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Implementation of judgments of the European Court of Human Rights

Report¹

Committee on Legal Affairs and Human Rights

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Summary

The implementation of judgments of the European Court of Human Rights is a priority for the Parliamentary Assembly and the Council of Europe. All States must implement, in good faith, and without delay, the final, binding judgments of the European Court of Human Rights. In order to implement Court judgments in a timely and effective manner, States must have effective national co-ordination mechanisms, with sufficient hierarchy and resources.

The Committee of Ministers should address the Assembly annually on the progress achieved in implementing the Court's judgments. Projects should be undertaken to support national parliaments and parliamentarians in driving through legislative reforms necessary to implement the Court's judgments – and in holding governments to account for taking timely action to implement such judgments.

The Committee of Ministers should prioritise the implementation of leading and complex cases, including inter-State cases. It should improve the transparency of the process of implementation – in particular the reasoning and accessibility of its decisions, interim resolutions and final resolutions, and the accessibility and ease of navigation of the HUDOC-EXEC website. It is crucial that European citizens can understand and have confidence in this core part of the European system for the protection of human rights, democracy and the rule of law.

1. Reference to committee: Bureau decision, Reference No. 4560 of 19 March 2021.



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A. Draft resolution²

1. Since its [Resolution 1226 \(2000\)](#), the Parliamentary Assembly has significantly contributed to the supervision of the implementation of judgments of the European Court of Human Rights (“the Court”) by the Committee of Ministers, given the priority it attaches to respect for human rights, democracy, and the rule of law. It recalls that in [Recommendation 2245 \(2023\)](#) “The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges” it sought to further strengthen processes for the swift implementation of Court’s judgments, including respect for interim measures, calling for the introduction of procedure for enhanced political dialogue in cases of non-compliance and for the promotion of the role of national parliaments, national human rights institutions and civil society in monitoring compliance with the European Convention on Human Rights (ETS No. 5, “the Convention”) and the Court’s judgments.

2. The Assembly also recalls its Resolutions [2358\(2021\)](#) [2178 \(2017\)](#), [2075 \(2015\)](#), [1787 \(2011\)](#), [1516 \(2006\)](#) and Recommendations [2110 \(2017\)](#) and [2079 \(2015\)](#) on the implementation of judgments of the Court, in which it promoted national parliaments’ engagement in this process. It again underlines that the implementation of a Court judgment, under Article 46, paragraph 1, of the Convention, may require not only the payment of the just satisfaction awarded by the Court, but also the adoption of other individual measures (aimed at the cessation of the violation of the Convention and the *restitutio in integrum* for applicants) and/or general measures (aimed at preventing repeated violations of the Convention).

3. Since last examining this question in 2021, the Assembly notes that there has been an increase in the number of judgments pending before the Committee of Ministers (from 5 231 at the end of 2019 to 6 256 on 1 March 2023). Having seen previous progress on reducing the backlog, it expresses concern at the current trajectory. The Assembly welcomes any measures taken by the Committee of Ministers to make its supervision of the implementation of Court’s judgments more efficient within the Council of Europe as well as with national authorities. It calls upon the Committee of Ministers to undertake further work to analyse why the number of pending cases has recently been growing and to suggest concrete steps to address this.

4. The Assembly also notes that Ukraine, Romania, Türkiye, Azerbaijan and Hungary have the highest number of non-implemented Court judgments and still face serious structural or complex problems, some of which have not been resolved for over ten years. Indeed these five countries, and in addition the Russian Federation, account for over 70% of the cases pending implementation. The Assembly remains deeply concerned over the number of cases revealing structural and complex problems pending before the Committee of Ministers for more than five years. Along with that, the Assembly realises that the situation in Ukraine is a complex one vis-à-vis other countries due to the Russian war of aggression and the consequences for the Ukrainian authorities and society as a whole, and that the implementation of judgments of the European Court of Human Rights faces specific challenges in light of the war.

5. The Assembly expresses concerns at the delays in implementing the Court’s judgments and recalls that the legal obligation for the States Parties to the Convention to implement the Court’s judgments is binding on all branches of State authority and cannot be avoided through the invocation of technical problems or obstacles which are due, in particular, to the lack of political will, lack of resources or national legislation, including the constitution. The Assembly recalls that where a State’s legislation, including its constitution, gives rise to violations of the Convention, it is incumbent on that State to interpret and, where necessary, amend its legislation in such a way as to resolve the violations found by the European Court of Human Rights and avoid any repetition.

6. The Assembly is gravely concerned at the slow progress towards the implementation of the Court’s judgments delivered in interstates cases or cases showing interstate features. It calls on all States Parties to the Convention involved in the process of implementation of such judgments to fully co-operate with the Committee of Ministers. It further calls on member States, as well as instances of the Council of Europe, to consider employing innovative and creative techniques and measures to seek to make progress in addressing intractable problems in such cases.

7. The Assembly strongly calls on States Parties to the Convention to:

7.1. implement in good faith and without delay final binding judgments of the European Court of Human Rights, in line with the clear and unambiguous obligations in Article 46, paragraph 1, of the Convention, which are of an unconditional nature, and in full respect for the rule of law;

7.2. provide for effective domestic remedies to address violations of the Convention and establish such remedies without undue delay where they are lacking;

2. Draft resolution adopted unanimously by the committee on 22 March 2023.

- 7.3. co-operate fully with the Committee of Ministers, the Court and the Department for the Execution the judgments of the Court as well as with other relevant Council of Europe bodies to swiftly and effectively enable the full and efficient implementation of the judgments of the Court;
 - 7.4. submit action plans, action reports and information on the payment of just satisfaction to the Committee of Ministers in a timely manner and to ensure that such action plans and reports contain sufficiently detailed information to explain the measures being taken, how they will address the issues raised by the judgment and to set out a clear timeframe for the judgment to be implemented;
 - 7.5. ensure that effective national co-ordination mechanisms are in place and have sufficient hierarchy and resources to be able to implement judgments and to co-ordinate responses in an efficient and informative manner, presenting the confirmed common position of various branches of power, and that such co-ordination bodies have the requisite clout to be able to ensure that priority is given to any necessary action;
 - 7.6. strengthen the role of civil society, bar associations and national human rights institutions in the process of implementing the Court's judgments, including through involving them in domestic planning on how to implement a judgment, as well as through providing replies to submissions made by applicants, national human rights institutions and non-governmental organisations under Rule 9 of the Committee of Ministers' Rules for the supervision of the execution of judgments and the terms of friendly settlements;
 - 7.7. pay particular attention to cases raising systemic, structural, endemic or complex problems identified by the Court or the Committee of Ministers, notably those identified in the Court's pilot judgments or judgments with indications under Article 46 of the Convention, especially those pending for over ten years;
 - 7.8. refrain from adopting laws or measures that would hinder the process of implementation of the Court's judgments and ensure that domestic legislation strengthens domestic capacity to implement judgments of the Court;
 - 7.9. take full advantage of the work undertaken as part of the "Support to efficient domestic capacity for the execution of ECtHR judgments (Phase 1)" project, which could provide good practice to assist States in improving their domestic processes for implementing the judgments of the European Court of Human Rights;
 - 7.10. develop more effective structures and mechanisms for the exchange of good practice and support each other in the execution of the judgments of the European Court of Human Rights, including by fully supporting the work done by the Council of Europe aimed at establishing a network to this end;
 - 7.11. increase support to Council of Europe co-operation projects to assist member States in executing the judgments of the Court;
 - 7.12. take into account the relevant opinions of Council of Europe expert bodies, including the European Commission for Democracy through Law (Venice Commission) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, when taking measures aimed at implementing the Court's judgments;
 - 7.13. uphold the rule of law, including by condemning statements discrediting the Court's authority and legitimacy;
 - 7.14. respect interim measures indicated by the Court, in accordance with the obligations stemming from Article 34 of the Convention;
 - 7.15. ratify Protocol No. 16 to the Convention (CETS No. 214) as soon as possible, if they have not already done so;
 - 7.16. take immediate action to implement any judgments of the European Court of Human Rights in respect of which a violation of Article 46, paragraph 1, has been found by the Court under infringement proceedings under Article 46, paragraph 4, and in this light calls on Türkiye to immediately release the philanthropist Osman Kavala.
8. Having regard to [Recommendation 2245 \(2023\)](#) "The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges", and referring to its [Resolution 1823 \(2011\)](#) "National parliaments: guarantors of human rights in Europe", the Assembly calls on the national parliaments of Council of Europe member States to implement the "Basic principles for parliamentary supervision of international human rights standards", advocated by the Assembly. Appropriate parliamentary structures are needed to monitor compliance with international human rights obligations and to ensure that democratically

elected representatives are in a position to effectively encourage and facilitate the timely and complete implementation of the Court's judgments. The Assembly calls on human rights or constitutional committees of national parliaments to engage in monitoring the implementation of the Court's judgments, including through taking a pro-active role in finding solutions to potential frictions with the Court, by proposing necessary legislative reforms.

9. In view of the need to speed up implementation of the Court's judgments, the Assembly resolves to remain seized of this matter and to continue to give it priority.

10. The Assembly's work could include holding targeted events at the parliamentary level, such as conferences, colloquies to help bolster domestic institutional capacity and to focus political attention on the legislative, structural or other reforms needed to implement the Court's judgments, including specific cases. Priority should be given to those countries or cases where dialogue at the level of parliamentarians might be most effective to encourage the timely implementation of the Court's judgments and in particular to drive through the necessary legislative reforms.

11. Finally, in order to help resolve the long-standing systemic and structural problems identified in the implementation of the Court's judgments, the Assembly resolves to step up its work on thematic reports focussing on such problems in order to identify tools to resolve specific systemic or structural issues.

B. Draft recommendation³

1. Referring to its Resolution ... (2023) “Implementation of judgments of the European Court of Human Rights”, the Parliamentary Assembly welcomes the measures taken by the Committee of Ministers to fulfil its tasks arising under Article 46, paragraph 2, of the European Convention on Human Rights (ETS No. 5, “the Convention”) and to improve the efficiency of its supervision of the implementation of the judgments of the Court.
2. As the implementation of the Court’s judgments still presents many challenges, the Assembly recommends that the Committee of Ministers:
 - 2.1. continue to use all available means (including interim resolutions) to fulfil its tasks arising under Article 46, paragraph 2, of the Convention;
 - 2.2. undertake further work to develop a clear toolkit for assisting co-operation as well as for increasing pressure on States, in order to encourage them to take timely action to implement the judgments of the European Court of Human Rights; this toolkit should include a range of different measures and techniques that could be potentially deployed, as required, in different situations depending on the seriousness and complexity of the issue as well as on the type of barriers that might exist to timely and effective implementation; such a toolkit should be an evolving document to include new techniques and best practice as experience develops; a creative approach should be applied in terms of tools and bodies that might assist in these endeavours;
 - 2.3. increase the focus and priority for implementing leading cases; noting in particular that whilst significant progress has been made in tackling repetitive cases – which has improved the overall statistics – this is no substitute for addressing the underlying root causes of a series of violations, through implementing the leading cases; to this end more of a focus should be given to analysing and publicising the barriers to implementing leading cases as well as deploying the necessary tools to implement them successfully;
 - 2.4. ensure that priority is given to tackling pockets of resistance and particularly complex cases, including by providing guidance and assistance to domestic authorities in the execution process to address the root causes underlying a violation;
 - 2.5. take action to ensure that all States have adequate, effective national co-ordination mechanisms, with sufficient hierarchy and resources to be able to implement judgments; this could include the provision of expertise on the organisation of the workload and any reforms required to ensure the correct levels of resourcing and hierarchy in order to effectively co-ordinate the implementation of the judgments of the European Court of Human Rights;
 - 2.6. consider developing new mechanisms to motivate and, if need be, sanction States that fail to take timely action, including the supply of information, especially where delays or obstacles in execution were readily avoidable, for example by more effective co-ordination; this could include using financing options from the Council of Europe Development Bank to help to fund projects relevant to the implementation of the Convention rights;
 - 2.7. use the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State; however, this should continue to be done sparingly and in exceptional circumstances;
 - 2.8. having regard to [Recommendation 2245 \(2023\)](#) “The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges”, develop further the options available to the Committee of Ministers, and indeed the Council of Europe as a whole, following a judgment of the Court under Article 46, paragraph 4, with the aim of ensuring respect for the rule of law and the Convention system; such work should include careful consideration of the potential role for the Assembly within such mechanisms, such as through the complementary joint procedure;
 - 2.9. ensure that thematic debates on the execution of the Court’s judgments, are carefully targeted with the relevant participation, including carefully selected external experts, where appropriate, in order to have a meaningful debate on the topic with openness to ideas for resolving difficult issues;
 - 2.10. continue to improve synergies and make best use of all available resources and organs within the Council of Europe, in particular the Court and its Registry, the Assembly, the Secretary General, the Commissioner for Human Rights, the Steering Committee for Human Rights, the European

3. Draft recommendation adopted unanimously by the committee on 22 March 2023.

Commission for Democracy through Law (Venice Commission), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Human Rights Trust Fund;

2.11. ensure adequate resources for the Department for the Execution of Judgments of the European Court of Human Rights, in light of the significant workload of cases, the necessity of ensuring its strong Convention and country-specific expertise in order to provide assistance to the Committee of Ministers and the member States within its mandate, and the importance of the timely implementation of judgments for the Organisation;

2.12. further elaborate the modalities of its strategy for ensuring the continued supervision over the execution of judgments pending implementation in respect of the Russian Federation, as well as those to be adopted in the future by the Court, within the limits of its jurisdiction;

2.13. develop structured processes to regularly inform the Assembly about judgments of the Court whose implementation reveals complex or structural problems and requires legislative action;

2.14. engage in a process of dialogue with the Assembly to ensure that the Assembly and the rapporteur for the implementation of the judgments of the European Court of Human Rights can be in a position to facilitate, as best possible, the work of the Department for the Execution of Judgments and the Committee of Ministers, for example by organising conferences and exchanges with national parliaments, where this could be useful to bolster domestic institutional capacity for implementing judgments or where political engagement might be helpful, such as where legislative or other significant reform is needed to address a judgment;

2.15. as part of this process of dialogue with the Assembly, establish a yearly communication of the Committee of Ministers to the Assembly during a part-session, to set out the progress achieved in the implementation of leading and other important cases; this could be similar to the addresses of the Commissioner for Human Rights to the Assembly when presenting the his/her Annual Report;

2.16. to this end, pilot the organisation of country-specific meetings between the Department for the Execution of Judgments and Assembly members during the Assembly's part-sessions on how best to improve the implementation of judgments within a given country; such meetings could be with a view to an ensuing country visit involving parliamentarians to improve the national mechanisms for the implementation of judgments as well as democratic engagement in supporting such measures;

2.17. continue to take measures aimed at ensuring greater transparency of the process of supervision of the implementation of the Court's judgments and a greater role for the Assembly, the applicants, civil society and national human rights institutions in this process, including by improving the accessibility of information on the status of the implementation of judgments on the HUDOC-EXEC website;

2.18. ensure that all interim and final resolutions contain clear, specific reasoning to justify closing the supervision of a case (or elements of a case), in accordance with transparent criteria, in order to improve the transparency and accountability of decision making, so that European citizens can understand and have confidence in this core part of the European system of protecting human rights, democracy and the rule of law;

2.19. elaborate a process for the supervision of the respect of interim measures indicated by the Court.

C. Explanatory memorandum by Mr Constantinos Efstathiou, Rapporteur

1. Introduction

1. Since 2000, the Parliamentary Assembly has taken a close interest in the implementation of the judgments of the European Court of Human Rights (hereinafter “the Court” or “ECtHR”).⁴ Whilst supervising the execution by the Council of Europe member States of ECtHR judgments is primarily the responsibility of the Committee of Ministers in accordance with Article 46(2) of the European Convention on Human Rights (ETS No. 5, “the Convention”), the Assembly has shown that the monitoring it carries out in this field and the political influence it exerts can provide great support for the action of the Committee of Ministers and therefore present an added value. In particular, the Assembly has systematically called on national parliaments to be more proactive in the process of implementing the Court’s judgments.

2. In its latest relevant resolution ([Resolution 2358 \(2021\)](#)), the Assembly decided to “remain seized of this matter and to continue to give it priority”.⁵ Consequently, at its meeting on 19 April 2021, the Committee on Legal Affairs and Human Rights appointed me again as the sixth rapporteur on this subject, having previously been appointed for the 10th report following Mr Venizelos’s departure from the Assembly. The previous rapporteurs were Messrs Erik Jurgens (Netherlands, SOC), Christos Pourgourides (Cyprus, EPP/CD), Klaas de Vries (Netherlands, SOC), Pierre-Yves Le Borgn’ (France, SOC) and Evangelos Venizelos (Greece, SOC). This report will be the 11th on this subject.

3. With regard to the parameters of this 11th report, as I set out in my introductory memorandum from October 2021, I focussed on the implementation of ECtHR judgments in those States having the highest number of cases pending before the Committee of Ministers; and the implementation of the most problematic cases, including interstate cases and Article 18 judgments. Given that the Russian Federation remains bound to respect the final judgments of the ECtHR against it notwithstanding its exclusion from the Council of Europe in 2022, I continued to include Russian cases in this report which are examined in a separate section.

4. The committee held two hearings with experts. The first one focussed on the implementation of interstate cases and took place on 7 December 2021 with the participation of Ms Dimitrina Lilovska, Head of division ad interim, Department for the Execution of Judgments of the European Court of Human Rights, Council of Europe, and Dr Isabella Risini, Senior research associate at Ruhr-University Bochum, visiting professor at Augsburg University, Germany. The second hearing focussed on the implementation of Article 18 judgments and was held during the committee meeting on 14 November 2022 with the participation of Ms Clare Ovey, Head of the Department for the Execution of Judgments of the European Court of Human Rights, Council of Europe; and Dr Başak Çalı, Professor of International Law, Co-director of the Centre for Fundamental Rights, Hertie School, Berlin.

