

SUPERVISION OF THE EXECUTION OF JUDGMENTS AND DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS **2016**

10th Annual Report
of the Committee of Ministers

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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CONSEIL DE L'EUROPE

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OF JUDGMENTS AND DECISIONS**
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OF HUMAN RIGHTS

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2016

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I. Introduction by the Chairs of the Human Rights meetings

The 2016 statistics continue to confirm the positive trends noted during the last few years and suggest that a number of long-standing and highly complex problems are on the way to being resolved and that the execution of the judgments of the European Court of Human Rights is today functioning well in the large majority of cases.

The situation attests to the reality of the political commitment to the European Convention on Human Rights and Fundamental Freedoms and the respect for the judgments of the Court, confirmed by all member States in May 2015 when endorsing the Brussels Declaration on the “Implementation of the European Convention on Human Rights, our shared responsibility”.

These positive experiences are important sources of inspiration as the system and the Committee of Ministers’ supervision of execution continues to be confronted with a number of cases touching highly complex political, constitutional, economic and/or organisational problems in member States, as well as the specific problems related to disputed areas in Europe.

Further highly complex cases can be expected. Solutions require creative action by all stakeholders to arrive at Convention-compliant solutions. Overcoming the problems posed by these cases is essential to preserve the common understanding of the fundamental values at the basis of democratic security and stability in Europe.

The kind of action required depends on the specificities of each situation. Experience shows, for example, that progress in difficult cases frequently depends on the capacity to disentangle complex political and/or legal situations to identify the precise obstacles to execution and find innovative solutions. In a number of situations important questions of resources may have to be addressed, possibly including recourse to international financial institutions.

Engaging in a constructive dialogue with relevant domestic authorities and other possible stakeholders, where necessary at the highest levels, is a major element of any solution. As Chairs we have tried to assist in ensuring such dialogue in different ways, but there have also been numerous other initiatives, notably by the Secretary General and the Parliamentary Assembly. Results have been encouraging and must be pursued and further developed. The role which may be played by the Commissioner for Human Rights could in this context be explored further.

When devising solutions, the experience of other member States is evidently an important source of inspiration, as is that of the Council of Europe’s different expert bodies. In addition, civil society communications and academic scholarship may provide valuable input and ideas. The position of other international organisations and bodies is evidently of great relevance. The possibilities of practical support offered by existing or new cooperation programmes run by the Council of Europe are also important elements to be taken into account.

The situation highlights the need to develop new coordinated strategies of action at high level and to enhance more generally the synergies between all those involved. It is timely that the CM is presently examining this latter question in the context of its follow up to the Brussels Conference and the CDDH’s report on the longer-term future of the Convention system.

We hope that the discussion foreseen for June 2017 on the present Annual Report will provide a good opportunity for all stakeholders to exchange on these matters. Finding solutions is essential for the future of the Convention system.”

Estonia
Mrs Katrin Kivi



Cyprus
Mrs Theodora Constantinidou



Czech Republic
Mr Emil Ruffer





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

Introduction

2016 was a year of interim stocktaking for the “Interlaken-Izmir-Brighton-Brussels process” (described in chapter 3). This process aims to ensure the long-term effectiveness of the Convention system. The final stocktaking is foreseen for 2019.

The reports presented by the CDDH (the Steering Committee for Human Rights) and the European Court of Human Rights are positive. The results of the present report confirm these trends, both in terms of statistics and concrete results achieved. Today, the execution of judgments is ensured in an efficient manner in the large majority of cases. It is supported by national and European institutions engaged in a constructive cooperation. The report shows, nevertheless, that a series of complex problems persists and necessitates specific measures.

Statistics

In 2016 a record number of 2 066 cases were closed (529 more than in 2015, with 1 537 cases). In spite of an increasing number of new cases, 1 352 (1 285 in 2015), the number of pending cases decreased below 10 000 (to 9 944) for the first time since the beginning of the Interlaken process in 2010.

The number of pending cases that reveal structural or systemic problems –so-called leading cases – has also decreased from 1 555 in 2015 to 1 493 in 2016, and the same applies to the number of cases placed under enhanced supervision due to the importance of the problem¹: 334 in 2015 and 323 in 2016.

The increase in the number of cases closed concerns particularly leading cases under enhanced supervision: 45 were closed in 2016, against 18 in 2015. This increase also concerns leading cases under standard supervision: 237 cases closed in 2016 compared to 135 in 2015.

1. The cases under enhanced supervision also include certain cases concerning urgent individual measures.

It is welcomed that amongst leading cases closed, many relate to persistent problems that have been pending before the Committee of Ministers for more than five years. Thus, 30 of the 45 leading cases closed under enhanced supervision procedure and 83 of the 237 cases under standard supervision were under the Committee of Ministers' supervision for more than five years. This represents a significant increase compared to 2015, when 12 out of 18 cases under enhanced supervision and 47 cases out of the 135 under standard procedure were closed.

Although the statistics are very positive, there is also some cause for concern. For example, the number of leading cases pending under standard supervision continues to grow. There is also a decrease in the payment of just satisfaction within the deadlines (the percentage has gone from 71 % in 2015 to 65 % in 2016). In addition, the time required for transmission of relevant information to the Department for the Execution of Judgments remains a source of concern. This situation deserves particular attention from the responsible national authorities.

It is also noted that, in order to deal with its high load of repetitive cases, the Court is increasingly using the procedure before a committee of three judges, so-called "WECL" (or "JBE" in French), which it may use where the questions raised by a case are already addressed in well-established case law. 303 cases of this type were transmitted to the CM in 2016, against 167 in 2015.

This increase in the use of the WECL procedure may pose a problem inasmuch as the very limited description of the facts in some cases may make it difficult to identify possible individual or general measures. In this context, it can also be noted that only six of the friendly settlements concluded in 2016 contained undertakings other than the payment of just satisfaction, while there were on average around 50 settlements with such undertakings in other recent years (with a peak of 98 in 2014).

The Committee of Ministers' action

The above statistics in themselves demonstrate the reality of the commitment made by the member States in the context of the Interlaken process, and most recently at the Brussels Conference in 2015. The action of the Committee of Ministers also reflects this commitment.

The number of interventions of the Committee to support the ongoing processes to implement the Court's judgments² has thus increased by almost 40 % (from 108 in 2015 to 148 in 2016), concerning some 107 cases or groups of cases (64 in 2015). The number of States concerned has also increased from 25 in 2015 to 30 in 2016 (out of a total of 31 States with cases subject to enhanced supervision).

The Committee has also improved the transparency its supervision.

Since June 2016, the list of cases subject to detailed examination at a given meeting is published already at the end of the preceding meeting, giving any interested person or institution ample time to react. The communications from NGOs and NHRIs have also increased to 90 in 2016 compared to an average of 80 in previous years. The

2.. Placing a case on the order of business of a meeting for more detailed examination.

right of international organisations and institutions to submit communications in relation to execution has also been formally recognised by the Committee by way of an amendment to the rules applicable its supervision (Rule 9, see Appendix 7).

Furthermore, the Secretariat of the Committee of Ministers and the Department for the Execution of judgments of the Court have made efforts to improve access to information needed to follow the supervision process. The websites have been developed and equipped with powerful search engines. The Committee of Ministers' search engine is mainly oriented towards the outcome of the meetings while that of the Department for Execution of Judgments – HUDOC-EXEC – is more oriented towards the information available in each case. Civil society has provided positive feedback on the functioning of HUDOC-EXEC. In addition, the Department has developed a series of factsheets with basic information about the situation in respect of the execution of the Court's judgments in each member State.

Progress and reforms

The encouraging figures above show the important progress made. The present report contains in Chapter 4 an overview of some 250 examples of reforms that have been implemented since the beginning of the Interlaken process in 2010 or which are today well advanced.

The reforms concern all the rights and liberties protected by the Convention. There is, however, a considerable focus on questions linked to the rule of law: the efficiency of the police and other security forces and the control of their actions, particularly the effectiveness of investigations into alleged excessive use of force or ill-treatment, and of the collection and storage of information in databases; the fairness and efficiency of judicial proceedings, both for solving conflicts between private persons and to ensure the legality of the acts of the administration and respect for human rights, including in the context of the reception of asylum seekers. In recent years, other areas subject to significant reforms have notably included preventing ill-treatment of persons deprived of their liberty; the fight against prison overcrowding, detainees' access to health care and protection against different forms of discrimination. Numerous other reforms also demonstrate the relevance of the Convention for many questions related to "good governance" in the member States.

The overviews also illustrate the extent to which political will is essential to ensure the execution of "difficult" cases. The adoption of the necessary measures to execute cases like *Kurić* or *Alisić v. Slovenia* is, for example, not simple in view of the scale of economic and political questions involved.

Many other reforms in complex and sensitive areas have also made progress thanks to a clearly manifested political will. So for example the numerous reforms adopted in several countries to combat overcrowding in prisons, notably so in Italy (*Torregiani*) and Poland (*Orchowski* group) or are today well advanced in other countries, in particular Bulgaria (*Kehayov/Neshkov* group), Hungary (*Istvan Gabor and Kovacs/Varga* group) and Romania (*Bragadireanu* group). Similarly, considerable progress can be noted in Ukraine's reforms to ensure the independence and quality of the

judiciary (*Salov/Volkov* and *Agrokompleks* group) or in the Republic of Moldova to improve the independence of prosecutors in individual cases and the legality of their actions (*Cebotari* group).

Important progress has also been made in many other complex situations (more technical), for example the length of judicial proceedings in some 15 countries (see Chapter 4), the control of lawfulness of detention in the Russian Federation (*Klyakhin* group) and in Turkey (*Demirel* group), or the respect of domestic judicial decisions in the Russian Federation (*Timofeyev/Burdov No. 2* group and *Ryabykh* group) or the restitution or compensation for property nationalised under the communist regimes in Albania and Romania (*Driza* group and *Strain/Draculet* groups) or the introduction of a procedure to reopen judicial proceedings in Andorra to give effect to the Court's judgments (*Ute Saur Valnet* case) in all types of proceedings, criminal, civil and administrative.

At a more general level, the years since 2010 have seen a considerable improvement of the effectiveness of domestic remedies. This is most welcome. They have also seen a reinforcement of the structures set up to coordinate national action, as well as an increased interest on the part of national parliaments, a considerable number of which have also developed specific structures to follow the execution process, notably through annual reports from the governments. The interest on the part of civil society for execution has also developed, including helpful contributions in many cases, and increasing activity at national level. In this context, one may also note that a number of NGO's have established an umbrella organisation in Strasbourg, the "European Implementation Network". The possibility for international organisations or institutions to submit communications to the Committee of Ministers has not, to date, been much used, but the codification of this right in the Rules is an important signal of the Committee's openness to dialogue.

The range and nature of the reforms demonstrate the importance of the execution process in ensuring that the common understanding of the requirements of the Convention in respect of rule of law, human rights and democracy in Europe are really translated into concrete actions in all member States, thereby confirming the Convention system's unique role for stability and democratic security on the European continent.

Behind the statistics and the formal information on progress made, there are many human stories where remedial action would never have been taken or only with difficulty had the Convention system not intervened. Among examples one could mention applicants who have been able to re-establish contacts with their children; who have obtained a new trial to erase an unfair conviction, e.g. for having exercised their freedom of expression; who were given access to an independent tribunal to resolve an important dispute with the administration; who could recover possessions, pension rights or even rights of residency lost, notably in the restructuring and wars that followed the break-up of the Socialist Federal Republic of Yugoslavia; or who, like the persons who participated in the clean-up after the Chernobyl disaster, have been able to obtain the authorities' compliance with judicial decisions awarding them compensation and/or protection.

What major problems subsist?

The overviews also show how complex the execution of certain cases may become. The challenges presented by the processes presently under supervision by the Committee of Ministers are notably linked to:

- ▶ *Important and complex structural problems* causing difficulties to identify necessary reforms, including those required to stop the stream of repetitive cases, and to find the means and resources for the implementation of the reforms;
- ▶ *The absence of a common understanding as to the scope of the execution measures required* following developments of the Court's case law, thus, for example, that flowing from an interpretation of the concept of "jurisdiction" – for the purposes of the Convention – mainly implying that a State, which exercises continuing and decisive influence over the self-proclaimed administration of a territory, becomes automatically responsible without any specific action or other implication on its part (should not nuances here be made as compared to the requirements when there is effective territorial control?);
- ▶ *Slow or blocked execution* as a result of disagreement between national institutions, or amongst political parties, as regards the substance of the reforms required and/or the procedure to be followed;
- ▶ *A refusal to adopt*, notwithstanding strong insistence from the Committee of Ministers, the *individual measures* required or to *pay just satisfaction* – situations which frequently hide more fundamental disagreements with the Court's conclusions or the requirements of execution.

Final remarks

The 2016 Annual Report clearly invites a positive conclusion as regards of the evolution of the execution of judgments and the Committee of Ministers' supervision since the Interlaken Conference in 2010. The report also illustrates, however, the urgency of adopting measures to respond to the challenges posed by a number of highly complex cases.

It is thus necessary to accelerate the adoption and implementation of the reforms required to overcome certain major structural problems. It is of the utmost importance to avoid new waves of repetitive cases before the Court. The responsibility for this is - by definition - national, but the Secretariat is evidently willing to provide all the support it can to the authorities concerned.

As regards the substantive issues raised, the major cooperation programmes engaged with a number of countries have allowed, in a longer perspective, important advances. These programmes must be fully exploited, as frequently recalled by the Committee of Ministers. I wish here to express gratitude to all those who have helped finance these programmes, or have the intention of contributing in the future. Mention must also be made of the work of numerous commissions, committees or expert groups, which provides an important contribution to the execution process by proposing avenues for the solution of the problems posed.

A dialogue is necessary to address the questions related to the understanding of the consequences of certain development of the Court's jurisprudence. Opportunities exist both in the context the Court's examination of new cases and of the Committee of Ministers' supervision of execution of the judgments concerned. Evidently, such a dialogue may also be engaged in the academic world and in that of civil society.

The most important blockages, whether as regards general measures or the redress due to applicants, are frequently of a political nature. Overcoming them requires, in the final analysis, the capacity to generate a vision of what could be an acceptable solution from the Convention perspective. Such situations call for creativity, both on the part of national bodies and on the part of the Council of Europe ones, whether the "expert" bodies, such as the Venice Commission, or the "political" ones, namely the Committee of Ministers itself or the Parliamentary Assembly. They also call for critical thinking. A number of problems are linked with misunderstandings regarding what is really required by the Convention and, sometimes, regarding the national realities.

High level contacts are frequently an essential component of the search for a solution. The history of the Convention is full of examples. Recent experiences highlight the crucial role which the Secretary General may play in establishing and developing this dialogue. The Committee has on several occasions directly invited him to engage or pursue this avenue. The possibilities for the Secretary General to engage a constructive dialogue on the basis of his competence under Article 52 of the Convention also appear to open interesting perspectives, especially through specific missions to the States concerned.

The nature of the problems dealt with here does not in principle allow hope for speedy solutions to all questions raised. Means must therefore be found to ensure coherent approaches over time, capable of mutually reinforcing each other. This calls for stable support structures, with necessary expertise and important institutional memory. Even if certain structures of this kind already exist, they would merit reinforcement. The reflection engaged in the wake of the Brussels Conference to promote the development of enhanced synergies with the other Council of Europe stakeholders – primarily the Court, the Parliamentary Assembly and the Commissioner for Human Rights – could usefully include also these dimensions.

Respect for human rights, as respect for democracy or the rule of law, is never achieved once and forever; it is an everyday battle. The Interlaken process has provided a series of important improvements to ensure the long term effectiveness of the Convention system, and in particular the supervision of execution of the Court's judgments. The long term efficiency of the system depends, however, fundamentally on the political will to respect it, also in face of difficult or complex cases. This willingness fully to respect the system was firmly confirmed by all member States at the Brussels Conference in 2015. This report shows that this commitment has been concretised over and over again. This is an encouraging message when it comes to meet the future challenges.

III. Improving the execution process: an ongoing reform

A. Guaranteeing long-term effectiveness: main trends

1. The main developments concerning the implementation process of the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) leading to the current system are summarised in the Annual Reports 2007-2009.
2. The pressure on the Convention system due to the success of the right to individual petition and the enlargement of the Council of Europe led rapidly to the necessity of further efforts to ensure the longterm effectiveness of the system. The starting point for these new efforts was the Ministerial Conference in Rome in November 2000 which celebrated the 50th anniversary of the Convention. The main avenues followed since then consisted in improving:
 - ▶ the domestic implementation of the Convention in general;
 - ▶ the efficiency of the procedures before the European Court of Human Rights (the Court);
 - ▶ the execution of the Court's judgments and its supervision by the Committee of Ministers (the CM).
3. The importance of these three lines of action has been regularly emphasised at ministerial meetings and also at the Council of Europe's 3rd Summit in Warsaw in 2005 and in the ensuing Action Plan. A large part of the implementing work was entrusted to the Steering Committee for Human Rights (CDDH).

