentally contaminated following blood transfusions or by the administration of blood derivatives to obtain an annual adjustment based on the inflation rate of the supplementary component of the compensation allowance they benefit from (the "Idennità Integrativa Speciale"). The CM further recalled that, in response to this judgment, the Italian authorities must pay to these persons (or to their heirs) arrears corresponding to the adjustment of

IIS from the date the compensation allowance at issue was granted to them, and guarantee the IIS is henceforth submitted to an annual adjustment.

Considering the information provided by the authorities in their communication of 17 April 2015, the CM welcomed that the arrears to be paid by the central authorities were cleared according to the time-table announced to the CM (before the end of 2014), following allocations made to this effect. Moreover, it also noted with satisfaction that allocations were also granted to the Regions by the Budget Law for 2015 and that the arrears to be paid by them should be cleared by the end of 2018. The CM invited the authorities to provide it with information on the status of the payments made in this respect at regional level, by 31 March 2016.

Before the same deadline, while taking note of the assurances given that at the central level the IIS is now submitted to an annual adjustment based on the inflation rate and paid without delay to the beneficiaries, the CM invited the authorities to submit information on the measures adopted to ensure that the Regions also submit the IIS to an annual adjustment.

#### **■ NOR / Lindheim and Others**

Application No. 13221/08, judgment final on 22/10/2012, transfer to standard procedure (see Appendix 2)

» **Shortcomings in the legislation regulating certain long land leases:** statutory provision allowing lessees to claim the indefinite extension of certain long lease contracts on unchanged conditions with the result that rent due bears no relation to the actual value of the land (Article 1 of Protocol No. 1)

**CM decision / Transfer:** Once the deadline set by the authorities in their updated action of 15 July 2015 for the adoption of the necessary amendments had expired, the CM resumed consideration of this case in September 2015.

As noted by the CM in its decision, the European Court's judgment revealed a major structural and complex problem in the legal regulation of long land leases. In this regard, the Court indicated under Article 46 "that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention".

The CM noted with satisfaction the information provided and the measures taken in response to the Court's judgment with a view to remedying the shortcomings in the domestic legislation, including the provisional measures rapidly taken (Act of 14 December 2012 No. 89) pending the adoption of the new legislative framework, and in particular the amendments to the Ground Lease Act 1996 which entered into force on 1 July 2015.

The CM further invited the Norwegian authorities to provide information in the form of an updated action report by 31 October 2015, as regards the outstanding questions. Amongst these questions : how the newly established system is intended to function in the longer term, i.e. in particular after the first 30 years following indefinite

extension of lease contracts ; how to prevent the rent and market values from falling out of balance again without any subsequent possibility of re-adjustment.

In view of the progress achieved, the CM decided to continue the examination of this case under the standard supervision procedure. The authorities provided a revised action report on 8 October 2015, in which they provided the outstanding information. In fact, the amendment notably introduces a mechanism which grants both parties the right to adjust the rent in relation to the market value of the undeveloped plot every 30 years after extension of the contract.

### ■ **SER + SVN / Ališić and Others (pilot judgment)**

Application No. 60642/08, judgment final on 16/07/2014, enhanced supervision  
(see Appendix 2)

» **Repayment of “old” foreign currency savings:** violations of the applicants’ right to peaceful enjoyment of their property on account of their inability to recover their “old” foreign-currency savings deposited before the dissolution in 1991-1992 of the Socialist Federative Republic of Yugoslavia in branches of banks located in what is today Bosnia-Herzegovina with head offices in what is today Serbia and Slovenia, respectively (Article 1 of Protocol No. 1)

**CM decisions:** The CM made a first examination of the execution of this pilot judgment in December 2014. Action plans were subsequently submitted by both states and examined in March 2015.

In March, the CM noted the information presented as regards the legislative proposals being prepared and invited the Serbian authorities to submit a consolidated plan. As regards Slovenia, the CM noted that a draft law introducing a repayment scheme would be presented to Parliament by the end of June 2015 and asked for information on specific arrangements needed as well as on the interest rate to be applied to repayment. The Secretariat was instructed to assess the information submitted by the Slovenian authorities regarding the question whether relevant outstanding “old” foreign-currency savings might have also been deposited with branches of Slovenian banks outside Slovenia, other than in Ljubljanska Banka branches in Sarajevo and Zagreb.

Both States were encouraged to intensify their efforts to adopt the necessary measures within the deadline set by the Court, i.e. 16 July 2015. In the wake of this decision a round table was organised with both respondent states, external experts (notably with regard to other repayment schemes involving large numbers of claimants) and the Secretariat on 7 May 2015.

The CM resumed examination in June, shortly before the expiry of the deadline.

As to Serbia, the CM noted with satisfaction the consolidated action plan provided on 9 April 2015, setting out the specific arrangements envisaged and in particular that the conditions envisaged for repayment of the deposits concerned were based on the same interest rates as were applied to Serbian citizens who had such savings in domestic branches of Serbian banks. As to Slovenia, the CM noted with satisfaction the additional information provided shortly before the meeting, on 29 May 2015, on the draft law as approved by the Government describing the payment

mechanism envisaged. With respect to the authorities' indication that the aim of the scheme was to preserve the actual value of the deposits, they were invited to clarify how the Court's indications in the judgment have been taken into account in the repayment scheme as regards the interest rates and those who had not used their special privatization accounts. The CM noted with satisfaction the commitment of the authorities of both States to meet the deadline set by the Court.

In September, the CM noted with satisfaction the revised action plan provided by the Serbian authorities on 9 July 2015 and the detailed explanations given. The CM regretted, however, that the draft law had not been adopted within the deadline set by the Court and urged therefore the authorities to adopt the draft law as a matter of priority. As to Slovenia the CM welcomed the friendly settlements reached between the authorities and the applicants Ms Ališić and Mr Sadžak in September 2015 providing for the repayment of their deposits based on the terms set out in the new law and noted that once the settlements had been complied with, no further individual measures were required. It welcomed that on 3 July 2015 the Slovenian Parliament adopted the repayment law and the detailed explanations as to how the law as adopted would ensure that the outstanding "old" foreign-currency savings were repaid under substantially the same conditions which were granted in the initial repayment scheme. The CM invited the Slovenian authorities to sustain their efforts to finalise rapidly the practical arrangements to ensure the proper functioning of the repayment scheme.

#### ■ **SER / Grudić**

Application No. 31925/08, judgment final on 24/09/2012, enhanced supervision  
(see Appendix 2)

” **Non-payment of pensions** : unlawful suspension, for more than a decade, by the Serbian Pensions and Disability Insurance Fund (SPDIF) of payment of pensions, based on a Government Opinion without any basis in domestic law that the Serbian pension system ceased to operate in Kosovo<sup>316</sup> (Article 1 of Protocol No. 1)

**Developments:** The bilateral consultations have continued in 2015 with a view to settle remaining issues (see AR 2014) taking into account the additional clarifications to be given by the Court in the judgment expected in the near future in the *Skenderi* case (application No. 15090/08), communicated on 26 June 2014.

#### ■ **SVK / Bitto and Others**

Application No. 30255/09, judgment final on 28/04/2014, enhanced supervision  
(see Appendix 2)

” **Rent control scheme**: unjust limitations on the use of property by landlords, notably through the rent control scheme (Article 1 of Protocol No. 1)

**Developments:** the Court provided special indications for the execution of this judgment under Article 46 (for more details see Appendix 4,B). An action plan is awaited.

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<sup>316</sup>. All reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## **TUR / Özerman and Others**

Application No. 3197/05, judgment final on 20/01/2010, [CM/ResDH\(2015\)243](#)  
(see *Appendix 3*)

” **Unjustified interference with property:** lack of compensation for expropriation of a plot partly considered as forest area and lack of effective remedy. (Articles 1 of Protocol No. 1 and 13)

**Final resolution:** On 18 April 2012, the Law no. 6292 “on supporting the development of forest villagers, valuation of areas taken out of forest area borders on behalf of the Treasury and vending of agriculture lands owned by the Treasury” created a new domestic remedy. In November 2009, the Court of Cassation changed case-law and held that the State bore responsibility for any irregularities in the land registers and could be held liable for the deprivation of rights as a result of incorrect entries in the land registers. If a private title had been declared void because the land was declared part of the public forest estate, the owner concerned is entitled to claim compensation under Article 1007 of the Civil Code.

## **O. Right to education**

### **RUS / Catan and Others**

Application No. 43370/04, judgment final on 19/10/2012, enhanced supervision, Interim Resolutions [CM/ResDH\(2015\)46](#) and [CM/ResDH\(2015\)157](#)  
(see *Appendix 2*)

” **Closure of schools and harassment of pupils wishing to be educated in their national language:** forced closure, between August 2002 and July 2004, of Moldovan/Romanian language schools located in the Transnistrian region of the Republic of Moldova, as well as continuing measures of harassment of children or parents of children; responsibility of the Russian Federation under the Convention because of Russia’s “effective control” over the Moldovan Republic of Transnistria (the “MRT”) during the period in question and its continued military, economic and political support for the “MRT”, which could not otherwise survive – responsibility notwithstanding the absence of any evidence of direct participation by Russian agents in the measures taken, nor of Russian involvement in, or approbation of, the “MRT”’s language policy in general (Article 2 of Protocol No. 1 with respect to the Russian Federation)

**CM decisions:** The absence of response to the violations established, including the absence of payment of just satisfaction awarded, has been a major source of concern and has led to the adoption of three interim resolutions, the last in September 2015. In the previous interim resolution of March 2015, the CM had reaffirmed that, as for all Contracting Parties, the Russian Federation’s obligation to abide by judgments of the European Court is unconditional, had exhorted the Russian Federation to pay, without further delay, the just satisfaction awarded as well as the default interest due, and had strongly invited the authorities to fully co-operate with the CM and the Secretariat with a view to executing this judgment.

In June 2015, the CM had to express its deep concern in view of reports of a continuous violation of the applicants’ right to education, resulting from acts of intimidation and pressure affecting the functioning of the Latin script schools in the Transnistrian

region of the Republic of Moldova, and the lack of certainty as to the ability of these schools to continue functioning when the new school year begins in September 2015. It deeply deplored the absence of steps to ensure the immediate payment of the just satisfaction awarded, despite the CM' repeated calls in this regard, as well as the absence of any other information in respect of the implementation of the judgment. The CM thus reiterated the calls made in the interim resolution.

In September 2015, the CM adopted a new interim resolution, recalling its different decisions and the two interim resolutions already adopted, and thus insisting anew on the unconditional nature of the obligation to pay just satisfaction and on the need for the Russian Federation to comply with this obligation. The CM urged the authorities to explore all appropriate avenues for the full and effective implementation of this judgment. In addition, it noted that the High Level Conference which further took place in Saint Petersburg on 22-23 October 2015 could be an opportunity to make progress towards a common understanding as to the scope of the execution measures flowing from this judgment and their modalities. The CM decided to resume consideration of the case in March 2016.