5. In November 2022, I undertook two country visits, to Azerbaijan and to Romania. I am very grateful to the authorities of those two countries for facilitating such useful and interesting visits. The mission reports of these visits have been declassified and are available to the public.⁶ These visits enabled me to understand the different types of challenges involved in grappling with the implementation of human rights judgements raising complex or structural issues, particularly when faced with a significant caseload. In particular, the visits also enabled a focus on domestic structures that can help to facilitate the timely and efficient execution of the judgments of the Court.

6. I also followed the approach of the 10th report by holding exchanges of views with chairpersons of national delegations of three countries with a significant number of cases pending implementation. During its meeting, on 25 January 2023, the committee held an exchange of views regarding Hungary with the participation of Mr Barna Zsigmond, Vice-Chairperson of the Hungarian delegation to the Assembly and Mr Dávid Oravec, Deputy to the Permanent Representative of Hungary to the Council of Europe. It also held an exchange of views regarding Türkiye with the participation of Mr Ahmet Yıldız, Chairperson of the Turkish delegation to the Assembly, and Mr Hacı Ali Açıkgül, Head of the Department of Human Rights in the Turkish

4. The first report was approved by the Committee on Legal Affairs and Human Rights on 27 June 2000; [Doc. 8808](#), rapporteur: Mr Erik Jurgens (Netherlands, SOC). On the basis of this report, the Assembly adopted [Resolution 1226 \(2000\)](#). Since 2000, the Assembly has adopted ten resolutions and nine recommendations relating to the implementation of the judgments of the European Court of Human Rights.

5. Paragraph 12 of the resolution.

6. AS/Jur(2023)02 “The Implementation of judgments of the European Court of Human Rights – 11th report: Information note following the rapporteurs visit to [Romania](#)”, November 2022; AS/Jur(2023)01 “The Implementation of judgments of the European Court of Human Rights – 11th report: Information note following the rapporteurs visit to [Azerbaijan](#)”, November 2022.

Ministry of Justice. It then held an exchange of views relating to Ukraine, with the participation of Ms Mariia Mezentseva, Chairperson of the Ukrainian delegation to the Assembly, Ms Iryna Mudra, Vice-Minister of Justice; and Ms Marharyta Sokorenko, Government Agent before the European Court of Human Rights. The information documents prepared for these exchanges of views have been declassified and are available to the public.⁷

2. 10th report of the Assembly

7. The Assembly's 10th report on the implementation of the judgments of the Court⁸ noted the impact of the reform of the system of the European Convention on Human Rights following the "Interlaken process", started in 2010: at the end of 2019, when that report was prepared, the Committee of Ministers was supervising the implementation of some 5 000 judgments, while at the end of 2016, when Mr Le Borgn' was preparing the 9th report, it was supervising nearly 10 000 judgments.⁹ However, current figures have again increased, with information suggesting 6 256 judgments pending implementation on 1 March 2023.¹⁰

8. The 10th report used the same working methods as the reports by my predecessors, Messrs Klaas de Vries, Pierre-Yves Le Borgn' and Evangelos Venizelos, who focused on the nine or ten States with the largest number of judgments pending before the Committee of Ministers. Therefore, I analysed in detail the implementation of the most stubbornly unimplemented judgments against the Russian Federation, Ukraine, Romania, Türkiye, Azerbaijan, Hungary, Italy, Bulgaria, and the Republic of Moldova. I also examined judgments whose implementation entailed particular difficulties due to their political or legal complexity, that one of my predecessors called "pockets of resistance".¹¹

9. In its [Resolution 2358 \(2021\)](#), based on the 10th report, the Assembly welcomed a constant reduction in the number of ECtHR judgments pending before the Committee of Ministers and the effects of the Interlaken process. It also welcomed the measures taken by the Committee of Ministers to make its supervision of the implementation of Court judgments more efficient, and the synergies that had developed within the Council of Europe as well as between its bodies and national authorities.¹² Nevertheless, the Assembly remained deeply concerned over the number of persisting cases revealing structural problems that had been pending before the Committee of Ministers for more than five years and noted, as regards in particular the ten countries mentioned in the 10th report, that some of those problems remained unresolved for over ten years. According to the Assembly, "this might be due to deeply rooted problems such as persistent prejudice against certain groups in society, inadequate management at national level, a lack of necessary resources or political will or even open disagreement with the Court's judgment".¹³ The Assembly was also "particularly concerned" by the "increasing legal and political difficulties" relating to the implementation of the Court's judgments and noted that "any national legislative or administrative measure should not add further obstacles to this process and that member States were not entitled to legitimise the possibility of not implementing the Court's decisions".¹⁴ In particular, "the invocation of technical problems or obstacles which are due, in particular, to the lack of political will, lack of resources or changes in national legislation, including the constitution", should be avoided.¹⁵ Moreover, the Assembly was concerned about the difficulties surrounding the implementation of judgments in interstate cases or individual cases displaying interstate features. Condemning once again the delays in the implementation of the Court's judgments, it reiterated its call on Council of Europe member States to implement the Court's judgments swiftly, effectively and fully and made a number of concrete recommendations in this respect (in particular by co-operating with the Committee of Ministers and relevant Council of Europe bodies, submitting action plans, providing effective remedies at national level, providing sufficient resources to relevant national stakeholders, reinforcing the role of civil society and instituting parliamentary structures to monitor compliance with the Convention).¹⁶ The

7. "The Implementation of judgments of the European Court of Human Rights – 11th report: Information notes in preparation of a hearing in relation to [Türkiye \(AS/Jur\(2023\)06\)](#), [Ukraine \(AS/Jur\(2023\)04\)](#), and [Hungary \(AS/Jur\(2023\)03\)](#)".

8. Adopted by the Committee on Legal Affairs and Human Rights at its meeting on 5 June 2020, [Doc. 15123](#) of 15 July 2020. See also Addendum to the report, [Doc. 15123 Add.](#) of 26 November 2020.

9. Report on "The implementation of judgments of the European Court of Human Rights", Committee on Legal Affairs and Human Rights, rapporteur: M. Pierre-Yves Le Borgn' (France, SOC), [Doc. 14340](#) of 12 June 2017, paragraph 6.

10. [HUDOC EXEC](#) website.

11. 10th report, Section 4.

12. Paragraph 3 of the resolution.

13. Paragraph 4 of the resolution.

14. Paragraph 5 of the resolution.

15. Paragraph 7 of the resolution.

16. Paragraphs 6, 7, 8 and 10 of the resolution.

Assembly called on Council of Europe member States which had not yet ratified Protocols Nos. 15 (CETS No. 213) and 16 (CETS No. 214) to the Convention to do so rapidly.¹⁷ It also called on the Russian Federation to change the recent amendments to Articles 79 and 125.5.b of the Constitution in light of the Opinion No. 981/2020 of 18 June 2020 of the European Commission for Democracy through Law (Venice Commission) “on draft amendments to the Constitution of the Russian Federation (as signed by the President of the Russian Federation on 14 March 2020) related to the execution in the Russian Federation of judgments by the European Court of Human Rights”.¹⁸

10. In [Recommendation 2193 \(2021\)](#), also based on the 10th report, the Assembly welcomed the measures taken by the Committee of Ministers to fulfil its tasks arising under Article 46(2) of the Convention and improve the efficiency of its supervision of the implementation of judgments of the Court. It made a number of further recommendations to the Committee of Ministers (such as to adopt interim resolutions, to use the procedures under Article 46(3) to (5) of the Convention, to give priority to leading cases pending over five years, to transmit leading cases pending for over ten years to enhanced supervision procedure, to ensure greater transparency of its supervision process and a greater role for applicants, to organise thematic debates, and to continue to develop synergies between various Council of Europe stakeholders). In particular, the Assembly recommended that the Committee of Ministers regularly inform it about those judgments whose implementation revealed “complex or structural problems” and required legislative action and that the Committee of Ministers finalise its evaluation of the “Interlaken process”.¹⁹

3. Further developments

11. In its [reply](#) to the Assembly’s [Recommendation 2193 \(2021\)](#),²⁰ the Committee of Ministers indicated that it had finalised its assessment of the “Interlaken process” in its decision on “Securing the long-term effectiveness of the system of the European Convention on Human Rights”, adopted at its 130th Ministerial Session in Athens on 4 November 2020. In that decision, the Committee of Ministers had welcomed the work undertaken by the States Parties to the Convention and the effective measures adopted, in particular by the Court. It had concluded that “(...) whilst no comprehensive reform of the Convention machinery [was] now needed, further efforts should be pursued by the Council of Europe as a whole to ensure that the Convention system can continue to respond effectively to the numerous human rights challenges Europe faces, including through the efficient response of the Court to pending applications”.²¹ The Committee of Ministers identified a number of steps to be taken in order to pursue those further efforts: enhancing the efficiency of the process of supervision of execution of the Court’s judgments, particularly its Human Rights meetings, by further developing its working methods and the means available to it; encouraging the development of enhanced synergy with the Court as well as with the other relevant Council of Europe stakeholders (in particular with the Assembly and the Commissioner for Human Rights); and encouraging States Parties to consider establishing, where not already done so, or strengthening effective, pluralist and independent national human rights institutions (NHRIs).²² Most of these measures had already been proposed in the 10th report as adopted by the Committee on Legal Affairs and Human Rights (AS/Jur) on 5 June 2020 and later endorsed by the Assembly in its [Recommendation 2193 \(2021\)](#).²³

12. Further, in its decisions adopted at the 130th Ministerial Session in November 2020, the Committee of Ministers urged all member States to ensure that [Recommendation CM/Rec\(2008\)2](#) on “efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights” be given full effect.²⁴ As stressed in the 14th Annual Report of the Committee of Ministers entitled “Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights 2020” (“[Annual Report 2020](#)”), the Committee of Ministers’ renewed interest in the issue of the domestic capacity for rapid and efficient execution of the Court’s judgments is related to two main challenges identified in practice: “the status and resources of the national co-ordinator” (namely the Government Agent in the majority of Council of Europe member States) and the co-ordinator’s capacity in identifying execution measures and promptly drawing up action plans and reports, in synergy with competent national authorities (...).²⁵ This is particularly necessary in cases revealing long-standing systemic and structural problems.

17. Paragraph 11 of the resolution.

18. Paragraph 9 of the resolution.

19. Paragraph 2 of the recommendation.

20. Adopted at the 1407th meeting of the Ministers’ Deputies (16 June 2021), [Doc. 15324](#) of 21 June 2021.

21. *Ibid.*, paragraph 3.

22. *Ibid.*, paragraph 4.

23. See paragraphs 1, 2.5 and 2.8 of the recommendation.

24. CM/Del/Dec(2020)130/4, “4. Securing the long-term effectiveness of the system of the European Convention on Human Rights”, item 8.

13. As indicated in its reply to the Assembly [Recommendation 2193 \(2021\)](#), at its 131st Ministerial Session (21 May 2021), the Committee of Ministers stressed the importance of securing the long-term effectiveness of the Convention system “in challenging times for the rule of law and human rights in democratic societies” as well as the importance of an efficient supervision of the execution of judgments “in order to ensure the long-term sustainability and credibility of the Convention system”. It instructed the Ministers’ Deputies “to examine whether and how to enhance the tools available to the Committee to supervise cases of non-execution or persistent refusal to execute the final judgments of the Court” and to examine questions relating to interstate disputes”.²⁶

14. Moreover, the German Chairmanship of the Committee of Ministers (November 2020 – May 2021) held a series of conferences and seminars devoted to the issue of implementation of the Court’s judgments and the Court’s interaction with Council of Europe member States’ constitutional courts.²⁷

15. Further, Council of Europe co-operation projects have also been useful in contributing to the execution of ECtHR judgments by supporting member States in improving relevant legislation, finding solutions to particularly challenging execution issues, and building institutional capacity to develop the institutions necessary for effective and full implementation of ECtHR judgments. In this context, it is worth highlighting the ongoing work on a multilateral project entitled “Support to efficient domestic capacity for the execution of ECtHR judgments (Phase 1)”. This project aims to support member States in reinforcing their capacity for full, effective and prompt execution of ECtHR judgments. Given the findings from the hearings and country visits undertaken during this report, I strongly welcome this initiative and urge member States to fully make use of it.

4. Recent statistics and other data

16. According to the Annual Report 2020, as of 31 December 2020, 5 233 cases were pending before the Committee of Ministers (at different stages of execution), one of the lowest figures since 2006.²⁸ The following ten countries had the largest number of pending cases (from the highest to the lowest number): Russian Federation (1 789), Türkiye (624), Ukraine (567), Romania (347), Hungary (276), Azerbaijan (235), Italy (184), Bulgaria (166), the Republic of Moldova (154) and Greece (120); they were followed by Poland (89), Croatia (73) and Georgia (53). The remaining Council of Europe member States had fewer than fifty cases pending before the Committee of Ministers.

17. According to the Annual Report 2021, as of 31 December 2021, there was a similarly low number of cases pending before the Committee of Ministers (at different stages of execution) – 5 533.²⁹ However there had been a significant increase (by 40%) of judgments delivered by the Court. The following ten countries had the largest number of pending cases (from the highest to the lowest number): Russian Federation (1 942), Ukraine (638), Türkiye (510), Romania (409), Azerbaijan (271), Hungary (265), Italy (170), the Republic of Moldova (170), Bulgaria (164), and Poland (97); they were followed by Greece (93), Croatia (79), Serbia (76), the Slovak Republic (63), Georgia (63), and Armenia (50). The number of States having more than 50 pending judgments therefore increased from 13 in 2020 to 16 in 2021. In this report, I shall focus in particular on the top six countries, which together have 73% of all judgments pending execution as of 31 December 2021.³⁰

18. It is also interesting to note the number of applications pending before the Court, whose statistics give a slightly different impression than that given by those of the Committee of Ministers. As of 31 December 2020, more than half of the approximately 62 000 applications pending before the Court came from the three following States: the Russian Federation (22%), Türkiye (19%) and Ukraine (16.8%). They were followed by Romania (12.2%), Italy (5.6%), Azerbaijan (3.3%), Serbia (2.8%), Armenia (2.3%), Poland (1.9%) and the Republic of Moldova (1.7%). As of 31 December 2022, this ranking has only slightly changed with an increase to 74 650 pending applications: applications against Türkiye increasing to 26.9% of the overall number, those

25. [Annual Report 2020](#), pp. 26-27. These challenges had been identified by the Steering Committee for Human Rights “Guide to good practice on the implementation of Recommendation (2008)2 of the Committee of Ministers on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights”, 2017.

26. [Doc. 15324](#) of 21 June 2021, paragraph 5.

27. [Annual Report 2020](#), p. 8.

28. [Annual Report 2020](#), pp. 12 and 37. In 2019, this figure was almost the same – 5 231, while in 2006 – 5 523 and in 2005 – 4 322. The report dates from March 2021.

29. [Annual Report 2021](#), pp. 11 and 37.

30. The [Annual Report 2022](#), issued after this explanatory memorandum was drafted, shows 6 081 cases pending execution and that the following ten countries have the largest number of pending cases: Russian Federation (2 352), Ukraine (716), Romania (509), Türkiye (480), Azerbaijan (285), Hungary (219), Italy (187), Bulgaria (182), Republic of Moldova (153) and Poland (125).

against the Russian Federation amounting to 22.4%, and those against Ukraine to 13.9%, thus exceeding 60% of the total number of pending applications between them.³¹ They were followed by: Romania (6.4%), Italy (4.8%), Greece (3.8%), Poland (3.3%), Azerbaijan (2.9%), Serbia (2.6%), and Armenia (1.7%) (the remaining 37 States represented 11.3% of the overall number of pending applications).³² These statistics, which concern applications on which the Court has not yet ruled, often illustrate the extent of structural problems at national level – reluctance in implementation and/or lack of political will – problems which should have been resolved in the context of the execution of previous Court judgments.³³ Indeed, the majority of States having the highest number of unimplemented judgments were also amongst those States having the highest number of applications pending before the Court thereby revealing resistance to the implementation of Court judgments (currently including Türkiye, the Russian Federation, Ukraine, Romania, Italy, Azerbaijan and Poland).

19. Out of the 5 533 cases pending before the Committee of Ministers at the end of 2021, 1 300 were “leading cases”, namely cases identified as revealing new structural and/or systemic problems, identified either by the Court or the Committee of Ministers³⁴ (a very slight increase from previous years). Out of the 1 300 leading cases, 343 were under “enhanced supervision” of the Committee of Ministers, 897 were under “standard supervision”, and 60 were awaiting classification. As concerns the length of the execution process for leading cases, 301 had been pending for less than two years, 291 for between two and five years and 648 for more than five years.³⁵

20. As regards leading cases under “enhanced supervision”, these concerned mainly actions of security forces (12%), lawfulness of detention and related issues (10%), specific situations involving the right to life and prohibition of ill-treatment (8%), conditions of detention and medical care (8%), length of judicial proceedings (8%), other interferences with property rights (4%), enforcement of domestic judicial decisions (3%), lawfulness of expulsion or extradition (4%), freedom of assembly and association (4%), and freedom of expression (5%).³⁶ Also, 78% of the leading cases concerned either the Russian Federation (16%), Ukraine (15%), Türkiye (11%), Romania (10%), Italy (7%), Azerbaijan (6%), Bulgaria (6%), Hungary (4%), or Poland (3%).