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

- ▶ adopt seven recommendations to States on various measures to improve the national implementation of the Convention,³ including in the context of the execution of judgments of the Court;
- ▶ adopt Protocol No. 14,⁴ both improving the procedures before the Court and providing the Committee of Ministers with certain new powers for the supervision of execution (in particular the possibility to lodge with the Court requests for the interpretation of judgments and to bring infringement proceedings in the event of refusal to abide by a judgment);
- ▶ adopt new Rules for the supervision of the execution of judgments and of the terms of friendly settlements (adopted in 2000, with further important amendments in 2006) in parallel with the development of the CM's working methods;⁵

3. – [Recommendation No. R\(2000\)2](#) of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

– [Recommendation Rec\(2002\)13](#) of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;

– [Recommendation Rec\(2004\)4](#) of the Committee of Ministers to member states on the European Convention on Human Rights in university education and professional training;

– [Recommendation Rec\(2004\)5](#) of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;

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

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

– [Recommendation CM/Rec\(2008\)2](#) of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights;

– [Recommendation CM/Rec\(2010\)3](#) of the Committee of Ministers to member states on effective remedies for excessive length of proceedings.

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

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

– [Resolution Res\(2002\)59](#) concerning the practice in respect of friendly settlements;

– [Resolution Res\(2004\)3](#) on judgments revealing an underlying systemic problem, as well as in 2013 the following non-binding instruments intended to assist national implementation of the Convention:

– [Guide](#) to good practice in respect of domestic remedies;

– [Toolkit](#) to inform public officials about the State's obligations under the European Convention on Human Rights.

4. This Protocol, now ratified by all contracting parties to the Convention, entered into force on 1st June 2010. A general overview of the major consequences of the entry into force of Protocol No. 14 is presented in the information document [DGHL-Exec/Inf\(2010\)1](#).

5. Relevant texts are published on the website of the Department for the Execution of Judgments of the European Court. Further details with respect to the developments of the Rules and working methods are found in Appendix 7 and also in previous annual reports.

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

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

B. The Interlaken - Izmir - Brighton – Brussels process

Origins

6. Shortly after the adoption of Protocol No. 14, the Warsaw Summit (2005) invited a Group of Wise Persons to report to the Committee of Ministers on the long-term effectiveness of the Convention control mechanism. The follow-up to this report, presented in November 2006, was impaired by the lasting non-entry into force of Protocol No. 14. Fresh impetus came as a result of the High Level Conference on the future of the Court, organised by the Swiss Chairmanship of the Committee of Ministers in Interlaken in February 2010. On the eve of the conference, the ratification of Protocol No. 14 by all member states, condition for its entry into force, was complete. The Declaration and Action Plan adopted at the Interlaken Conference generated an important dynamic, supported and developed by the Izmir Conference organised in 2011 by the Turkish Chairmanship of the CM, and the Brighton Conference, organised in 2012 by the United Kingdom Chairmanship of the CM. The Brighton Conference was followed in 2015 of the Brussels Conference organised by the Belgian Chairmanship (see also below paragraphs 21 and following). The results of these conferences were subsequently endorsed by the CM at its ministerial sessions.

As matters stand end of 2016, the final evaluation of the results of the process set in motion is due for 2019 as foreseen in the Interlaken Declaration. Evaluations in 2016 indicate that the challenges for the Convention system discernible so far can be met within the current framework (see paragraph 22 below).

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

Results

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

9. Among the first results was the Ministers' Deputies' adoption of *new working methods* as of 1 January 2011, based on a twin-track system for better prioritisation

of supervision and emphasising judgments revealing important structural problems, including pilot judgments and judgments requiring urgent individual measures. Further details about the new modalities are given in Appendix 8.⁶

10. In parallel, the CDDH started reflections on possible further measures which would not require amendments to the Convention (final report of December 2010) as well as measures which would require such amendments (final report of February 2012). Related proposals concerned the supervision of compliance with unilateral declarations, the means of filtering applications, the Court's handling of repetitive applications, the introduction of fees for applicants and other formalities regulating access to the Court, changes to the admissibility criteria, and the Court's competence to deliver advisory opinions at the request of domestic courts. A separate report of June 2012 examined the possible introduction of a simplified procedure for amending certain provisions of the Convention.

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

12. Following the political *guidance* given at the Brighton Conference in April 2012, the reform work accelerated and the CDDH was mandated to prepare *two draft protocols* to the Convention (preparatory work carried out by working group GT-GDR-B). Both protocols were adopted by the CM in 2013. **Protocol No. 15** (ratified by 33 of the 47 member states by the end of January 2017) concerns the principle of subsidiarity and the states' margin of appreciation in implementing the Convention; certain admissibility criteria (reduction of the time limit for submitting applications from six to four months; rejection of applications if the applicant is not found to have suffered a "significant disadvantage", provided that the complaints have been considered by domestic courts) and certain aspects of the Court's functioning (age limits for judges, simplified relinquishment of jurisdiction in favour of the Grand Chamber). **Protocol No. 16** (ratified by 7 member states by the end of January 2017, of ten necessary for its entry into force) allows specified highest domestic courts and tribunals to request the Court to give advisory opinions on questions of principle

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

relating to the interpretation or application of the rights and freedoms enshrined in the Convention, raised in cases pending before them.

13. The CM also gave a mandate to the CDDH to *examine a series of other questions*, some of which related to the execution of judgments and the CM's supervision thereof.⁷

14. One question related to the advisability and modalities of a *representative application procedure* before the Court in the event of numerous complaints alleging the same violation against the same State (preparatory work carried out by the working group GT-GDR-C). The CDDH concluded that, taking into account the Court's existing tools, there would be no significant added value to such a procedure in the current circumstances, although subsequent developments could render a re-examination of the question necessary.

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

16. The CM also decided to examine the question *whether more efficient measures are required vis-à-vis States that fail to implement judgments in a timely manner*. This work supplements the one previously undertaken relating to the problem of slowness and negligence in the execution,⁸ including modalities to prevent such situations.⁹

17. The CM started its examination of this question in September 2012, whilst in parallel giving a mandate to the CDDH to examine the same question. The first results of the CM's examination were presented in December 2012, and those of its working group GT-REF.ECHR in April 2013 (see Annual Report 2013). These results were communicated to the CDDH to assist its special working group (GT-GDR-E) set up to examine the issue, including through an exchange of views with representatives of civil society and independent experts. The ensuing CDDH report of November 2013 noted the excessively large and growing number of judgments pending before the CM, its resulting serious concern and the necessity of remedial action, comprising,

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

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

9. See for example the CDDH proposals in document CDDH(2006)008. The CDDH has also subsequently presented additional proposals – see document CDDH(2008)014 relating notably to action plans and action reports.

inter alia, the more effective application of existing measures among the CM's new working methods and/or the introduction of new, more effective measures. Furthermore, the need to reinforce the staff and the information technology capacity of the Department for the Execution of Judgments of the Court could be considered.

18. Before continuing its own examination, the CM requested in February 2014 an opinion from the Court on the proposals contained in the CDDH report. The Court, in its opinion of May 2014, stressed the importance of adequate and timely execution and highlighted the continuing problem of repetitive cases, in particular with regard to a certain number of states. The Court also indicated that its approach to the pilot judgment procedure (allowing for a directive to the respondent state among the operative provisions of the judgment) has proceeded from the concern – clearly expressed in the Brighton Declaration – to safeguard the effectiveness of the Convention system, while respecting the competences and prerogatives of its different actors. It recognised the interest of the overall Convention system that its two institutional pillars – the Court and the CM – act in a mutually reinforcing way. The Court concluded by noting that very few of the CDDH proposals appeared to find much support and that it was hard to see how they could significantly improve the current system – yet such improvement was undoubtedly needed. Reflection thus had to continue.

19. In parallel, the CM decided in January 2013 **to make public the cases to be examined during its DH meetings**.

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

The Brussels Conference

21. In the context of the reform process, the Belgian Chair of the Committee of Ministers organised on 26-27 March 2015 a high level conference entitled “***The implementation of the Convention, our shared responsibility***” in Brussels. The Declaration adopted at the Brussels Conference and the accompanying action plans were endorsed by the CM at its ministerial session in May 2015.

22. Subsequently, in December 2015, the CDDH sent its final *Report on the longer-term future of the system of European Convention of Human Rights*. The relevant conclusions for the execution of judgments are presented in the Annual Report 2015. The CM decided to forward this report to the Court to obtain its views. In its response of 1 March 2016, the Court found “persuasive the CDDH's conclusion that, with the exception of the procedure for selecting and electing judges, the challenges discernible at the present time for the Convention system in the longer term can be met within the current framework. That such a conclusion has been reached well within

the timeframe originally set down in the Interlaken Declaration attests to the success – greater than anticipated – of the reforms implemented in the period 2010-2015.”

23. As to the continuing implementation of the Brussels Declaration, the CDDH Committee of Experts on the system of the European Convention on Human Rights (DH-SYSC) reviewed in 2016 the *implementation of the Recommendation CM/Rec(2008)2 on efficient domestic capacity measures taken for rapid execution of judgments of the European Court of Human Rights*. In this context, it made an inventory of good national practices relating to execution. It also discussed the usefulness of updating the recommendation in the light of such practices, and concluded that, instead of updating this instrument, it would be preferable to draw up a guide to good practice, for adoption by the CM. Such guide should include an analytical part, non-prescriptive analysis, setting out good national examples, explaining the developments since the elaboration of the above-mentioned Recommendation and illustrating its implementation. The text should be submitted by the CDDH to the CM in 2017.

24. Furthermore, in the context of its discussions on the implementation of the Convention and the execution of the Court’s judgments, the DH-SYSC exchanged views on mechanisms for ensuring the compatibility with the Convention of legislation (arrangements, advantages, obstacles) and considered good practices in this respect. A specific webpage was created in this regard. The summary of the exchanges of views will be formally adopted by the DH-SYSC in 2017.

25. Finally, the DH-SYSC organised a workshop in November 2016 with a presentation, by the representatives of the Department for the Execution of Judgments of the European Court of Human Rights and the Department of Information Technology of the Court’s Registry, of the new search tool – HUDOC-EXEC – and information on the state of execution of the Court’s judgments as well as the new tools to increase the transparency and visibility of the monitoring process (country factsheets, thematic factsheets, website), as welcomed by the CM.

26. In the context of the implementation of the Brussels Action Plan (point 3), a large number of States submitted *information on new measures to improve their judgment execution process*. Part of this information has already been used in the context of the assessment of the need to update Recommendation (2008)2 – See paragraph 23. To ensure an answer from all member states, the time-limit to submit this information was extended, initially, until 31 December 2016.

Parliamentary Assembly

27. In parallel to the above-mentioned developments, the Parliamentary Assembly of the Council of Europe has continued its regular reporting on the implementation of the Court’s judgments, partly based on country visits, resulting in recommendations to States, the CM and the Court. An eighth report was presented in September 2015¹⁰ leading to a number of recommendations to the CM and the States.¹¹ The work for the ninth report continued in 2016 with a view to its being presented during the session of June 2017.

10. Doc. 13864 of 09/09/2015

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

28. In 2016, the Assembly also increased its efforts to disseminate knowledge about the Convention requirements, notably in execution matters, among the legal advisers attached to competent parliamentary commissions and to encourage national parliaments to contribute to the execution of the Court's judgments, by setting up, as already done in a number of States, special parliamentary mechanisms to supervise the timely progress of the execution. In this context, an overview of existing mechanisms was published in October 2014 and revised in 2015.¹² Following a series of activities carried out by the Parliamentary Assembly, in June 2016 Georgia successfully set up, a parliamentary monitoring mechanism for the implementation of the Court's judgments. The Republic of Moldova has also launched a legislative initiative along these lines, which is expected to bear fruit in the course of 2017.

Other instances

29. The Brussels Declaration emphasised the shared responsibility of all actors to ensure the execution of judgments and also contained an invitation to the CM to promote the development of reinforced synergies with other actors of the Council of Europe, in the framework of their competences – mainly the European Court, the Parliamentary Assembly and the Commissioner for Human Rights. The synergies developed were visible in different ways in 2016, notably in the decisions of the CM, the reports of the Commissioner and the activities of the Secretary General.

C. Development of cooperation activities

i. The targeted cooperation activities of the Department for the Execution of Judgments of the European Court

30. In accordance with its mandate,¹³ the Department for the Execution of Judgments of the European Court of Human Rights advises and assists the CM in its supervision of the execution of the Court's judgments, and provides support to the member states in their efforts to achieve full, effective and prompt execution of judgments. Since 2006, the CM provides special support to the Department for the development of the targeted co-operation activities, which comprise legal expertise, round tables, exchanges of experience between interested states and training programmes. Numerous activities take place every year, often in the form of confidential meetings with the national decision-makers or in the form of expertise of different types. Certain activities take a public form. The sharing of good practice is always an important component.

31. These activities are supplemented by regular and *ad hoc* visits to Strasbourg of government agents, other officials and/or judges, with a view to participate in different events related to the CM's supervision of execution and/or specific execution issues. This practice continued in 2016, notably through meetings with public officials and national judges, including from supreme courts.

12. PPSD(2014)22 rev 08/09/2015.

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

32. The CM's *Recommendation CM/Rec(2008)2 to member states on efficient domestic capacity for rapid execution of judgments of the European Court* continues, together with the other Committee Recommendations cited above, to be an important contribution to the execution process and a constant source of inspiration in regular bilateral relations between national authorities and the Department for the Execution of Judgments of the Court.¹⁴ The preparation of a guide of good practices to support this development is underway (see paragraph 23).

ii. More general cooperation programmes

33. The importance of technical assistance and cooperation programmes was highlighted throughout the Interlaken – Brighton – Izmir process and most recently during the Brussels Conference. This support for the execution was an important issue notably during the discussions within the CM's working group GT-REF.ECHR (see the "tools" discussion summarised in the 2013 Annual Report - Appendix 3) and the CDDH (see the conclusions in Appendix 6 of the 2015 Annual Report). The Secretary General underlined the need to ensure that co-operation and technical assistance reflect the findings of the monitoring bodies and the judgments of the Court (See the document SG/Inf(2015)17-rev). Concrete action in this respect has been reinforced since 2014 to take account of structural problems identified in the judgments of the Court, which is why some national action plans refer to such programmes.

34. In 2016, the Action Plans between the Council of Europe and Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova and Ukraine all contained numerous activities specifically designed to support the execution of judgments revealing important structural problems and the need for long-term continuing efforts. This was also the case in the "Programmatic cooperation" with Albania.

35. In this way, the CM, in its decisions in individual cases, frequently invites the States to take advantage of the different cooperation programs offered by the Council of Europe.

iii. Additional support for cooperation programmes

36. A special effort was also made in recent years, in addition to the efforts made in the framework of the general Action Plans, to identify promptly targeted issues that can benefit for the rapid introduction of assistance activities. The financing is often provided by the Human Rights Trust Fund,¹⁵ the European Union, States and certain organisations.

14. Important positive developments in the different areas covered by this recommendation were noted at the multi-lateral conference organised in Tirana in December 2011. The conclusions are available on the Department's website.

15. A full list of projects supported by the Fund is available on its website (www.coe.int/t/dghl/humanrightstrustfund). Between 2009 and 2015 the Department for the Execution of Judgments implemented a number of special cooperation programmes specifically targeted towards the execution of judgments of the European Court. The conclusions of the seminars and conferences (and other relevant documentation) organised in this context are available on the Department's website.

IV. Main achievements

Introduction

The 2015 Annual Report contained a State by State overview of main achievements since the entry into force of Protocol No. 11 in 1998 (earlier achievements were summarised in the Court's Annual Report of that year celebrating the Court's 40th anniversary).

The 2016 Annual Report intends to provide additional insights into problems which have more recently come before the Committee of Ministers and led to more important reforms. The present overview thus focuses on reforms reported since the beginning of the Interlaken process in 2010. The individual measures adopted in order to erase the consequences of the violations for the individual applicants are not presented in this overview.