## P. Electoral rights

### ■ AZE / Namat Aliyev (group)

Application No. 18705/06, judgment final on 08/07/2010, enhanced supervision  
(see Appendix 2)

” **Irregularities connected with the control of parliamentary elections:** arbitrary and non-motivated rejection, by the electoral commissions and the courts, of complaints of members of the opposition parties or independent candidates regarding irregularities or breaches of electoral law in the 2005 elections (Article 3 of Protocol No. 1)

**CM decisions:** Earlier developments are described in AR 2013-2014. In response to the indications given by the CM in December 2014 (in response to the updated consolidated action plan of July 2014), the authorities provided additional information in February 2015. When examining the situation in March 2015, the CM noted that the recent information provided as regards the independence, transparency and legal competence of electoral commissions was still limited to trainings, which weren't sufficient to solve the problems identified by the Court. As to the effectiveness of judicial review, the CM noted, however, with interest the reform of 30 December 2014, aimed notably at further limiting the influence of the executive within the Judicial and Legal Council, although the reform had to demonstrate its efficiency in practice.

In view of the imminence of the legislative elections in November 2015, the CM reiterated the importance of proper functioning of electoral commissions and of courts capable of reviewing the legality of the decisions of these commissions. It also urged the authorities to further improve the system of control of the regularity of these elections in order to prevent any arbitrariness and, in particular to co-operate with the Venice Commission, make full use of the additional possibilities offered by the Action Plan of the Council of Europe for Azerbaijan and ensure that the highest

competent authorities send a clear message to electoral commissions that neither illegality nor arbitrary action will be tolerated.

In this context, the CM also underlined the crucial importance of targeted practical guidance from the Supreme Court, based on the European Court's judgments, and the importance of ensuring that the proceedings before the Constitutional Court provide the guarantees required by the Convention, in particular, as regards the right to appear in person before it and with regard to transparency (case of *Kerimli and Alibeyli*).

At their meetings in June and September, in the continued absence of additional information concerning concrete actions aimed at improving the system of control of the regularity and prevention of arbitrariness at the forthcoming parliamentary elections in November 2015, the CM reiterated its previous calls and requests to the authorities to adopt the necessary measures to eliminate the causes of the violations found in this case.

At their December meeting, the CM had to face the fact that the recent parliamentary elections in Azerbaijan were held without the necessary reforms having been adopted and reiterated, thus, its calls for rapid progress in the adoption of these reforms. Noting with concern that there were no ongoing activities in co-operation between Azerbaijan and the Venice Commission concerning the issues relevant to the execution of this group of cases, the CM strongly reiterated its call on the authorities to seize, particularly in the context of the Council of Europe's Action Plan for Azerbaijan, all opportunities for co-operation with the organisation, in particular with the Venice Commission. The CM noted in this context, that it is essential that the authorities take into account the recommendations of the Venice Commission and OSCE/ODIHR on the electoral system of Azerbaijan, as well as the Code of Good Practice in Electoral Matters adopted by the Venice Commission in 2002.

### ■ BIH / *Sejdić and Finci*

Application No. 27996/06, judgment final on 22/12/2009, enhanced supervision  
(see *Appendix 2*)

” **Ineligibility to stand for elections due to the non-affiliation with a constituent people:** impossibility for citizens of Bosnia and Herzegovina of Roma and Jewish origin to stand for election to the House of Peoples and to the Presidency of Bosnia and Herzegovina, due to their lack of affiliation with one of the constituent peoples (Article 14 taken in conjunction with Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12)

**CM decision:** Following the absence of decisive progress in the efforts to achieve the necessary changes to the electoral system (for a summary of developments see AR 2014), elections were held in October 2014 under the same regulatory framework as that impugned in the European Court's judgment. The CM noted this fact with profound concern and disappointment, but encouraged in December 2014 the authorities and political leaders to give a fresh impetus to their endeavour to bring the constitutional and legislative framework into line with the Convention requirements.

When resuming examination in June 2015, the CM noted with satisfaction the written commitment to devote special attention to the execution of this group of cases

adopted by the Presidency of Bosnia and Herzegovina, which was signed by the leaders of the major political parties and endorsed by Parliament on 23 February 2015. The CM encouraged the authorities and political leaders to ensure that this written commitment leads to concrete results and, consequently, invited them again to intensify their efforts to this effect.

In the meantime, on 15 December 2014, the *Zornic* judgment (application 3681/06) became final. In this judgment violations were found also in respect of a person who did not wish to disclose her affiliation to any of the constituent peoples. The Court indicated under Article 46, like the CM, that it was anxious to encourage the speediest and most effective resolution of the situation in a manner which complies with the Convention's guarantees and stressed that it expected that democratic arrangements would be made without further delay.

### ■ LIT / Paksas

Application No. 34932/04, judgment final on 06/01/2011, enhanced supervision  
(see Appendix 2)

” **Right to free elections:** permanent disqualification from the possibility to stand for elections as a result of impeachment proceedings brought against Lithuania's former president (Article 3 of Protocol No. 1)

**CM decisions:** Following the striking out of the amended draft law (No XIP-5001(2)) from the agenda of the Parliament, the CM noted in September 2014 that the initiated legislative reform remained in its initial phase, and that the applicant's situation remained unchanged. Urging the authorities to adopt the constitutional changes required to put an end to the persisting violation of the applicant's right to free elections, the CM decided to transfer the case into the enhanced supervision procedure.

Resuming consideration of this case in March 2015, the CM noted with concern that the applicant continued to be banned from standing parliamentary elections, due to the persistence of the situation found to be in breach of the Convention despite the efforts made so far. It noted with interest that the Parliament's "Ad hoc Investigation Commission" had adopted its conclusions containing different proposals on how to proceed in order to implement the judgment of the European Court.

Considering in particular the general elections scheduled for October 2016, the CM urged the authorities to advance rapidly in their efforts to amend the Constitution, renewed its urgent call for concrete results without further delay, and invited the authorities to provide updated information by 31<sup>st</sup> July 2015.

In December 2015, the CM took note of the new legislative proposal (Draft Law No. XIIP-2841) which appeared to provide for a viable solution to remedy the violation found in the European Court's judgment both on the individual and on the general level.

It noted with interest not only the adoption in first reading of this draft law on 10 September 2015, but also that the calendar presented by the Lithuanian authorities in their updated action plan of 2 November 2015 regarding the next steps in the legislative procedure would allow the applicant to run for the upcoming parliamentary elections in October 2016.



However, the CM stressed the importance of the second voting as regards the respondent State's compliance with its obligations under the Convention and strongly encouraged the authorities to complete the legislative process in accordance with this calendar. In this regard, the CM invited them to keep it informed on the progress made in this process.

An updated action plan was submitted on 8 January 2016, informing the CM that the proposed constitutional amendments were rejected by the Seimas on 15 December 2015.

## Q. Freedom of movement

## R. Discrimination

### AUT / Sporer

Application No. 35637/03, judgment final on 03/05/2011, [CM/ResDH\(2015\)19](#)  
(see Appendix 3)

” **Discriminatory treatment during custody proceedings of fathers of children born out of wedlock:** difference in treatment as regards the judicial scrutiny in the attribution of custody to fathers of a child born out of wedlock compared to fathers who had originally held parental authority and later separated from the mother or divorced (Article 14 taken together with Article 8)

**Final resolution:** On 1 February 2013, the Law amending Child Custody Law and the Law on Names entered into force. Even if the mother of a child born out of wedlock is still attributed the sole custody of the child, conditions for the father to obtain joint custody together with the mother have been facilitated. Moreover, Austrian law now provides for a judicial review of the question of custody, and the court decides, in accordance with the child's best interests, on who will obtain custody: the mother, joint custody, or only the father with a testing period of six months in the latter case.

### CRO / Šečić

Application No. 40116/02, judgment final on 31/08/2007, enhanced supervision  
(see Appendix 2)

” **Ineffective investigation into a racist attack on a Roma** (Article 3, Article 14 taken in conjunction with Article 3)

**Action plan:** The authorities provided an updated action plan in July 2015. The information presented is being assessed.

### CZE / D.H. (group)

Application No. 57325/00, judgment final on 13/11/2007, enhanced supervision  
(see Appendix 2)

” **Right to education – discrimination against Roma children:** assignment of Roma children to special schools (designed for children with special needs, including those suffering from a mental or social handicap) on account of their Roma origin (Article 14 in conjunction with Article 2 of Protocol No. 1)

**CM decision:** The CM regularly follows the efforts made by the authorities to come to grips with the shortcomings identified by the European Court in its judgment. In June 2014, the CM had invited the Czech authorities to provide a revised action plan including an update on the use of diagnostic tools and the most recent statistics concerning the education of Roma pupils in groups/classes for pupils with “mild mental disability”.

Resuming consideration of this group of cases in March 2015, the CM, while noting the new legislative framework and diagnostic tools in place, expressed concern that the percentage of Roma pupils in classes or groups for children with “mild mental disability” remains disproportionate. The CM noted the problems identified in the functioning of the testing system and the follow-up for pupils recommended for transfer to the mainstream education, and therefore underlined the importance of ensuring effective supervision of the use of diagnostic tools and a follow-up of recommendations. It also urged the authorities to ensure the necessary support to pupils entering or transferred to the mainstream education.

As regards the new legislative framework, the CM welcomed the changes envisaged under the Education Act for September 2016 and invited the authorities to indicate the measures to be taken to implement it effectively. The CM further encouraged the authorities to enhance their ongoing co-operation with civil society in this area and to ensure that future measures adopted have the necessary impact in practice.

The CM decided to resume consideration of this case in June 2016. To this end, it invited the authorities to provide, no later than by 1 September 2015, information on the strategy they envisage to implement the new legislative framework, as well as, by 5 February 2016, an update with the most recent statistics concerning the education of Roma pupils in groups/classes for pupils with “mild mental disability”, and information responding to the other concerns raised.

An updated action plan was received on 1 September 2015. The authorities informed that the amended Education Act was adopted and will come into force on 1 September 2016. The Act was presented to civil society at a roundtable on inclusive education in April 2014. Another roundtable was scheduled for April 2015. Responding to the Committee’s request, they provided an overview of their strategy and a time-frame for the implementation of the amended Act.

#### **GRC / Sampani and Others - GRC / Lavidia and Others**

Application Nos. 59608/09 and 7973/10, judgments final on 29/04/2013 and on 30/08/2013, enhanced supervision

(see Appendix 2)

#### **Placing of Roma children to a public school attended exclusively by Roma children** (Article 14 of the Convention in conjunction with Article 2 of Protocol No 1)

**Action plan:** In May 2015, the Greek authorities provided a follow-up to the action plan presented in 2013, containing notably updated information on general measures. This information is being assessed.

## ■ GRC / Vallianatos and Mylonas

Application No. 29381/09, judgment final on 07/11/2013, enhanced supervision  
(see Appendix 2)

” **Sexual orientation based discrimination:** discrimination against same sex couples as they were excluded from the scope of the law establishing civil unions for different-sex couples (Article 14 in conjunction with Article 8)

**Developments:** Most recently, in the course of bilateral consultations, the Greek authorities indicated that Articles 1-11 of the new *Law 4356/2009* extended the option to form a civil union to all couples (of the same or different sex). The civil union provides full property and inheritance rights for all couples, thus also for the same-sex couples. An action plan/report detailing this information is awaited.