21. In 2021, the Committee of Ministers closed 1 122 cases (including 170 “leading” cases, out of which 11 had been under “enhanced supervision”) following the adoption by respondent States of individual measures and a wide range of legislative and other general measures.³⁷

22. As stressed in the Annual Reports of 2020 and 2021, significant progress has been achieved with the closure of the issue of individual measures in 2020 in the three cases against Azerbaijan concerning abusive arrests and detention (in the former group of cases *Ilgar Mammadov*³⁸) as well as the judgments of the Supreme Court of Azerbaijan in November 2021 quashing the convictions of a further four applicants in the *Mammadli* group of cases.³⁹

23. For 2020, the Annual Report welcomed the closure of the case *Baralija v. Bosnia and Herzegovina*⁴⁰ concerning voting rights in local elections.⁴¹ For 2021, the Annual Report in particular noted positive developments where a number of respondent States adopted measures, including legislative measures, in order to execute the Court’s judgments, such as the amendment of the Judicial Code in Belgium enhancing

31. [Pending applications](#).

32. [Pending applications](#).

33. [Doc. 14340](#), op. cit., paragraph 7.

34. [Annual Report 2021](#).

35. The [Annual Report 2022](#), issued after this explanatory memorandum was drafted, shows that out of 6 081 cases pending execution, 1 229 were leading cases, of which 367 under “enhanced supervision”, 904 under “standard supervision”, and 28 awaiting classification.

36. [Annual Report 2021](#), p. 62.

37. The [Annual Report 2022](#), issued after this explanatory memorandum was drafted, shows 880 cases as having been closed during 2022, including 200 leading cases, of which 18 had been under the enhanced supervision.

38. Application No.15172/13, judgment of 22 May 2014. By Final Resolution CM/ResDH(2020)178 of 3 September 2020, the Committee of Ministers decided to close this case as well as that of Rasul Jafarov. In December 2020, it decided to close the examination of individual measures in the case of Natig Jafarov, see decision CM/Del/Dec(2020)1390/H46-2 of 3 December 2020. The general measures continue to be examined within the framework of the group of cases *Mammadli v. Azerbaijan* (Application No. 47145/14, judgment of 19 April 2018).

39. [Annual Report 2021](#), p. 12.

40. Application No. 30100/18, judgment of 29 October 2019. The Committee of Ministers closed the examination of this case by Resolution CM/ResDH(2020)240 of 1 December 2020.

41. [Annual Report 2020](#), p. 12. For major advances in other cases examined by the Committee of Ministers, see [Annual Report 2020](#), pp. 24-26.

freedom of religion in courtrooms; adoption of a new law in France introducing a judicial preventive remedy concerning inadequate conditions of detention (*J.M.B. and Others v. France*); statutory and case law developments in Italy enhancing safeguards of administrative detention of migrants in initial reception centres (*Khalifa and Others v. Italy*); the Italian contaminated blood compensation payments case (*M.C. and Others v. Italy*); measures taken by Lithuania to improve investigations into hate crimes and hate speech, notably against LGBTI persons (*Beizaras and Levickas v. Lithuania*); steps taken in relation to defamation laws in Ukraine (*Siryk v. Ukraine*); and measures taken in relation to medical negligence and healthcare in Türkiye (*Oyal v. Turkey, Şentürk v. Turkey, Asiye Genç v. Turkey and Zafer Öztürk v. Turkey*).⁴²

24. However, the Annual Report 2021 noted continuing challenges for the execution of judgments, such as an increasing number of new judgments from the Court, as well as serious delays in the submission of information by member States that is vital for cases to be closed (for example action plans, action reports and information on the payment of just satisfaction).⁴³

25. The Annual Reports of 2020 and 2021 revealed an increase in co-operation between the Committee of Ministers on the one hand, and civil society and national human rights institutions (NHRIs) on the other. In 2021, the Committee of Ministers received an unprecedented number of submissions from NGOs/NHRIs: 206 communications concerning 27 Council of Europe member States (compared to 133 in 2019 concerning 24 member States).⁴⁴ Moreover, 2020 saw the first ever submission by the Council of Europe Commissioner for Human Rights,⁴⁵ swiftly followed by four more in 2020⁴⁶ and a further two in 2022.⁴⁷ This possibility had been added to Rule 9 of the Ministers' Deputies' Rules for the supervision of the execution of judgments and of the terms of friendly settlements on 18 January 2017.⁴⁸ As the Commissioner for Human Rights conducts regular monitoring of the human rights situation in Council of Europe member States, these communications are particularly valuable.

26. As stressed in the Annual Report 2020, three categories of ECtHR judgments pose particular challenges; taken together, these categories represented approximately 53% of the cases which were examined by the Committee of Ministers during its Human Rights (DH) meetings in 2020.⁴⁹ Given the importance of these categories of cases, I have focussed on these during my work. They are:

- Interstate cases and other cases linked to post-conflict situations or unresolved conflicts;
- Article 18 judgments,⁵⁰ concerning abusive limitations of rights and freedoms;
- cases revealing long-standing “systemic and structural problems” identified by the Court’s judgments, or a lack of will and culture to abide by its judgments.

5. Interstate cases and other cases linked to post-conflict situations or unresolved conflicts

27. Whether cases originate in individual or interstate applications, the implementation of interstate cases or cases linked to post-conflict situations or unresolved conflicts in general takes time and requires a “concerted engagement” by the Committee of Ministers and its Secretariat, as well as the member States concerned. This process can be difficult due to the “prominent political dimensions at national or international

42. [Annual Report 2021](#), pp. 12-15.

43. The [Annual Report 2022](#), issued after this explanatory memorandum was drafted, shows similar challenges and records progress in the closure of cases notably relating to: effective investigations into war crimes during the Croatian Homeland War (1991-1995); lawfulness of judicial appointments to the Icelandic Court of Appeal; and elimination of discriminatory provisions relating to children’s surnames in Italy.

44. [Annual Report 2021](#), p. 30.

45. In the cases *Tysiāc v. Poland*, *R. R. v. Poland*, and *P. and S. v. Poland*, concerning restrictions in access to lawful abortion.

46. In the cases: *Kavala v. Turkey* (concerning the detention of the applicant, a prominent civil activist, in violation of Articles 5 and 18 of the Convention), *Bălşan v. Romania* (concerning violation of the prohibition of torture and of inhuman and degrading treatment), *Yordanova and others v. Bulgaria* (forced eviction of Roma) and *D.H. and Others v. the Czech Republic* (discrimination in the enjoyment of Roma children’s right to education). See here for the list of those [communications](#).

47. In the cases: *McKerr and Others v. the United Kingdom* (concerning several shortcomings in the investigation of deaths during the Troubles in Northern Ireland: [see the communication](#)) and *Ilias and Ahmed v. Hungary* (concerning the expulsion of applicants from Hungary to Serbia without carrying out a thorough examination of the risk of ill-treatment: [see the communication](#)).

48. By a decision adopted at the 1275th meeting, CM/Del/Dec(2017)1275/4.1.

49. [Annual Report 2020](#), p. 12.

50. Article 18 of the Convention: “The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed”.

level and the fact that they are linked to traumatic armed violence requiring a long period of healing”.⁵¹ In this context, the Annual Report 2020 mentions as a “success story” the closure (partial or full) of the *Skendžić and Krznarić v. Croatia*⁵² group, concerning ineffective investigations into war crimes, and the *Sanader v. Croatia*⁵³ case concerning conviction *in absentia* for war crimes in Croatia. However, a number of challenging cases remain.

28. It should be noted in this context that the number of interstate applications lodged before the Court has recently significantly increased and therefore one can anticipate interstate cases posing a challenge for the implementation of judgments for the years to come.⁵⁴ There are currently 19 interstate applications pending before the Court, 12 of which have been lodged since 2020.⁵⁵ Many of these involve different cases featuring the same countries.⁵⁶ To put this in context, the Court and the former Commission only ever completed 25 interstate cases (including those struck off the list).⁵⁷ Whilst pending applications will not necessarily result in judgments requiring implementation by a State, or supervision by the Committee of Ministers, one can nevertheless surmise that given the growth in such cases it would be prudent for the Council of Europe to develop tools for dealing with interstate cases and for facilitating the implementation of the relevant judgments.

29. In the hearing on 7 December 2021 (see the summary in the Appendix), the challenges posed by interstate cases were clear, as well as the importance of perseverance and a deeper understanding that as long as there are unresolved conflicts between member States, interstate cases will remain and their judgments will remain unimplemented precisely because of a lack of political will. Europe must become a space of peace and security free from interstate disputes and conflicts and greater thought should perhaps be given to developing the Council of Europe’s focus on these challenges. Numerous individual applications are linked to armed conflicts, and it is therefore important to cover such cases as well and not to lose sight of the individuals affected by a conflict situation. The below cases illustrate the sorts of challenges in dealing with interstate cases – *Cyprus v. Turkey*; *Georgia v. Russia*; *Catan and Others v. Moldova and Russia*; *Mozer v. Moldova and Russia*; and cases relating to the situation in Nagorno-Karabakh.

5.1. Cyprus v. Turkey and cases related to the situation in the part of Cyprus where Türkiye exercises effective control

30. In the 2001 *Cyprus v. Turkey*⁵⁸ judgment, the Court found multiple violations of the Convention in connection with the situation in the part of Cyprus where Türkiye exercises effective control according to the Court’s findings, since Türkiye’s 1974 military intervention in Cyprus. The Turkish authorities have remedied a number of violations⁵⁹ but the Committee of Ministers’ supervision focuses mainly on issues concerning

51. Annual Report 2020, pp. 12 and 13.

52. Application No. 16212/08, judgment of 20 January 2011.

53. Application No. 66408/12, judgment of 12 February 2015. Its examination was closed by the Committee of Ministers’ Resolution CM/ResDH(2020)250 of 3 December 2020.

54. The website of the ECtHR contains a recent [list of interstate cases](#).

55. *Liechtenstein v. the Czech Republic* (No. 35738/20); *Armenia v. Azerbaijan* (No. 42521/20); *Armenia v. Turkey* (No. 43517/20); *Azerbaijan v. Armenia* (No. 47319/20); *Ukraine v. Russian Federation* (IX) (No. 10691/21); *Russia v. Ukraine* (No. 36958/21); *Armenia v. Azerbaijan* (II) (No. 33412/21); *Armenia v. Azerbaijan* (III) (No. 42445/21); *Armenia v. Azerbaijan* (IV) (No. 15389/22); *Azerbaijan v. Armenia* (II) (No. 39912/22); *Ukraine v. Russian Federation* (X) (No. 11055/22); *the Netherlands v. Russia* (No. 28525/20).

56. *Georgia v. Russian Federation* (II) (Just satisfaction) (No. 38263/08); *Ukraine v. Russian Federation* (re Crimea) (No. 20958/14); *Ukraine v. Russian Federation* (VII) (No. 38334/18); *Ukraine and the Netherlands v. Russian Federation* (nos. 8019/16, 43800/14, 28525/20 and 11055/22); *Georgia v. Russian Federation* (IV) (No. 39611/18); *Ukraine v. Russian Federation* (VIII) (No. 55855/18); *Armenia v. Azerbaijan* (No. 42521/20); *Armenia v. Turkey* (No. 43517/20); *Azerbaijan v. Armenia* (No. 47319/20); *Ukraine v. Russian Federation* (IX) (No. 10691/21); *Russia v. Ukraine* (No. 36958/21); *Armenia v. Azerbaijan* (II) (No. 33412/21); *Armenia v. Azerbaijan* (III) (No. 42445/21); *Armenia v. Azerbaijan* (IV) (No. 15389/22); *Azerbaijan v. Armenia* (II) (No. 39912/22). See [the ECtHR website](#).

57. *Latvia v. Denmark* (No. 9717/20); *Slovenia v. Croatia* (No. 54155/16); *Ukraine v. Russian Federation* (III) (No. 49537/14); *Georgia v. Russian Federation* (III) (No. 61186/09); *Georgia v. Russia* (I) (No. 13255/07); *Denmark v. Turkey* (No. 34382/97); *Cyprus v. Turkey* (IV) (No. 25781/94); *Denmark, France, Norway, Sweden & the Netherlands v. Turkey* (nos. 9940/82 to 9944/82); *Cyprus v. Turkey* (III) (No. 8007/77); *Cyprus v. Turkey* (I) and (II) (Nos. 6780/74 and 6950/75); *Ireland v. United Kingdom* (II) (No. 5451/72); *Ireland v. United Kingdom* (I) (No. 5310/71); *Denmark, Norway, Sweden & the Netherlands v. Greece* (II) (No. 4448/70); *Denmark, Norway, Sweden & the Netherlands v. Greece* (I) (nos. 3321/67 to 3323/67 and 3344/67); *Austria v. Italy* (No. 788/60); *Greece v. United Kingdom* (II) (No. 299/57); *Greece v. United Kingdom* (I) (No. 176/56). Of these 25 applications, 17 (68%) involved either Türkiye or Greece as one of the parties to the proceedings.

58. Application No. 25781/94, Grand Chamber judgments of 10 May 2001 (on the merits) and 12 May 2014 (just satisfaction). *Cyprus v Turkey* (merits) – see here for [the status of implementation](#).

Greek Cypriot missing persons, and the property rights of displaced Greek Cypriots and of those residing in the part of Cyprus under the effective control of Türkiye, which have been on its agenda since 2001. The main issues concerning the implementation of *Cyprus v. Turkey* have already been presented in an [information document](#).⁶⁰ The case concerns 14 violations of the Convention in relation to the situation in the part of Cyprus where Türkiye exercises effective control concerning:

- Greek Cypriot missing persons and their relatives (violation of Articles 2, 3 and 5).⁶¹ Related to this is the *Varnava v. Turkey*⁶² case which concerns the lack of effective investigations into the fate of Greek Cypriots who disappeared during the Turkish military operations in Cyprus in 1974;
- Property rights of displaced Greek Cypriots (violation of Articles 8 and 13 and of Article 1 of the Additional Protocol of the Convention (ETS No. 9). Related to this is the *Xenides-Arestis* case;⁶³
- Living conditions of Greek Cypriots in the Karpasia/Karpas peninsula (violation of Articles 3, 8, 9, 10 and 13 and Articles 1 and 2 of the Additional Protocol to the Convention);⁶⁴
- Rights of Turkish Cypriots living in the part of Cyprus under the effective control of Türkiye relating to the competence of Turkish military courts (violation of Article 6).⁶⁵

31. In the *Cyprus v. Turkey* (just satisfaction) judgment,⁶⁶ the Grand Chamber ruled that Türkiye was to pay the Government of Cyprus 30 million euros in respect of non-pecuniary damage suffered by the relatives of missing persons and 60 million euros in respect of non-pecuniary damage (not concerning property rights) suffered by the enclaved Greek Cypriot residents of the Karpasia/Karpas peninsula. The Court indicated that these amounts should be distributed by the Government of Cyprus to the individual victims under the supervision of the Committee of Ministers. In September 2021, the Committee of Ministers adopted Interim Resolution [CM/ResDH\(2021\)201](#) strongly urging the Turkish authorities to abide by their unconditional

59. Concerning the rights of Greek Cypriots in the part of Cyprus under the effective control of Türkiye to education, and freedom of religion and their property rights, as well as the competences of military courts, see Interim Resolutions ResDH(2005)44, CM/Res(2007)25 and CM/ResDH(2020)185.

60. AS/Jur(2023)06 “The Implementation of judgments of the European Court of Human Rights – 11th report Information note in preparation of a hearing in relation to Türkiye”.

61. As regards missing persons, the Committee on Missing Persons continues its search by exhumation activities and submitting any new relevant information on possible burial sites. As of 31 January 2022 the CMP had found the remains of 1 185 persons and identified 1 024 persons belonging to both communities (out of 2 002 missing persons from both communities). Amongst the identified persons, 733 were Greek Cypriots (out of 1 510 missing Greek Cypriots). The Turkish authorities indicated that in 1997 they provided the CMP with all the information at their disposal about possible burial sites.

As regards criminal investigations, the Missing Persons Unit was set up in the northern part of Cyprus in 2010 to conduct investigations into the death of Greek Cypriots whose remains have been located and identified by the CMP. As of 2020 ([DH-DD\(2020\)1003](#)), this unit has opened 700 criminal investigations, and received written statements from 605 witnesses. NGOs have criticised the lack of involvement of the victims’ families in the process of investigations and have instead called for a Truth Commission ([DH-DD\(2021\)150](#)).

62. *Varnava v. Turkey*.

63. *Xenides-Arestis v. Turkey* – see here for [the status of execution](#). Following the *Xenides-Arestis* judgment, Law No. 67/2005 on the Compensation, Exchange or Restitution of Immovable Property (“the IPC Law”) was adopted, setting up a modified Immovable Property Commission (IPC). This Law enables Greek Cypriot owners to apply to the IPC for restitution, compensation and/or exchange, as well as for compensation for loss of use, in respect of immovable property located in the northern part of the island that was registered in their names on 20 July 1974 (or in the name of a person of whom they are the legal heirs). Concerns have been expressed that property is being affected by property transfers and construction activities. The Turkish authorities have noted that following a decision by the IPC providing for immediate restitution of properties or for their restitution after the solution of the Cypriot problem, they cannot be sold or developed without the consent of their Greek Cypriot owners. The Turkish authorities consider that this part of the judgment should be closed given the functioning of the IPC, the amount already paid in awards, and the assessments of the ECtHR.

64. Following the measures adopted by Türkiye, the Committee of Ministers has closed supervision relating to living conditions of Greek Cypriots in the part of Cyprus under the effective control of Türkiye as regards secondary education, censorship of schoolbooks, freedom of religion and property rights. Further elements of the *Cyprus v. Turkey* judgment have yet to be examined, including the breach of the right to respect for private and family life and home of Greek Cypriots living in the parts of Cyprus under the effective control of Türkiye, in particular arising from the restrictions on family visits and the surveillance of their contacts and movements (violation of Article 8); and discrimination against Greek Cypriots living in the Karpas region amounting to degrading treatment due to the restrictions imposed on their community (violation of Article 3); and a lack of remedies in respect of the authorities’ interference with the rights of Greek Cypriots living in the part of Cyprus under the effective control of Türkiye (violation of Article 13).

65. Following the measures adopted by Türkiye, the Committee of Ministers has closed supervision relating to the rights of Turkish Cypriots living in the part of Cyprus under the effective control of Türkiye (competence of military courts).