In line with the approach in the overview of activities in 2016 (Appendix 5 – Thematic Overview) and that in the country fact sheets (Appendix 9), the presentation is thematic, indicating with respect to each theme the States and cases concerned.

In order to provide as up-to-date information as possible, reforms reported are not limited to those accepted in final resolutions in cases closed, but also includes more important progress made in pending cases; references are here to the presentation of the status of execution in HUDOC-EXEC.

Nota Bene: Cases cited under a specific theme do not necessarily raise all the issues mentioned in the heading. Similarly, the mention of the closure of supervision of a specific case does not necessarily mean that all problems in the area concerned have been solved. In a number of instances, the Committee of Ministers recognised major progress with respect to the solution of certain aspects of a larger problem by allowing a closure of certain cases of a group related to the aspects solved (“partial closure”).

For presentation purposes, only the case leading the group is mentioned; in case of joinder of several groups, only the first group is mentioned.

Thematic examples of achievements reported since interlaken 2010

Under the supervision of the Committee of Ministers, notable progress has been achieved in the following areas:

Actions of security forces and effectiveness of investigations

Prevention of arbitrary detention without reasonable suspicion that the person concerned has committed a crime (notably reinforcement of prosecutors' independence from the executive and the legislator, increased disciplinary liability for prosecutors and clear prohibition for all State authorities from interfering in the handling of individual cases)

Republic of Moldova: Cebotari, Final resolution (2016)147; Musuc, see status of execution; Armenia: Khachatryan and Others, Final resolution (2016)184

Control of the lawfulness of detention in the context of police operations on the high seas

France: Medvedyev and Others, Final resolution (2014)78

Proportionate use of force during arrest and other interventions, including more precise instructions – notably as regards the handling of the use of lethal force and dangerous immobilisation techniques

Bulgaria: Tzekov and 5 other cases, Final resolution (2016)274; Estonia: Korobov and Others, Final resolution (2016)105; France: Guerdner and Others, Final resolution (2016)6, Darraj, Final resolution (2016)216; Greece: Makaratzis, see status of execution; Republic of Moldova: Colibaba, Final resolution (2016)146; Poland: Dzwonkowski, Final resolution (2016)148

Protection against the use of threats of torture or other ill-treatment by the police in order to obtain information

Germany: Gäfgen, Final resolution (2014)289

Improvement of the planning and implementation of anti-terror operations to better take into account the risk of collateral damages affecting innocent persons

Russian Federation: Finogenov, see status of execution

Independence and effectiveness of investigations concerning police (including involvement of victims or their relatives) into allegations of excessive use of force, ill-treatment (including in police custody), as well as in face of ordinary crimes reported

Bulgaria: Seidova and Others, Final resolution (2013)101; Cyprus: Shchukin and Others, Final resolution (2014)93; Czech Republic: Eremiasova and Pechova, Final resolution (2014)69; Hungary: Knetty and Barta, Final resolution (2011)297; Republic of Moldova: Colibaba, Final resolution (2016)146, Cebotari, Final resolution (2016)147; Poland: Dzwonkowski, Final resolution (2016)148; Romania: Barbu Anghelescu, Final resolution (2016)150; Serbia: Stanomirovic, see status of execution

Independence and effectiveness of investigations concerning troops on mission abroad in case of allegations of illegal killings, ill-treatment or deprivations of liberty

Netherlands: Jaloud, pending, see status of execution; United Kingdom: Al-Skeini and Others, Final resolution (2016)298, Al-Jedda, Final resolution (2014)271

Strengthening procedures to investigate possible racial motives (notably related to Roma)¹⁶ behind excessive use of force or criminal actions

Greece: Makaratzis, see status of execution; Romania: Barbu Anghelescu, Final resolution (2016)150; Slovak Republic: Mizigarova, Final resolution (2016)17

Availability of a right to damages, notably non pecuniary damages, in case of abuses by security forces

Armenia: Khachatryan and Others, Final resolution (2016)184; Estonia: Korobov and Others, Final resolution (2016)105

Right to life - protection against ill-treatment: specific situations

Security Forces

Securing of areas with land mines, notably to protect children

Turkey: Pasa and Erkan Erol, Final resolution (2011)16

Improvement of guarantees surrounding body searches in prison or in connection with trials

France: El Shennawy, Final resolution (2015)77

Introduction of a possibility for life prisoners to seek, after having served a fixed tariff, a review of their situation allowing, if deemed appropriate, conditional release and ensuring that decisions taken are subject to judicial review

United Kingdom: Vinter, see status of execution

Protection against:

sexual abuse by relatives

Romania: M. and C., Final resolution (2013)233

school violence

Turkey: Kayak, Final resolution (2016)302

Independence and effectiveness of investigations into deaths in hospital

Poland: Byrzykowski, Final resolution (2013)208

16. The terms "Roma and Travellers" are being used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies.

Reception / Expulsion / Extradition

General

Convention protection applies also in case of naval or coast guard operations on the high seas (non-refoulement)

Italy: Hirsi Jamaa and Others, Final resolution (2016)221

Ensure that transfers do not take place when the receiving country cannot guarantee reception conditions and asylum procedures that meet Convention requirements, **notably within the area covered by the Dublin regulations**

Belgium: M.S.S., Final resolution (2014)272

Availability of effective remedies with automatic suspensive effect in case of entry prohibitions (notably in case of confinement in international areas of airports or other waiting zones)

France: Gebremedhin, Final resolution (2013)56

Examination of asylum applications

Improved examination of asylum requests (notably as regards the risks faced, including post flight risks, the risk of denial of justice and the quality of diplomatic assurances) and granting regular suspensive effect to appeals

Belgium: M.S.S., Final resolution (2014)272, Singh and Others, Final resolution (2014)112; Malta: Suso Musa, Final resolution (2016)277; Switzerland: A.A., Final resolution (2015)95; United Kingdom: Othman (Abu Qatada), Final resolution (2013)198

Ensuring that the right to family life may be adequately taken into account in expulsion proceedings, including where national security grounds are invoked

Bulgaria: Al-Nashif, Final resolution (2015)44; Norway: Nunez, Final resolution (2013)117

Prevention of excessive formalism in the examination of requests for residence permits

Netherlands: G.R., Final resolution (2014)293

Reception and detention

Improvement of the handling of unaccompanied minors, including detention issues

Belgium: Mubilanzila and Kaniki Mitunga, Final resolution (2014)226

Improved judicial procedures to ensure that the lawfulness of detention (including in reception zones in airports) **awaiting a decision on asylum or in view of expulsion** is speedily reviewed (including the right to order release if detention is no longer required or if there are no prospects of implementation of removal decisions within a reasonable time)

Czech Republic: Buishvili, Final resolution (2015)98; **Greece:** S.D., see *status of execution*; **Latvia:** Nassr Allah, Final resolution (2016)192; **Malta:** Suso Musa, Final resolution (2016)277; **United Kingdom:** A. and Others, Final resolution (2013)114

Amendments' ensuring that detention in view of expulsion/extradition is based on sufficiently precise legislation and ordered only on the basis of a formal decision (even where the measure is ordered on national security grounds)

Bosnia and Herzegovina: Al Hamdani, Final resolution (2014)186; **Czech Republic:** Rashed, Final resolution (2014)99; **Greece:** Mathloom, Final resolution (2014)232; **Romania:** Al-Agha, Final resolution (2016)110; **San Marino:** Toniolo, Final resolution (2014)283

Development of alternatives to detention with a view to expulsion for national security reasons where there are no prospects of effective removal

United Kingdom: A. and Others, Final resolution (2013)114

Improvement of the conditions of detention of migrants and asylum seekers, and ensuring the existence of effective remedies

Greece: S.D., see *status of execution*; **Malta:** Suso Musa, Final resolution (2016)277

Prohibition of slavery and forced labour

Protection against human trafficking and subjection to servitude

France: C.N. and V., Final resolution (2014)39; **United Kingdom:** C.N., Final resolution (2014)34

Protection of rights in detention

Lawfulness of detention

Ensuring that pre-trial detention is always covered by judicial orders, including the special problems which may occur when transferring detained persons between federal structures

Russian Federation: Bednov, Final resolution (2015)249; **Switzerland:** Borer, Final resolution (2016)240

Abolition of the rule that no specific detention orders are required once the investigating authorities have sent the case files to the trial court

Georgia: Patsuria, Final resolution (2011)105; **Republic of Moldova:** Sarban, see *status of execution*

Quality of the control of lawfulness of pre-trial detention, notably introduction of a right for the accused to be served prosecutor motions for extension of detention, to attend hearings and/or to have access to relevant parts of the case-file (including assistance of an interpreter) and obligations on the courts to provide reasons; also acceleration of appeal proceedings and ensuring that release orders are rapidly enforced

Czech Republic: Husak, Kneble and Krejcir, Final resolution (2013)120; **Estonia:** Ovsjannikov, Final resolution (2015)136; **Germany:** Mooren, Final

resolution (2011)216; Hungary: Imre, Maglódi, Csáky and Bárkányi, Final resolution (2011)222; Latvia: Shannon, Final resolution (2016)64; Poland: Laskiewicz, Final resolution (2013)85, Ladent, Final resolution (2016)32; Russian Federation: Bednov, Final resolution (2015)249; Turkey: Demirel, Final resolution (2016)332

Measures to limit length of pre-trial detention

Latvia: Bannikov, Final resolution (2015)137; Turkey: Demirel, Final resolution (2016)332

Introduction of special rules adapted to the situation of minors

Turkey: Nart, Final resolution (2016)304

Deduction of house arrest as periods spent in detention when calculating prison sentence

Romania: Ciobanu, Final resolution (2015)28

Speedy review of the lawfulness of continued detention after expiry of the tariff

United Kingdom: Betteridge, Final resolution (2013)217

Control of the justification for placement under special prison regime for “dangerous detainees” or in isolation, including judicial review of such decisions or specific interferences with Convention rights caused

*Bulgaria: Yankov, Final resolution (2013)102; Poland: Horych, Final Resolution (2016)128; Romania: Enache, see *status of execution**

Protection against arbitrary detention in psychiatric hospital, notably by ensuring that such detention is always ordered by a court and not by social authorities or through the simple consent of the guardian

Bosnia and Herzegovina: Tokic and Others, Final resolution (2014)197; Czech Republic: Sýkora, Final resolution (2015)75; Bulgaria: Yankov, Final resolution (2013)102

Imposition of ceilings on the duration of detention for non-payment of the personal guarantee fixed in case of breach of bail conditions, depending on the amount of bail bond

Malta: Gatt, Final resolution (2014)165

Introduction or improvement of possibilities to obtain compensation for illegal detention and/or abolition of the obligation to prove one’s innocence in order to receive compensation for detention on remand if acquitted

Belgium: Capeau, Final resolution (2011)43; Bulgaria: Yankov, Final resolution (2013)102; Estonia: Harkmann and Bergmann, Final resolution (2010)158; Georgia: Jgarkava, Final resolution (2016)25; Ireland: D.G., Final resolution (2014)234; Republic of Moldova: Cebotari, Final resolution (2016)147; Turkey: Aydemir and Michalko, Final resolution (2013)47

Conditions of detention

Improvement of the conditions of detention on remand centres and prisons, including problems related to overcrowding

Estonia: Kochetkov, Final resolution (2013)9; **France:** R.L. and M.-J.D., Final resolution (2014)113; **Netherlands:** Mathew, Final resolution (2016)126; **Romania:** Bragadireanu, see *status of execution*; **Poland:** Orchowski, Final resolution (2016)254

Measures to ensure adequate conditions for the preparation and distribution of food in accordance with religious beliefs

Romania: Vartic No. 2, Final resolution (2014)221

Increased right to family visits, including possibilities to organise “direct contact” visits

Poland: Klamecki No. 2, Final resolution (2013)228

Introduction of an effective remedy for unsatisfactory prison conditions (whether by way of monetary compensation or in the form of reduction of sentence)

Estonia: Kochetkov, Final resolution (2013)9; **Italy:** Torreggiani and Others, Final resolution (2016)28

Proportionality and adequacy of disciplinary measures (including in case of persons with mental illness)

Bulgaria: Yankov, Final resolution (2013)102; **France:** Renolde, Final resolution (2016)24; **Netherlands:** Mathew, Final resolution (2016)126

Use of coercive measures in the context of involuntary confinement in mental hospital

Croatia: M.S. No. 2, see *status of execution*

Proportionality of interventions by security forces to maintain order in prison

Romania: Iorga and Others, Final resolution (2016)265

Independence and effectiveness of investigations vis-à-vis the penitentiary staff into allegations of disproportionate use of force or ill-treatment

Romania: Barbu Anghelescu, Final resolution (2016)150

Improvement in the handling of mentally-ill persons in police custody and measures to limit pre-placement detention of mentally-ill offenders in ordinary remand centres

Netherlands: Morsink, Final resolution (2014)294; **United Kingdom:** M.S., Final resolution (2013)175

Better access to media and physical exercise for “dangerous detainees” subjected to special detention regimes (often involving lengthy solitary confinement)

Poland: Horych, Final resolution (2016)128

Conditions of detention - medical care

Improvement of health care for prisoners, including special problems such as HIV or mental health problems

Albania: Dybeku and Grori, Final resolution (2016)273; **France:** R.L. and M.-J.D., Final resolution (2014)113, Renolde, Final resolution (2016)24; **Georgia:** Ghavtadze, Final resolution (2014)209, Jashi, Final resolution (2014)162; **Poland:** Kaprykowski, Final resolution (2016)278

Detention and other rights

Abolition of blanket bans on prisoners' voting

Austria: Frodl, Final resolution (2011)91; **Romania:** Calmanovici, Final resolution (2014)13; **Turkey:** Soyler, see status of execution

Right to compassionate leave increased (i.e. leave to visit dying child in hospital and attend funeral)

Poland: Giszczak, Final resolution (2013)65

Creation of a clear and detailed framework for control of prisoners' correspondence

Netherlands: Doerga, Final resolution (2011)137; **Poland:** Klamecki No. 2, Final resolution (2013)228

Functioning of justice

Access to court

Introduction or improvement of procedures to contest the lawfulness of acts of public bodies and officials

Armenia: Khachatryan, Final resolution (2015)37, Saghatelyan, Final resolution (2016)211; **Serbia:** Backovic, Final resolution (2013)44

Access to the highest courts, notably abolition of excessively formalistic requirements

Armenia: Melikyan, Final resolution (2014)44; **Belgium:** L'Erablière A.S.B.L., Final resolution (2013)224; **Bulgaria:** Angel Angelov, Final resolution (2013)153; **Greece:** Alvanos and Others and 3 other cases, Final resolution (2016)178; **Czech Republic:** Adamicek and 3 other cases, Final resolution (2013)58; **Luxembourg:** Kemp and Others, Final resolution (2012)93; **Poland:** Siałkowska, Final resolution (2013)147, Subicka, Final resolution (2015)146; **Slovak Republic:** Kovárová, Final resolution (2016)138

Access to court/and or right to appeal in case of administrative offences

Bulgaria: Kamburov No. 2, Final resolution (2013)99; **France:** Cadene and 2 other cases, Final resolution (2016)283

Introduction of a possibility to obtain a determination of civil claims brought in criminal proceedings also in case these have been discontinued because of statutes of limitations, amnesty or death of the accused

Bulgaria: Antanasova, Final resolution (2013)239

Access to court through reforms of court fees and rules on legal representation and abolition of requirement of regular residence in the country to obtain legal aid

Belgium: Anakomba Yula, Final resolution (2016)243; **Georgia:** FC Mretebi, Final resolution (2010)163; **Poland:** Tabor, Final resolution (2011)239; **United Kingdom:** Zagorodniy, Final resolution (2016)92

Access to court as regards measures taken in the context of the implementation of labour market programs affecting “civil” rights

Sweden: Mendel, Final resolution (2013)196

Protection of minority shareholders’ right of access to court

Czech Republic: Suda, Final resolution (2012)18

Judicial independence

Disciplinary procedures against judges ensuring the independence of the competent body

Croatia: Olujic, Final resolution (2011)194; **Ukraine:** Oleksandr Volkov, see *status of execution*

Independence of military court

Turkey: Ibrahim Gürkan, Final resolution (2016)303

Contempt of court issues to be dealt with by another court than the one concerned

Cyprus: Kyprianou, Final resolution (2015)47

Respect for final judicial decisions

Abolition or limitation of executive prerogatives to challenge final domestic decisions

Bulgaria: Mancheva, Final resolution (2014)201; **Bosnia and Herzegovina:** Jeličić, Final resolution (2012)10; **Romania:** Androne, Final resolution (2013)232