## ■ HUN / Horváth and Kiss

Application No. 11146/11, judgment final on 29/04/2013, enhanced supervision  
(see Appendix 2)

” **Discrimination against Roma children:** discriminatory assignment of Roma children to special schools for children with mental disabilities during their primary education (Article 2 of Protocol No. 1 read in conjunction with Article 14)

**CM decision:** Resuming consideration of this case in December 2015, the CM first took note of the information provided on the measures taken so far in response to the European Court’s judgment. However, it noted that without statistical data on the evolution of the number of Roma children in special education, it was difficult to assess whether or not the measures taken have had an impact and contributed to solving the problem of overrepresentation and segregation of Roma children in special schools due to the systemic misdiagnosis of mental disability.

Accordingly, the CM called on the Hungarian authorities to take the necessary steps in order to collect and to submit disaggregated statistical data on the following points:

- ▶ the number of Roma children, compared to non-Roma children, that have to sit intelligence tests and undergo expert examination in order to assess their learning abilities as well as their respective results. In this regard, the authorities were invited to submit additional information on the process of standardisation of the newly introduced testing methods to evaluate learning abilities and the state of their implementation, on the testing methods’ concrete role in the examination process, on the selection of children that have to sit the tests.
- ▶ the evolution of the number of Roma children, compared to non-Roma children, in mainstream and inclusive education as well as in special or segregated schools or classes. In this regard, the authorities were invited to inform the CM on whether the new testing methods and the introduced legal safeguards have led to any changes in the number of Roma children diagnosed with mental disabilities and/or assigned to special schools or classes.
- ▶ the number of Roma children, compared to non-Roma children, diagnosed as having mental disabilities that were or are still being re-examined and re-transferred to standard education on account of programmes such as “Out of the back bench”.

The CM further invited the authorities to submit information on the means to guarantee that Roma children do not have to undergo examination unless there are objective grounds for this, and on the remedies available once a child is diagnosed with a disability and assigned to special education.

Like in March 2014, the CM ended its decision of December 2015 urging the authorities to pursue their efforts with a view to implementing an inclusive education policy and to provide specific information on the impact of this policy, in particular as regards the reduction of the high proportion of Roma children in special schools.

### ■ ITA / Dhahbi

Application No. 17120/09, judgment final on 08/07/2014, CM/ResDH(2015)203  
(see Appendix 3)

” **Difference of treatment for obtaining the family allowance due to nationality:** difference of treatment based on nationality justified by insufficient budgetary rationales; failure of the Court of Cassation to refer a preliminary ruling to the Court of Justice of the European Union (Article 14 in conjunction with Article 8, Article 6 § 1)

**Final resolution:** The just satisfaction awarded by the European Court, covering the amount of family allowance not obtained at domestic level, was paid.

Article 65 of Law No. 448 of 1995 was amended so that family allowance is henceforth granted to European Union citizens and to foreigners residing on the Italian territory for a long-term period.

As regards the obligation to ask for preliminary ruling, the authorities submitted that it was an isolated case, but amended in any case the law on judges' accountability (indirect) in force since March 20015, which provides for the possibility to apply for compensation in case of an obvious violation of EU law, including in case of violation of the obligation to refer a preliminary ruling to the CJEU.

### ■ ROM / Moldovan and Others (group)

Application No. 41138/98, judgment final on 05/07/2005, enhanced supervision  
(see Appendix 2)

” **Violence against Roma:** racially-motivated violence, between 1990 and 1993, against villagers of Roma origin, and in particular improper living conditions as a result of the destruction of their homes; incapacity of the authorities to put an end to the violations of their rights (Articles 3, 6, 8, 13 and 14 in conjunction with Articles 6 and 8)

**CM decision:** In the light of the action plan presented by the authorities on 1 April 2015 in response to the CM's request formulated in its decision of December 2014 (See AR 2014), the CM resumed its detailed examination of this group in June 2015. It noted then that the legislative framework for the construction of a medical centre and of an industrial site in Hădăreni, announced to the CM in 2011, has been put in place. However, having regard to the significant delay in its adoption, the CM strongly invited the authorities to intensify their efforts to ensure that the works planned are rapidly completed. The authorities were also encouraged to define as

a matter of priority the additional measures they envisage adopting in the areas of intervention identified. In this respect, the CM welcomed the authorities' initiative to co-operate with civil society, which would benefit from being broadened to other areas for further interventions identified. In conclusion, the CM decided to resume consideration of these cases in March 2016, in the light of the updated information on the implementation of all the measures laid out in the action plan, expected by the end of November 2015, and of an in-depth assessment of the status of execution of these judgments by the Secretariat.

### ■ ROM / Tănase

Application No. 62954/00, Judgment final on 26/08/2009, [CM/ResDH\(2015\)238](#)  
(see Appendix 3)

” **Destruction of Roma homes** : resulting in living conditions contrary to Article 3 ; lack of an effective remedy ; discrimination ; lack of a fair trial within a reasonable time (Articles 3, 6 § 1, 8, 13 et 14, Article 1 of Protocol No. 1)

**Final resolution:** Amounts awarded as just satisfaction were paid. All of the applicants had left the village after the violence in 1991. In the framework of an Action Plan for Giurgiu County, the county authorities adopted different programmes and projects to promote non-discrimination of Roma population and to raise awareness, in particular of teaching staff: in 2007, the County School Inspectorate has implemented the project “The School Open to Community”; other measures aimed at promoting Roma participation in local economic, social, cultural and political life. In 2011, the National Agency for Roma implemented a project on increasing socio-economic participation of vulnerable groups by promoting professional training. An evaluation of all these measures in September 2011 showed that the Roma population was fully integrated in the socio-economic life of the community. To prevent future conflicts, local action plans have been developed in line with the “Strategy of the Government for the inclusion of citizens belonging to the Roma minority for the period 2012-2020”. The Strategy provides for an internal mechanism of periodic review of the situation of Roma at national level and was revised in 2015. An Interministerial Committee in which all central institutions involved are represented will monitor the implementation of the Strategy. The Committee Secretariat is operated by the General Secretariat of Government and the Cabinet of the Prime Minister.

### ■ RUS / Alekseyev

Application No. 4916/07, judgment final on 11/04/2011, enhanced supervision  
(see Appendix 2)

” **Repeated bans on gay marches**: repeated bans on the holding of gay-rights marches and pickets, and enforcement of the ban by dispersing events held without authorisation and by finding the participants guilty of an administrative offence; absence of effective remedies (Articles 14 and 13 in conjunction with Article 11)

**CM decision:** Since the judgment was rendered in 2011, the CM has repeatedly expressed concern with regard to the fact that the applicant has not been able to hold events similar to those at issue in the judgment in Moscow, and has noted that this situation appears closely connected with the issue of general measures.

As regards general measures, attention has focused on practice in the light notably of statistical information on the holding of public events by LGBT persons, the effects, especially in the light of the indications given by the Supreme Court and the Constitutional Court, of the 2013 federal law prohibiting “homosexual propaganda among minors” and the effects of the new Code of Administrative procedure adopted in 2015.

When examining the situation in June 2015, the CM noted that the low percentage of events announced which could eventually take place (around 5%) was a source of serious concern and the authorities were urged to take concrete measures to remedy the situation. Among these measures, some shall ensure that the abovementioned 2013 federal law does not constitute an obstacle to the holding of events and the freedom of association. The CM invited the authorities to provide a comprehensive action plan, including awareness raising measures, to ensure the effective right to peaceful assembly and concrete information on how judicial practice is developing, including measures to harmonise divergent practice. The CM noted with satisfaction that the new Code of Administrative Procedure ensures that disputes concerning the holding of public events can be decided before the planned event.

## S. Cooperation with the European Court and respect of right to individual petition

### BEL / Trabelsi

Application No. 140/10, judgment final on 16/02/2015, enhanced supervision  
(see Appendix 2)

» **Expulsion of a Tunisian national in violation of an interim measure indicated by the European Court** : expulsion of the applicant to the United States where he faces risk of irreducible life sentence, intervened in spite of an interim measure indicated by the European Court of Human Rights (Article 3 and 34).

**CM decision:** In December 2015, the CM examined the action plan of 20 December 2015 submitted by the Belgian authorities. As found by the European Court, the CM noted that the Belgian authorities deliberately breached the interim measure indicated by the Court not to proceed with the extradition of the applicant before the end of the proceedings before it, thus irreversibly lowering the level of protection of the rights set out in Article 3 of the Convention which the applicant had endeavoured to uphold by lodging his application with the Court.

As regards individual measures, the CM noted the recent request from the Belgian authorities of new diplomatic assurances from the United States authorities. It therefore invited them to ensure a close follow-up of this request and to inform it of any development in this respect. The CM also requested to be informed of any development concerning the payment of just satisfaction so that this question can be assessed with a view to the next examination of this case.

Concerning general measures, the CM noted the measures taken, but requested the Belgian authorities to demonstrate how they are likely to prevent deliberate non-compliance with an interim measure indicated by the Court. In this regard, the CM invited the highest authorities of the State to make the commitment that no

deliberate non-compliance with interim measures indicated by the European Court will be tolerated.

The CM decided to resume consideration of the individual measures in March 2016 in the light of the further information to be provided by the authorities.

### ■ ITA / Ben Khemais (group)

Application No. 246/07, judgment final on 06/07/2009, [CM/ResDH\(2015\)204](#)  
(see *Appendix 3*)

#### ” Expulsion to Tunisia in spite of the risk of ill-treatment and failure to comply with an interim measure (Articles 3 and 34)

**Final resolution:** The expulsion orders were called off in respect of all the applicants and none of them has applied for a residence permit in Italy. In all cases of this group, the just satisfaction awarded was paid to the applicants.

As regards general measures, the Ministry of Justice sent a circular to all Italian courts of appeal stressing the obligation to comply with interim measures indicated by the Court under Rule 39.

The Court of cassation in its decision No. 10636 of 3 May 2010 held that justices of the peace should assess the concrete risks that an irregular immigrant would face in his country of origin before an expulsion order can be executed. The same applies in appeal proceedings lodged against an expulsion order for international terrorism.

### ■ RUS / Garabayev (group)

Application No. 38411/02, judgment final on 30/01/2008, enhanced supervision  
(see *Appendix 2*)

#### ” Various forms of removal and disappearances of applicants and failure to comply with interim measures: extradition or expulsion without assessment of the risk of ill-treatment, unclear legal provisions for ordering and extending detention with a view to extradition, defective judicial review of the lawfulness of detention (Articles 3, 5 and 13); kidnapping and forcible transfers of applicants to Tajikistan or Uzbekistan, in some instances with involvement of Russian State agents and in violation of the Court’s indications under Rule 39 (Article 34)

**CM decisions:** The first responses to the violations established addressed the risks of extradition or expulsion in violation of the ECHR and issues of detention. These responses included references to changes of prosecutor, government and court practice, including guidance from the Constitutional Court and the Supreme Court, and amendments to the Code of Criminal Procedure.

Following a number of judgments and incidents involving the disappearance of applicants, starting with the *Iskandarov* judgment in 2010, the CM’s attention has been focused on this particular problem all the more so as many of the applicants concerned were eventually found in prison in the state seeking extradition, and as the Court found in a number of cases that the illegal transfers of the applicants could not have taken place without the knowledge and passive or active involvement of the Russian authorities. The CM thus called upon the Russian authorities to address this worrying and unprecedented situation, including by adopting protective measures

for persons at risk and ensuring that all incidents are effectively investigated, in particular to establish the fate of the disappeared. In this context the CM and the Court (*Savridin Dzhurayev* judgment) have highlighted the necessity of diplomatic efforts to ensure that those who have ended up in prison in Tajikistan and Uzbekistan are not subjected to treatment contrary to Article 3.