66. *Cyprus v. Turkey* (just satisfaction).

obligation and pay the just satisfaction awarded by the Court in 2014 in this case, together with the default interest accrued, without further delay. Notwithstanding further decisions in 2022 and 2023 deploring the absence of a response to this interim resolution, the just satisfaction remains unpaid.

32. I set out the status of implementation in this case in the information note published to facilitate the exchange of views of the Committee on Legal Affairs and Human Rights on Türkiye in January 2023.⁶⁷

33. In March 2023, the Committee of Ministers also examined the issue of missing Greek Cypriots and, whilst acknowledging the progress that had been made since 2001, reiterated its call on the Turkish authorities to continue to ensure that the Committee on Missing Persons (CMP) has unhindered access to all areas, and information on any places, where remains might be found and for the continuation of the investigations conducted by the Missing Persons Unit. The Committee furthermore examined the related individual case *Varnava and Others v. Turkey*. In this case, the Committee also insisted again firmly on the unconditional obligation of Türkiye to pay without further delay the just satisfaction awarded by the Court in 2019.

34. The *Xenides-Arestis* group of cases *v. Turkey*⁶⁸ concerns 33 individual cases regarding interference with property rights relating to properties in the part of Cyprus under the effective control of Türkiye where payment of just satisfaction is still outstanding. In 2021, the Committee of Ministers decided to close the supervision of the execution of the judgments in the cases of *Alexandrou* and *Eugenia Michaelidou Developments Ltd* and *Michael Tymvios* and adopted a final resolution. The general measures required in response to the shortcomings found by the Court in these cases continue to be examined within the framework of *Cyprus v. Turkey*. The Committee of Ministers, when last examining this group in 2022, instructed the Secretariat, if the situation concerning the payment of just satisfaction remained unchanged, to prepare a draft interim resolution on the payment of the just satisfaction, for consideration by the Committee at its next examination.

35. The Committee of Ministers also examined the *Kakoulli* and *Isaak* groups of cases concerning Türkiye, relating to violations of the right to life in respect of individuals killed having crossed the ceasefire line. In the last examination, as regards individual measures, the Committee requested additional information in respect of the competent authorities' conclusion that the security forces acted lawfully and on the possibility for new investigations in some cases. As regards general measures, the Committee of Ministers welcomed the message of zero tolerance of police ill-treatment delivered by the competent Attorney General and noted with interest the introduction of a possibility to remove from office a police officer following a conviction to a prison sentence for excessive use of force, as well as the introduction of a new criminal offence in the Criminal Code on excessive use of force.

5.2. Georgia v. Russia⁶⁹

36. *Georgia v. Russia (I)*,⁷⁰ originates in the political tensions between the two countries in the summer of 2006 and concerns the arbitrary arrest, detention and expulsion from the Russian Federation of a large number of Georgian nationals in 2006 and 2007 (violations of Article 4 of Protocol No. 4 (ETS No. 46) and of Articles 3, 5(1)(4), 13 and 38 of the Convention). In relation to general measures, in February 2022 the Russian authorities submitted an action plan (DH-DD(2022)211). According to the action plan, a draft law had been developed to allow the individual circumstances of foreign nationals to be considered before expulsion and to establish better conditions of detention for vulnerable categories. The Committee of Ministers evaluated the changes positively but considered that "those developments alone cannot fully respond to the root causes of the problem raised in the judgment."⁷¹

37. In its just satisfaction judgment, the European Court of Human Rights held that, within three months, the Russian Federation was to pay the Government of Georgia 10 million euros in respect of non-pecuniary damage suffered by the group of at least 1 500 Georgian nationals, who were victims of the violations of the Convention. The Court indicated that these amounts should be distributed by the Government of Georgia to the individual victims under the supervision of the Committee of Ministers. The deadline for payment expired

67. AS/Jur(2023)06, op. cit., paragraphs 39-45.

68. *Xenides-Arestis v. Turkey* (Application No. 46347/99) – in respect of which the payment of just satisfaction has been due since 2007.

69. There is also a more recent interstate case, *Georgia v. Russia (II)*, which concerns various violations of the Convention in the context of the armed conflict between Georgia and Russia in August 2008.

70. Application No. 13255/07, Grand Chamber judgments of 3 July 2014 (on the merits) and 31 January 2019 (just satisfaction).

71. Interim Resolution CM/ResDH(2022)146, 10 June 2022.

on 30 April 2019 and Russia has raised various arguments seeming to contest this award of just satisfaction. There was some hope of a breakthrough in 2021. An innovative approach was proposed, whereby the Russian Federation would pay the just satisfaction and accrued interest into a Council of Europe bank account. The sums would be held in a fiduciary capacity until details of the distribution mechanism were provided to the Committee of Ministers by the Georgian authorities and approved by it in a decision authorising the sums to be transferred to Georgia. In December 2021, the Committee of Ministers noted with satisfaction that the Secretary General of the Council of Europe and the Georgian authorities had signed a memorandum of understanding to this end, and looked forward also to the swift signature of the memorandum of understanding by the Russian authorities and the payment of the funds to the Council of Europe bank account held in escrow in the shortest possible time-frame and in any event by the end of the year. On 17 December 2021, the Russian Government agent also signed the memorandum of understanding, which was transmitted to the Secretary General. Unfortunately, however, the payment, as requested by the Committee of Ministers and required by the memorandum of understanding, was not made. In its interim resolutions of June and December 2022, the Committee of Ministers firmly reiterated the unconditional nature of the obligation in Article 46(1) of the Convention to pay the just satisfaction awarded by the Court and deeply deplored the continued lack of payment.⁷²

5.3. The situation in the Transnistrian region of the Republic of Moldova – the Catan and Mozer cases

38. *Catan and Others v. Moldova and Russia*,⁷³ concerns the violation of the right to education of children or parents of children from Latin-script schools located in the Transnistrian region of the Republic of Moldova. The Court found that the Russian Federation exercised effective control over the Transnistrian region of Moldova during the period in question and the Russian Federation incurred responsibility under the Convention for the violation. Again, this is a case where the Russian Federation sought to contest the judgment and responsibility for implementing the judgment, notwithstanding the final binding judgment of the ECtHR.

39. Despite interim resolutions, problems remain. The Committee of Ministers considered the case in 2021 and deeply deplored that, some nine years after the judgment became final, the Russian authorities had failed to provide the Committee with any information on the concrete measures taken or foreseen to execute the judgments in the group to which this case belongs. The Committee of Ministers took the unusual step of instructing the Secretariat to prepare an analysis of the measures required, in the light of the ECtHR findings and the current factual conditions concerning the functioning of the Latin-script schools. Although unusual, the instructions given to the Secretariat reflect the Committee of Ministers' recognition that measures are needed to implement Court judgments. In December 2022, the Committee of Ministers noted that after ten years the Russian authorities continue to fail to pay the just satisfaction and to provide the Committee with an action plan or to comply with the final binding judgment of the Court, contrary to Article 46(1).⁷⁴

40. *Mozer v. Moldova and Russia*,⁷⁵ and 42 other cases, concern various violations of the Convention which took place in the Transnistrian region of the Republic of the Moldova between 1997 and 2016. The Court maintained its previous findings that Russia continued to exercise effective control and a decisive influence over the "MRT (Moldavian Republic of Transnistria) authorities". Some of the applicants received a letter dated 4 August 2022 from the Russian authorities stating that these decisions could not be executed because they contravene the constitutional foundations of the Russian Federation.⁷⁶ In a decision of 8 December 2022, the Committee of Ministers reiterated its grave concern over the absence of any action plan or report in this group of cases and firmly urged the Russian authorities to provide relevant documents, setting out concrete measures to execute the judgments.⁷⁷

72. Interim Resolution CM/ResDH(2022)146, 10 June 2022; Interim Resolution CM/ResDH(2022)354, 8 December 2022.

73. *Catan and Others v. Moldova and Russia*, Application Nos. 43370/04, 8252/05 and 18454/06, judgment of 19 October 2012. In 2018, the Court issued another judgment – *Bobeico and Others v. Russia* (Application No. 30003/04, judgment of 23 October 2018) – finding the same kind of Convention violation for another group of children.

74. Decision CM/Del/Dec(2022)1451/H46-30 – 8 December 2022.

75. Application No. 11138/10, 23 February 2016.

76. Secretariat of the Committee of Ministers – DH-DD(2022)1227, 10 November 2022, submitted on 24 October 2022.

77. Decisions – CM/del/Dec(2022)1451/H46-34, Ministers' Deputies, 1451st meeting, 8 December 2022.

5.4. Cases relating to the situation in Nagorno-Karabakh

41. Since June 2015, the Committee of Ministers has been examining the implementation of two judgments relating to the military conflict between Armenia and Azerbaijan in Nagorno-Karabakh between 1988 and 1994: *Chiragov and Others v. Armenia*⁷⁸ and *Sargsyan v. Azerbaijan*.⁷⁹ The *Chiragov and Others* judgment concerns Azerbaijani nationals who were forced to flee from their homes in Lachin at the beginning of the conflict, and were consequently denied access to their property and homes as well as any redress remedy (continuing violations of Article 1 of the Additional Protocol to the Convention, Articles 8 and 13 of the Convention). The Court found that Armenia “exercised effective control over Nagorno-Karabakh and the surrounding territories”, including the district of Lachin, and that the matters complained of “fell within the jurisdiction of that State”.⁸⁰ The *Sargsyan* judgment concerns an Armenian refugee who, because of the conflict, was forced to leave his home in Gulistan, over which, according to the Court, Azerbaijan had the “internationally recognised jurisdiction”. The Court accepted the Azerbaijani authorities’ refusal to grant civilian access to the village because of safety considerations, but criticised the lack of measures aimed at restoring the applicant’s rights in respect of his property and home and the lack of any compensation mechanism (also continuing violations of Article 1 of the Additional Protocol to the Convention, Articles 8 and 13 of the Convention). In both judgments, the Court held 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”.⁸¹ In the just satisfaction judgments in both cases, the Court awarded each applicant a just satisfaction of 5 000 euros for pecuniary (loss of income and increased living expenses) and non-pecuniary damage. The just satisfaction awarded by the Court in 2017 has still not been paid, although the Secretariat has been working on innovative solutions including a memorandum of understanding to pay the just satisfaction through a Council of Europe bank account.

42. In addition to the more regular interstate cases, a significant proportion of Azerbaijan’s ECtHR cases pending implementation relate to the consequences of the conflict. Many of these cases relate to accommodation for internally displaced persons in Azerbaijan, under the *Mirzayev Group*.⁸² These cases concern people who were forced to leave their homes due to the conflict, many of whom moved into apartments belonging to others (there are over 500 domestic cases that still require execution). These cases make up around 40% of Azerbaijan’s overall unimplemented cases. However, there are also other cases relating to the conflict. During my visit to Azerbaijan, I heard of the progress in some areas, but that due to the sensitivity of such matters, and concerns over reciprocity, progress was not as fast as it might have been for a less politically sensitive matter. In my information note on the visit, I suggested that it would be useful to consider how co-operation can be improved with Armenia over human rights issues arising from the conflict. I would also encourage Azerbaijan to take action to resolve matters relating to internally displaced persons – if this group of cases were resolved this would reduce the overall statistics for unimplemented Azerbaijani cases by around 40%. This would enable Azerbaijan to deal with the unimplemented judgments which pertain to serious domains of democracy and the rule of law.

6. Article 18 judgments, concerning abusive limitations of rights and freedoms

43. According to the Annual Report 2021, the number of Article 18 judgments has been increasing and, as of end 2021, 13 such cases concerning five States (Azerbaijan, Georgia, Russian Federation, Türkiye and Ukraine) were pending before the Committee of Ministers.⁸³ They concern primarily the arrest, detention and, in some cases, conviction of government critics, civil society activists, human-rights defenders and politicians, in many cases involving criminal prosecutions for charges unsupported by evidence and where the ulterior motive is to silence or punish the applicant and discourage other activists or critics. These are: the *Mammadli v. Azerbaijan* group of cases,⁸⁴ *Lutsenko v. Ukraine*,⁸⁵ and *Tymoshenko v. Ukraine*,⁸⁶ *Merabishvili v. Georgia*,⁸⁷ *Kavala v. Turkey*,⁸⁸ *Selahattin Demirtaş v. Turkey (No. 2)*,⁸⁹ *Navalnyy v. Russia*⁹⁰ and *Navalnyy*

78. Application No. 13216/05, Grand Chamber judgments of 16 June 2015 (on the merits) and of 12 December 2017 (on just satisfaction). The [case notes](#) contain the latest information on the state of implementation.

79. Application No. 40167/06, Grand Chamber judgments of 16 June 2015 (on the merits) and of 12 December 2017 (on just satisfaction).

80. Paragraph 186 of the *Chiragov and Others* judgment.

81. Paragraph 199 of the *Chiragov and Others* judgment and paragraph 238 of the *Sargsyan* judgment.

82. [Mirzayev v. Azerbaijan](#) (2009).

83. The [Annual Report 2022](#), issued after this explanatory memorandum was drafted, identifies 13 such cases concerning Azerbaijan, Bulgaria, Georgia, the Russian Federation, Türkiye and Ukraine.

84. Application No. 15172/13, judgment of 22 May 2014. Group of six cases.

(No. 2) v. Russia.⁹¹ The 10th report examined in detail the implementation of the judgment *Ilgar Mammadov v. Azerbaijan*, which was subject to an Article 46(4) judgment, and other cases from this (former) group (now called the *Mammadli* group).⁹² It is welcome that some of these cases could now be closed. I have set out some of them in further detail below to illustrate the types of issues and challenges.

44. Violations of Article 18 of the Convention deny *par excellence* the very gist of democracy and are regarded as particularly serious given that they relate to the purposive misuse of power. They “require special attention since, not only are they typically linked to systemic problems at national level but because they also, by their nature, have a prominent political dimension which may create barriers to swift execution”.⁹³ According to the Committee of Ministers’ established practice, the execution of such cases would require that all the negative consequences of the abusive criminal proceedings for the applicant be erased (the principle of *restitutio in integrum*) and that the respondent State take measures to prevent any repetition of abuses of power, and, if need be, strengthen the independence of the judiciary and the prosecuting authorities.⁹⁴

45. A summary of the hearing held on 14 November 2022 (see the Appendix) explains the specific nature of Article 18 judgments, which concern human rights violations in pursuit of an unlawful ulterior purpose. The clear jurisprudence applied by the ECtHR in relation to Article 18 cases relates to (1) a significant time gap between the sets of events (for example many years between the alleged facts and the acts of the prosecution); (2) the quality of the totality of evidence (for example if lawful activities were criminalised); (3) the conduct of the applicant in the criminal process; and (4) temporal inferences between how politicians approached the framing of a case and the framing of the indictment. This hearing highlighted the significance of Article 18 judgments in relation to the misuse of power and ulterior motives for human rights abuses; such judgments are a red flag. I underline that the implementation and full redress of Article 18 violations constitute the very essence of a democratic society. I noted in particular the different types of Article 18 cases (detention cases and those to silence through disciplinary proceedings), and the need for close and timely monitoring of Article 18 cases. National parliaments and parliamentarians need to intervene to support the resolution of such cases, and more might be done to involve national parliaments and parliamentarians in this work

46. The Committee of Ministers has brought infringement proceedings under Article 46(4) in relation to unimplemented Article 18 detention cases. This has facilitated the release of Ilgar Mammadov by Azerbaijan. However the judgment in favour of human rights defender Mr Kavala has yet to secure his release by Türkiye; he has now spent 5 years in prison. In these infringement proceedings, the ECtHR noted that where an individual's detention was deemed to be a violation of Article 18, if they were released and then re-detained on different charges but based on the same facts, then the Article 18 violation continued.

6.1. Article 46(4) and failure to comply with a final judgment of the ECtHR – Arbitrary detention with the ulterior purpose of silencing Osman Kavala and dissuading other human rights defenders

47. Osman Kavala, a human right defender in Türkiye, has been involved in setting up numerous NGOs and civil-society movements which are active in the areas of human rights, culture, social studies, historical reconciliation and environmental protection. Mr Kavala was arrested on 18 October 2017 and placed in pre-trial detention, accused of attempting to overthrow the government within the context of the Gezi Park events of 2013 (Article 312 of the Turkish Criminal Code) and to overthrow the constitutional order within the context of the attempted coup in July 2016 (Article 309 of the Turkish Criminal Code). He has been deprived of his liberty since then.

48. In the 2019 *Kavala* judgment,⁹⁵ the European Court of Human Rights concluded that there had been a violation of Article 5 and of Article 18 taken together with Article 5, with regard to the suspicions raised against Mr Kavala in October 2017 concerning the Gezi Park events and the attempted coup of 15 July 2016, and his subsequent pre-trial detention. The Court found that this arrest and pre-trial detention took place in the

85. Application No. 6492/11, judgment of 3 July 2012.

86. Application No. 49872/11, judgment of 30 April 2013.

87. Application No. 72508/13 judgment of 28 November 2017.

88. Application No. 28749/18, judgment of 10 December 2019.

89. Application No. 14305/17, judgment of 22 December 2020.

90. Application No. 29580/12, judgment of 15 November 2018 (Grand Chamber).

91. Application No. 43734/14, judgment of 9 April 2019.

92. 10th report, Section 4.1.

93. Annual Report 2020, p. 12.

94. Annual Report 2021, p. 17.

95. [Kavala v. Turkey](#) – see here for the status of execution.

absence of evidence to support a reasonable suspicion he had committed an offence and also that they pursued the ulterior purpose of silencing him and dissuading other human rights defenders (violation of Article 18 taken in conjunction with Article 5). The Court indicated that any continuation of the applicant's pre-trial detention would entail a prolongation of the violation of Article 5 and of Article 18 in conjunction with Article 5, as well as a breach of Türkiye's obligations to abide by the Court's judgments in accordance with Article 46(1) of the Convention. It therefore held that the government should secure his immediate release.