Due enforcement of domestic judicial decisions, in particular against the State or State owned companies (including the setting up of a central state fund to honour such judgments)

Armenia: Khachatryan, Final resolution (2015)37; **Georgia:** “Iza” Ltd and Makrakhidze, Final resolution (2011)108; **Italy:** Ventorino, Final resolution (2016)316; **Montenegro:** Boucke, Final resolution (2016)165, Milic, Final resolution (2016)223; **Russian Federation:** Timofeyev / Burdov No. 2, Final resolution (2016)268; Gerasimov, see *status of execution*; **The former Yugoslav Republic of Macedonia:** Atanasovic and Others, Final resolution (2016)35

Enforcement of decisions regarding children

Romania: Lafargue, Final resolution (2014)282

Speedy execution of foreign judgments (exequatur) relating to child maintenance

France: Dinu, Final resolution (2013)157

Length of judicial proceedings

Ensuring trial within a reasonable time:

in civil proceedings including the setting up of effective compensatory and acceleratory remedies

Bulgaria: *Finger / Dimitrov and Hamanov*, Final resolution (2015)154; **Cyprus:** *Buj*, Final resolution (2011)47; **Estonia:** *Saarekallas Oü*, Final resolution (2014)286; **Germany:** *Rumpf*, Final resolution (2013)244; **Greece:** *Michelioudakis*, Final resolution (2015)231; **Italy:** *Andreoletti*, Final resolution (2015)246; **Portugal:** *Oliveira Modesto and Others*, Final resolution (2016)149, *Martins de Castro*, Final resolution (2016)99; **Romania:** *Nicolau*, Final resolution (2016)151; **Slovak Republic:** *Maxian and Maxianova*, see *status of execution*; **Slovenia:** *Lukenda*, Final resolution (2016)354; **The former Yugoslav Republic of Macedonia:** *Atanasovic and Others*, Final resolution (2016)35; **Turkey:** *Ormanci and Others*, Final resolution (2014)298

in “civil” proceedings before administrative courts including the setting up of effective compensatory and acceleratory remedies

Austria: *Rambauske*, Final resolution (2015)222; **Cyprus:** *Buj*, Final resolution (2011)47; **Estonia:** *Saarekallas Oü*, Final resolution (2014)286; **Germany:** *Rumpf*, Final resolution (2013)244; **Greece:** *Vassilios Athanasiou and Others*, Final resolution (2015)230, *Papazoglou and Others*, Final resolution (2016)94; **Italy:** *Di Bonaventura*, Final resolution (2016)358; **Poland:** *Fuchs*, Final resolution (2016)359; **Portugal:** *Oliveira Modesto and Others*, Final resolution (2016)149, *Martins de Castro*, Final resolution (2016)99

in criminal proceedings, including speeding up criminal investigations and the setting up of effective compensatory and acceleratory remedies

Austria: *Donner and 5 other cases*, Final resolution (2016)212; **Bulgaria:** *Finger / Dimitrov and Hamanov*, Final resolution (2015)154; **Germany:** *Rumpf*, Final resolution (2013)244; **Greece:** *Michelioudakis*, Final resolution (2015)231; **Lithuania:** *Sulcas*, Final resolution (2014)291; **Luxembourg:** *Schuhmacher*, Final resolution (2014)216; **Portugal:** *Oliveira Modesto and Others*, Final resolution (2016)149, *Martins de Castro*, Final resolution (2016)99; **Romania:** *Nicolau*, Final resolution (2016)151; **Serbia:** *Ristić*, Final resolution (2014)18

Fair trial

Improved reasoning of judicial decisions

Armenia: *Sholokhov*, Final resolution (2015)116; **Belgium:** *Taxquet*, Final resolution (2012)112; **The former Yugoslav Republic of Macedonia:** *Atanasovskij*, Final resolution (2015)152

Measures to ensure consistency of domestic courts’ case-law

Romania: *Beian*, Final resolution (2015)04

Oral hearing in administrative cases

Armenia: *Stepanyan*, Final resolution (2015)38

Improved respect by civil courts for administrative court findings concerning the lawfulness of State acts

Bulgaria: Kehaya, Final resolution (2013)238, Decheva and Others, Final resolution (2014)137

Respect for the adversarial principle in civil proceedings

Romania: Grozescu, Final resolution (2013)55

Measures to improve Assize Court proceedings in criminal cases (jury trials)

Belgium: Taxquet, Final resolution (2012)112

Access of the accused to relevant information in criminal “lustration” proceedings

Poland: Matyjek, Final resolution (2014)172

Improved possibilities to obtain the reopening of criminal cases decided in absentia (without the person having been duly informed of the proceedings)

Bulgaria: Aliykov, Final resolution (2014)259

Recognition of the right of the accused to remain silent and to be assisted by a lawyer when interrogated in police custody

Monaco: Navone and Others, Final resolution (2014)266

No punishment without law

Remedying excessively vague criminal legislation

Estonia: Livik, Final resolution (2010)157

Abolition of retroactive application of criminal law (including special issues such as retroactive extension of “preventive detention” not foreseen when the person was convicted)

Bosnia And Herzegovina: Maktouf and Damianovic, see [status of execution](#); Germany: M., Final resolution (2014)290; Spain: Del Rio Prada, Final resolution (2014)107

Protection of home, private and family life

Right to home and privacy

Affording Roma and travellers improved protection against eviction from publicly owned sites put at their disposal

United Kingdom: Buckland, Final resolution (2013)237

Ensuring that eviction decisions take into account the consequences for the leaseholder (proportionality test)

Croatia: Ćosić, Final resolution (2011)48

Limitation of broad police powers to issue stop and search orders without suspicion of crime concerning persons or vehicles (power henceforth apply only where senior police officers suspect an act of terrorism)

United Kingdom: Gillan and Quinton, Final resolution (2013)52

Introduction of a prohibition on photo abusively interfering with the right to privacy

Sweden: Söderman, Final resolution (2014)106

Parental rights

Mechanisms for the swift resolution of parental conflicts and for safeguarding parents' rights (visiting or other) to their children

Czech Republic: Bergmann, Final resolution (2013)155; Italy: Roda and Bonfatti, Final resolution (2016)27

Swift judicial decisions and effective implementation thereof in cases of international kidnappings (cases under the Hague Convention on the civil aspects of international abduction)

Czech Republic: Macready, Final resolution (2012)21

Abolition of automatic public care for certain criminal convictions

Malta: M.D. and Others, Final resolution (2014)265

Possibilities to reopen paternity proceedings in the light of new evidence linked to new scientific methods (DNA)

Slovak Republic: Paulik, Final resolution (2013)195

Access to medically-assisted procreation for persons with genetic diseases

Italy: Costa and Pavan, Final resolution (2016)276

Abortion

System put in place to make practical the right to seek and obtain lawful abortion within the limits set by the Constitution

Ireland: A., B. and C., Final resolution (2014)273

Acquisition, use, disclosure or retention of private information

Control of secret surveillance measures and effective remedies

Lithuania: Drakšas, Final resolution (2016)124

More detailed rules for the holding of confidential police registers and improved supervision of the respect of these rules

Bulgaria: Dimitrov-Kazakov, Final resolution (2013)119

Limitations introduced on the keeping of fingerprints or DNA profiles in police records where persons were eventually not prosecuted or acquitted

France: M.K., Final resolution (2016)310; United Kingdom: Goggins, Final resolution (2014)91; S. and Marper, see status of execution

Freedom of religion and conscience

Revision of the system of conscientious objection to reduce extra length and provide redress to conscientious objectors unjustly convicted

Armenia: Bayatyan, Final resolution (2014)225

Abolition of the requirement to divulge one's faith when taking oath of office as a lawyer

Greece: Alexandridis, Final resolution (2016)312

Lifting of the prohibition to wear religious headgears and garments in public areas

Turkey: Ahmet Arslan and Others, Final resolution (2016)330

Freedom of expression

Introduction of an obligation to provide properly substantiated and reasoned decisions with respect to the selection, refusal or invalidation of broadcasting licences

Armenia: Meltex Ltd and Mesrop Movsesyan, Final resolution (2011)39

Abrogation of the possibility to prohibit the future publication of whole periodicals because of an article deemed to have constituted propaganda in favour of a terrorist organisation

Turkey: Ürper and Others, Final resolution (2014)130

Limitation of parliamentary immunity in defamation matters to exclude statements made without link to the exercise of a parliamentary function

Italy: Patrono, Cascini and Stefanelli, Final resolution (2016)119

Decriminalisation of defamation and insult

Montenegro: Šabanović, Final resolution (2016)44

Freedom of assembly and association

Adoption of a precise legal framework for peaceful assemblies

Armenia: Galstyan, Final resolution (2016)185

Filling of legislative lacuna so as to protect against unfair dismissal also on the grounds of political opinion

United Kingdom: Redfearn, Final resolution (2013)223

Protection of property

Adoption of legislation required for the settling of a state bond scheme

Russian Federation: Malysh and Others, Final resolution (2012)134

Adoption of legislation required to honour an earlier legislative engagement to compensate victims of Soviet era repression

Georgia: Klaus and Yuri Kiladze, Final resolution (2015)41

Introduction of a new system of rent and property regulations to ensure a fair balance between the interests of landlords and tenants to solve problems inherent in an earlier rent control scheme

Norway: Lindheim, Final resolution (2016)46; Poland: Hutten-Czapska, Final resolution (2016)259

Adoption of a repayment scheme for “old” foreign currency accounts frozen after the dissolution of the Socialist Federative Republic of Yugoslavia

Slovenia: Alisić and Others, see status of execution

Recognition of the right of property owners with ethical objections to hunting to withdraw from hunting associations (which may by law be created against their will)

Germany: Herrmann, Final resolution (2016)188; Luxembourg: Schneider, Final resolution (2013)34

Mechanism to provide redress (restitution or compensation) to owners of properties nationalised under the former communist regime was accepted as in principle capable of offering adequate redress

Romania: Draculet, Final resolution (2014)274, see also status of execution in Maria Atanasiu and Others and Strain

Right to education

Measures to facilitate the enrolment of Roma children in the national education system and monitor regular attendance and special instructions and training to teachers

Croatia: Orsus, see status of execution; Greece: Sampanis and Others, Final resolution (2011)119; Sampani, see status of execution

Electoral rights

Submission of a property and income declaration no longer a pre-requisite for registration for parliamentary elections

Armenia: Sarukhanyan, Final resolution (2014)108

Narrowing of the scope of persons ineligible for parliamentary elections to those who were formerly directly involved in the KGB's primary functions

Latvia: Adamsons, Final resolution (2014)279

Improved control of the regularity of elections and of actions of the central electoral commission

Georgia: Georgian Labour Party, Final resolution (2016)42

Freedom of movement

Abolition of the possibility to impose travel bans for unpaid taxes and of automatic imposition of such ban in case of breach of immigration rules of a third country

Bulgaria: Makedonski, Final resolution (2013)2; Stamose, Final resolution (2014)249

Obligation to provide more in depth justifications for travel bans imposed for the purposes of pending criminal proceedings

Bulgaria: Pfeifer, Final resolution (2015)67; Poland: Miazdzyk, Final resolution (2016)261

Discrimination

Abolition of discriminations based on...

...sexual orientation

in the right to engage civil unions

Greece: Vallianatos and Others, Final resolution (2016)275

in the enjoyment of succession rights to jointly rented flats

Poland: Kozak, Final resolution (2013)81

in the enjoyment of rights under insurance schemes for civil servants

Austria: P.B. and J.S., Final resolution (2011)42

in the enjoyment of the right to adopt children

Austria: X. and Others, Final resolution (2014)159

...nationality

in the enjoyment of family allowances

Greece: Zeibek, Final resolution (2012)34; Italy: Dhabbi, Final resolution (2015)203

...ethnic origin

in the enjoyment of state support in repairing the consequences of acts of ethnic violence which occurred before ratification of the Convention (Roma) (vast array of measures adopted to make good consequences suffered)

Romania: Moldovan and Others, Final resolution (2016)39

...other grounds

as regards the right of unmarried fathers to obtain child custody

Austria: Sporer, Final resolution (2015)19; Germany: Zaunegger, Final resolution (2014)163

as regards the right of single parents to accede to full adoption

Luxembourg: Wagner and J.M.W.L., Final resolution (2013)33

as regards the right of persons unjustly “erased” from the lists of residents after Slovenia’s independence (granting of the right to seek reinstatement in their residence rights and compensation for consequences of the “erasure”)

Slovenia: Kuric and Others, Final resolution (2016)112

as regards the right of refugees enjoying a time-limited leave to remain to be joined by their spouses married abroad “post-flight” (a limitation not upheld vis-à-vis spouses married abroad “before flight” - right of reunification granted)

United Kingdom: Hode and Abdi, Final resolution (2014)05

Limitation on the use of restrictions of rights

Preventing abuse of power through the use of arrest and pre-trial detention for purposes other than those accepted under Article 5 (notably reinforcement of prosecutor independence of the executive and the legislator, increased disciplinary liability for prosecutors and a clear prohibition for all state authorities to interfere in the handling of individual cases)

Republic of Moldova: Cebotari, Final resolution (2016)147

Effective remedies – general issues

Introduction of a general remedy for all types of violations of the Convention

Turkey: Özbek, Final resolution (2013)254

Reopening of proceedings to give effect to judgments of the European court – developments since 2010

(an overview of the earlier situation can be found in documents CDDH(2006)008 Addendum III, CDDH(2008)008 Add. I.; updated information are presented on the website of the CDDH).

In criminal cases

Cyprus: Kyprianou, Final resolution (2015)47; Georgia: Jgarkava, Final resolution (2016)25; Italy: Bracci, Final resolution (2014)102

Extending right to ask for reopening of proceedings to include also the prosecutor

Georgia: see Appendix 6

In civil, criminal and administrative cases

Andorra: Ute Saur Valnet, see status of execution

In civil cases related to the status of the person

France: see Appendix 6

V. Glossary

Action plan – document setting out the measures taken and/or envisaged by the respondent State to implement a judgment of the European Court of Human Rights, together with an indicative timetable.

Action report – report transmitted to the Committee of Ministers by the respondent State setting out all the measures taken to implement a judgment of the European Court and / or the reasons for which no additional measure is required.

Judgment with indications of relevance for the execution “Article 46” – judgment by which the Court seek to provide assistance to the respondent State in identifying the sources of the violations established and the type of individual and/or general measures that might be adopted in response. Indications related to individual measures can also be given under the section Article 41.

Case – generic term referring to a judgment (or a decision) of the European Court.

Case awaiting classification – case for which the classification - under standard or enhanced supervision – is still to be decided by the Committee of Ministers.

Classification of a case – Committee of Ministers’ decision determining the supervision procedure – standard or enhanced.

Closed case – case in which the Committee of Ministers adopted a final resolution stating that it has exercised its functions under Article 46 § 2 and 39 § 4 of the Convention, and thus closing its examination of the case.

Deadline for the payment of the just satisfaction – when the Court awards just satisfaction to the applicant, it indicates in general a deadline within which the respondent State must pay the amounts awarded; normally, the time-limit is three months from the date on which the judgment becomes final.

“DH” meeting – meetings of the Committee of Ministers specifically devoted to the supervision of the execution of judgments and decisions of the European Court. If necessary, the Committee may also proceed to a detailed examination of the status of execution of a case during a regular meeting.

Enhanced supervision – supervision procedure for cases requiring urgent individual measures, pilot judgments, judgments revealing important structural and / or complex problems as identified by the Court and / or by the Committee of Ministers, and interstate cases. This procedure is intended to allow the Committee of Ministers to closely follow progress of the execution of a case, and to facilitate exchanges with the national authorities supporting execution.

Final judgment – judgment which has to be executed by the respondent State under the supervision of the Committee of Ministers. A Chamber judgment (panel of 7 judges) becomes final: immediately if the parties declare that they will not request the referral of the case to the Grand Chamber of the Court, or three months after its delivery to ensure that the applicant or the respondent State have the possibility to request the referral, or when the Grand Chamber rejects the referral's request. When a judgment is delivered by a committee of three judges or by the Grand Chamber, it is immediately final.

Final resolution – Committee of Ministers' decision whereby it decides to close the supervision of the execution of a judgment, considering that the respondent State has adopted all measures required in response to the violations found by the Court.

Friendly settlement – agreement between the applicant and the respondent State aiming at putting an end to the application before the Court. The Court approves the settlement if it finds that respect of human rights does not justify maintaining the application. The ensuing decision is transmitted to the Committee of Ministers which will supervise the execution of the friendly settlement's terms as set out in the decision.