Resuming examination of this group in June 2015, the CM welcomed the regular information provided on measures to protect applicants against the risk of extradition or expulsion in violation of Article 3. However, it noted with concern that a number of applicants may remain in detention pending expulsion notwithstanding the fact that such removal is not possible having been found by the European Court of Human Rights to be in breach of Article 3.

As regards the applicants removed to Tajikistan and Uzbekistan in violation of the Convention, the CM found that the requests for information sent by the Russian authorities to the Tajik and Uzbek authorities were not sufficient to protect against the risks of ill-treatment. Therefore, it reiterated its call for further initiatives to obtain regular access, for monitoring purposes, to the applicants who were detained in these countries, either by Russian diplomatic personnel or by representatives of reputable and independent national and international organisations.

As regards the investigations into the incidents of disappearance/abductions which the CM has followed closely, the CM expressed grave concern that the fate of several applicants still remained unknown. More generally, the CM noted with concern that the material submitted had not established that a Convention-compliant investigatory response had been given in all cases, permitting to reconcile the applicants' statements given in prison in Uzbekistan and Tajikistan with other material, in particular the one available from the Court's judgments, and taking into account the applicants' vulnerable situation.

As to general measures, the CM assessed the response given to its call for automatic protection of persons facing a risk of abduction (in particular organization of a procedure aiming at granting, if necessary "witness protection"). The CM noted the information submitted about procedures put in place to inform applicants of the possibility to seek such protection, but considered that the effectiveness of the measures remained to be seen and encouraged the Russian authorities to provide regular updates concerning their implementation.

As regards the prevention of the unlawful practice of abductions and forcible removals, the CM called upon the authorities to continue to provide information on other relevant measures, in addition to the investigatory efforts, planned or taken by all competent State authorities.

Yet a further incident of disappearance was reported in May 2015 concerning four applicants in the *Nizamov and Others* case. The results of the investigations launched by the authorities were examined by the CM in July and September 2015 but at the last meeting the fate of the four applicants remained unknown and the CM thus called upon the authorities to continue their efforts.



## ■ SVK / Labsi

Application No. 33809/08, judgment final on 24/09/2012, enhanced supervision  
(see Appendix 2)

### ” Expulsion in violation of Article 3 ; failure to comply with interim measures:

Expulsion of a person suspected of terrorist activities from the Slovak Republic to Algeria on 19 April 2010, despite a real risk of being subjected to treatment contrary to Article 3; occurring despite an interim measure ordered by the Court under Rule 39 of its Rules, leading to a violation also of the right to individual petition as the level of protection that the Court was able to afford was irreversibly reduced and as the Court was prevented from protecting the applicant against treatment contrary to Article 3; also lack of suspensive effect of appeals against expulsion to the Constitutional Court (Article 13)

**Action plan:** In response to the CM' invitation of December 2014, the authorities provided a revised action plan on 21/8/2015, with detailed information on individual and general measures taken and envisaged with a view to complying with the Court's judgment in this case. This information is being assessed.

## T. Inter-State and related case(s)

## ■ RUS / Georgia

Application No. 13255/07, Judgment final on 03/07/2014, Enhanced supervision

” **Arrest, detention and expulsion from the Russian Federation of large numbers of Georgian nationals from the end of September 2006 until the end of January 2007:** the Court found that, from October 2006, a coordinated policy of arresting, detaining and expelling Georgian nationals, amounting to administrative practice, had been implemented in the Russian Federation.

**Action plan:** The Russian authorities submitted initial information on 22 October 2015 (DH-DD(2015)1114) and an action plan on 17 December 2015 (DH-DD(2015)1383). The Georgian authorities submitted an analysis of the judgment which was circulated on 8 December 2015 (DH-DD(2015)1323). The question of the application of Article 41 remains pending before the Court. The case is foreseen for examination by the CM in March 2016.

## ■ TUR / Cyprus

Application No. 25781/94, judgment final on 10/05/2001, enhanced supervision  
(see Appendix 2)

” **Fourteen violations linked with the situation in the northern part of Cyprus** concerning the Greek Cypriots missing persons and their families, the homes and properties of displaced persons, the living conditions of Greek Cypriots in the Karpas region of the northern part of Cyprus, and the rights of Turkish Cypriots living in the northern part of Cyprus (Articles 8 and 13, Article 1 of Protocol No. 1, Articles 3, 8, 9, 10 and 13, Articles 1 and 2 of Protocol No. 1, Articles 2, 3, 5 and 6)

**And**

## **TUR / Varnava**

Application Nos. 25781/94 and 16064/90, judgments final on 10/05/2001 and 18/09/2009, enhanced supervision  
(see Appendix 2)

” **Missing Greek Cypriots:** lack of effective investigations into the fate of nine Greek Cypriots who disappeared during the Turkish military operations in Cyprus in 1974.

**CM Decisions:** In accordance with the examination calendar defined in December 2014, the CM resumed in June 2015 its examination of outstanding questions with respect to the part of the case which concerns persons still missing following the Turkish military intervention in 1974. A summary of earlier developments is presented in AR 2014.

The CM welcomed the progress made by the Committee on Missing Persons in Cyprus (CMP) in the search for and the identification of the missing persons and noted that 2014 had been a landmark year as regards the number of persons identified and, within the context of the supervision of these judgments, reiterated their full support for the CMP's work. The CM recalled, due to the passage of time, the necessity for the Turkish authorities to adopt a proactive approach to providing the CMP with all the assistance it needs, including notably access to military zones and information from military archives, to continue to achieve tangible results as quickly as possible.

The CM also noted with interest the progress achieved in the investigations conducted into the deaths of identified persons and invited the authorities to submit additional information on the two investigations referred to during the meeting - including in the case of Hadjipantelli, one of the applicants in the *Varnava* case - and to keep the CM informed of progress in all investigations in line with the Court's settled case-law.

As to the other missing persons at issue in the *Varnava* case, the CM noted the information regarding the identification of Andreas Varnava and on the opening of an investigation into his case. It invited the authorities to continue to keep it informed of the progress of this investigation, as well as on the individual measures taken in respect of the seven other persons who are still missing.

In September 2015, the CM, pursuing its examination of one of the other remaining aspects of the case relating to the property rights of enclaved Greek Cypriots and their heirs, expressed its appreciation of the measures taken. The CM indicated, however, that it wished to examine the possible consequences on these questions of the separate judgment of 12 May 2014 in the present case on the issue of just satisfaction. Consequently it decided to come back to this question in June 2016 following the debate foreseen in December 2015 on the impact of this judgment in the context of the discussion on the property rights of displaced persons.

At both meetings, in June and September 2015, the CM recalled the unconditional obligation to pay the just satisfaction awarded by the European Court and reiterated its invitation to the Turkish authorities to pay the sums awarded in the judgment of 12 May 2014.

In December 2015 the CM agreed to postpone consideration of the case of *Cyprus v. Turkey* and, accordingly, agreed to a modified time-table for the examination of this case in 2016.

#### ■ **TUR / Xenides-Arestis (group)**

Application No. 46347/99, judgments final on 22/03/2006, 23/05/2007, enhanced supervision (see Appendix 2)

” **Violation of property rights of displaced Greek Cypriots:** continuous denial of access to property in the northern part of Cyprus and consequent loss of control thereof and, in some cases, also violation of the applicants’ right to respect for their homes (Article 1 of Protocol No. 1 and Article 8 of the Convention)

**And**

#### ■ **TUR / Varnava**

Application No. 16064/90, judgment final on 18/09/2009, enhanced supervision (see Appendix 2)

” **Missing Greek Cypriots:** lack of effective investigations into the fate of nine Greek Cypriots who disappeared during the Turkish military operations in Cyprus in 1974

**CM Decisions:** The absence of payment of the just satisfaction awarded in the present cases was considered by the CM at its June, September and December meetings. The CM firmly insisted on Turkey’s unconditional obligation to pay the just satisfaction awarded and exhorted the authorities to pay without further delay. In June, it also invited the Secretary General to raise this issue in his contacts with the Turkish authorities, calling on them to take the necessary measures for payment. In September, the CM also encouraged the authorities of the member States to do the same.

*Nota bene: The problems of substance raised with respect to the property rights of displaced persons following Turkey’s military intervention in 1974 and their right to their homes, as well as the problems linked with the establishment of the fate of missing persons, are presently dealt with in the context of the case Cyprus v. Turkey.*





## Appendix 6 – Brussels Declaration on the implementation of the European Convention on Human Rights

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### High-level Conference on the “Implementation of the European Convention on Human Rights, our shared responsibility”

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#### Brussels Declaration 27 March 2015

*The High-level Conference meeting in Brussels on 26 and 27 March 2015 at the initiative of the Belgian Chairmanship of the Committee of Ministers of the Council of Europe (“the Conference”):*

Reaffirms the deep and abiding commitment of the States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and their strong attachment to the right of individual application to the European Court of Human Rights (“the Court”) as a cornerstone of the system for protecting the rights and freedoms set forth in the Convention;

Acknowledges the extraordinary contribution of the Convention system to the protection and promotion of human rights in Europe since its establishment and reaffirms its central role in maintaining democratic stability across the Continent;

Recalls, in this respect, the interdependence between the Convention and the other activities of the Council of Europe in the field of human rights, the rule of law and democracy, the objective being to develop the common democratic and legal space founded on respect for human rights and fundamental freedoms;

Reaffirms the principles of the Interlaken, Izmir and Brighton Declarations and welcomes the very encouraging results achieved to date by the Council of Europe in the framework of the reform of the Convention system, through the implementation of these declarations;

Welcomes, in particular, the efforts of the Court as regards the swift implementation of Protocol No. 14 to the Convention, which entered into force on 1 June 2010, and that the backlog of manifestly inadmissible cases is expected to be cleared in 2015;

Welcomes, in the light of the positive results obtained, the new working methods of the Committee of Ministers for the supervision of the execution of the Court's judgments, which entered into force on 1 January 2011 and which inter alia strengthen the principle of subsidiarity;

Reiterates the subsidiary nature of the supervisory mechanism established by the Convention and in particular the primary role played by national authorities, namely governments, courts and parliaments, and their margin of appreciation in guaranteeing and protecting human rights at national level, while involving National Human Rights Institutions and civil society where appropriate;

Underlines the obligations of States Parties under Article 34 of the Convention not to hinder the exercise of the right to individual application, including by observing Rule 39 of the Rules of the Court regarding interim measures, and under Article 38 of the Convention to furnish all necessary facilities to the Court during the examination of the cases;

Underlines the importance of Article 46 of the Convention on the binding force of the Court's judgments, which stipulates that the States Parties undertake to abide by the final judgments of the Court in any case to which they are parties;

Stresses the importance of further promoting knowledge of and compliance with the Convention within all the institutions of the States Parties, including the courts and parliaments, pursuant to the principle of subsidiarity; Recalls in this context that the execution of the Court's judgments may require the involvement of the judiciary and parliaments;

Whilst noting the progress achieved by States Parties with regard to the execution of judgments, emphasises the importance of the full, effective and prompt execution of judgments and of a strong political commitment by the States Parties in this respect, thus strengthening the credibility of the Court and the Convention system in general;

Is convinced that further to the improvements already carried out, emphasis must now be placed on the current challenges, in particular the repetitive applications resulting from the non-execution of Court judgments, the time taken by the Court to consider and decide upon potentially well-founded cases, the growing number of judgments under supervision by the Committee of Ministers and the difficulties of States Parties in executing certain judgments due to the scale, nature or cost of the problems raised. To this end, additional measures are necessary in order to:

- i. continue to enable the Court to reduce the backlog of well-founded and repetitive cases and to rule on potentially well-founded new cases, particularly those concerning serious violations of human rights, within a reasonable time;
- ii. ensure the full, effective and prompt execution of the judgments of the Court;
- iii. guarantee full and effective supervision of execution of all judgments by the Committee of Ministers and develop, in co-operation with States Parties, bilateral dialogue and assistance by the Council of Europe in the execution process.