49. However, the applicant was not released, and the Committee of Ministers thus referred the matter to the Court under Article 46(4). In the ensuing 2022 *Kavala* (Article 46(4)) judgment, issued on 11 July 2022, the Grand Chamber found that Türkiye had failed to fulfil its obligation to comply with final judgments of the ECtHR under Article 46(1). It noted that failure to implement a final, binding judicial decision would be likely to lead to situations incompatible with the principle of the rule of law. The Court considered that the measures indicated by Türkiye did not permit it to conclude that the State Party had acted in "good faith", in a manner compatible with the "conclusions and spirit" of the *Kavala* judgment, or in a way that would make practical and effective the protection of the Convention rights. The Court held that its finding in the first *Kavala* judgment of a violation of Article 5(1), read separately and in conjunction with Article 18, "vitiates any action resulting from the charges relating to the Gezi Park events and the attempted coup".

50. On 25 April 2022, the Assize Court convicted the applicant and sentenced him to aggravated life imprisonment for attempting to overthrow the government by force (Article 312 of the Turkish Criminal Code). On 28 December 2022 the Istanbul Regional Appeal Court rejected the applicant's appeal against the conviction and sentence. Given the ECtHR's findings that there was insufficient evidence for any reasonable suspicion that Mr Kavala had committed these crimes, it is difficult to understand how the Turkish courts have concluded that there was sufficient evidence for conviction. Further proceedings are pending.

51. The Turkish authorities have sought to dispute the clear findings of the ECtHR rather than seeking to comply with Türkiye's obligations under Article 46(1) of the Convention to eliminate all the negative consequences of the criminal charges brought against Mr Kavala, raising concerns for respect of the Convention system as a whole.

52. On 11 July 2022, the Chair of the Committee of Ministers, the President of the Parliamentary Assembly, and the Secretary General made a joint statement, urging Türkiye, as a Party to the Convention, to take all necessary steps to implement the judgment. In November 2022, the Committee of Ministers appointed a Liaison Group of Ambassadors to assist its Chair in engaging with the Turkish authorities regarding the implementation of the judgment in the *Kavala* case (CM/Del/Dec(2022)1446/H46-1). The Committee of Ministers regularly examines this issue. In January 2023, the Assembly co-rapporteurs for the monitoring of Türkiye had a meeting with Mr Osman Kavala.

53. This case displays the procedural barriers that States use to seek to deflect from timely implementation of ECtHR judgments, especially where political will is the principal obstacle. The Assembly should make clear that any prevarication with the implementation of a judgment, and especially following an Article 46(4) judgment is unacceptable and threatens the Convention system as a whole. I strongly urge Türkiye to implement this judgment with no further delay.

6.2. Arbitrary detention – politically motivated violation of rights – Selahattin Demirtaş

54. The *Demirtaş (No. 2)*⁹⁶ case concerns the politically motivated arrest and detention of Selahattin Demirtaş, who was, between 2007 and 2018, one of the leaders of the Peoples' Democratic Party (HDP), a pro-Kurdish opposition party, and a member of the Turkish National Assembly. In October 2014, violent protests took place in 36 provinces in eastern Türkiye, followed by further violence in 2015 in the wake of the breakdown of negotiations aimed at resolving the "Kurdish question". On 20 May 2016, the Turkish Constitution was amended, lifting inviolability from prosecution for certain members of parliament. Mr Demirtaş was one of the 154 parliamentarians (including 55 HDP members) who lost parliamentary inviolability following the constitutional amendment.⁹⁷ Mr Demirtaş was arrested on 4 November 2016 and placed in pre-trial detention, charged with offences under various provisions of the Criminal Code, the Prevention of Terrorism Act, and the Meetings and Demonstrations Act, including membership of an armed organisation

96. *Selahattin Demirtaş v. Turkey* – see here for [the status of execution](#).

97. Other related cases also concern the lifting of parliamentary inviolability of parliamentarians, including the recent case *Yüksekdağ Şenoğlu and Others v. Turkey*, (Application No 14332/17), which also concerns a number of violations of Article 18, 5, 10 of the Convention and Article 3 of the Additional Protocol, following the detention of twelve parliamentarians.

(Article 314 of the Turkish Criminal Code) and public incitement to commit an offence (Article 214 of the Turkish Criminal Code). At the same time 8 other democratically elected HDP members of parliament, were also arrested, as was the former HDP co-chair Figen Yüksekdağ.

55. The Court considered, in respect of the applicant's pre-trial detention between 4 November 2016 and 7 December 2018, that the domestic courts had failed to indicate specific facts or information that could give rise to a reasonable suspicion that the applicant had committed the offences in question and justify his arrest and pre-trial detention (violations of Article 5(1) and (3)). It further held that the way in which his parliamentary inviolability was removed and the reasoning of the courts in imposing pre-trial detention on him violated his rights to freedom of expression and to sit as a member of parliament (violations of Article 10 of the Convention and Article 3 of the Additional Protocol to the Convention). Finally, taking into account, among other elements, the applicant's return to pre-trial detention on 20 September 2019, the Court found that the applicant's detention pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate (violation of Article 18 in conjunction with Article 5). The Court indicated, under Article 46, that the nature of the violation under Article 18 left no real choice as to the measures required to remedy it, and that any continuation of the applicant's pre-trial detention on grounds pertaining to the same factual context would entail a prolongation of the violation of his rights as well as a breach of the obligation on the respondent State to abide by the Court's judgment in accordance with Article 46(1), of the Convention. It therefore held that Türkiye had to take all necessary measures to secure the applicant's immediate release. The applicant is still in detention; therefore the ECtHR judgment has not been complied with. The Committee of Ministers has strongly urged the Turkish authorities to ensure his immediate release.

6.3. The Mammadli v. Azerbaijan group of Article 18 cases

56. The *Mammadli* Group⁹⁸ concerns political-motivated arrests and prosecutions of human rights defenders, civil society activists and a journalist, all subject to arrest and detention from 2013 to 2016, in violation of Articles 18 and 5 of the Convention.⁹⁹ As these cases relate to the misuse of the criminal law intended to punish and silence these individuals contrary to Article 18 of the Convention, they are a priority both for this report and for the Council of Europe in general. There has been welcome progress here in that all individuals in this group have now been pardoned and released, but in order to address the individual measures, and to eliminate all consequences of these violations, their convictions need to be quashed. In this light, during my visit to Baku, it was positive to hear from the Supreme Court that it was working its way through the remaining six cases to remove the consequences of these prosecutions and that all of the cases should be dealt with in 2023, to move towards closing supervision of this group of cases. It is worrying that the judiciary in Azerbaijan is not completely independent from the executive. Therefore, ensuring respect for the separation of powers and the independence of the judiciary, including through the independence of the Judicial Legal Council, is also a core part of the general measures required for this group as well as being a theme in relation to respect for ECtHR judgments in Azerbaijan.¹⁰⁰

7. Specific challenges, including cases revealing long-standing “systemic and structural problems” identified by the Court’s judgments

57. The Annual report 2021 pinpoints, in particular, major issues concerning the functioning of the judicial system (including cases concerning excessive length of judicial proceedings and non-enforcement of domestic judicial decisions); ill-treatment by State agents and/or ineffective investigations; poor conditions of detention; or cases linked to democracy and pluralism (right to free elections, freedom of expression, freedom of assembly and freedom of association). To facilitate progress on these issues, I propose that the Assembly prepare reports on these themes in order to try to shine a spotlight on them, to consider and promote potential solutions and to try better to tackle these challenges. In this light, I note that I am currently working on a report on systemic torture, which should go some way to identifying the challenges of ill-treatment by State agents –

98. *Mammadli v. Azerbaijan* – see here for the [status of execution](#).

99. In some cases violations of Articles 3 (freedom from torture and inhuman or degrading treatment or punishment), Article 6 (right to a fair trial), Article 8 (right to family and private life), Article 10 (freedom of expression) and Article 1 of the Additional Protocol (right to peaceful enjoyment of possessions) were also found.

100. Improving the independence of the judiciary is a requirement for addressing the general measures in the *Mammadli* group, as well as the *Namat Aliyev* group (*Namat Aliyev v. Azerbaijan* (2010) – see here for the [status of execution](#)), which relates to violations of the right to free elections (Article 3 of the Additional Protocol), specifically relating to the arbitrary application of electoral legislation and the absence of adequate safeguards against arbitrariness – in particular relating to the approach taken by the courts in considering such cases. The fairness of civil and criminal proceedings is also relevant to a number of groups of cases, including the *Isanov* group.

some of which could surely be avoided by better deployment of body cameras, for example. I suggest a more systemic and structured approach for the future with Assembly reports on these systemic and structural problems as identified through the Annual Reports of the Department for the Execution of Judgments.

58. I should also like to highlight some other cases that raise specific issues requiring increased attention. These relate to secret detention and rendition by the American Central Intelligence Agency (CIA) in a number of Council of Europe member States including Lithuania, Poland and Romania (see paragraph 59); the Greek authorities' refusal to register associations relating to ethnic minorities (see paragraph 60); concerns relating to the Polish reform of the judiciary (see paragraph 61); and the inherently discriminatory nature of the constitution of Bosnia and Herzegovina dividing the population along ethnic lines, affecting elections in that country (see paragraph 62).

59. The *Al Nashiri and Husayn (Abu Zubaydah) v. Poland*¹⁰¹ cases relate to the secret detention of the applicants, suspected of terrorist acts, in the CIA detention facility in Poland and their subsequent transfer to Guantanamo Bay, in a situation that may amount to a risk of imposition of the death penalty or to a flagrant denial of justice.¹⁰² The applicants' situation is also examined by the Committee of Ministers in the context of the implementation of two subsequent judgments, *Al Nashiri v. Romania*¹⁰³ concerning the CIA "extraordinary rendition" operations in Romania (between 2004 and 2005), and *Abu Zubaydah v. Lithuania*¹⁰⁴ concerning the CIA "extraordinary rendition" operations in Lithuania (between 2005 and 2006) and finding the same violations of the Convention as in the two above-mentioned cases against Poland. Despite numerous repeated calls from the Committee of Ministers, significant concerns relating to individual measures and challenges in obtaining the requisite diplomatic assurances from the US as to the use of the death penalty and inhuman treatment remain (although some progress has been made on general measures to prevent recurrence).

60. The judgments concerning violations of the right to freedom of association resulting from the Greek authorities' refusal to register associations promoting the idea of the existence of an ethnic minority as distinct from the religious minorities recognised by the 1923 Treaty of Lausanne (*Bekir-Ousta* group)¹⁰⁵ remain unimplemented for almost 15 years. Similar questions have been under the Committee of Ministers' supervision since 2015 in *House of Macedonian Civilization and Others v. Greece*.¹⁰⁶ This is the second judgment, following that of *Sidiropoulos and Others v. Greece*¹⁰⁷ of 1998, concerning the same association in which the Court found a violation by Greece of Article 11 of the Convention. Despite the legislative amendment adopted by Greece in 2017 which allowed the reopening of the impugned proceedings, the applicant organisations have still not received *restitutio in integrum*, largely due to the judgments of the Greek Court of Cassation in 2021 and 2022 which considered that the dissolution of the Tourkiki Enosi Xanthis association to be lawful on grounds most of which were expressly impugned by the ECtHR and the decision not to register Emin and Bekir-Ousta to be lawful, also on certain grounds already rejected by the ECtHR (related to the promotion of the idea of existence of an ethnic minority). The Committee of Ministers considered this group of cases most recently in December 2022 and expressed their "most profound regret that the Court of Cassation did not take into consideration an essential element spelled out by the European Court", noting that the members of these associations have never advocated the use of violence or undemocratic or unconstitutional means and that no evidence was presented showing the opposite.¹⁰⁸ In light

101. Applications Nos. 28761/11 and 7511/13, judgment of 24 July 2014.

102. The cases concern multiple violations of the Convention, and in particular of Article 3, Article 6(1), and, with regard to Mr Al Nashiri, also of Articles 2 and 3 taken together with Article 1 of Protocol No. 6 (ETS No. 114). These issues were first examined in the two reports by our former committee colleague Mr Dick Marty (Switzerland, ALDE) "Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member States", Doc. 10957 of 12 June 2006, and "Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report", Doc. 11302 of 11 June 2007. These reports led to the adoption of the Assembly's Resolutions 1507 (2006) and 1562 (2007) and Recommendations 1754 (2006) and 1801 (2007).

103. Application No. 33234/12, judgment of 31 May 2018. In line with the Court's indications, the Romanian authorities took a number of steps, which are summarised in the notes on the agenda of the Committee of Ministers' 1411st meeting (September 2021) (DH) (CM/Notes/1411/H46-26). These steps included parliament enacting legislation to disapply the statute of limitations to the crime of torture

104. Application No. 46454/11, judgment of 31 May 2018. In line with the Court's indications, the Lithuanian authorities took a number of steps, which are summarised in the notes on the agenda of the Committee of Ministers' 1348th meeting (DH) (CM/Notes/1348/H46-14) (June 2019).

105. *Bekir-Ousta and Others v. Greece*, judgment of 11 October 2007.

106. Application no. 1295/10, judgment of 9 July 2015, examined for the last time at the 1362nd meeting (DH), see CM/Del/Dec(2019)1362/H46-9, 5 December 2019.

107. Application no. 26695/95, judgment of 10 July 1998.

108. *Bekir-Ousta*, HUDOC EXEC Case Notes.

of this, the Chair of the Committee of Ministers sent a letter to the authorities of Greece conveying the Committee of Ministers' deep concern about the present situation and urging them to swiftly adopt measures allowing the full and effective execution of the European Court's judgments. The successive barriers to full implementation of these cases are regrettable. Notwithstanding the legislative amendments introduced, it is frustrating that new barriers to implementation seem to have been imposed. This should finally be resolved.

61. The recent Polish reforms to its judiciary have incited controversy, not least given the apparent refusal of the Polish authorities – including the newly reformed judiciary – to abide by the final judgments of the ECtHR on this topic. In *Xero Flor v. Poland*,¹⁰⁹ the ECtHR found a violation of Article 6 of the Convention because of the composition of the Polish Constitutional Tribunal and questioned the validity of the election of several judges.¹¹⁰ Similarly, in the *Reczkowicz* group of cases, the ECtHR found violations of the right to a tribunal established by law, contrary to Article 6 of the Convention, due to the participation in domestic proceedings of the Polish Supreme Court judges that were appointed in an inherently deficient procedure on the motion of the National Council of the Judiciary, lacking independence from the legislature and the executive, noting the wider context of reforms aimed at weakening judicial independence.¹¹¹ In its judgment of 29 September 2021 in *Broda and Bojara v. Poland*,¹¹² the ECtHR found a violation of Article 6 of the Convention (access to court), on account of the premature termination of the applicants' terms of office as vice-presidents of a regional court. In response, the Polish Constitutional Tribunal delivered two judgments¹¹³ declaring that Article 6(1) of the Convention was incompatible with the Constitution (i) to the extent that the term "court" used in that provision referred to it, (ii) in so far as it conferred on the ECtHR the competence to assess the legality of the election of judges to the Constitutional Tribunal, and (iii) because it considered that the organisation and jurisdiction of domestic courts and the appointment of judges should be left to the competence of the State Party. Poland has recently informed the ECtHR Court Registry that it will not comply with an interim measure under Rule 39 of the Rules of Court issued in cases relating to judicial reform *Leszczyńska-Furtak v. Poland*, *Gregajtys v. Poland* and *Piekarska-Drażek v. Poland*.¹¹⁴ Successive decisions of the Committee of Ministers have recalled the clear unconditional obligation on Poland to comply with binding final judgments of the ECtHR in line with its obligation under Article 46(1) of the Convention,¹¹⁵ and deplored the authorities' position that the European Court acted beyond its legal authority in adopting the *Xero Flor* judgment. It is incumbent on Poland to interpret and, where necessary, amend its laws in such a way as to avoid any repetition of the violations found by the ECtHR in these cases. Unfortunately, this has not occurred to date, notwithstanding the exceptional procedure of an inquiry by the Secretary General having been launched under Article 52 of the Convention.¹¹⁶

62. The judgments in the *Sejdić and Finci v. Bosnia and Herzegovina*¹¹⁷ group concern discrimination against persons belonging to groups other than the "constituent peoples" of Bosnia and Herzegovina (namely Bosniaks, Croats and Serbs) as regards their right to stand for election to the House of Peoples and the

109. Application No. 4907/18, judgment of 7 May 2021.

110. The ECtHR found, in particular, that the election of certain judges to the Constitutional Tribunal was irregular as it was not in conformity with the Polish constitutional provisions relating to the election of judges to the Constitutional Court. Judges had already been elected by the previous Sejm (just not approved by the President) therefore it was inappropriate for the new Sejm to seek to re-elect different judges in their place. These irregularities infringed the applicant company's right to a tribunal established by law, in violation of Article 6 of the Convention, given the participation of irregularly appointed judges in judicial deliberations concerning its constitutional complaint

111. *Reczkowicz v. Poland*, judgment of 22 July 2021. The cases in this group include *Broda and Bojara v. Poland*, Application no. 26691/18, judgment of 29 June 2021; *Reczkowicz v. Poland*, Application No. 43447/19, judgment of 22 July 2021; *Dolińska-Ficek and Ozimek v. Poland*, Applications Nos. 49868/19 and 57511/19, judgment of 8 November 2021 and *Advance Pharma Sp. z o.o. v. Poland*, Application No. 1469/20, judgment of 3 February 2022.

112. *Broda and Bojara v. Poland*, judgment of 29 June 2021.

113. K 6/21 and K 7/21.

114. [Press release](#) from the ECtHR.