General measures – measures that the respondent States' authorities have to take to prevent similar violations to those found by the Court or put an end to continuing violations. The adoption of general measures can notably imply a change of legislation, of judicial practice or practical measures such as the refurbishing of a prison or staff reinforcement, etc. The obligation to ensure effective domestic remedies is an integral part of general measures (see notably Committee of Ministers Recommendation (2004)6).

Group of cases – when several cases under the Committee of Ministers' supervision concern the same violation or are linked to the same structural or systemic problem in the respondent State, the Committee may decide to group the cases and deal with them jointly. The group usually bears the name of the first judgment submitted to the Committee for supervision of its execution. If deemed appropriate, the grouping of cases may be modified by the Committee, notably to allow the closure of certain cases of this group dealing with a specific structural problem which has been resolved (partial closure).

Individual measures – measures that the respondent States' authorities must take to erase, as far as possible, the consequences of the violations for the applicants - *restitutio in integrum*. Individual measures include for example the reopening of unfair criminal proceeding or the destruction of information gathered in breach of the right to private life, etc.

Interim resolution – form of decision adopted by the Committee of Ministers aimed at overcoming more complex situations requiring special attention.

Isolated case – case where the violations found appear closely linked to specific circumstances, and does not require any general measures (for example, bad implementation of the domestic law by a tribunal thus violating the Convention).

Just satisfaction – when the Court considers, under Article 41 of the Convention, that the domestic law of the respondent State does not allow complete reparation of the consequences of this violation of the Convention for the applicant, it can award just satisfaction. Just satisfaction frequently takes the form of a sum of money covering material and/or moral damages, as well as costs and expenses incurred.

Leading case – case which has been identified as revealing new structural and / or systemic problems, either by the Court directly in its judgment, or by the Committee of Ministers in the course of its supervision of execution. Such a case requires the adoption of new general measures to prevent similar violations in the future.

New cases – expression referring to a judgment of the Court that became final during the calendar year and was transmitted to the Committee of Ministers for supervision of its execution.

Pending case – case currently under the Committee of Ministers' supervision of its execution.

Pilot judgment – when the Court identifies a violation which originates in a structural and / or systemic problem which has given rise or may give rise to similar applications against the respondent State, the Court may decide to use the pilot judgment procedure. In a pilot judgment, the Court will identify the nature of the structural or systemic problem established, and provide guidance as to the remedial measures which the respondent State should take. In contrast to a judgment with mere indications of relevance for the execution under Article 46, the operative provisions of a pilot judgment can fix a deadline for the adoption of the remedial measures needed and indicate specific measures to be taken (frequently the setting up of effective domestic remedies). Under the principle of subsidiarity, the respondent State remains free to determine the appropriate means and measures to put an end to the violation found and prevent similar violations.

Reminder letter – letter sent by the Department for the Execution of Judgments to the authorities of the respondent State when no action plan/report has been submitted in the initial six-month deadline foreseen after the judgment of the Court became final.

Repetitive case – case relating to a structural and/or general problem already raised before the Committee in the context of one or several leading cases; repetitive cases are usually grouped together with the leading case.

Standard supervision procedure – supervision procedure applied to all cases except if, because of its specific nature, a case warrants consideration under the enhanced procedure. The standard procedure relies on the fundamental principle that it is for respondent States to ensure the effective execution of the Court's judgments and decisions. Thus, in the context of this procedure, the Committee of Ministers limits its intervention to ensuring that adequate action plans / reports have been presented and verifies the adequacy of the measures announced and / or taken at the appropriate time. Developments in the execution of cases under standard procedure are closely followed by the Department for the Execution of Judgments, which presents information received to the Committee of Ministers

and submits proposals for action if developments in the execution process require specific intervention by the Committee of Ministers.

Transfer from one supervision procedure to another – a case can be transferred by the Committee of Ministers from the standard supervision procedure to the enhanced supervision procedure (and *vice versa*).

Unilateral declaration – declaration submitted by the respondent State to the Court acknowledging the violation of the Convention and undertaking to provide adequate redress, including to the applicant. The Committee of Ministers does not supervise the respect of undertakings formulated in a unilateral declaration. In case of a problem, the applicant may request that its application be restored to the Court’s list.

“WECL” case – judgment on the merits rendered by a Committee of three judges, if the issues raised by the case are already the subject of “well-established case-law of the Court” (Article 28 § 1b).

Appendix 1 – Statistics 2016

Introduction

The information presented in this appendix is based on the database of the Department for the Execution of Judgments of the European Court of Human Rights. A brief description of the basic notions underlying the statistics follows below.

Basic notions

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

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

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

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

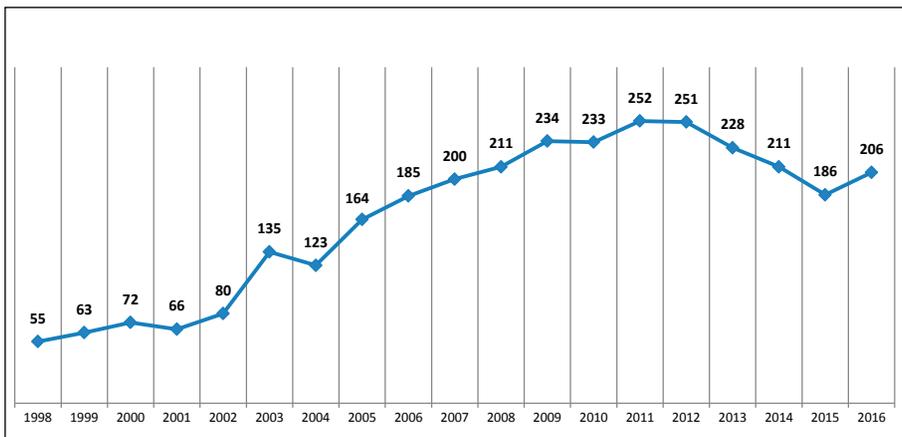
Note: For practical reasons, information on judgments which have become final in a specific year may still be incomplete when the statistics are produced. For some judgments/decisions, this information will only arrive and be registered later with some minor consequences for the exactness and comparability of statistics regarding new and pending cases. In addition, as regards the comparability of statistics within a certain year, it must be borne in mind that new cases, final and closed during the same year (107 in 2016, 151 in 2015), are not included among the "cases pending" at the end of the year.

A. Overview of developments in the number of cases from 1998 to 2016

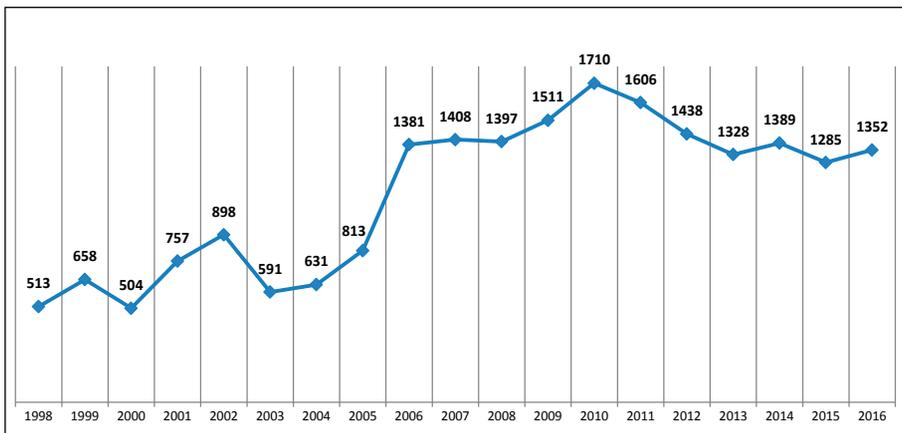
The data presented also include cases where the Committee of Ministers decided itself whether or not there had been a violation under former Article 32 of the Convention (while this competence in principle disappeared in connection the entry into force of Protocol No. 11 in 1998, a number of such cases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

A.1. New cases transmitted for supervision each year

A.1.a. New leading cases



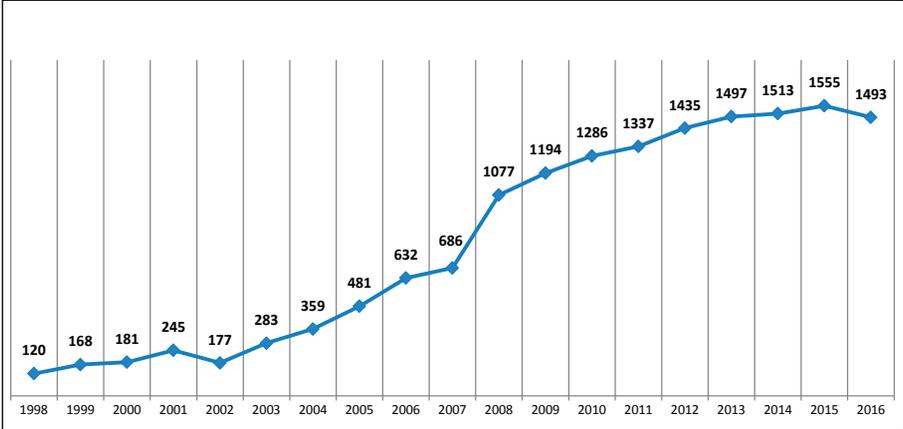
A.1.b. Total number of new cases transmitted each year



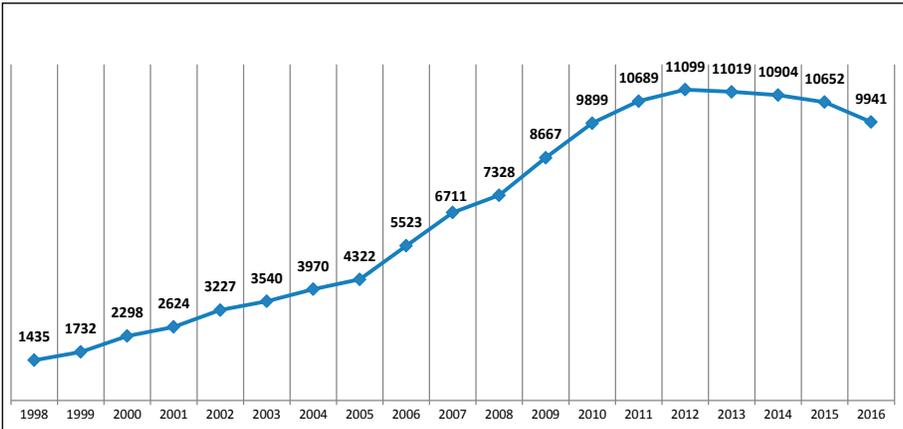
A.2. Pending cases at the end of the year

(at various stages of execution)

A.2.a. Leading cases pending



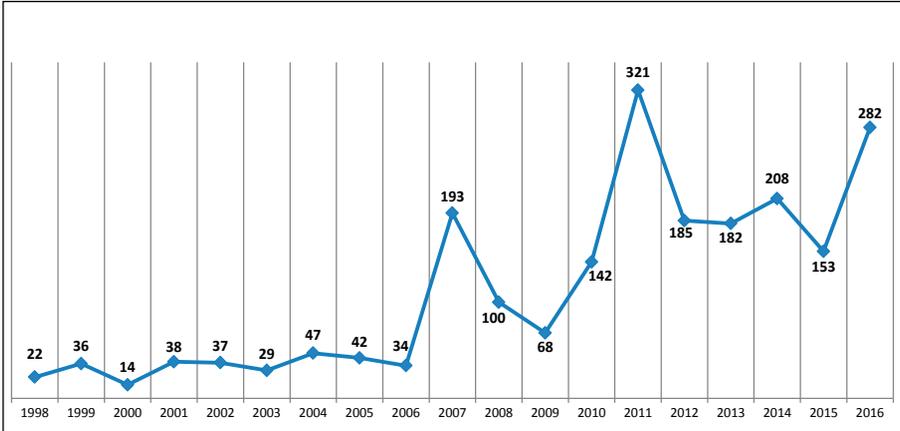
A.2.b. Total number of pending cases



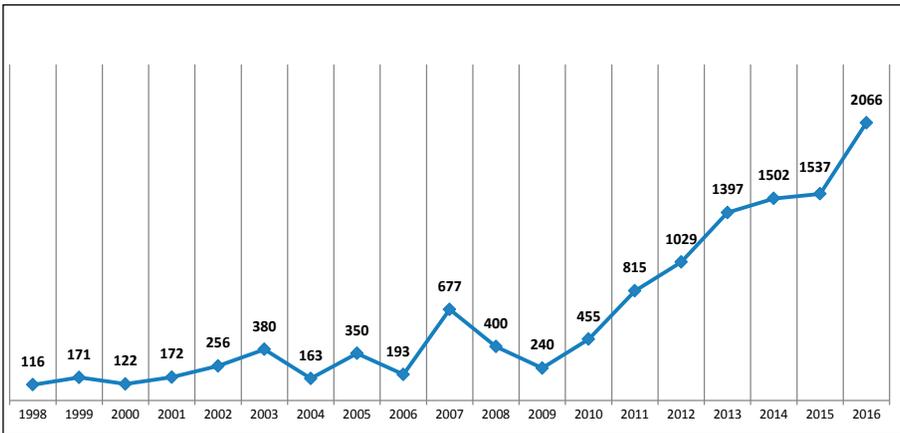
A.3. Cases closed during the year

(all necessary measures adopted)

A.3.a. Leading cases closed



A.3.b. Total number of cases closed



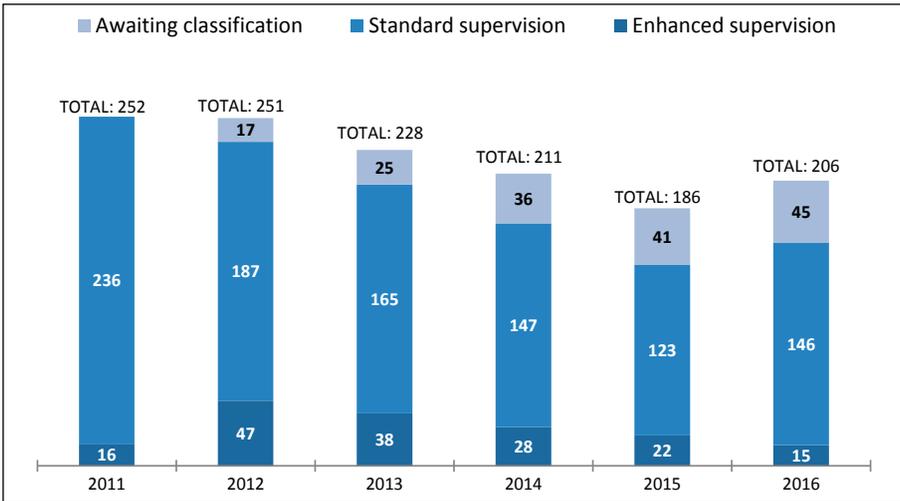
B. Statistics relating to the new working methods: 2011-2016

Note: This presentation contains some new pending cases awaiting classification in enhanced or standard procedure, and thus final qualification as leading or repetitive cases.