*The Conference therefore:*

- (1) Reaffirms the strong attachment of the States Parties to the Convention to the right of individual application;
- (2) Reiterates the firm determination of the States Parties to fulfil their primary obligation to ensure that the rights and freedoms set forth in the Convention and its protocols are fully secured at national level, in accordance with the principle of subsidiarity;
- (3) Invites each stakeholder to ensure that the necessary means are available to fulfil its role in the implementation of the Convention, in conformity with the Convention providing for shared responsibility between the States Parties, the Court and the Committee of Ministers;
- (4) Welcomes the work carried out by the Court in particular regarding the dissemination of its judgments and decisions, through its information notes, its practical guide on admissibility, as well as its case-law guides and thematic factsheets;
- (5) Reaffirms the need to maintain the independence of the judges and to preserve the impartiality, quality and authority of the Court;
- (6) Acknowledges the role of the Registry of the Court in maintaining the highest efficiency in the management of applications and in the implementation of the reform process;
- (7) Invites the Court to remain vigilant in upholding the States Parties' margin of appreciation;
- (8) Stresses the need to find, both at the level of the Court and in the framework of the execution of judgments, effective solutions for dealing with repetitive cases;
- (9) Encourages in this regard States Parties to give priority to alternative procedures to litigation such as friendly settlements and unilateral declarations;
- (10) Recalling Article 46 of the Convention, stresses that full, effective and prompt execution by the States Parties of final judgments of the Court is essential;
- (11) Reiterates the importance of the Committee of Ministers respecting the States Parties' freedom to choose the means of full and effective execution of the Court's judgments;
- (12) Calls for enhancing, at the level of both the Committee of Ministers and the States Parties, in accordance with the principle of subsidiarity, the effectiveness of the system of supervision of the execution of the Court's judgments;
- (13) Encourages the bodies of the Council of Europe to increase and improve their activities of co-operation and bilateral dialogue with States Parties with regard to the implementation of the Convention, including by facilitating access to information on good practices, and invites States Parties to make full use of the said activities;
- (14) Calls on the States Parties to sign and ratify Protocol No. 15 amending the Convention as soon as possible and to consider signing and ratifying Protocol No. 16;
- (15) Reaffirms the importance of the accession of the European Union to the Convention and encourages the finalisation of the process at the earliest opportunity;

- (16) Takes note of the work currently being carried out by the Steering Committee for Human Rights (CDDH), as a follow-up to the Brighton Declaration, on the reform of the Convention system and its long-term future, the results of which are foreseen in December 2015;
- (17) Adopts the present Declaration in order to give political impetus to the current reform process to ensure the long-term effectiveness of the Convention system.

## Action Plan:

### A. Interpretation and application of the Convention by the Court

1. Bearing in mind the jurisdiction of the Court to interpret and apply the Convention, the Conference underlines the importance of clear and consistent case-law as well as the Court's interactions with the national authorities and the Committee of Ministers, and in this regard:

- a) encourages the Court to continue to develop its co-operation and exchange of information on a regular basis with the States Parties and the Committee of Ministers, especially as regards repetitive and pending applications;
- b) welcomes the Court's dialogue with the highest national courts and the setting-up of a network facilitating information exchange on its judgments and decisions with national courts, and invites the Court to deepen this dialogue further;
- c) welcomes the intention expressed by the Court to provide brief reasons for the inadmissibility decisions of a single judge, and invites it to do so as from January 2016;
- d) invites the Court to consider providing brief reasons for its decisions indicating provisional measures and decisions by its panel of five judges on refusal of referral requests.

2. Recalling the remaining challenges, including the repetitive cases, the Conference underlines the importance of an efficient control of the observance of the engagements undertaken by States Parties under the Convention and, in this regard, supports:

- a) further exploration and use of efficient case-management practices by the Court in particular its prioritisation categories for the examination of cases, according to, among other things, their level of importance and urgency, and its pilot-judgment procedure;
- b) the continued consideration by the Court, in consultation with the Committee of Ministers and the States Parties, in particular through their government agents and legal experts, of the improvement of its functioning, including for appropriate handling of repetitive cases, while ensuring timely examination of well-founded, non-repetitive cases;
- c) greater transparency on the state of the proceedings before the Court in order that the parties can have better knowledge of their procedural progress.



## B. Implementation of the Convention at national level

The Conference recalls the primary responsibility of the States Parties to ensure the application and effective implementation of the Convention and, in this regard, reaffirms that the national authorities and, in particular, the courts are the first guardians of human rights ensuring the full, effective and direct application of the Convention – in the light of the Court’s case law – in their national legal system, in accordance with the principle of subsidiarity.

### **The Conference calls upon the States Parties to:**

1. Prior to and independently of the processing of cases by the Court:
  - a) ensure that potential applicants have access to information on the Convention and the Court, particularly about the scope and limits of the Convention’s protection, the jurisdiction of the Court and the admissibility criteria;
  - b) increase efforts at national level to raise awareness among members of parliament and improve the training of judges, prosecutors, lawyers and national officials on the Convention and its implementation, including as regards the execution of judgments, by ensuring that it constitutes an integral part of their vocational and in-service training, where relevant, including by having recourse to the Human Rights Education for Legal Professionals (HELP) programme of the Council of Europe, as well as to the training programmes of the Court and to its publications;
  - c) promote, in this regard, study visits and traineeships at the Court for judges, lawyers and national officials in order to increase their knowledge of the Convention system;
  - d) take appropriate action to improve the verification of the compatibility of draft laws, existing laws and internal administrative practice with the Convention, in the light of the Court’s case law;
  - e) ensure the effective implementation of the Convention at national level, take effective measures to prevent violations and to provide effective domestic remedies to address alleged violations of the Convention;
  - f) consider making voluntary contributions to the Human Rights Trust Fund and to the Court’s special account to allow it to deal with the backlog of all well-founded cases, and continue to promote temporary secondments to the Registry of the Court;
  - g) consider the establishment of an independent National Human Rights Institution.
2. After the Court’s judgments:
  - a) continue to increase their efforts to submit, within the stipulated deadlines, comprehensive action plans and reports, key tools in the dialogue between the Committee of Ministers and the States Parties, which can contribute also to enhanced dialogue with other stakeholders, such as the Court, national parliaments or National Human Rights Institutions;

- b) in compliance with the domestic legal order, put in place in a timely manner effective remedies at domestic level to address violations of the Convention found by the Court;
- c) develop and deploy sufficient resources at national level with a view to the full and effective execution of all judgments, and afford appropriate means and authority to the government agents or other officials responsible for co-ordinating the execution of judgments;
- d) attach particular importance to ensuring full, effective and prompt follow-up to those judgments raising structural problems, which may furthermore prove relevant for other States Parties;
- e) foster the exchange of information and best practices with other States Parties, particularly for the implementation of general measures;
- f) promote accessibility to the Court's judgments, action plans and reports as well as to the Committee of Ministers' decisions and resolutions, by:
  - developing their publication and dissemination to the stakeholders concerned (in particular, the executive, parliaments and courts, and also, where appropriate, National Human Rights Institutions and representatives of civil society), so as to involve them further in the judgment execution process;
  - translating or summarising relevant documents, including significant judgments of the Court, as required;
- g) within this framework, maintain and develop the financial resources that have made it possible for the Council of Europe, since 2010, to translate a large number of judgments into national languages;
- h) in particular, encourage the involvement of national parliaments in the judgment execution process, where appropriate, for instance, by transmitting to them annual or thematic reports or by holding debates with the executive authorities on the implementation of certain judgments;
- i) establish "contact points", wherever appropriate, for human rights matters within the relevant executive, judicial and legislative authorities, and create networks between them through meetings, information exchange, hearings or the transmission of annual or thematic reports or newsletters;
- j) consider, in conformity with the principle of subsidiarity, the holding of regular debates at national level on the execution of judgments involving executive and judicial authorities as well as members of parliament and associating, where appropriate, representatives of National Human Rights Institutions and civil society.

### C. Supervision of the execution of judgments

The Conference underlines the importance of the efficient supervision of the execution of judgments in order to ensure the long-term sustainability and credibility of the Convention system and, for this purpose:

1. Encourages the Committee of Ministers to:

- a) continue to use, in a graduated manner, all the tools at its disposal, including interim resolutions, and to consider the use, where necessary, of the procedures foreseen under Article 46 of the Convention, when the conditions have been satisfied;
  - b) develop, in this context, the resources and tools available, including by adding appropriate political leverage to its technical support, in order to deal with the cases of non-execution;
  - c) promote the development of enhanced synergies with the other Council of Europe stakeholders within the framework of their competencies – primarily the Court, the Parliamentary Assembly and the Commissioner for Human Rights;
  - d) explore possibilities to further enhance the efficiency of its Human Rights meetings, including - but not limited to - the chairmanship as well as the length and frequency of meetings, while reaffirming the intergovernmental nature of the process;
  - e) consider extending “Rule 9” of its Rules for the supervision of the execution of judgments and of the terms of friendly settlements to include written communications from international organisations or bodies identified for this purpose by the Committee of Ministers, while appropriately ensuring the governments’ right of reply;
  - f) encourage, as required, the presence in its Human Rights meetings of representatives of national authorities who have competence, authority and expertise in the subjects under discussion;
  - g) consider thematic discussions on major issues relating to the execution of a number of judgments, so as to foster an exchange of good practices between States Parties facing similar difficulties;
  - h) take greater account, where appropriate, of the work of other monitoring and advisory bodies;
  - i) continue to increase transparency in the judgment execution process in order to promote further exchanges with all the parties involved;
  - j) support an increase in the resources of the Department for the Execution of Judgments, in order to allow it to fulfil its primary role, including its advisory functions, and to ensure co-operation and bilateral dialogue with the States Parties, by providing for more permanent personnel whose expertise would cover the national legal systems, as well as to encourage States Parties to consider the secondment of national judges or officials.
2. Encourages the Secretary General and, through him, the Department for the Execution of Judgments to:
- a) facilitate availability of information, regularly updated, on the state of the execution of judgments by improving its IT tools, including its databases and, as the Court has done, produce thematic and country factsheets;
  - b) distribute a handbook to assist States Parties in the preparation of their action plans and reports;

- c) continue the process of reflection on the recommendations of the External Audit;
  - d) enhance, when necessary, bilateral dialogue with States Parties, in particular by means of early assessment of action plans or action reports and through working meetings, involving all relevant national stakeholders, to promote, in full respect of the principle of subsidiarity, a common approach concerning judgments with regard to the measures required to secure compliance.
3. Also encourages:
- a) all the relevant Council of Europe stakeholders to take into account to a larger extent issues relating to the execution of judgments in their programmes and co-operation activities and, to this end, to establish appropriate links with the Department for the Execution of Judgments;
  - b) all intergovernmental committees of the Council of Europe to take pertinent aspects of the Convention into consideration in their thematic work;
  - c) the Secretary General to evaluate the Council of Europe co-operation and assistance activities relating to the implementation of the Convention so as to move towards more targeted and institutionalised co-operation;
  - d) the Secretary General to continue, on a case-by-case basis, to use his/her authority in order to facilitate the execution of judgments raising complex and/or sensitive issues at the national level, including through the exercise of the powers entrusted to him/her under Article 52 of the Convention;
  - e) the Commissioner for Human Rights, in the exercise of his/her functions – and in particular in his/her country visits – to continue to address with the States Parties, on a case-by-case basis, issues relating to the execution of judgments;
  - f) the Parliamentary Assembly of the Council of Europe to continue to produce reports on the execution of judgments, to organise awareness-raising activities for members of national parliaments on implementation of the Convention and to encourage national parliaments to follow in a regular and efficient manner the execution of judgments.