115. The most recent *Xero Flor* and *Reczkowicz* decisions were adopted at the CM-DH meeting in December 2022.

116. On 7 December 2021, the Secretary General initiated a Procedure in accordance with Article 52 of the Convention following the judgments of the Polish Constitutional Court in the case K6/21 and subsequently the case K7/21. The report concluding the procedure ([SG/Inf\(2022\)39](#)) was published on 9 November 2022. It concluded that as a result of the findings of unconstitutionality in judgment K6/21, the obligation of Poland under the European Convention on Human Rights to ensure the enjoyment of the right to a fair trial by an independent and impartial tribunal established by law to everyone under its jurisdiction had not been fulfilled. Action is required by Poland to comply with its international obligations, which include ensuring that its internal law is interpreted and, where necessary, amended in such a way as to avoid any repetition of the same violations.

117. Application No. 27996/06, judgment of 22 December 2009 (Grand Chamber), and three other judgments: *Zornić v. Bosnia and Herzegovina*, Application No. 3681/06, judgment of 15 July 2014; *Šlaku v. Bosnia and Herzegovina*, Application No. 56666/12, judgment of 26 May 2016 and *Pilav v. Bosnia and Herzegovina*, Application No. 41939/07, judgment of 9 June 2016.

Presidency of Bosnia and Herzegovina (violations of Article 1 of Protocol No. 12 (ETS No. 172)). The Committee of Ministers has followed this group of cases very closely, calling on the authorities and political leaders to bring the constitutional and legislative framework into line with Convention requirements. Notwithstanding the Committee of Minister's interventions and the extensive support offered to the authorities by both the Council of Europe and the European Union (addressing the judgment is one of the 14 priorities for the accession of Bosnia and Herzegovina to the European Union),¹¹⁸ it is of deep concern that the elections of 2010, 2014, 2018 and 2022 were based on what has been described as a "discriminatory electoral system in clear violation of the requirements" of the Convention.¹¹⁹ After a government was formed at the end of December 2019 following the 2018 elections, the Minister of Foreign Affairs of Bosnia and Herzegovina took part in the 1369th meeting (DH) in March 2020 and stated that "the matter would be examined within the parliamentary framework". However, the particularities of this case stem from the constitutional arrangements resulting from the Dayton agreement and the existing political system in Bosnia and Herzegovina. It is not surprising that despite efforts to reach an agreement on constitutional and electoral amendments, no consensus among the political leaders could be reached and the 2022 elections also took place following a discriminatory electoral system in violation of the Convention requirements. The Venice Commission has produced numerous opinions on the subject, notably calling on the people and politicians of Bosnia and Herzegovina to gradually replace ethnic representation mechanisms with representation based on the citizenship system.¹²⁰

63. I have a growing concern over the reluctance of certain member States to implement the Court's judgments. It is more than obvious that domestic politics play a significant role in this context. The adoption by the Russian Federation's legislative authorities of constitutional amendments which put a question mark on the country's obligations to implement the Court's judgments, the political or structural obstacles emanating from the ethnicity-based political system in Bosnia and Herzegovina, the Turkish and Azerbaijani authorities' reluctance to implement the Court's judgments touching upon "political" issues, or the recent stand of the Polish authorities relating to interim measures of the European Court of Human Rights and to the reform of the judiciary, are all stark examples.

8. States having the largest numbers of cases pending implementation before the Committee of Ministers

64. For this report, I have focussed on the five States having the largest number of cases pending implementation – as well as the Russian Federation – given that these six States together have such a significant proportion of the overall cases pending implementation. Moreover, considering the cases and challenges of these States can help to highlight the challenges and potential improvements of benefit to all States.

8.1. Türkiye

65. In relation to Türkiye, I set out the details of the major cases in an information note.¹²¹ According to the Annual Report 2021 on the Execution of Judgments, Türkiye has the second largest number of cases pending execution (510) of Council of Europe member States, with the largest number of leading cases (139) and the second largest number of repetitive cases (371).¹²² Türkiye was also first in relation to the number of cases closed during 2021 (222). For 2022, the case numbers look to be similar, with 480 cases pending execution (ranking Türkiye as third), with the largest number of leading cases (126) and the second largest number of cases closed during 2022 (107).¹²³

66. It is important to note that the number of Turkish pending cases has drastically diminished in recent years, in particular as concerns repetitive cases (for example where individual measures have been addressed or became impossible to perform due to the application of the statute of limitations in Turkish law). However, the number of leading cases (which indicate systemic issues) remains high, and Türkiye has a large

118. European Commission, Commission Opinion on Bosnia and Herzegovina's membership of the European Union, [SWD\(2019\)222](#), 29 May 2019.

119. Decision adopted at the 1324 meeting (DH), 20 September 2018, CM/Del/Dec(2018)1324/4, paragraph 1.

120. CDL-AD(2005)004-e, "Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative" adopted by the Venice Commission at its 62nd plenary session (Venice, 11-12 March 2005).

121. [AS/Jur\(2023\)06](#), op. cit.

122. [Annual Report 2021](#).

123. See the [Annual Report 2022](#) issued after this explanatory memorandum was drafted.

number of leading cases that have been pending for over 5 years (78). Leading cases often require significant general measures in order to be resolved, such as legislative change or improvements to the independence of the judiciary and the functioning of the rule of law.

67. There has been recent progress on cases concerning property rights, domestic violence, and compensation for medical negligence. However, political will is required to make the changes needed to address cases relating to freedom of expression, freedom of association and the right to liberty (Articles 5, 10 and 11 of the Convention). Key groups of cases relate to freedom of expression;¹²⁴ the independence of the judiciary¹²⁵ and the functioning of the justice system; freedom of thought, conscience and religion;¹²⁶ freedom of assembly;¹²⁷ and the consequences of the 1974 Turkish military intervention in Cyprus.

68. The *Kavala*, *Demirtaş* and *Yüksekdağ Şenoğlu* cases are of particular interest given the focus of the Committee on Legal Affairs and Human Rights for this report on Article 18 cases relating to human rights violations for politically motivated reasons. Reforms of the composition of the Council of Judges and Prosecutors, in line with the Venice Commission Opinion, would be key to ensuring the independence of the judiciary. The continued failure to comply with the Article 46(1) and 46(4) judgments of the ECtHR in the case of *Kavala* is of particular concern for respect of the Council of Europe's human rights system and the rule of law as a whole.

69. The *Bati* group of cases,¹²⁸ relating to the ineffectiveness of investigations into torture or ill-treatment by members of security forces could be of special interest to our committee given its ongoing work on the report on systemic torture. The *Cyprus v. Turkey* case is also of particular interest given the committee's focus for the present report on interstate cases.

70. The *Gurban* group of cases¹²⁹ concerns violations of the prohibition of torture and inhuman or degrading treatment or punishment on account of the applicants' sentences to aggravated life imprisonment without any prospects of release or any adequate review mechanism of these sentences (Article 3 of the Convention). This requires a review mechanism in light of the standards already set out by the Court. In the case of *Öcalan v. Turkey* (No. 2) the Court further found a violation of Article 3 in relation to the applicant's conditions of detention prior to 17 November 2009.

71. During the hearing in the committee, Mr Ahmet Yıldız, Chairperson of the Turkish delegation to the Assembly, underlined that 89% of ECtHR judgments against Türkiye had been implemented, with 107 cases being closed in 2022. The *Kavala* case remained a political priority for the authorities. In relation to *Cyprus v. Turkey*, he recalled that the question of living conditions for Greek Cypriots in the Karpasia/Karpas region as well as questions relating to the *Loizidou* case had been closed and that the Committee on Missing Persons was continuing its work. Mr Hacı Ali Açıkgül, Head of the Human Rights Department in the Ministry of Justice, underlined the good co-operation between his department and the Department for the Execution of Judgments of the Court and measures taken to address certain judgments.

8.2. Romania

72. I undertook a fact-finding visit to Romania on 15-16 November 2022 and my information note contains full details of the visit, the challenges and major cases of interest.¹³⁰ The focus of the visit was (1) institutional capacity in Romania for implementing ECtHR judgments; (2) judgments relating to mental health conditions, mental capacity and people with learning difficulties;¹³¹ (3) prison conditions;¹³² (4) other judgments including those relating to restitution cases;¹³³ and enforcement of domestic judgments.¹³⁴ I am very grateful to all I met with for their time and useful insights into the challenges and efforts being made to implement judgments of the European Court of Human Rights.

124. *Altug Taner Akcam v. Turkey* – see here for the status of execution. *Öner and Türk v. Turkey* – see here for the status of execution. *Nedem Şener v. Turkey*. *Vedat Şorli v. Turkey*. *Dink v. Turkey* – see here for the status of execution. *Ahmet Yıldırım v. Turkey* – see here for the status of execution.

125. *Alparslan Altan v. Turkey* – see here for the status of execution.

126. *Izzettin Doğan v. Turkey* – see here for the status of execution. *Ülke v. Turkey* – see here for the status of execution. *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey* – see here for the status of execution.

127. *Oya Ataman v. Turkey* – see here for the status of execution. *Işıkırık v. Turkey* – see here for the status of execution.

128. *Bati and others v. Turkey* – see here for the status of execution.

129. *Gurban v. Turkey*.

130. AS/Jur(2023)02, "The Implementation of judgments of the European Court of Human Rights – 11th report – Information note following the rapporteurs visit to Romania", November 2022.

131. Centre for Legal Resources on behalf of *Mr Valentin Campeanu v. Romania* – see here for the status of execution; *Parascineti v. Romania* – see here for the status of execution. *Cristian Teodorescu v. Romania* – see here for the status of execution.

73. According to the Annual Report 2021 on the Execution of Judgments, Romania has the third largest number of cases pending execution (409) of Council of Europe member States, and the second largest number of leading cases pending execution (106). Romania was seventh in relation to cases closed during 2021 (45). The latest figures for 2022 do not seem to be showing improvements, with 509 cases pending execution (ranking Romania as second), with the second largest number of leading cases (113) but only the eighth largest number of cases closed during 2022 (37).¹³⁵ Romania has the largest number of unimplemented ECtHR judgments amongst EU member States.

74. During my visit, I heard about a significant number of legislative and practical reforms being implemented at national level, especially in the field of justice and social care. I was pleased to hear about the important progress being made, in particular to deinstitutionalise a number of people in the care system and to better support living in the community. Many of the sorts of reforms needed to grapple with the challenges identified by the ECtHR judgments require significant investment. I would therefore encourage maximum use of funds and expertise available from international organisations, to help to deliver on these challenging but important reforms.

75. Most interlocutors considered that the government was efficient at paying just satisfaction, but that there were greater delays in taking action to deal with general measures to address the root causes behind a human rights violation. During our meetings there was apparent general acceptance and acknowledgement that Romania had not yet achieved a sufficient focus on implementing ECtHR judgments in terms of resources, institutional mechanisms, and political weight and priority given to implementation. This was especially obvious when compared to judgments of the Court of Justice of the European Union which were given a greater priority due to the financial penalties attached to their non-implementation through infringement proceedings of the Court of Justice of the European Union.

76. The responsibility for co-ordinating the implementation of ECtHR judgments in Romania lies with the Agent to the ECtHR, within the Ministry for Foreign Affairs, whose office had, for a number of years, been sorely understaffed in view of the significant case-load they faced (both in terms of litigating cases before the ECtHR and in co-ordinating the implementation of judgments). I was very pleased to hear of recent plans to address these concerns, through recent recruitment exercises. As well as staffing, there was also the recognition of the need for improved political co-ordination from those within government with the power to drive through reforms needed to address ECtHR judgments. Recent steps being taken to provide the necessary co-ordination from central Government are therefore welcome. During my visit, I was informed that three separate working groups/task forces were very recently established by the Chancellery Office of the Prime Minister to co-ordinate work in relation to (a) all the mental health/mental capacity cases; (b) the enforcement of domestic judgments (*Sacaleanu*) cases; and (c) the restitution cases, with further co-ordinating working groups for other topics and groups of judgments to be added as this co-ordination work progressed.

77. Overall, whilst there is a very good knowledge of human rights and the judgments in some areas, further work is arguably needed to embed more of a human rights culture in other areas. Ideas such as a "focal point" for human rights within each Ministry could assist in this work.¹³⁶

78. These new initiatives seem very positive and, in my opinion, seem to be a very welcome response to deliver what is needed to enable Romania to best tackle the challenges of implementing some of these groups of ECtHR judgments. I can only encourage all involved in driving forward this important work and hope that these changes will facilitate improvements in addressing these complex ECtHR judgments. Ideas for improving transparency for the implementation of ECtHR judgments, and involving all actors, including civil society, in the new systems for implementing judgments could further help to improve the understanding of

132. There is a series of Romanian cases relating to prison conditions, including overcrowding and poor conditions in prisons and police detention facilities (*Bragadireanu v. Romania* and *Rezmives v. Romania* – see here for [the status of execution](#)), as well as deficiencies in the mental health treatment and care in detention (*Ticu v. Romania* – see here for [the status of execution](#)), poor conditions of detention for life-sentenced prisoners, relating to isolation and systemic handcuffing, (*Enache v. Romania* – see here for [the status of execution](#)) and release on humanitarian grounds (*Dorneanu v. Romania* – and see here for [the status of execution](#)).

133. *Strain v. Romania* and *Maria Atanasiu v. Romania* – see here for [the status of execution](#).

134. *Sacaleanu v. Romania* – see here for [the status of execution](#).

135. See the *Annual Report 2022* issued after this explanatory memorandum was first drafted.

136. Designating "focal points" or "reference contacts" in the relevant national authorities is recommended in CM Recommendation [CM/Rec\(2008\)2](#) to member States on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights (at point 1). Article 7 of the recommendation specifically refers to training such actors.

the steps being taken to address ECtHR judgments, and to ensure they respond to the needs of society. I would encourage thought to be given to ensuring the involvement of as many stakeholders as possible, including the Ombudsman's Office and civil society, in these new processes.

79. In relation to parliamentary scrutiny of the implementation of ECtHR judgments, this had perhaps diminished somewhat since the Assembly [Resolution 1823 \(2011\)](#) "National parliaments: guarantors of human rights in Europe". Parliamentarians, during our meeting, committed to write a memorandum to their permanent Bureau to request improvement of the democratic control of parliament over the executive in relation to the execution of judgments. Ideas were discussed such as a committee specifically focussing on the implementation of ECtHR judgments and requesting an annual or six-monthly report from the government on the implementation of ECtHR judgments. I welcome this commitment and strongly encourage our colleagues in this work.

80. Overall, my impression is that there is a great deal of human rights expertise within both government and civil society. The Romanian Government is aware of its need to comply with its obligations and to address the institutional challenges posed by the number of unimplemented ECtHR judgments and is in the process of developing good initiatives to strengthen the institutional capacity to implement these judgments. All of these initiatives draw on the Committee of Ministers' Recommendation [CM/Rec\(2008\)2](#) to member States on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights and sound like examples of good practices for member States grappling with the implementation of ECtHR judgments and I encourage the Romanian authorities in this work. I would also encourage creative thinking to secure the funding, expertise and commitment that are necessary to deliver on some of the reforms needed. In addition, I would also support a more human rights focussed approach to be embedded within the Ministry of Health and the provision of mental health care. Restitution cases are a subject of concern; as I was told during my fact-finding mission, local authorities which are involved in the process of restitution proved to be reluctant and sometimes unco-operative. Finally, I would urge the authorities to fully draw on Council of Europe expertise, including in technical cooperation programmes and projects. I look forward to hearing further about the progress of the implementation of these cases once these new processes start delivering tangible results.

8.3. Ukraine

81. In relation to Ukraine, I set out the detail of recent statistics and cases in my information note.¹³⁷ According to the Annual Report 2021 on the Execution of Judgments, at the end of 2021, Ukraine had the largest number of cases pending execution (638) of current Council of Europe member States, with the largest number of repetitive cases (532) and the second largest number of leading cases (106).¹³⁸ Ukraine was second in relation to the number of cases closed during 2021 (126). At the end of 2022, the number of cases had increased with 716 cases pending execution (99 leading cases and 617 repetitive cases) and 67 cases having been closed during the year, ranking Ukraine as having the largest number of cases pending execution but only the third largest number of leading cases.¹³⁹

82. It goes without saying that the implementation of ECtHR judgments, as for other public functions, necessarily faces specific challenges in light of Russian's war of aggression against Ukraine, and I am conscious of the very difficult context and the huge challenges that Ukraine is currently facing not least in preparing the way for reconstruction of the country, which will be greatly facilitated by ensuring respect for the rule of law and protection of human rights. It is therefore encouraging that throughout 2022 the Ukrainian authorities have continued to collaborate closely with the Department for the Execution of Judgments and to make regular submissions to the Committee of Ministers on individual cases and groups of cases (over 50 action plans and reports were submitted), thus expressing their commitment to full compliance with the Convention.¹⁴⁰ I was also positively struck by the detailed information provided by the Ukrainian representatives during the exchange of views with the Committee on Legal Affairs and Human Rights.

83. Given the number of cases involved, the complex and structural nature of some of the issues raised in those judgments, and the length of time taken to resolve many of these groups of cases, there is a significant number of outstanding issues that require additional attention, further measures and political will. It is also

137. [AS/Jur\(2023\)04](#), The Implementation of judgments of the European Court of Human Rights – 11th report – Information note in preparation of a hearing in relation to Ukraine.

138. Annual Report 2021.

139. See the Annual Report 2022 issued after this explanatory memorandum was drafted.

140. See for example: "Examination of the cases concerning Ukraine – Department for the Execution of Judgments of the European Court of Human Rights" ([coe.int](#)).

worth noting that many leading cases date from some time ago, before the “revolution of dignity” in February 2014, meaning that the political, legislative and administrative context has often significantly evolved since then, even if the underlying issues have not yet been entirely resolved.