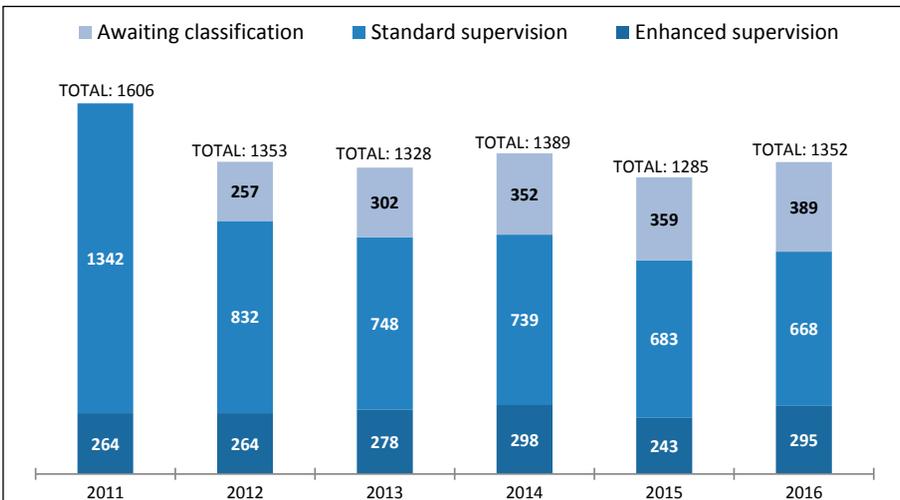
B.1. Classification of cases: enhanced or standard supervision

B.1.a. New cases

New leading cases

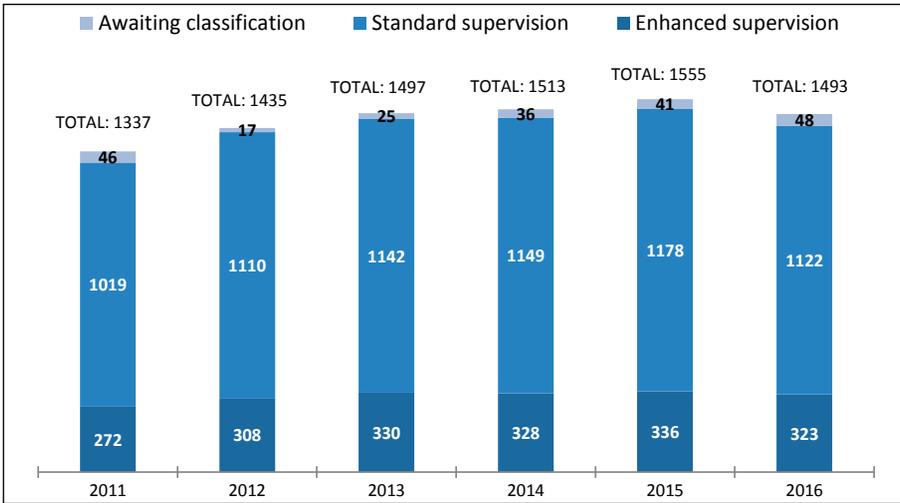


Total of new cases

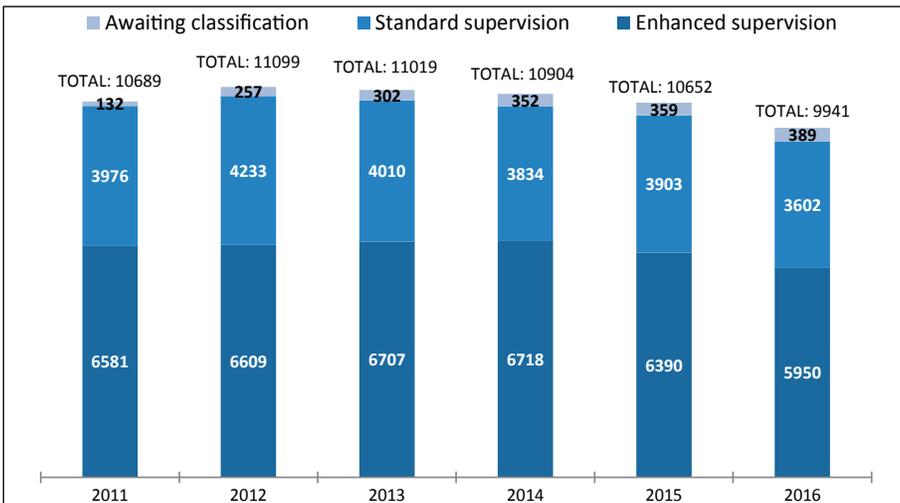


B.1.b. Pending cases at the end of the year

Leading cases pending

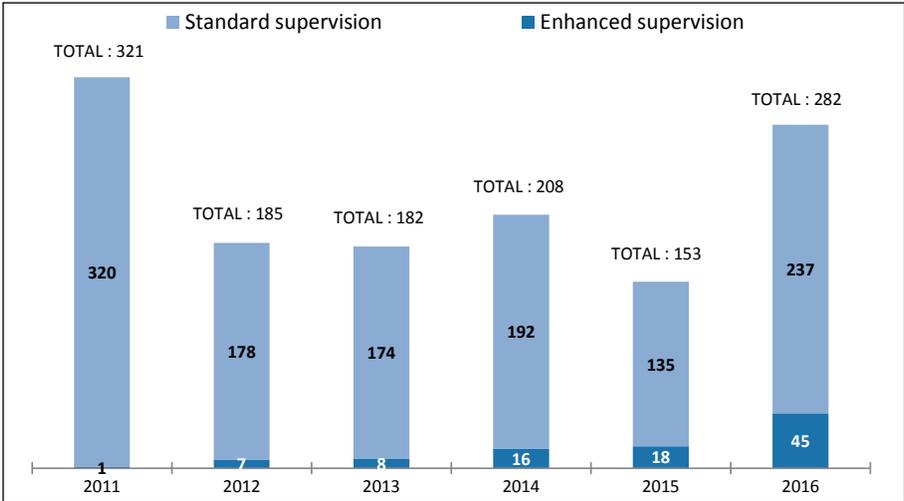


Total of pending cases

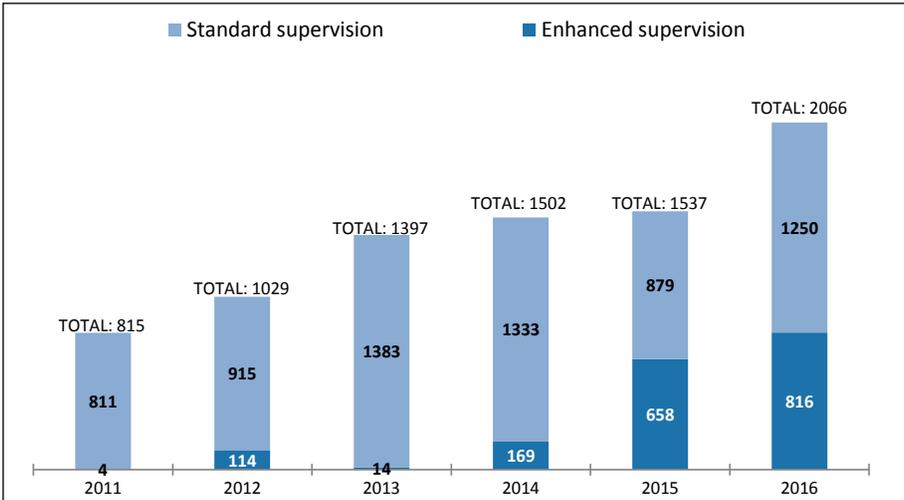


B.1.c. Cases closed during the year

Leading cases closed

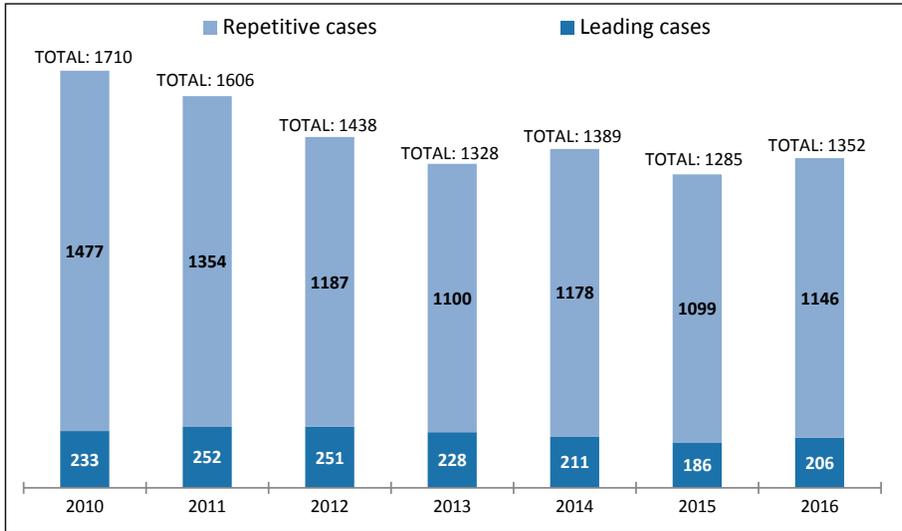


Total of cases closed

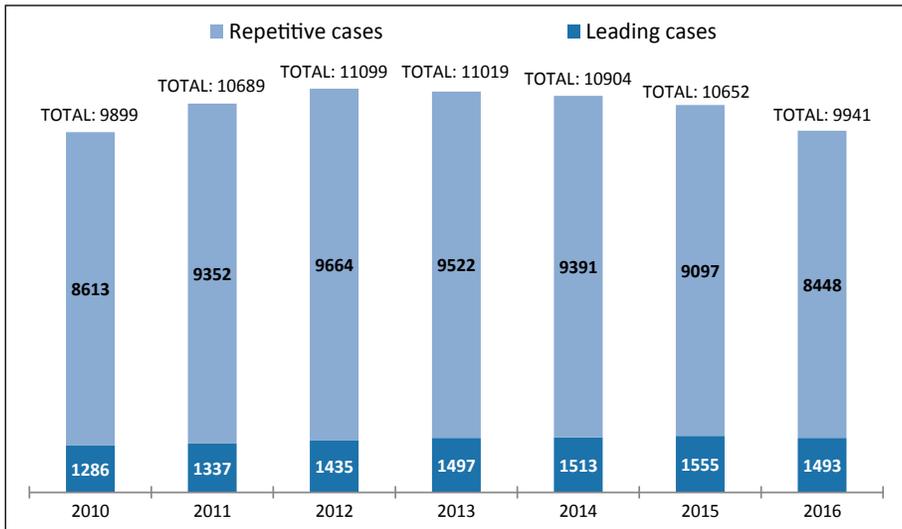


B.2. Nature of cases: leading or repetitive cases

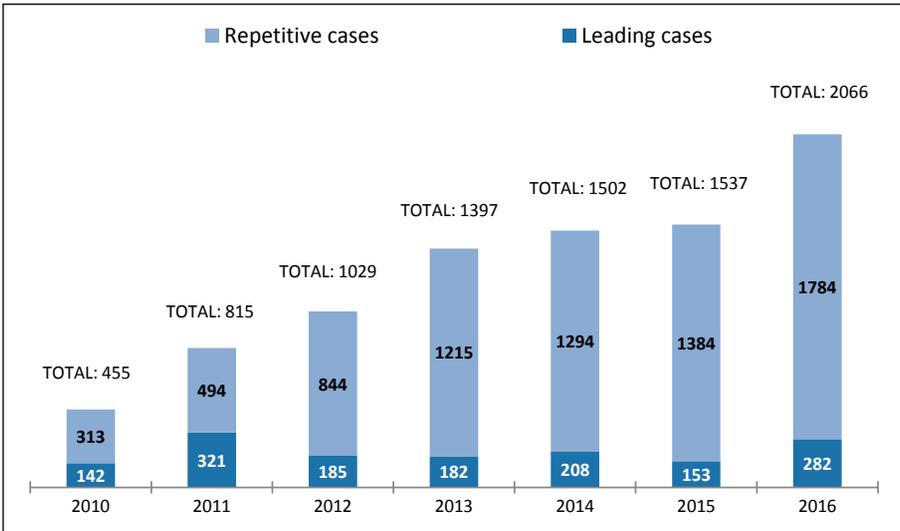
B.2.a. New cases



B.2.b. Pending cases at the end of the year



B.2.c. Cases closed during the year



B.3. Detailed statistics by State

B.3.a. New cases

(transmitted for supervision during the year)

State	Leading cases								Repetitive cases								TOTAL	
	Enhanced supervision		Standard supervision		Awaiting classification		Total of leading cases		Enhanced supervision		Standard supervision		Awaiting classification		Total of repetitives cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Albania			1				1		3	7	2	3	5	4	10	14	11	14
Andorra				1				1										1
Armenia	1		1	6	1		3	6	5			4			5	4	8	10
Austria			1		1		2				5	11			5	11	7	11
Azerbaijan	2	1	1	1			3	2	4	13	17	2	10	4	31	19	34	21
Belgium	2		1	4		1	3	5	2		11			1	13	1	16	6
Bosnia and Herzegovina				1	1		1	1	1	2		3		1	1	6	2	7
Bulgaria	2	1	7	8		9	9	18	6	10	10	12	1	9	17	31	26	49
Croatia			8	6	3	2	11	8		1	23	14	5	5	28	20	39	28
Cyprus				3				3		1			3		3	1	3	4
Czech Republic			2				2					2	1		1	2	3	2
Denmark				1				1										1
Estonia			1	1	2	1	3	2			1	1		1	1	2	4	4
Finland											4				4		4	

State	Leading cases								Repetitive cases								TOTAL	
	Enhanced supervision		Standard supervision		Awaiting classification		Total of leading cases		Enhanced supervision		Standard supervision		Awaiting classification		Total of repetitive cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
France			9	1	1	1	10	2			10	6	2	9	12	15	22	17
Georgia	1		3	2	1		5	2			7	3	3	2	10	5	15	7
Germany			3	4	2	2	5	6				3		1		4	5	10
Greece		1	3	5	3		6	6	13	12	78	71	35	32	126	115	132	121
Hungary	1	2	6	5	1	3	8	10	14	12	61	54	21	17	96	83	104	93
Iceland											2				2		2	
Ireland																		
Italy	2	2	4	2	2	3	8	7	2		11	25	5	3	18	28	26	35
Latvia			7	6	2	1	9	7			5	2		1	5	3	14	10
Liechtenstein				1	1		1	1				1				1	1	2
Lithuania			1	6	1	1	2	7			3	7			3	7	5	14
Luxembourg			1				1										1	
Malta				1	1	1	1	2		3	3		2	1	5	4	6	6
Republic of Moldova			3	3		3	3	6	4	8	8	5	5	6	17	19	20	25
Monaco																		
Montenegro			1	2			1	2			2	2		5	2	7	3	9
Netherlands			1	3			1	3			2	6		2	2	8	3	11
Norway			1	1			1	1									1	1
Poland	1		4	8	4	4	9	12	10	3	80	30	32	5	122	38	131	50

State	Leading cases								Repetitive cases								TOTAL	
	Enhanced supervision		Standard supervision		Awaiting classification		Total of leading cases		Enhanced supervision		Standard supervision		Awaiting classification		Total of repetitive cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Portugal			3	7	1	2	4	9	4	6	22	16	12	1	38	23	42	32
Romania		1	13	16	4	3	17	20	32	28	48	68	38	35	118	131	135	151
Russian Federation	1	1	4	4	2	3	7	8	53	101	31	69	29	105	113	275	120	283
San Marino					1		1										1	
Serbia	1			3			1	3	11	8	30	5	18	8	59	21	60	24
Slovak Republic			8		2		10				14	16	12	12	26	28	36	28
Slovenia				4				4			9	1	2		11	1	11	5
Spain			3	2		1	3	3			2	6		2	2	8	5	11
Sweden			1	3			1	3									1	3
Switzerland		1	3	3			3	4					1		1		4	4
"the former Yugoslav Republic of Macedonia"		2	5	3	1		6	5			5	8	8	9	13	17	19	22
Turkey	1	2	10	10	2	3	13	15	28	26	46	45	54	28	128	99	141	114
Ukraine	6	1	2	4	1		9	5	28	38	7	21	13	35	48	94	57	99
United Kingdom	1		1	5		1	2	6	1	1	1		1		3	1	5	7
TOTAL	22	15	123	146	41	45	186	206	2221	280	560	522	318	344	1099	1146	1285	1352

B.3.b. Pending cases at the end of the year

(at various stages of execution)

State	Leading cases								Repetitive cases								TOTAL	
	Enhanced supervision		Standard supervision		Awaiting classification		Total of leading cases		Enhanced supervision		Standard supervision		Awaiting classification		Total of repetitives cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Albania	8	4	10	6			18	10	19	24	7	12	5	4	31	40	49	50
Andorra			1	2			1	2									1	2
Armenia	3	3	8	9	1		12	12	3	2	10	5			13	7	25	19
Austria			21	14	1		22	14			20	17			20	17	42	31
Azerbaijan	14	14	31	39			45	53	40	57	52	54	10	4	102	115	147	168
Belgium	6	4	7	9		1	13	14	20	19	17	17		1	37	37	50	51
Bosnia and Herzegovina	6	5	4	6	1		11	11	9	11	6	8		1	15	20	26	31
Bulgaria	24	24	65	61		9	89	94	124	130	58	57	1	9	183	196	272	290
Croatia	4	3	63	69	3	2	70	74	2	4	85	97	5	5	92	106	162	180
Cyprus	2	2	2	3			4	5		4			3		3	4	7	9
Czech Republic	1	1	6	5			7	6			1	4	1		2	4	9	10
Denmark				1				1										1
Estonia			6	3	2	1	8	4			3			1	3	1	11	5
Finland			13	12			13	12			29	29			29	29	42	41
France	4	3	36	24	1	1	41	28	1	1	25	20	2	9	28	30	69	58
Georgia	6	6	15	9	1		22	15	2	15	11	7	3	2	16	24	38	39