### Implementation of the Action plan:

In order to implement this Action Plan, the Conference:

- (1) first and foremost calls on the States Parties, the Committee of Ministers, the Secretary General and the Court to give full effect to this plan;
- (2) calls on the Committee of Ministers to decide, at the Ministerial Session on 19 May 2015, to take stock of the implementation of, and make an inventory of good practices relating to, Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights and, if appropriate, provide for updating the Recommendation in the light of practices developed by the States Parties;
- (3) calls on the States Parties to adopt, in the light of this Action Plan, possible new measures to improve their judgment execution process and to provide the Committee of Ministers with information on this subject before the end of June 2016;

- (4) encourage all States Parties to examine, together with the Department for the Execution of Judgments, all their pending cases, identify those that can be closed and the remaining major problems and, on the basis of this analysis, work towards progressively absorbing the backlog of pending cases;
- (5) calls, in particular, on the Committee of Ministers and the States Parties to involve, where appropriate, civil society and National Human Rights Institutions in the implementation of the Action Plan;
- (6) invites the Committee of Ministers to evaluate, while respecting the calendar set out in the Interlaken Declaration, the extent to which implementation of this Action Plan has improved the effectiveness of the Convention system. On the basis of this evaluation, the Committee of Ministers should decide, before the end of 2019, on whether more far-reaching changes are necessary;
- (7) asks the Belgian Chairmanship to transmit this Declaration and the Proceedings of the Brussels Conference to the Committee of Ministers;
- (8) invites the future Chairmanships of the Committee of Ministers to monitor implementation of this Action Plan.



## Appendix 7 – Actions and developments relevant for execution

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### A. Conclusions of seminars, workshops, round tables...

#### Round Table on “Reopening of proceedings following a judgment of the European Court of Human Rights”

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Strasbourg, 5-6 October 2015

##### Conclusions

On the 5-6 October 2015, the Council of Europe (Department for the Execution of Judgments) organised a Round Table in Strasbourg dedicated to the reopening of proceedings following a judgment of the European Court of Human Rights.

The overall objective of the Round Table is to analyse the reopening of proceedings as a means of ensuring *restitutio in integrum* following a judgment of the European Court, to clarify the scope of the obligation to adopt such a measure, its limitations and alternatives.

##### The round-table pointed out:

- ▶ generally speaking, the ongoing interest of the Recommendation (2000)2 and (2004)6 so as to ensure that national law and practice permit effectively to guarantee the *restitutio in integrum* in the event of violations of the Convention;
- ▶ that the reopening of proceedings remains an effective way, and sometimes the only way, to that end;

- ▶ that the assessment of the necessity of the reopening takes into account the criteria adopted in the Recommendation (2000)2;
- ▶ the necessity to ensure that the reopened proceedings can fully address the shortcomings found by the Court;
- ▶ *as regards criminal proceedings*, that the vast majority of states have legal provisions ensuring the possibility to ask for reopening of the proceedings impugned by the Court;
- ▶ the utility of the exchange of views in order to provide inspiration to states that still have not adopted such provisions in their reform efforts;
- ▶ the importance to have adequate procedures in place, notably in order to ensure: that the deadlines for appeal are reasonable; that the applicant's detention pending the new proceedings is not only based on the judgment but also on grounds recognized in respect of remand detention; that the consequences of the reopening are correctly determined, notably to avoid the risk of *reformatio in pejus*;
- ▶ the positive experience of states that have extended the effects of reopening to co-defendants, or have also opened the possibility to obtain the reopening to friendly settlements and unilateral declarations;
- ▶ *as regards civil proceedings*, the range of systems established, some states having broadly accepted the possibility of reopening, some others in a more *ad hoc* manner, some others relying on other means than reopening to address the consequences of the violations;
- ▶ the utility of the exchange of views in order to inspire states to ensure there are, in all situations where reopening is not provided for by the law, or is excluded for other reasons (legal certainty, respect of *res judicata* or the interests of *bona fide* third parties), alternative possibilities to obtain the *restitutio in integrum*;
- ▶ the particular interest in these situations of the possibility to get compensation for loss of opportunity;
- ▶ the close link between the findings of the Court under Article 41 and the necessity of reopening;
- ▶ the positive experience of states that have extended the effects of the reopening, or have also opened the possibility to obtain the reopening to friendly settlements and unilateral declarations;
- ▶ furthermore, the positive experience of states that have extended the possibilities of reopening to the Constitutional Court.

The round-table finally expressed the hope that these conclusions and the detailed exchange of views will inspire the current reflection on reopening as part of the CDDH (notably through the subcommittee DH-GDR-F) as well as the current work on a *Vademecum* on the execution.



# Steering Committee for Human Rights' report on the longer-term future of the system of the European Convention on Human Rights

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84th meeting, Strasbourg

7-11 December 2015

*(Extract)*

## Conclusions

169. As regards the execution of judgments, the CDDH concludes the following:

- i) The CDDH recalls that the overwhelming majority of Court judgments are executed without any particular difficulty. However, the execution of some cases is problematic for reasons of a more political nature, while the execution of some other cases is problematic for reasons of a more technical nature due notably to the complexity of the execution measures or the financial implications of the judgment. The CDDH stresses that the execution of Court judgments raising structural or systemic problems is key to alleviating the Court's burden and to preventing future similar violations.
- ii) The CDDH recalls its previous work in this field and notes the importance of the detailed road-map in the Brussels Declaration on the timely execution of Court judgments, while reiterating that there could be no exceptions to the obligation under Article 46 of the Convention to abide by judgments of the Court.
- iii) The CDDH supports the need for an enhanced authority of all stakeholders in charge of the execution process at national level. It highlights that, in the next biennium, it will focus on this question in the framework of its work on the Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.
- iv) The CDDH considers that the Court could indicate more clearly in its judgments which elements were actually problematic and constituted the direct sources of the finding of the violation. Regarding the possibility of the Court giving specific indications "as to the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist", the CDDH reaffirms its previous conclusions in that respect. The CDDH does not support a regular recourse to this practice, beyond these exceptional cases, where the nature of the violation found may be such as to leave no real choice as to the measure(s), in particular individual ones, required to remedy it.
- v) Regarding the issue of just satisfaction awarded by the Court, the CDDH considers that the criteria applied by the Court need to be more transparent and take appropriately into account national economic circumstances. This could prevent applicants from lodging applications for financial rather than substantive reasons, a situation with repercussions on the Court's docket. Regarding the supervision of the execution of the payment of just satisfaction, the CDDH reiterates that it could be useful to consider updating or even upgrading the memorandum on "monitoring of the payment of sums

awarded by way of just satisfaction: an overview of the Committee of Ministers' present practice" (document CM/Inf/DH(2008)7 final, 15 January 2009).

- vi) Regarding the issue of the reopening of proceedings following a judgment by the European Court, the CDDH notes that this is only one of the means to secure to the applicant *restitutio in integrum* also on the basis of the criteria adopted in Recommendation (2000)2. In light of the exchange of views at the 8th meeting of the DH-GDR regarding the issue of reopening of civil and criminal proceedings as well as the Round Table organised by the Department for the Execution of Judgments and their follow-up, States Parties may draw inspiration, where possible, from their respective experience and solutions found.

170. As regards the supervision of execution, the CDDH concludes the following:

- i) There was no support to transfer some or all of the Committee of Ministers' current supervisory functions to other organs. The CDDH highlights that what is required is to consider ways and means of supplementing the technical support with a suitable political lever for meeting the challenges of the process.
- ii) Furthermore, the CDDH considers that it is necessary to further examine enhancing procedures for the implementation of judgments related to serious large-scale violations committed in the context of complex problems that call for political solutions and peaceful settlement. The CDDH stresses the need for the Committee of Ministers to ensure adequate coordination and synergies with other instances and activities of the Council of Europe in these cases.
- iii) At the same time it is necessary to ensure that the Department for the Execution of Judgments is able to fulfil its primary role and assist member States in the execution process. With regard to the relevant parts in the Brussels Declaration (points C.2. and C.1.j)) the CDDH, for its part, would underline the significance of the following (interrelated) aspects:
  - to ensure that the Department for the Execution of Judgments has sufficient capacity, including resources, to process effectively the high number of cases decided by the Court and to conduct the enhanced dialogue through bilateral consultations between the national authorities and the Department regarding cases revealing structural or complex issues. As for the issue of staffing, the CDDH would note the desirability of having one or more lawyers from all States Parties active in the Department. Their knowledge of the national legal system could facilitate a better understanding of the action plans and reports submitted by States Parties;
  - there is a need for the Department for the Execution of Judgments to consider further streamlining and adjusting its working methods to ensure that sufficient time is allocated for the early assessment of all action plans and reports. When States Parties have satisfactorily demonstrated in their action reports that all measures necessary in response to a judgment have been taken, those cases must be closed without delay.
- iv) The CDDH does not retain a proposal to extend the Committee of Ministers' supervisory role to include the implementation of unilateral declarations

containing specific undertakings, which go beyond the payment of just satisfaction and do not constitute repetitive cases.

- v) The CDDH reiterates its support for the extension of Rule 9 of the Committee of Ministers' Rules for supervision of execution of judgments and terms of friendly settlements to include written communications from international organisations or bodies.
- vi) The CDDH, also in view of the call of the Brussels Declaration for enhanced synergies between all Council of Europe actors regarding the execution of judgments, stresses the importance of adequate capacity in the field of co-operation and assistance activities to contribute to the prompt solution of structural and systemic problems revealed by violations found by the Court.

## **B. Special actions of member States to improve the implementation of the Convention**

### **Armenia: Launching of the Official Website of the Armenian Government Agent Office**

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**30 September 2015**

The official website of the Armenian Government Agent before the European Court of Human Rights was launched on 30 September 2015. This is the first initiative of this kind among Council of Europe Member States. The website, created within the framework of a project engaged with the Council of Europe, aims at enhancing the efficiency of the implementation of judgments of the Court in line with the Brussels' Declaration adopted in March 2015 by the Committee of Ministers of the Council of Europe.