84. We cannot therefore ignore that there are judgments in certain key groups of cases covering a very wide range of human rights issues, such as torture, hate crimes,¹⁴¹ prison conditions,¹⁴² irreducible whole life sentences,¹⁴³ unlawful pre-trial detention,¹⁴⁴ or independence of the judiciary¹⁴⁵ which remain unimplemented. However the effective functioning of the justice system and respect for the rule of law are common threads that are prevalent across many of these groups of cases. The Committee of Ministers has noted that a number of the outstanding groups (non-enforcement or delayed enforcement of domestic judgments against the State;¹⁴⁶ independence of the judiciary; length of judicial proceedings¹⁴⁷) reveal major structural deficiencies adversely affecting the functioning of the justice system and the rule of law in Ukraine, depriving people of effective access to justice and thus eroding their trust in the judicial system.¹⁴⁸

85. The developments in the *Lutsenko* and *Tymoshenko* cases are of particular interest given the focus of the Committee on Legal Affairs and Human Rights for this report on Article 18 cases relating to the abuse of power for politically motivated reasons. Three groups could also be of potential interest to the committee for its current work on systemic torture: the *Kaverzin* Group¹⁴⁹ which relates to systemic use of torture and ill-treatment by the Ukrainian police in order to extract confessions; the *Yaremenko* group concerning the use of evidence obtained by torture; and the *Karabet* group¹⁵⁰ on torture of prisoners by special forces either as punishment or during training exercises in prisons.

86. There seem to be a significant number of instances across different groups of cases where the Ukrainian authorities have been unable to pay just satisfaction due to an inability to obtain the bank details of the applicants. It might be useful to reflect on how to improve this situation – and in particular to ensure such money is available as and when the applicants are eventually located so that supervision of these cases can eventually be closed.

87. Another recurring theme is the lack of an effective domestic remedy for breaches of human rights including for structural problems that lead to multiple repetitive violations by the Court. The lack of such mechanisms and ensuing violations of Article 13 seem to be a regular feature of complex cases in Ukraine and should be a priority for the Ukrainian authorities to address.

88. Ms Iryna Mudra, Vice-Minister of Justice, noted that 67 cases against Ukraine had been closed during 2022 and the role of the Government Agent had been reinforced. Ms Sokorenko, Government Agent before the ECtHR, mentioned the laws adopted in 2022 to remedy the problem of ill-treatment by the police, of the legality and length of pre-trial detention, and indeterminate life imprisonment. Other work had been pursued in developing plans to deal with prison overcrowding. However, challenges remained, such as the *Burmych* cases. She noted that damage caused by the war of aggression complicated matters, for example in relation to prison movements and the safety of certain prisons, where files were destroyed, and the general pressure on the justice system. I can only commend the ongoing work to address ECtHR judgments even in such difficult circumstances and suggest that the Council of Europe provides ample support to Ukraine in dealing with these challenges.

89. The situation in Ukraine is a complex one vis-à-vis other countries due to the Russian war of aggression and the consequences for the Ukrainian authorities and society as a whole. The challenge though is to prove that democracy and the rule of law should always prevail notwithstanding the huge barriers and challenges.

141. *Fedorchenko and Lozenko v. Ukraine* – see here for the [status of execution](#). Such cases included victims of Roma and Armenian origin, as well as Jehovah’s Witnesses.

142. *Nevmerzhitsky v. Ukraine* – see here for the [status of execution](#).

143. *Petukhov (no 2) v. Ukraine* – see here for the [status of execution](#).

144. *Ignatov v. Ukraine (ex Kharchenko)* – see here for the [status of execution](#).

145. *Oleksandr Volkov v. Ukraine* – see here for the [status of execution](#).

146. *Zhovner v. Ukraine*, *Yuriy Nikolayevich Ivanov v. Ukraine* and *Burmych v. Ukraine* – see here for the [status of execution](#).

147. *Svetlana Naumenko v. Ukraine* and *Merit v. Ukraine* – see here for the [status of execution](#).

148. See CM/Del/Dec(2021)1411/H46-44, CM/Del/Dec(2021)1411/H46-41, CM/Del/Dec(2021)1411/H46-42.

149. *Kaverzin v. Ukraine* – see here for the [status of execution](#).

150. *Karabet and Others v. Ukraine* – see here for the [status of execution](#).

8.4. Hungary

90. In relation to Hungary, I set out the detail of the most significant cases in the Information Note.¹⁵¹ According to the Annual Report 2021 on the Execution of Judgments, Hungary has the fifth largest number of cases pending execution (265) of Council of Europe member States.¹⁵² Hungary was fourth in relation to numbers of cases closed during 2021 (66). For 2022, these figures look to be improving with 219 cases pending execution (ranking Hungary fifth); and 109 cases having been closed during 2022 (of which 4 were leading cases), meaning that Hungary closed the largest number of cases during 2022.¹⁵³ Hungary has the second largest number of unimplemented ECtHR judgments amongst EU member States.

91. Key groups of cases relate to poor conditions of detention in prisons;¹⁵⁴ inadequate procedures for processing asylum seekers before returning them to Serbia;¹⁵⁵ excessively lengthy and unlawful pre-trial detention;¹⁵⁶ excessive length of civil, criminal and administrative proceedings and the lack of an effective remedy;¹⁵⁷ independence of the judiciary;¹⁵⁸ irreducibility of life sentences;¹⁵⁹ discrimination against Roma children in education;¹⁶⁰ violations of the right to life and the right to be free from torture and inhuman or degrading treatment by security forces;¹⁶¹ and the inadequacy of secret surveillance legislation.¹⁶²

92. During the exchange of views with the committee, Mr Barna Zsigmond, Vice-Chairperson of the Hungarian delegation to the Assembly highlighted the efforts that had been made to implement pilot cases and in particular recent progress relating to the overcrowding of prisons, including through the introduction of both preventive and compensatory mechanisms. I was pleased to hear that in the largest group of cases pending implementation which was related to the excessively lengthy and unlawful pre-trial detention, significant progress had been accomplished in 2021 thanks to the introduction of an appeal against excessively lengthy procedures and other legislative changes. Mr Zsigmond also noted recent co-operation with the Council of Europe, such as through a conference in October 2022 relating to effective investigations into allegations of mistreatment by the police. He highlighted that the Ministry of Justice regularly submitted information to parliament on the implementation of ECtHR judgments.

8.5. Azerbaijan

93. As concerns Azerbaijan, I undertook a fact-finding visit to Baku from 20 to 23 November 2022 and my information note¹⁶³ contains full details of the visit, the challenges and major cases pending implementation. I am very grateful to all I met with for their time and useful insights into the challenges and efforts being made to implement judgments of the European Court of Human Rights. According to the Annual Report 2021 on the Execution of Judgments, Azerbaijan has the fourth largest number of cases pending execution (271) of Council of Europe member States. However, Azerbaijan was only 20th in the number of cases closed in that year (12).¹⁶⁴

94. Major cases are those related to Article 18 judgments (as set out above) in: the *Mammadli* group¹⁶⁵; the *Muradova* group¹⁶⁶ relating to excessive use of force and ill-treatment by the police during demonstrations; the *Mammadov (Jalaloglu)* group¹⁶⁷ relating to ill-treatment and/or torture during arrest and police custody and the lack of adequate criminal investigations relating to allegations of torture or mistreatment; the *Ramazanova* group,¹⁶⁸ relating to the freedom of association (Article 11 of the Convention),

151. [AS/Jur\(2023\)03](#), The Implementation of judgments of the European Court of Human Rights – 11th report – [Information note](#) in preparation of a hearing in relation to Hungary.

152. [Annual Report 2021](#).

153. See the [Annual Report 2022](#) issued after this explanatory memorandum was drafted.

154. [István Gábor Kovács v. Hungary](#) and [Varga and others v. Hungary](#) – see here for the [status of execution](#).

155. [Ilias and Ahmed v. Hungary](#) – see here for the [status of execution](#).

156. [XY v. Hungary](#) – see here for the [status of execution](#).

157. [Gazsó v. Hungary](#) – see here for the [status of execution](#).

158. [Baka v. Hungary](#) – see here for the [status of execution](#).

159. [Laszlo Magyar v. Hungary](#) – see here for the [status of execution](#).

160. [Horvath and Kiss v. Hungary](#) – see here for the [status of execution](#).

161. [Gubacsi v. Hungary](#) – see here for the [status of execution](#).

162. [Szabo and Vissy v. Hungary](#) – see here for the [status of execution](#).

163. [AS/Jur\(2023\)01](#), The Implementation of judgments of the European Court of Human Rights – 11th report – [Information note](#) following the rapporteurs visit to Azerbaijan, November 2022.

164. The [Annual Report 2022](#), issued after this explanatory memorandum was drafted, ranks Azerbaijan as having the fourth largest number of unimplemented cases (285).

165. [Mammadli v. Azerbaijan](#) – see here for the [status of execution](#).

166. [Muradova v. Azerbaijan](#) (2009) – see here for the [status of execution](#).

167. [Mammadov \(Jalaloglu\) v. Azerbaijan](#) (2007) – see here for details on the [status of execution](#).

and impediments to registering associations that acted as a barrier to an effective civil society; the *Mirzayev* group¹⁶⁹ relating to internally displaced persons which make up a significant proportion of Azerbaijan's unimplemented cases; the holding of demonstrations and the right to protest, for example as part of the *Gafgaz Mammadov* group,¹⁷⁰ freedom of the press, including the *Khadija Ismayilova* group,¹⁷¹ and the *Mahmudova and Agazade* group,¹⁷² concerning the deterrent effect on free speech of a potential long prison sentence for defamation. I strongly encourage swift legislative action to remove the possibility of detention in defamation cases.

95. During my visit I heard about a significant number of legislative and practical reforms adopted at the national level, especially in the field of justice, as well as the recent co-operation with the Department for the Execution of Judgments in advancing action to address the implementation of ECtHR judgments. I was also pleased to hear about recent efforts in 2022 in closing 25 ECtHR cases under the supervision of the Committee of Ministers and submitting 30 action reports. This is part of a positive trend: Azerbaijan closed 6 cases in 2020, 12 in 2021 and 35 in 2022, and further progress in closing cases can be hoped for in the coming year.

96. I also heard how the Presidential Administration had established, in early 2022, a working group on the execution of judgments, including the most relevant agencies for this work. However, there was a significant caseload and backlog of cases, and perhaps less of an appreciation of the measures needed to address ECtHR judgments across the government more generally. Interlocutors noted greater delays in taking action to address general measures or indeed individual measures. Further consideration should perhaps be given to how to ensure swift action in resolving individual measures following ECtHR judgments and to ensure that all unnecessary administrative obstacles to enforcing ECtHR judgments are removed.

97. Overall, my impression is that we can expect more progress and that the Azerbaijani authorities seem to be taking positive steps to better co-ordinate and to accelerate action in addressing outstanding ECtHR judgments – including through the deployment of a working group on the execution of judgments, as well as through co-operation programmes and projects run in collaboration with the Council of Europe's Department for the Execution of Judgments. I consider that it may, however, be helpful to reflect on what more might be done to improve the domestic accountability of the government for addressing ECtHR judgments in a timely manner, perhaps through giving a greater role to civil society, the parliament and ombudsman, whose remit could perhaps include supervising the implementation of human rights judgments or even to have the right of legislative initiative to help in resolving human rights issues. Most interlocutors considered that the government was efficient at paying just satisfaction but that quicker mechanisms are needed for addressing individual measures, and that there is a need to incentivise timely action to address general measures that are needed to prevent the recurrence of human rights violations. I encourage the timely action of the Azerbaijani authorities, including the Supreme Court, in addressing the outstanding cases as swiftly as possible, in particular to promote the independence of the judiciary and core democratic values such as freedom of expression and of association. I look forward to hearing about a much more significant number of cases being closed in the year to come as these new processes should yield some positive results.

8.6. Russian Federation

98. The Russian Federation poses a particular problem, given the exceptionally large number of unimplemented ECtHR judgments; its resistance to implementing a significant number of judgments even prior to 2022; its involvement in the majority of current interstate cases – or cases linked to conflict or post-conflict situations – due to its (often military) interference in countries in the region (for example *Georgia v. Russia, Catan and Others v. Moldova and Russia, Mozer v. Moldova and Russia*, as well as a number of cases pending before the Court relating to the downing of flight MH17, the situation in Georgia, the various interferences in the sovereignty of Ukraine including the ongoing war of aggression); the persistent rule of law issues in the country; the intolerance towards democracy and free speech; as well as its recent expulsion from the Council of Europe following its full-scale military war of aggression against Ukraine.

99. According to the Annual Report 2021, as of 31 December 2021, of the 5 533 cases pending implementation under the supervision of the Committee of Ministers, by far the largest number of pending cases related to the Russian Federation (1 942), thus accounting for 35% of all cases.¹⁷³ The current figure is

168. *Ramazanov v. Azerbaijan* (2007).

169. *Mirzayev v. Azerbaijan* (2009).

170. *Gafgaz Mammadov v. Azerbaijan* (2015) – see here for the status of execution.

171. *Khadija Ismayilova v. Azerbaijan* – see here for the status of execution.

172. *Mahmudov and Agazade v. Azerbaijan* (2009) and see here for the status of execution.

closer to 2 395 cases pending implementation.¹⁷⁴ Moreover, notwithstanding Russia ceasing to be a member of the Council of Europe, 22.4% of all applications pending before the ECtHR at the end of 2022 were against the Russian Federation.¹⁷⁵

100. The Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022 (Resolution [CM/Res\(2022\)2](#)), and a Party to the Convention as from 16 September 2022. The Registrar of the Court issued a Press Release (ECHR 036(2023), 3 February 2023) and confirmed that according to Article 58 of the Convention, the European Court remained competent to deal with applications directed against Russia in relation to acts and omissions capable of constituting a violation of the Convention provided that they occurred up until 16 September 2022. In relation to the implementation of judgments of the ECtHR, the Russian Federation remains bound by its obligations under international law to respect human rights and to comply with final judgments against it under Article 46(1) of the Convention. Thus the Committee of Ministers continues to supervise the execution of ECtHR judgments and friendly settlements concerning the Russian Federation (paragraph 7 of Resolution [CM/Res\(2022\)3](#)). To this end it is important that efforts continue to ensure that people in Russia, and people in countries affected by the Russian Government's actions, are able to obtain redress following a finding of a violation of the Convention, and to have their human rights respected.

101. It is regrettable that, since 3 March 2022, the Russian authorities have ceased all communication with the Secretariat. Moreover, a new Russian law regarding the execution of judgments, that entered into force on 11 June 2022 further confuses the situation domestically. That law sought to argue that due to the exclusion of the Russian Federation from the Council of Europe, judgments of the European Court which became final after 15 March 2022 should not be enforced, nor should they serve as a ground for the reopening of proceedings domestically. This ignores the clear legal obligation of Russia to comply with binding final judgments of the ECtHR. In relation to the payment of just satisfaction for judgments prior to this day, the Russian authorities stated that payment will be made in roubles, only to bank accounts in Russia, and payment would be made only until the end of 2022.

102. I welcome the carefully thought-through strategy that has been developed on how the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights will approach Russian cases – including continuing to write to the Russian authorities to request information on cases; closing cases that are implemented (where possible); co-operating closer with civil society as a means of obtaining up-to-date information on the situation in Russia and in areas under Russian effective control; co-operating closer with other international organisations where there are useful synergies, for example as concerns enforced disappearances in Chechnya and the work of the United Nations Working Group on Enforced or Involuntary Disappearances (the *Khashiev* group of cases), or relating to protecting women against domestic violence and the work of the UN Committee on the Elimination of Discrimination against Women (the *Volodina* group of cases). I also welcome the initiatives relating to the effective communication of information to the public in relation to the state of Russian implementation of ECtHR judgments, the register of outstanding just satisfaction awards,¹⁷⁶ and the stock-taking exercise.

103. Many of the cases continue to be of relevance to free speech and democracy in Russia, for example the *Lashmankin*¹⁷⁷ group of cases, which prove that the structural problem is still persisting in Russia on that issue. Similarly, the blocking of online resources (*Vladimir Kharitonov* group of cases) is of continuing relevance given that thousands of websites have been blocked mostly for their opposition against the war in Ukraine.¹⁷⁸

104. The main cases or groups of cases pending implementation by the Russian Federation include poor conditions of detention in remand centres (*Kalashnikov* group of cases); excessive length of remand detention and other violations of Article 5 of the Convention (*Klyakhin* group of cases);¹⁷⁹ acts of torture and ill-treatment during custody (*Mikheyev* group of cases); repeated bans on gay pride events (the *Alekseyev* case); secret, extrajudicial extraditions and expulsions (*Garabayev* group of cases); continuing human rights violations in the North Caucasus region of the Russian Federation, mostly relating to the actions of security

173. [Annual Report 2021](#), pp. 11 and 37.

174. As of 6 March 2023.

175. [Pending applications](#).

176. [Register](#) of outstanding just satisfaction in respect of the Russian Federation.

177. *Lashmankin* group of cases (see the notes and the draft decisions [CM/Notes/1459/H46-21](#)).

178. *Vladimir Kharitonov* group of cases (see the notes and the draft decisions [CM/Notes/1459/H46-23](#)).

179. In particular, the issue of individual measures in the cases *Pichugin v. Russia* (No. 1), Application No. 38623/03, judgment of 23 October 2012, and *Pichugin v. Russia* (No. 2), Application No. 38958/07, judgment of 6 June 2017 (release of the applicant) and in *Khodorkovskiy and Lebedev v. Russia*, Application No. 11082/06, judgment of 25 July 2013 (the lifting of an unlawful damage award).

forces in the Chechen Republic (*Khashiyev and Akayeva* groups of cases),¹⁸⁰ *Georgia v. Russia, Catan and Others v. Moldova and Russia* and *Mozer v. Moldova and Russia* (see the section on interstate cases above). The *Navalnyy v. Russia*¹⁸¹ and *Navalnyy (No. 2) v. Russia*¹⁸² judgments continue to be important. The Committee of Ministers continues asking for the latter's release and refers to his harsh detention conditions and solitary confinements.