State	Leading cases								Repetitive cases								TOTAL	
	Enhanced supervision		Standard supervision		Awaiting classification		Total of leading cases		Enhanced supervision		Standard supervision		Awaiting classification		Total of repetitive cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Germany			15	19	2	2	17	21			3	5		1	3	6	20	27
Greece	9	12	40	37	3	1	52	50	85	84	130	146	35	31	250	261	302	311
Hungary	6	9	36	42	1	3	43	54	251	275	73	94	21	17	345	386	388	440
Iceland			2	1			2	1			3				3		5	1
Ireland	1		1	2			2	2			4	4			4	4	6	6
Italy	25	20	54	47	2	3	81	70	2161	2092	174	185	5	3	2340	2280	2421	2350
Latvia			48	40	2	1	50	41			13	11		1	13	12	63	53
Liechtenstein				1	1		1	1				1				1	1	2
Lithuania	2	3	21	16	1	1	24	20			7	7			7	7	31	27
Luxembourg			1	1			1	1									1	1
Malta	2		8	6	1	1	11	7	1		9	4	2	1	12	5	23	12
Republic of Moldova	25	22	54	55		3	79	80	113	118	73	82	5	6	191	206	270	286
Monaco																		
Montenegro			13	6			13	6			4	5		5	4	10	17	16
Netherlands	1	1	8	7			9	8						2		2	9	10
Norway			3	1			3	1									3	1
Poland	10	8	21	22	4	4	35	34	214	157	65	29	32	5	311	191	346	225
Portugal	2	1	9	10	1	2	12	13	82	7	23	20	12	1	117	28	129	41
Romania	19	17	53	52	4	3	76	72	445	370	93	111	38	35	576	516	652	588

State	Leading cases								Repetitive cases								TOTAL	
	Enhanced supervision		Standard supervision		Awaiting classification		Total of leading cases		Enhanced supervision		Standard supervision		Awaiting classification		Total of repetitives cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Russian Federation	54	54	141	147	2	3	197	204	1014	901	309	363	29	105	1352	1369	1549	1573
San Marino			1	2	1		2	2									2	2
Serbia	11	8	18	17		1	29	26	45	51	156	78	18	7	219	136	248	162
Slovak Republic	2	2	23	8	2		27	10		1	32	36	12	12	44	49	71	59
Slovenia	1	2	19	19			20	21	15	16	272	12	2		289	28	309	49
Spain	1	1	17	15		1	18	17			16	22		2	16	24	34	41
Sweden			3	2			3	2									3	2
Switzerland		1	13	6			13	7					1		1		14	7
“the former Yugoslav Republic of Macedonia”	2	4	26	24	1		29	28			86	29	8	9	94	38	123	66
Turkey	32	34	144	144	2	4	178	182	585	422	774	799	54	27	1413	1248	1591	1430
Ukraine	50	52	93	94	1		144	146	813	856	82	110	13	35	908	1001	1052	1147
United Kingdom	3	3	5	7		1	8	11	10	10			1		11	10	19	21
TOTAL	336	323	1178	1122	41	48	1555	1493	6054	5627	2725	2480	318	341	9097	8448	10652	9941

B.3.c. Cases closed during the year

(all necessary measures adopted)

State	Leading cases						Repetitive cases						TOTAL	
	Enhanced supervision		Standard supervision		Total of leading cases		Enhanced supervision		Standard supervision		Total of repetitive cases		2015	2016
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016		
Albania		4		3		7		3		3		6		13
Andorra														
Armenia	2		5	6	7	6	10	1		9	10	10	17	16
Austria			4	8	4	8			33	14	33	14	37	22
Azerbaijan									1		1		1	
Belgium	2	1	3	2	5	3	16	1	5		21	1	26	4
Bosnia and Herzegovina			1		1					1		1	1	1
Bulgaria	3	2	9	12	12	14	57	4	10	13	67	17	79	31
Croatia		1	8	3	8	4			41	6	41	6	49	10
Cyprus			1	2	1	2							1	2
Czech Republic			5	1	5	1			3		3		8	1
Denmark														
Estonia			2	6	2	6				4		4	2	10
Finland				1		1			3		3		3	1
France		1	5	15	5	16			2	12	2	12	7	28
Georgia			3	3	3	3			3	3	3	3	6	6
Germany			3	2	3	2			1	1	1	1	4	3

State	Leading cases						Repetitive cases						TOTAL	
	Enhanced supervision		Standard supervision		Total of leading cases		Enhanced supervision		Standard supervision		Total of repetitive cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Greece		1	10	10	10	11	128		249	102	377	102	387	113
Hungary			1	1	1	1			46	41	46	41	47	42
Iceland			3	1	3	1				3		3	3	4
Ireland														
Italy	3	5	3	8	6	13	213	75	9	20	222	95	228	108
Latvia			5	16	5	16			4	4	4	4	9	20
Liechtenstein				1		1								1
Lithuania				11		11				7		7		18
Luxembourg														
Malta		2		4		6		3		8		11		17
Republic of Moldova		3		2		5		4	6		6	4	6	9
Monaco														
Montenegro			1	9	1	9			2	1	2	1	3	10
Netherlands			2	4	2	4			3	6	3	6	5	10
Norway		1	2	2	2	3							2	3
Poland	3	5	11	10	14	15	202	52	72	103	274	155	288	170
Portugal		2	2	7	2	9		83	33	28	33	111	35	120
Romania	2	6	22	21	24	27	1	112	98	75	99	187	123	214
Russian Federation		3		1		4	13	231	31	26	44	257	44	261
San Marino														

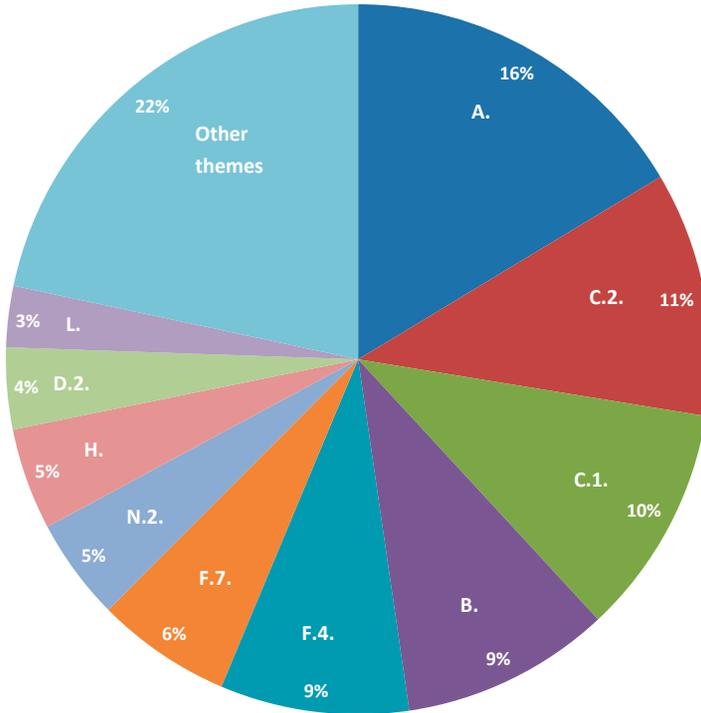
State	Leading cases						Repetitive cases						TOTAL	
	Enhanced supervision		Standard supervision		Total of leading cases		Enhanced supervision		Standard supervision		Total of repetitive cases			
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Serbia	1	4	4	4	5	8		7		96		103	5	111
Slovak Republic			3	16	3	16			11	25	11	25	14	41
Slovenia		1		4		5			3	260	3	260	3	265
Spain				4		4								4
Sweden			1	4	1	4							1	4
Switzerland	1		7	11	8	11							8	11
“the former Yugoslav Republic of Macedonia”			3	6	3	6			6	73	6	73	9	79
Turkey		1	3	10	3	11		195	47	68	47	263	50	274
Ukraine				4		4			14		14		14	4
United Kingdom	1	2	3	2	4	4			8	1	8	1	12	5
TOTAL	18	45	135	237	153	282	640	771	744	1013	1384	1784	1537	2066

C. Statistics relating to the Committee of Ministers' follow-up of cases

C.1. Main themes under enhanced supervision

(based on leading cases)

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

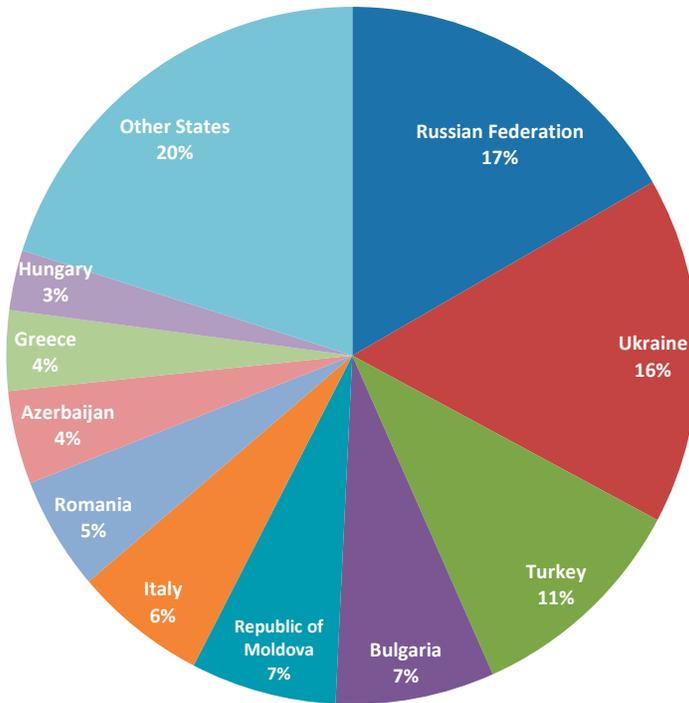


- A. Actions of security forces
- C.2. Conditions of detention - medical care
- C.1. Lawfulness of detention and related issues
- B. Right to life - Protection against ill-treatment: specific situations
- F.4. Length of judicial proceedings
- F.7. Execution of domestic judicial decisions
- N.2. Other interferences with property rights
- H. Home / Private and family life
- D.2. Lawfulness of expulsion or extradition
- L. Freedom of assembly and association
- Other themes

Nota bene: For 2016, the themes and titles have been slightly readjusted. Note that former sections A.2 and A.3 have been merged into a new section B.

C.2. Main States with cases under enhanced supervision

(based on leading cases)



C.3. Transfers from one supervision procedure to another

Transfers to enhanced supervision: In 2016, 18 cases concerning 4 States (Bulgaria, Georgia, Romania, Turkey), were transferred from standard to enhanced supervision. In 2015, 6 cases concerning 3 States (Albania, Hungary and Turkey) had been transferred from standard to enhanced supervision.

Transfers to standard supervision: In 2016, 24 cases concerning 3 States (Greece, Ireland, Turkey), were transferred from enhanced to standard supervision. In 2015, 5 cases concerning 4 States (Norway, Republic of Moldova, Russian Federation, United Kingdom) had been transferred from enhanced to standard supervision.

C.4. Action plans / Action reports

From 1st January to 31st December 2016, the Committee of Ministers received 252 action plans and 504 action reports. For the same period in 2015, the CM had received 236 action plans (266 in 2014) and 350 action reports (481 in 2014).

In 2016, 69 reminder letters (56 in 2015) have been addressed to 27 States concerning 93 cases (103 in 2015). For 76 of these cases (90 in 2015), an action plan/report has been sent to the CM before the end of the year.¹⁷

Year	Action plans received	Action reports received
2016	252	504
2015	236	350
2014	266	481
2013	229	349
2012	158	262
2011	114	236

C.5. Interventions of the Committee of Ministers

In 2016, 30 States¹⁸ had cases included in the Order of Business of the Committee of Ministers for detailed examination (25 in 2015) – initial classification issues excluded; this, out of a total of 31 states with cases under enhanced supervision (31 in 2015).

C.5.a. Number of interventions¹⁹

Year	Interventions of the Committee of Ministers during the year	States concerned	Number of States having cases under enhanced supervision
2016	148	30	31
2015	108	25	31
2014	111	26	31
2013	123	27	31
2012	119	26	29
2011	97	24	26
2010	75	21	-

17. According to the new working methods, when the six-month deadline for States to submit an action plan / report has expired and no such document has been transmitted to the Committee of Ministers, the Department for the Execution of Judgments of the European Court of Human Rights sends a reminder letter to the delegation concerned. If a member State has not submitted an action plan / report within three months after the reminder, and no explanation of this situation is given to the Committee of Ministers, the Secretariat may propose the case for detailed consideration by the Committee of Ministers under the enhanced procedure (see CM/Inf/DH(2010)45final, item IV).
18. 2016: Albania, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, France, Georgia, Greece, Hungary, Italy, Ireland, Lithuania, Malta, Netherlands, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Serbia, Slovenia, Slovak Republic, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom.
19. The figures presented in the Annual Report 2014 have been slightly updated following an harmonisation of practices, notably as regards cases concerning two states, henceforth counted twice (i.e. once for each State).

C.5.b. Number of cases submitted to detailed examination – frequency of interventions

Year	2016	2015	2014	2013	2012
Cases / groups of cases examined	107	64	68	76	67
Examined four times or more	5	4	6	6	6
Examined three times	6	10	5	5	9
Examined twice	11	9	11	14	11
Examined once	85	41	46	51	41

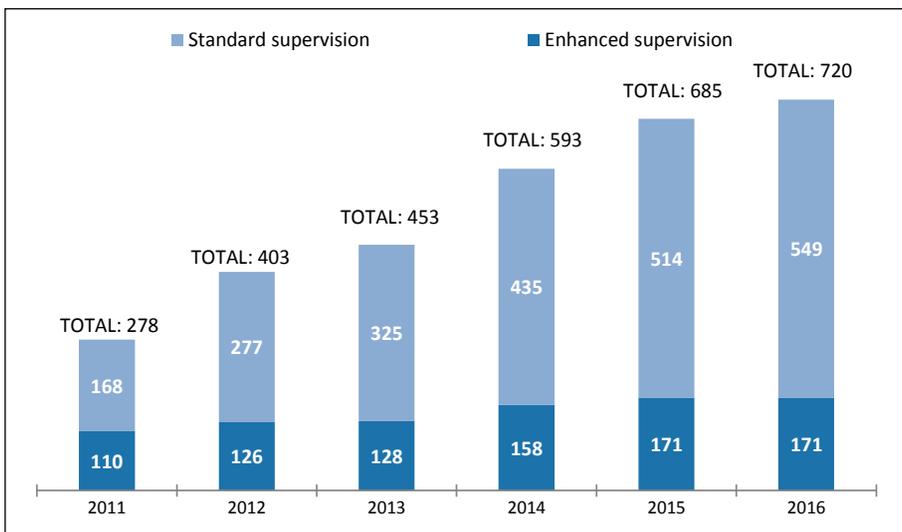
C.6. Contributions from civil society

In 2016, 90 contributions from NGOs and NHRI (National Human Rights Institutions) were received and disseminated by the Committee of Ministers, concerning 22 States. In 2015, this number was 81 concerning 21 states. In 2014, this number was 80 concerning 21 states. In 2013, this number was 81 concerning 18 states. In 2012 and 2011, this number was 47 concerning respectively 16 and 12 states.

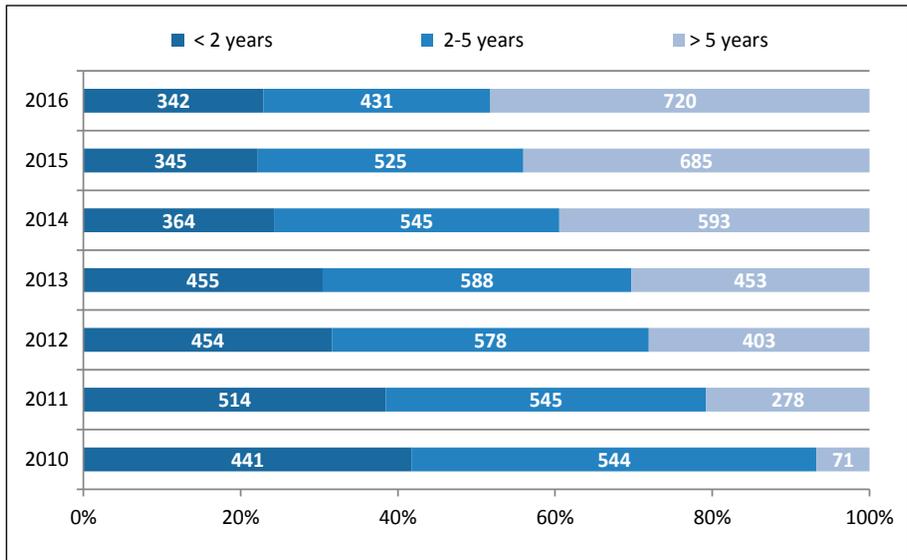
D. Length of execution of the Court's judgments

D.1. Leading cases pending

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



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



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

The difference in figures for cases under supervision for less than 2 years (< 2 years), as compared to table D.1.b., relates to cases not yet classified.