### **Georgia: Seminar on "Reopening of cases on the basis of judgment/decision of the European Court of Human Rights"**

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**27 and 28 October 2015**

In the framework of the Council of Europe and European Union joint programme "Application of the European Convention on Human Rights and harmonisation of national legislation and judicial practice in Georgia in line with European Standards" and in partnership with the High School of Justice, the Council of Europe organised, on 27 and 28 October 2015, a seminar on "Reopening of Cases on the Basis of Judgment/Decision of the European Court of Human Rights" for two groups of City and Appellate Court judges of criminal and civil chambers.

The seminar aimed at acquainting Georgian judges to the procedure of reopening of cases under the Recommendation No R(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. The mentioned recommendation invited the authorities to ensure that their domestic legal system contains the necessary possibilities to achieve, as far as possible, *restitutio in integrum*, and, in particular, provides adequate possibilities for re-examining cases, including reopening proceedings so that injured parties should be put in the same situation as he or she enjoyed prior to the violation of the Convention.

## Greece: A comprehensive national strategy to “tackle racism and intolerance”

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The “National Council to tackle racism and intolerance” was set up by the *Law 4356/2015*. It has an advisory role to the Government and is entrusted with the coordination of the other authorities in the field of national policies combating racism, intolerance and any kind of discrimination. The current priority of the Council is the drafting of a National Plan to combat racism and intolerance.

In addition, two prosecutors within the two biggest Greek towns (Athens and Piraeus) are especially designated to prosecute on crimes or other acts motivated by racist violence or intolerance. To this same end, experts from the Ministry of Justice, Transparency and Human Rights have participated to the meetings of the EU-FRA working group on the development of effective methods to encourage reporting and ensure proper recording of hate crimes; the experts have also attended as well two workshops on that issue organized by the Fundamental Rights Agency.

## Appendix 8 – The Committee of Ministers’ supervision of the execution of judgments and decisions – scope and procedure

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### Introduction

1. The efficiency of the execution of judgments and of the Committee of Ministers’ supervision thereof (generally, carried out at the level of the Minister’s Deputies) have been at the heart of the efforts over the last decade to guarantee the long term efficiency of the Convention system (see also Chapter III). The Committee of Ministers thus reaffirmed at its 120th session in May 2010, in the pursuit of the Interlaken process started at the Interlaken High Level Conference in February 2010 *“that prompt and effective execution of the judgments and decisions delivered by the Court is essential for the credibility and effectiveness of the Convention system and a determining factor in reducing the pressure on the Court.”* The Committee added that *“this requires the joint efforts of member States and the Committee of Ministers”*.
2. As a consequence, the Committee of Ministers instructed its Deputies to step up their efforts to make execution supervision more effective and transparent. In line herewith the Deputies adopted new modalities for the supervision process as of 1 January 2011 (see section B below). As noted in the Annual Report 2011, these new modalities proved their value and the Deputies confirmed them in December 2011. The necessity of further developments of the Committee of Ministers’ supervision procedure was discussed at the High Level Conference in Brighton in April 2012. The matter has thereafter been the object of further discussions in the Committee of Ministers, in its working party GT-REF.ECHR and in the Steering Committee for Human Rights – see also Chapter III above).
3. The above efforts and developments have not changed the main elements of the obligation to abide by the Court’s judgments. These have thus largely remained the same: redress must be provided to the individual applicant and further similar violations prevented. Certain developments have, nevertheless taken place. For instance, the continuing problem of repetitive cases has drawn the attention on the importance of prevention of new violations, including by rapidly setting up effective remedies.
4. The statistics for 2014 (see appendix 1) continue to confirm the Committee of Ministers positive assessments in 2013 and 2012 of the results of the new working methods, and notably that the priority system for the examination of cases, inherent to the new twin-track supervision procedure, enables the Committee of Ministers to focus its supervision efforts efficiently on the most important cases.

## A. Scope of the supervision

5. The main features of the Contracting States' undertaking "to abide by the final judgment of the Court in any case to which they are parties" are defined in the Committee of Ministers' Rules of Procedure<sup>317</sup> (Rule 6.2). The measures to be taken are of two types.

6. 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*.

7. The second type of measures – general measures – relate to the obligation to prevent 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 (see also §36).

8. The obligation to take individual measures and provide redress to the applicant has two aspects. The first is, for the State, to provide any just satisfaction - normally a sum of money - which the Court may have awarded the applicant under Article 41 of the Convention.

9. The second aspect relates to the fact that the consequences of a violation for the applicants are not always adequately remedied by the mere award of a just satisfaction by the Court or the finding of a violation. 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 re-opening 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 against an alien despite a real risk of torture or other forms of ill-treatment in the country of destination. The Committee of Ministers 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 No. R(2000)2)<sup>318</sup>.

10. The obligation to take general measures aims at preventing violations similar to the one(s) found and may, depending on the circumstances, imply a review of legislation, regulations and/or judicial practice. 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 procedures.

11. When examining general measures today, the Committee of Ministers pays particular attention to the efficiency of domestic remedies, in particular where the

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317. Called, since 2006, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements".

318. Cf. Recommendation No. R(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.

judgment reveals<sup>319</sup> important structural problems (see also as regards the Court Section C below). The Committee also expects competent authorities to take different provisional measures, notably to find solutions to possible other cases pending before the Court<sup>320</sup> and, more generally, to prevent as far as possible new similar violations, pending the adoption of more comprehensive or definitive reforms.

12. These developments are intimately linked with the efforts to ensure that execution supervision contributes to limit the important problem of repetitive cases in line with Recommendations CM/Rec(2004)6 and CM/Rec(2010)3 on domestic remedies and the recent developments of the Court's case-law as regards the requirements of Article 46, notably in different "pilot judgments" adopted to support on-going execution processes (see Section C below).

13. In addition to the above considerations, the scope of the execution measures required is defined in each case on the basis of the conclusions of the European Court in its judgment, considered in the light of the Court's case-law and Committee of Ministers practice<sup>321</sup>, and relevant information about the domestic situation. In certain situations, it may be necessary to await further decisions by the Court clarifying outstanding issues.

14. As regards the payment of just satisfaction, the execution conditions are usually laid down with considerable detail in the Court'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 Committee of Ministers practice on these and other frequent issues is detailed in a memorandum prepared by the Department for the execution of judgments of the Court (document CM/Inf/DH(2008)7final).

15. As regards the nature and the scope of other execution measures, whether individual or general, the judgments are generally silent. As stressed by the Court on numerous occasions, it belongs in principle to the respondent State to identify these measures under the Committee of Ministers' supervision. In this respect, national authorities may, in particular, find inspiration in the important practice developed over the years by other States, and in relevant Committee of Ministers Recommendations. In an increasing number of cases, the judgment of the Court will also seek to provide assistance – so called "judgments with indication of interest for execution (under Article 46)". In certain situations, the Court will even indicate specific execution measures (see below section C.).

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

320. Measures accepted by the Court include, besides the adoption of effective domestic remedies, also practices aiming at the conclusion of friendly settlements and/or adoption of unilateral declarations (see also the Committee of Ministers' Resolution Res(2002)59 concerning the practice in respect of friendly settlements).

321. See e.g. the judgments of the Court in the case of *Broniowski v. Poland*, judgment of 22/06/2004, § 194, in *Ramadhi v. Albania*, judgment of 13/11/2007, § 94, in *Scordino v. Italy*, judgment of 29/03/2006, § 237.

16. This situation can be explained by the principle of subsidiarity, according to which respondent States are, in principle, free to choose the means to be put in place in order to meet their obligations under the Convention. However this freedom goes hand-in-hand with the Committee of Ministers' control. As a consequence, in the course of its execution supervision, the Committee of Ministers, may adopt, if necessary, decisions or interim resolutions in view of taking stock of the execution progress, and, where appropriate, encourage or express its concerns, make Recommendations or give directions with respect to execution measures required.

17. The direct effect more and more frequently granted to the European Court's judgments by the domestic courts and national authorities, greatly facilitates the adoption of the necessary execution measures, both as regards adequate individual redress and rapid Development of domestic law and practices to prevent similar violations, including by improving the efficiency of domestic remedies. Where execution through such direct effect is not possible, other avenues will have to be pursued, most frequently legislative or regulatory.

18. The Directorate General of Human Rights and Rule of Law, represented by the Department for the Execution of Judgments of the European Court, assists the Committee of Ministers with the supervision of the measures taken by the States in the execution of the Court's judgments<sup>322</sup>. The States can, in the context of their reflection on the needed execution measures, request different forms of support from the Department (advice, legal expertise, round tables and other targeted cooperation activities).

## **B. New supervision modalities: a twin-track approach to improve prioritization and transparency**

### **Generalities**

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19. The new modalities for the Committee of Ministers' supervision, developed in response to the Interlaken process, remain within the more general framework set by the Rules adopted by the Committee of Ministers in 2006<sup>323</sup>. As from their entry into force in 2011, they have brought important changes to the working methods

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

323. The currently applicable Rules were adopted on 10/05/2006 (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*". As a result of the Russian ratification of Protocol No. 14, the rules in their entirety entered into force on 1 June 2010.



applied since 2004 in order to improve efficiency and transparency of the supervision process<sup>324</sup>.

20. The new 2011 modalities stress the subsidiary nature of the supervision and thus the leadership role that national authorities, i.e. governments, courts and parliaments must play in defining and securing rapid implementation of required execution measures.

## Identification of priorities: twin track supervision

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21. In order to meet the call for increased efficiency the new modalities provide for a new twin track supervision system allowing the Committee to concentrate on deserving cases under what is called “enhanced supervision”. Other cases will be dealt with under “standard supervision”. The new modalities thus also give more concrete effect to the existing priority requirement in the Rules (Rule 4).

22. The cases which from the outset are liable to come under “enhanced supervision” are identified on the basis of the following criteria:

- ▶ Cases requiring urgent individual measures;
- ▶ Pilot judgments;
- ▶ Judgments otherwise disclosing major structural and/or complex problems as identified by the Court and/or by the Committee of Ministers;
- ▶ Interstate cases;

The classification decision is taken at the first presentation of the case to the Committee of Ministers.

23. The Committee of Ministers may also decide at any phase of the supervision procedure to examine any case under the enhanced procedure upon request of a member State or the Secretariat (see also paragraph 32 below). Similarly, a case under enhanced supervision may subsequently be transferred to standard supervision when the developments of the national execution process no longer justify an enhanced supervision.

## Continuous supervision based on action plans/reports

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24. The new working methods of 2011 have introduced a *new, continuous supervision* of the execution process. Indeed, all cases are under the permanent supervision of the Committee of Ministers which should receive, in real time, relevant information concerning the execution progress. Insofar as, in addition, all cases are now considered as being inscribed on the agenda of all Human Rights meetings and may also be inscribed on the agenda of ordinary meetings, the Committee can respond rapidly to developments where necessary.

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324. The documents which explain the reform more in depth are presented on the Committee of Ministers web site and on the web site of the Department for the Execution of Judgments and decisions of the European Court (see notably CM/Inf/DH(2010)37 and CM/Inf/DH(2010)45 final).