105. The case *OAO Neftyanaya Kompaniya YUKOS v. Russia*¹⁸³ illustrates the problems caused by the amendments to the Constitution of the Russian Federation that add further obstacles to Russian compliance with its international obligations under the Convention. In *YUKOS*, the Court held that there had been various violations of the Convention concerning tax and enforcement proceedings brought against the applicant oil company (mainly of Article 6 of the Convention and Article 1 of the Additional Protocol of the Convention). The Court allocated a total amount of nearly 1.9 billion euros to the shareholders of the applicant company (as they stood at the time of the company's liquidation) by way of just satisfaction, to be paid within six months from the date on which that judgment became final.¹⁸⁴ The just satisfaction is still outstanding although the costs were paid in 2017. Following an application by the Russian Ministry of Justice, on 19 January 2017, the Russian Constitutional Court delivered a judgment concluding that it was impossible to implement the Court's judgment on just satisfaction in this case without contravening the Russian Constitution¹⁸⁵ (which was due to the amendments to the Federal Law on the Constitutional Court passed in December 2015)¹⁸⁶. While the Russian authorities referred to this decision of the Constitutional Court, the Committee of Ministers stressed that this did not alter the "unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments" of the Court. On 20 January 2020 the Russian President introduced a bill to the State Duma, proposing amendments to 22 provisions of the Constitution, including an amendment aimed at adding to Article 79 of the Constitution¹⁸⁷ the following sentence: "Decisions of interstate bodies adopted on the basis of the provisions of international treaties are not enforceable in the Russian Federation if they contradict the Constitution". The amendments were passed in parliament on 10-11 March, signed by the President on 14 March and approved by the Russian Constitutional Court on 16 March 2020. The Committee of Ministers has consistently recalled the unconditional obligation to abide by the Court's judgments and that provisions of national law cannot justify a failure to perform obligations stemming from international treaties.

9. Conclusions

106. The question of the implementation of judgments of the European Court of Human Rights is not purely a practical or legal matter. Experience has proved that this issue is primordially a political one and this can be proved flagrantly in the interstate cases, in the cases falling under violations of Article 18 and in cases where the execution is lacking because of the unwillingness or reluctance of authorities to comply with final binding judgments of the Court. Although the execution of ECtHR judgments, according to the Convention, is a matter above all under the responsibility of the Committee of Ministers, the Assembly's involvement is indispensable, and the Assembly has shown that the monitoring it carries out in this field and the political pressure it exerts provide greater support for the action of the Committee of Ministers and therefore present an added value.

107. As stressed in my previous report, recent reforms have enabled the Committee of Ministers to successfully close some of the pending cases more quickly, and swift action has been taken notably in relation to repetitive cases. I particularly commend the diligent work of the Department for the Execution of Judgments of the European Court of Human Rights in this regard, which grapples with an enormous caseload in assisting States with the often challenging task of implementing ECtHR judgments.

180. *Khashiyev* group of cases (see the notes and the last decisions in CM/Del/Dec(2022)1436/H46-24). Issues relating to cases concerning the North Caucasus have been considered in separate reports by the Assembly including the report by a former committee member Mr Michael McNamara (Ireland, SOC), [Doc. 14083](#) of 8 June 2016, and [Resolution 2157 \(2017\)](#) and [Recommendation 2099 \(2017\)](#) "Human rights in the North Caucasus: what follow-up to [Resolution 1738 \(2010\)](#)?" of 25 April 2017. See also the more recent work by Mr Frank Schwabe (Germany, SOC) on "[The continuing need to restore human rights and the rule of law in the North Caucasus region](#)".

181. Application No. 29580/12, judgment of 15 November 2018 (Grand Chamber).

182. Application No. 43734/14, judgment of 9 April 2019.

183. Application No. 14902/04, judgment of 20 September 2011 (on the merits).

184. Application No. 14902/04, judgment of 31 July 2014 (just satisfaction, Article 41).

185. [Case Description](#) in HUDOC-EXEC.

186. See the Venice Commission Opinion CDL-AD(2016)016.

187. According to this provision, "[t]he Russian Federation may participate in interstate organisations and transfer to them part of its powers according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation".

108. However, a considerable number of leading cases have still not been executed, which is often due to deeply rooted problems, whether due to a lack of adequate resources or organisation – or more fundamental political opposition to reforms. In addition to this, a significant number of cases, including repetitive cases, continue to be brought adding to the overall caseload of both the Court and the Committee of Ministers. The sheer number of cases therefore seems likely to persist, with the lion's share implicating only a handful of countries. Moreover, frequently, cases become more difficult precisely because of political considerations and can take a long time to resolve and use a lot of resources. Indeed, many of the cases mentioned in previous reports have now been pending for over ten years or even more (for example, *Cyprus v. Turkey* since 2001).

109. As shown in this report, there are still persistent difficulties in the execution of certain judgments linked to the absence of political will or even an open disagreement with a judgment of the Court, especially when it comes to interstate cases or cases having interstate features. However, whilst the challenges remain huge, there has been some welcome progress in individual cases, for example *Paksas v. Lithuania*.

110. In general, the Committee of Ministers should continue to make use of its usual instruments of peer pressure such as interim resolutions or repeated examination of cases at its human rights (DH) meetings, not only to express its political disagreement with the relevant State's insufficient action, but also to give more visibility to the issues at stake. In particular, I would encourage more systematic co-operation with National Human Rights Institutions in the execution process. I also recommend that careful, perhaps creative, reflection is given to improving the tools available to the Committee of Ministers and the Council of Europe as a whole, to encourage the timely and effective implementation of ECtHR judgments, especially in complex cases such as interstate cases.

111. ECtHR judgments, and the supervision of their implementation, have an important role to play in providing European citizens with confidence in the processes for upholding the rule of law, democracy and human rights across the European continent. The upset and confusion in Cyprus following the closure of the *Loizidou* case¹⁸⁸ illustrates the importance of improved explanations and transparency to explain why a case is being closed and what this means. This is especially important where general measures will continue to be considered under another leading judgment. I therefore strongly call on the Committee of Ministers to ensure that they set out in all interim and final resolutions, their clear, specific reasoning to justify closing supervision of a case, in accordance with clear and transparent criteria. This should help to improve accountability, and build understanding and trust in the functioning of the system. European citizens need to be able to understand how decisions are made and to understand the legitimacy of decision making as part of building confidence and trust in the ability of the system to promote and protect the rule of law, human rights and democracy.

112. States Parties to the Convention have achieved a certain progress in ensuring compliance with the Convention by undertaking important reforms following the Court's judgments. However, more can be done to improve structure within States to best ensure the timely implementation of ECtHR judgments and to ensure full co-operation with the Committee of Ministers, the Department for the Execution of Judgments and other relevant bodies of the Council of Europe. If the execution measures are not adopted or if they do not provide redress in practice, this will entail more human rights violations and thus will lead to new applications being lodged at the Court, followed by new judgments finding more violations of the Convention, leading to a more rigorous supervision of the Committee of Ministers.

113. I have found in this work that a surprisingly significant amount of delay to implementing ECtHR judgments is at least in part due to ineffective or under-resourced national mechanisms for implementing reforms and for co-ordinating the response to ECtHR judgments. There are plenty of examples of guidance as to best practice available, however, such ideas do not always seem to be implemented. I encourage further efforts to be made so that States ensure that those responsible for implementing ECtHR judgments have the necessary resources, authority, and incentives to perform this task swiftly – not least given the imperative of preventing further human rights violations. To this end, I think it could be useful to consider what mechanisms (including penalties) could incentivise States to submit relevant information on time to avoid unnecessary delays due to a lack of attention to implementation.

114. The Russian Federation poses a particular problem, given its resistance to implementing a significant number of judgments even prior to 2022; its involvement in a vast majority of interstate cases due to its, often military, interference in countries in the region; the persistent rule of law issues in the country; as well as its recent expulsion from the Council of Europe following its full-scale military war of aggression against Ukraine. The Russian Federation remains bound by its obligations under international law to respect human rights and

188. [Loizidou v. Turkey](#).

to comply with final judgments against it under Article 46(1) of the Convention. Efforts must continue to ensure that people in Russia and in countries affected by Russia's actions can obtain redress and have their human rights respected. To this end, I welcome the well thought-through strategy on how the Committee of Ministers and the Department for the Execution of Judgments will approach Russian cases and notably their approach to co-operation with civil society and NGOs as well as other international organisations, including the UN and its special procedures and rapporteurs.

115. The rule of law must be coupled with accountability if it is to have any real effect and States must assume their responsibility. What has become evident in the drafting of this report is that national and political priorities often render the judgments of the Court ineffective, and thus human rights illusory. I note that a significant number of interlocutors have suggested that tricky implementation challenges could be facilitated by introducing incentives, including the possible imposition of penalties as part of the tools for tackling unduly delayed implementation of ECtHR judgments, as for the judgments of the Court of Justice of the European Union. Such ideas should not be ruled out for the future. It is alarming, for example, that the *Kavala* judgment remains unimplemented notwithstanding the clear obligation on the Turkish authorities following the Article 46(4) judgment. However, I remain hopeful that with the right attitudes and perseverance we will ensure respect for the rule of law and human rights across the Council of Europe space.

116. Parliaments have a special role in relation to the implementation of ECtHR judgments, as the Annual Reports and the above overview of cases show – many judgments concerning complex or structural problems have not been implemented because of a lack of political will and/or legislative measures. Many national parliaments have still not established special structures to examine the compatibility of draft legislation with the Convention and to systematically monitor the implementation of the Court's judgments concerning their countries and the implementation of the Convention in general, neither have they organised regular parliamentary debates on this subject. It is important that we, as parliamentarians, have the possibility to question governments on their actions related to execution measures, including on the elaboration and content of action plans/reports. A handbook for parliamentarians entitled "[National Parliaments as Guarantors of Human Rights in Europe](#)" was published in 2018. The Assembly's role in monitoring the implementation of the Court's judgments has been emphasised in its [Resolution 2277 \(2019\)](#) "The role and mission of the Parliamentary Assembly: main challenges for the future".¹⁸⁹ The Assembly should continue to promote the idea of establishing parliamentary structures devoted to ensuring compatibility of draft legislation with the Convention and the Court's case law, in line with its previous resolutions such as [Resolution 2178 \(2017\)](#) and [Resolution 1823 \(2011\)](#). Moreover, we, as individual members of the Assembly, have a special responsibility for promoting these measures and raising awareness of the Convention standards in our parliaments.

117. I consider that the Assembly should seek to do more, in the coming years, to encourage national parliaments and parliamentarians to develop the structures and capacity to actively monitor and hold governments to account for the timely and effective implementation of ECtHR judgments and of the Convention as a whole. I recommend further initiatives to develop parliamentary capacity for performing this important democratic function, in furtherance of the respect for the rule of law and human rights. As part of this I propose that the Assembly steps up its engagement with national parliaments, including through the involvement of the work of the Sub-Committee on the implementation of judgments of the ECtHR and of the future rapporteurs dealing with this file.

189. In paragraphs 5 and 11.1.

Appendix – Summary of the hearings held during this reporting cycle

1. On 7 December 2021 the Committee on Legal Affairs and Human Rights held a hearing on the topic of interstate cases and cases with interstate features, with the participation of Ms Dimitrina Lilovska, Head of division ad interim, Department for the Execution of Judgments of the European Court of Human Rights (Council of Europe), and Dr Isabella Risini, Senior research associate at Ruhr-University Bochum, visiting professor at Augsburg University, Germany.
2. Ms Lilovska focused on interstate cases and individual cases related to unresolved conflicts and post-conflict situations. She noted that some progress had been made on the execution of the *Cyprus v. Turkey* case, relating to the Immovable Property Commission mechanism to deal with the property rights of Greek Cypriots and the work of the Committee on Missing Persons, to identify the remains of missing persons. However, progress on other cases remained difficult, such as in *Catan* – or where situations were still tense, such as concerning the conflict in Nagorno-Karabakh. Such cases required a lot of resources and consultations with the States concerned. The Assembly could support their execution by helping to increase awareness in the countries and by supporting the execution measures proposed by the Committee of Ministers and by the Court. She considered that the Court could also contribute to this process by answering in the follow-up cases the arguments of the respondent States raised before the Committee of Ministers and by doing as much fact-finding as possible.
3. Dr Risini noted that about 15% of all individual cases pending before the Court stemmed from an armed conflict and many of them overlapped with interstate cases, which raised the question of how those cases should be processed. In 2020, the use of the interstate procedure had reached an all-time high of six applications within one year. Interstate cases required a lot of fact-finding, whereas the resources of the Court were limited. There was also scope for further work as to how to identify victims of violations in such cases.
4. This hearing made clear the challenges of interstate cases and the importance of perseverance and creative thinking in finding solutions. Numerous individual applications are linked to armed conflicts, and it is therefore important to cover such cases as well and not to lose sight of the individuals affected by a conflict situation. The below cases illustrate the sorts of challenges in dealing with interstates cases – *Cyprus v. Turkey*; *Georgia v. Russia*; *Catan and Others v. Moldova and Russia*; *Mozer v. Moldova and Russia*; and cases relating to the situation in Nagorno-Karabakh.
5. The Committee on Legal Affairs and Human Rights also held a hearing focussed on the implementation of Article 18 judgments during its meeting on 14 November 2022 with the participation of Ms Clare Ovey, Head of the Department for the Execution of Judgments of the European Court of Human Rights, Council of Europe; and Dr Başak Çalı, Professor of International Law, Co-director of the Centre for Fundamental Rights, Hertie School, Berlin.
6. Ms Ovey explained the particularity of Article 18 judgments. They were different from other cases as there was often resistance on the part of States to implement these judgments. This required understanding and significant support, including from parliamentarians. So far there were few judgments finding a violation of Article 18 – only eighteen such cases to date. They were rare because in order to find a violation, all State bodies involved, including the judiciary, needed to have a political motivation in perpetuating the human rights violation. Such occurrences were thus very worrying and a big red flag; Article 18 judgments indicated a major dysfunction of the rule of law and justice system in a State. This often suggested that a higher level of international intervention was required.
7. Execution of Article 18 judgments should put the victim back into the situation they were in before the violation took place (for example acquit them of politically motivated convictions and remove all the consequences of a wrongful prosecution and conviction). States must also take general measures to prevent the repetition of further violations. In this vein, the Committee of Ministers looks for general measures to boost the independence of the judiciary and of prosecuting bodies, such as considering how judges get appointed and promoted. One concern with such cases was that if the ECtHR has said that the domestic courts acted under political influence, it is then hard simply to leave it to those domestic courts to solve; there is then a need for a higher level of intervention to ensure compliance.
8. Dr Çalı, set out the exceptional importance of Article 18 cases; these were human rights violations in pursuit of an unlawful ulterior purpose. This ulterior purpose, such as “stifling of democracy and pluralism” was not present under other Convention articles. As such, an Article 18 violation was a warning sign of risks to democracy and the rule of law. Parliamentarians thus needed to follow such cases closely as they had significance for the very foundations of democracy and the rule of law. She explained that the first Article 18 judgment was the relatively recent 2004 case *Gusinsky v. Russia*. Cases since then have involved the detention of opposition politicians, human rights defenders, lawyers and journalists in Ukraine, Russia,

Azerbaijan and Türkiye. However, as Dr Çalı noted, Article 18 was not restricted to detention cases – there were also travel bans and recent cases relating to politically-motivated disciplinary proceedings of judges in Poland and Bulgaria.

9. More recently, the Committee of Ministers had brought infringement proceedings under Article 46(4) in relation to unimplemented Article 18 detention cases. This had facilitated the release of Ilgar Mammadov by Azerbaijan. However the judgment in favour of human rights defender Mr Kavala had yet to secure his release by Türkiye; he had now spent 5 years in prison. In these infringement proceedings, the ECtHR noted that where an individual's detention was deemed to be a violation of Article 18, if they were released and then re-detained on different charges but based on the same facts, then the Article 18 violation continued.

10. Dr Çalı went on to note best practice in terms of the role taken by parliament (as well as the judiciary and the executive) to implement the judgments in the Ukrainian cases of *Lutsenko* and *Tymoshenko*. She noted that Article 18 cases did not merely require arbitrary behaviour but manifest irregularity in the administration of justice, combined with political influence over the judiciary. The Assembly and parliamentarians were well placed to consider legislative and judicial reforms necessary to protect the judiciary from undue influence. She considered that the Assembly should monitor Article 18 judgments closely and be able to start monitoring as soon as these were final and to ensure frequent follow-up. The Assembly had a useful role to play to dispel misunderstandings about Article 18 cases and their importance – and to recognise the risks posed by the persecution of individuals for their participation in democratic society or for defending the rule of law. Such cases were not only about the rights of specific individuals; they concerned the overall health of democratic systems of government based on the rule of law. The Assembly members could consider attending the domestic trials of these individuals to encourage respect for the rule of law and for the implementation of ECtHR judgments. They should also ask for the full restoration of rights of those affected (not only release from unlawful detention).

11. Dr Çalı noted that the ECtHR was developing a solid jurisprudence in relation to Article 18 cases and its criteria in those cases, which related to (1) a significant time gap between the sets of events (for example many years between the alleged facts and the acts of the prosecution); (2) the quality of the totality of evidence (for example if lawful activities were criminalised); (3) the conduct of the applicant in the criminal process; and (4) temporal inferences between how politicians approached the framing of a case and the framing of the indictment. In relation to the *Kavala* case, Dr Çalı recalled that ECtHR judgments were binding under the Turkish Constitution so one would hope that the Turkish domestic courts would apply the Convention and ECtHR judgments properly in this case.

12. This hearing highlighted the significance of Article 18 judgments in relation to the misuse of power and ulterior motives for human rights abuses; such judgments are a red flag. I noted in particular the different types of Article 18 cases (detention cases and those to silence through disciplinary proceedings) and the need for close and timely monitoring. National parliaments and parliamentarians need to intervene to support the resolution of such cases, and more might be done to involve them in this work.