25. The new modalities also confirm the development that the Committee of Ministers's supervision is to be based on action plans or *action reports* prepared by competent State authorities<sup>325</sup>. The action plans / reports present and explain the measures planned or taken in response to the violation(s) established by the European Court and should be submitted as soon as possible and, in any event, not later than 6 months after a judgment or decision has become final.

## Transparency

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26. In response to the call for increased transparency, the Committee of Ministers has decided that such plans and reports, together with other relevant information provided *will be promptly, made public (...), except where a motivated request for confidentiality is made at the time of submitting the information*, in which case it may be necessary to await the next Human Rights meeting to allow the Committee to decide the matter (see Rule 8 and decision taken at the 1100th Human Rights meeting, item "e").

27. The information received is in principle published on the web. This rule allows national parliaments, different State authorities, lawyers, representatives of civil society, national institutions for the promotion and protection of human rights, applicants and other interested persons to follow closely the development of the execution process in the different cases pending before the Committee. The applicants' submissions should in principle be limited to matters relating to the payment of just satisfaction and to possible individual measures (Rule 9).

28. As from 2013, the Committee of Ministers publishes also some 3-4 weeks before each HR meeting, the indicative list of cases proposed to be inscribed for detailed examination at the HR meeting.

## Practical modalities

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29. Under the framework of the "*standard supervision*" procedure, the Committee of Ministers' intervention is limited. Such intervention is provided for solely to confirm, when the case is first put on the agenda, that it is to be dealt with under this procedure, and, subsequently, to take formal note of action plans / reports. Developments are, however, closely followed by the Department for execution of judgments. Information received and evaluations made by the Department are circulated as rapidly as possible in order to ensure that the Committee of Ministers can promptly intervene in case of need and *transfer the case* to the "*enhanced supervision*" procedure to define appropriate responses to new developments.

30. The classification under the "*enhanced supervision*" procedure, ensures that the progress of execution is closely followed by the Committee of Ministers and facilitates the support of domestic execution processes, e.g. in the form of adoption of specific decisions or interim Resolutions expressing satisfaction, encouragement or concern, and/or providing suggestions and Recommendations as to appropriate execution measures (Rule 17). The Committee of Ministers' interventions may, depending on

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325. This system was partially put in place already in June 2009 as the Committee of Ministers formally invited States to henceforth provide, within six months of a judgment becoming final, an Action Plan or an Action Report as defined in document CM/Inf/DH(2009)29rev.

the circumstances, take other forms, such as declarations by the Chair or high-level meetings. The necessity of translating relevant texts into the language(s) of the State concerned and ensuring their adequate dissemination is frequently underlined (see also Recommendation CM/Rec(2008)2).

31. At the request of the authorities or of the Committee, the Department may also be led to contribute through various targeted cooperation and assistance activities (legislative expertise, consultancy visits, bilateral meetings, working sessions with competent national authorities, round-tables, etc.). Such activities are of particular importance for the cases under enhanced supervision.

### **Simplified procedure for the supervision of payment of just satisfaction**

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32. As regards *the payment of just satisfaction*, supervision has been simplified under the new working methods of 2011 and greater importance has been laid on applicants' responsibility to inform the Committee of Ministers in case of problems. This way, the Department for the execution of the Court's judgments limits itself in principle to register the payments of the capital sums awarded by the Court, and, in case of late payment, of the default interest due. Once this information has been received and registered the cases concerned are presented under a special heading on the Department's website ([www.coe.int/execution](http://www.coe.int/execution)) indicating that the applicants now have two months to bring any complaints to the attention of the Department. Applicants have before had been informed through the letters accompanying the European Court's judgments that *it is henceforth their responsibility to rapidly react to any apparent shortcoming* in the payment, as registered and published. If such complaints are received, the payment will be subject to a special examination by the Department, and if necessary, the Committee of Ministers itself.

33. If no complaint has been received within the two months deadline, the issue of payment of just satisfaction is considered closed. It is recalled that the site devoted to payment questions is now available in different languages (Albanian, French, Greek, Romanian, Russian and English- further language versions are under way).

### **Necessary measures adopted: end of supervision**

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34. When the respondent State considers that *all necessary execution measures have been taken*, it submits to the Committee a final action report proposing the closure of the supervision. Then starts running a six month period within which other States may submit possible comments or questions as regards the measures adopted and their ability to fully ensure the execution. To assist the Committee, the Secretariat also makes a detailed evaluation of the action report. If its evaluation is consistent with the one submitted by the authorities of the respondent State, a draft final resolution will thereafter be presented to the Committee for its adoption. If a divergence remains, it is submitted to the Committee for consideration of the issue(s) raised. When the Committee considers that all the necessary execution measures have been taken, the supervision concludes with the adoption of a final resolution (Rule 17).

## C. Increased interaction between the Court and the Committee of Ministers

35. The European Court's interaction with the Committee of Ministers, in implementing Article 46, is constantly evolving. For several years now, the Court contributes to the execution process more and more frequently and in various ways, e.g. by providing, itself, in its judgments, Recommendations as to relevant execution measures ("pilot" judgments and "judgments with indication of interest for execution (under Article 46)" in that the Court considers different questions linked with execution without resorting to a full-fledged pilot judgment procedure) or more recently by providing relevant information in letters addressed to the Committee of Ministers.

36. Today, the European Court thus provides such Recommendations notably in respect of individual measures in a growing number of cases. Pursuant to Article 46, it may in certain circumstances, also decide the effect that should be given to the violation finding, order directly the adoption of relevant measures and fix the time limit within which the action should be undertaken. For example, in case of arbitrary detention, *restitutio in integrum* will necessarily require, among other things, release from detention. Thus, in several cases, the Court has ordered immediate release of the applicant<sup>326</sup>.

37. Moreover, in the context of general measures, notably in the "pilot" judgment procedure, the Court examines nowadays in more detail the causes behind the structural problems, with a view to making, where appropriate, Recommendations or more detailed indications, and even require the adoption of certain measures within specific deadlines (see Rule 61 of the Rules of Court). In this context, to support more complex execution processes, the Court has used the "pilot" judgment procedure across a range of contexts<sup>327</sup>, generating, or risking to generate, an important number of repetitive cases, notably in order to insist on the rapid setting up of effective domestic remedies and to find solutions for already pending cases<sup>328</sup>. (*For further information on "Pilot" judgments and other judgments with indications of interest for execution, under Article 46, brought before the Committee of Ministers in 2013, see the E. table below*).

38. The improved prioritisation in the framework of the new working modalities and the development of the Court's practices, in particular as regards "pilot" judgment procedures, appear to make it possible to limit significantly the number of repetitive cases linked to important structural problems (especially where "pilot"

326. See *Assanidze v. Georgia*, No. 71503/01, judgment of 08/04/2004, *Ilascu v. Republic of Moldova and Russian Federation*, No. 48787/99, judgment of 08/07/2004 and *Fatullayev v. Azerbaijan*, No. 40984/07, judgment of 22/04/2010.

327. See for instance *Broniowski v. Poland* (application No. 31443/96; Grand Chamber judgment of 22/06/2004 – pilot judgment procedure brought to an end on 06/10/2008); *Hutten-Czapska v. Poland* (application No. 35014/97, Grand Chamber judgment of 19/06/2006 and Grand Chamber friendly settlement of 28/04/2008).

328. See e.g. *Burdov No. 2 v. Russian Federation*, No. 33509/04, judgment of 15/01/2009; *Olaru v. Republic of Moldova*, No. 476/07, judgment of 28/07/2009 and *Yuriy Nikolayevich Ivanov v. Ukraine*, No. 40450/04, judgment of 15/10/2009.

judgment procedures are combined with the “freezing” of the examination of all similar pending applications).

#### **D. Friendly settlements**

39. The supervision of the respect of undertakings made by States in friendly settlements accepted by the European Court follows in principle the same procedure as the one outlined above.



# Appendix 9 – Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly settlements

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## 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<sup>329</sup> 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<sup>330</sup> have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

### Rule 7 Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible

329. 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).

330. 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.



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,<sup>331</sup> 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

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<sup>331</sup>. 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.

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 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 by the Committee of Ministers on 2 December 2010 at the 1100th meeting of the Ministers' Deputies

### Decision adopted at the 1100th meeting of the Committee of Ministers – 2 December 2010

The Deputies,

1. decided to implement the new, twin-track supervision system with effect from 1 January 2011 taking into account the transitional provisions set out below;
2. decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process;
3. decided that action plans and action reports, together with relevant information provided by applicants, nongovernmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9§ 3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information;
4. decided that all new cases transmitted for supervision after 1 January 2011 will be examined under the new system;

Following the last ratification required for the entry into force of Protocol No. 14 to the European Convention on Human Rights in February 2010, Rules 10 and 11 have taken effect on 1st June 2010.



## Appendix 10 – Where to find further information on the execution of “the Court’s judgments”

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further information on the supervision by the Committee of Ministers of the execution of ECtHR judgments, on the cases mentioned in the Annual reports, as well as on all other cases, is available on the web sites of the Committee of Ministers and of the Department for the execution of judgments of the European Court.

Such information comprises notably:

- ▶ Summaries of violations in cases submitted for execution supervision
- ▶ Summaries of the developments of the execution situation (“status of execution”)
- ▶ Memoranda and other information documents submitted by States or prepared by the Secretariat
- ▶ Action plans/reports
- ▶ Communications from the applicants
- ▶ Communications from NGO’s and NHRI’s
- ▶ Decisions and interim resolutions adopted
- ▶ Various reference texts

On the Committee of Ministers website (“Human rights meetings”) - [www.coe.int/cm](http://www.coe.int/cm) - the information is in principle presented by meeting or otherwise in chronological order.

On the special Council of Europe website, in the page dedicated to the execution of the ECtHR’s judgments, kept by the Department for the Execution of Judgments of the ECtHR (Directorate General of Human Rights and Rule of Law – DG1) - [www.coe.int/en/web/execution](http://www.coe.int/en/web/execution) the pending cases are presented and sortable by State, type of supervision procedure, type of violation and date of judgment.

As a general rule, information concerning the state of progress of the adoption of the execution measures required is published shortly after each HR meeting and published on the internet sites of the Committee of Ministers and the Department for the Execution of Judgments of the Court.

The text of Resolutions adopted by the Committee of Ministers is regularly updated and can also be found through the HUDOC database on [www.echr.coe.int](http://www.echr.coe.int).





## Appendix 11 – “Human Rights” meetings and abbreviations

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### A. CMDH meetings in 2014 and 2015

Meeting No.	Meeting Dates
1243	8-9 December 2015
1236	22-24 September 2015
1230	9-11 June 2015
1222	11-12 March 2015
1214	2-4 December 2014
1208	23-25 September 2014
1201	3-5 June 2014
1193	4-6 March 2014

## B. General abbreviations

AR 2007-15	Annual Report 2007-2015
Art.	Article
CDDH	Steering Committee on Human Rights
CM	Committee of Ministers
CMP	Committee on Missing Persons in Cyprus
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights and Fundamental Freedoms
European Court	European Court of Human Rights
HRTF	Human Rights Trust Fund
GM	General Measures
HR	“Human Rights” meeting of the Ministers’ Deputies
IM	Individual Measures
IR	Interim resolution
NGO	Non-governmental organisation
NHRI	National Human Rights Institutions
Prot.	Protocol
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

## C. Country codes

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MLT	Malta
AUT	Austria	MDA	Republic of 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		



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