State	Enhanced supervision						Standard supervision					
	< 2 years		2-5 years		> 5 years		< 2 years		2-5 years		> 5 years	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Albania	1		2	2	5	2	2	1	2	1	6	4
Andorra								1	1	1		
Armenia	1	1	1	1	1	1	1	6	6	3	1	
Austria							3	2	8	4	10	8
Azerbaijan	3	3	1	2	10	9	1	2	19	24	11	13
Belgium	2	2	2	1	2	1	1	5	4	2	2	2
Bosnia and Herzegovina	1		2	2	3	3	1	2	3	3		1
Bulgaria	3	3	7	7	14	14	17	13	18	18	30	30
Croatia	1		2	1	1	2	19	15	20	23	24	31
Cyprus			1	1	1	1		2			2	1
Czech Republic					1	1	5	2	1	3		
Denmark								1				
Estonia							2	3	4			
Finland							2		2	3	9	9
France	1		3	3			17	9	17	13	2	2

State	Enhanced supervision						Standard supervision					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Georgia	1	1	2		3	5	6	3	2	3	7	3
Germany							5	9	9	7	1	3
Greece		4	4	1	5	7	4	9	6	2	30	26
Hungary	2	4	3	4	1	1	9	12	19	14	8	16
Iceland									1		1	1
Ireland	1									1	1	1
Italy	2	5	9	4	14	11	19	7	10	19	25	21
Latvia							17	12	19	17	12	11
Liechtenstein								1				
Lithuania		1	1		1	2	6	5	10	9	5	2
Luxembourg							1	1				
Malta			2				1	2	4	2	3	2
Republic of Moldova			7	7	18	15	8	6	11	12	35	37
Monaco												
Montenegro							2	2	10	3	1	1
Netherlands	1			1			1	3	3	2	4	2
Norway							2	1	1			
Poland	1	3	3	2	6	3	5	11	7	3	9	8
Portugal				1	2		5	7	3	2	1	1
Romania	2	1	9	8	8	8	19	22	17	18	17	12
Russian Federation	7	3	18	18	29	33	12	10	42	34	87	103
San Marino								1			1	1
Serbia	1	1	3	3	7	4	3	3	7	7	8	7
Slovak Republic	1		1	2			13	2	10	6		
Slovenia			1	2			3	5	7	7	9	7
Spain	1			1			3	4	10	4	4	7
Sweden							2	2	1			
Switzerland		1					6	3	5	2	2	1
"the former Yugoslav Republic of Macedonia"		2	1	1	1	1	5	8	7	6	14	10
Turkey	5	3	6	9	21	22	19	22	37	26	88	96
Ukraine	11	8	24	22	15	22	6	7	44	20	43	67
United Kingdom	1				2	3	1	4	3	1	1	2
TOTAL	50	46	115	106	171	171	254	248	410	325	514	549

D.2. Leading cases closed

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

State	Enhanced supervision						Standard supervision					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Albania				1		3				1		2
Andorra												
Armenia			1		1			2	4	3	1	1
Austria									1	4	3	4
Azerbaijan												
Belgium			1		1	1				1	3	1
Bosnia and Herzegovina							1					
Bulgaria			2		1	2	2	4	4	2	3	6
Croatia				1			4	1	3	2	1	
Cyprus								1			1	1
Czech Republic							4	1	1			
Denmark												
Estonia							2	2		4		
Finland												1
France				1			2	4	2	9	1	2
Georgia							1		2			3
Germany							1		2	2		
Greece				1			2		3	2	5	8
Hungary									1	1		
Iceland										1	3	
Ireland												
Italy			1	4	2	1	1	1	2			7
Latvia							2	5	1	5	2	6
Liechtenstein								1				
Lithuania								2		4		5
Luxembourg												
Malta				2				1		1		2
Republic of Moldova						3				1		1
Monaco												
Montenegro								1	1	6		2
Netherlands							1	1	1	1		2
Norway				1			2	2				
Poland				1	3	4	1	4	2	2	8	4
Portugal						2	1	5		1	1	1
Romania				1	2	5	9	13	4	1	9	7

State	Enhanced supervision						Standard supervision					
	< 2 years		2-5 years		>5 years		< 2 years		2-5 years		>5 years	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Russian Federation					2	3		1				
San Marino												
Serbia			1			4	3		1	3		1
Slovak Republic							1	9	2	7		
Slovenia				1								4
Spain							1		3			
Sweden							1	3		1		
Switzerland	1						5	4		6	2	1
“the former Yugoslav Republic of Macedonia”							1		1		1	6
Turkey						1		2		3	3	5
Ukraine										4		
United Kingdom		1	1			1	3	2				
TOTAL	1	1	7	14	12	30	50	73	38	81	47	83

D.2.b. Average length of execution of leading cases closed – by State

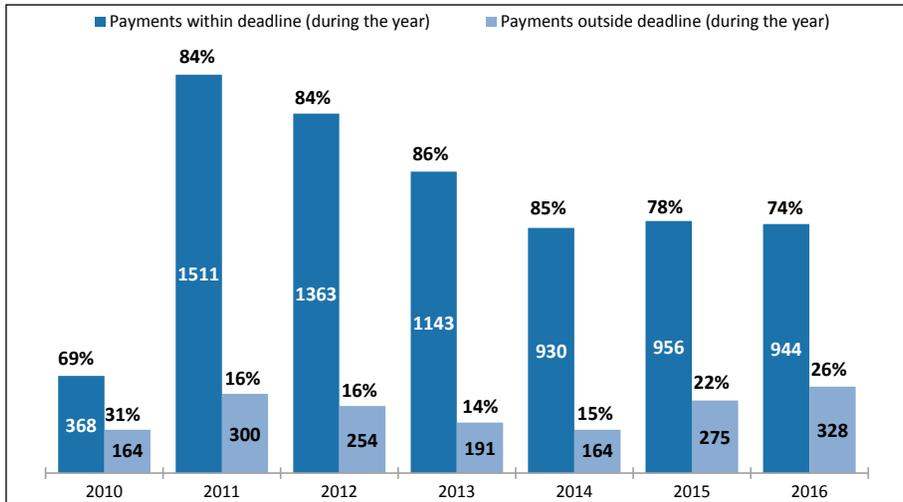
(based on the number of years)

State	Enhanced supervision		Standard supervision		General average	
	2015	2016	2015	2016	2015	2016
Albania		6,2		5,7		6
Andorra						
Armenia	5,4		4,0	3,5	4,4	3,5
Austria			7,0	5,3	7	5,3
Azerbaijan						
Belgium	6,8	6	8,2	5,9	7,6	5,9
Bosnia and Herzegovina			1,7		1,7	
Bulgaria	6,9	8,2	4,1	4,2	4,8	4,8
Croatia		3,8	2,5	1,9	2,5	2,4
Cyprus			9,3	3,8	9,3	3,8
Czech Republic			1,5	1,9	1,5	1,9
Denmark						
Estonia			1,1	2,7	1,1	2,7
Finland				5,8		5,8

State	Enhanced supervision		Standard supervision		General average	
	2015	2016	2015	2016	2015	2016
France		3,3	3,6	3,3	3,6	3,3
Georgia			2,9	6,7	2,9	6,7
Germany			2	4,3	2	4,3
Greece		2,9	6,6	7,3	6,6	6,9
Hungary			2,5	4,6	2,5	4,6
Iceland			8,6	3,4	8,6	3,4
Ireland						
Italy	8,6	4,3	3,1	7,6	5,9	6,3
Latvia			4	4,2	4	4,2
Liechtenstein				1,1		1,1
Lithuania				4,7		4,7
Luxembourg						
Malta		2,8		4,5		4
Republic of Moldova		8,8		4,2		7
Monaco						
Montenegro			2	4,1	2	4,1
Netherlands			1,8	6	1,8	6
Norway		3,4	1,5	1,4	1,5	2,1
Poland	12,8	8,4	6	4,1	7,5	5,5
Portugal		11,7	4,4	2,2	4,4	4,3
Romania	7,3	9,3	4	3	4,3	4,4
Russian Federation		10,2		1,2		7,9
San Marino						
Serbia	2,5	8,6	1,9	4,6	2	6,6
Slovak Republic			2,3	2,4	2,3	2,4
Slovenia		3,9		12		10,4
Spain				2,8		2,8
Sweden			1,4	1,9	1,4	1,9
Switzerland	0,6		2,9	2,5	2,7	2,5
“the former Yugoslav Republic of Macedonia”			3,2	7,9	3,2	7,9
Turkey		13,5	8,4	4,8	8,4	5,6
Ukraine				3,1		3,1
United Kingdom	2,6	3,5	0,8	0,5	1,2	2
TOTAL	7,2	7,2	4,1	4,2	4,5	4,7

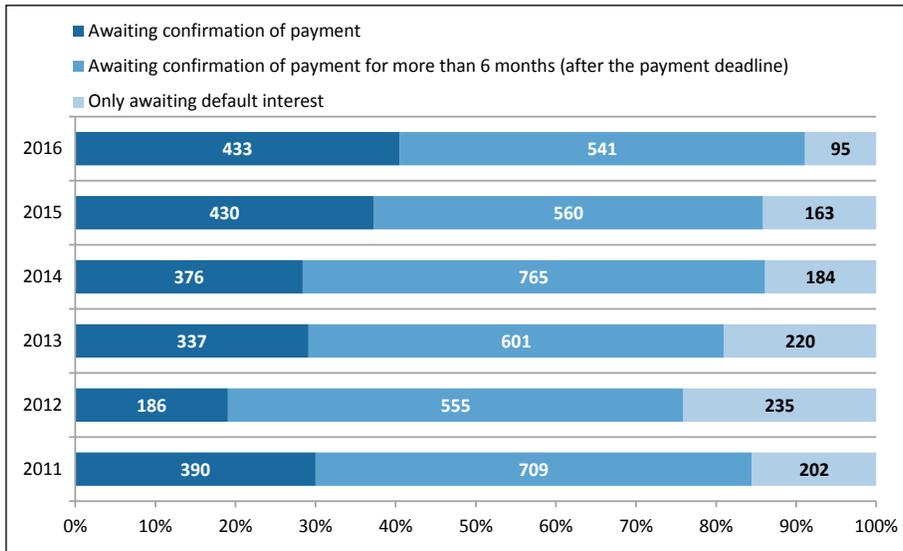
D.3. Respect of payment deadlines

D.3.a. Respect of payment deadlines – overall statistics: 2010-2016



D.3.b. Information on payments made 2011-2016

(situation at 31 December)



D.3.c. Respect of payment deadlines by State: 2015-2016

State	Respect of payment deadlines									
	Payments within deadline (during the year)		Payments outside deadline (during the year)		Cases only awaiting default interest		Cases awaiting confirmation of payments at 31 December		... including cases awaiting this information for more than six months (outside payment deadline)	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Albania		3	2	14	12	1	14	21	7	11
Andorra								1		
Armenia	2	10	3				1			
Austria	10	10	3	5			1			
Azerbaijan	19		1	3			68	86	44	74
Belgium	8	5		3	4	4	18	13	12	12
Bosnia and Herzegovina		3	1	4			3	3	2	2
Bulgaria	26	23	6	6			3	20	2	3
Croatia	44	26		2	1	1	8	3	1	1
Cyprus	2	4					1	1		
Czech Republic	3	1					3	5	2	4
Denmark								1		
Estonia	2	3								
Finland	1	1	1	1			8	6	4	6
France	4	7	6	10			15	13	9	4
Georgia	12	9	2				5	1	2	1
Germany	4	8					1	1		
Greece	52	47	66	85	17		57	56	15	15
Hungary	75	49	1	8	2		26	65		32
Iceland	4									
Ireland										
Italy	1	32	9	22	13	14	95	69	75	49
Latvia	16	7						1		
Liechtenstein		3					1			
Lithuania	7	12						1		
Luxembourg										
Malta	4	5	1							
Republic of Moldova	24	17	1				2	6		2

State	Respect of payment deadlines									
	Payments within deadline (during the year)		Payments outside deadline (during the year)		Cases only awaiting default interest		Cases awaiting confirmation of payments at 31 December		... including cases awaiting this information for more than six months (outside payment deadline)	
	2015	2016	2015	2016	2015	2016	2015	2016	2015	2016
Monaco										
Montenegro	4	5			1	1		1		
Netherlands	6	9								
Norway	1	1	1							
Poland	74	102		1	2	2	73	19	8	12
Portugal	21	51	2	6	4	4	27	5	8	2
Romania	89	115	16	21			54	55	19	24
Russian Federation	95	90	109	63	15	6	126	198	74	55
San Marino		1					1			
Serbia	51	103	3	5	1		103	18	65	13
Slovak Republic	18	35		1			15	5	1	
Slovenia	10	9	1				6		4	
Spain	1	5	1	2			6	5	5	2
Sweden	2	2						1		
Switzerland	5	2						1		
“the former Yugoslav Republic of Macedonia”	32	20		1			14	13	10	10
Turkey	202	85	11	49	64	42	66	66	56	41
Ukraine	23	20	28	16	27	20	168	213	135	166
United Kingdom	2	4					1	1		
TOTAL	956	944	275	328	163	95	990	974	560	541

E. Additional statistics

E.1. Just satisfaction

E.1.a. Amount of just satisfaction awarded: 2010-2016

Year	Total awarded (euros)
2016	82 288 795
2015	53 766 388
2014	2 039 195 858
2013	135 420 274
2012	176 798 888
2011	72 300 652
2010	64 032 637

E.1.b. Just satisfaction awarded by State: 2015-2016

State	Total awarded (euros)	
	2015	2016
Albania	9 410 000	18 216 450
Andorra	0	26 250
Armenia	234 820	93 585
Austria	75 135	67 500
Azerbaijan	311 950	815 146
Belgium	276 188	71 400
Bosnia and Herzegovina	28 700	97 077
Bulgaria	263 402	969 492,42
Croatia	394 187	174 126,14
Cyprus	8 796 391	61 737
Czech Republic	39 745	13 800
Denmark	0	6 000
Estonia	86 502	24 500
Finland	54 442	0
France	240 631	550 713,80
Georgia	184 652	221 000
Germany	57 937	69 368,59
Greece	2 642 829	4 168 864
Hungary	1 652 285	3 329 990,05
Iceland	12 450	0
Ireland	0	0
Italy	4 099 111	15 127 536,54
Latvia	84 047	34 245,44
Liechtenstein	1 520	14 770

State	Total awarded (euros)	
	2015	2016
Lithuania	132 233	281 770,90
Luxembourg	0	0
Malta	542 250	74 685
Republic of Moldova	227 339	218 337
Monaco	0	0
Montenegro	19 726	100 690
Netherlands	12 320	79 560,77
Norway	12 500	6 500
Poland	885 458	301 346,76
Portugal	829 942	2 400 618,81
Romania	7 940 726	4 104 685,48
Russian Federation	4 916 117	7 380 062,28
San Marino	18 000	0
Serbia	736 100	164 873,30
Slovak Republic	2 610 630	594 630
Slovenia	125 631	45 314,38
Spain	72 105	115 142,62
Sweden	2 000	75 742
Switzerland	29 415	61 000
“the former Yugoslav Republic of Macedonia”	139 145	102 870
Turkey	4 578 020	20 743 112
Ukraine	966 357	1 209 401,60
United Kingdom	23 450	74 900
TOTAL	53 766 388	82 288 794,88

E.2. Friendly settlements

A friendly settlement with undertaking implies the respondent State’s commitment to adopt general measures in order to address and prevent future similar violations.

Year	New friendly settlements without undertaking	New friendly settlements with undertaking	TOTAL New friendly settlements
2016	504	6	510
2015	534	59	593
2014	501	98	599
2013	452	45	497
2012	495	54	549
2011	544	21	564
2010	227	6	233

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

State	Cases judged under Protocol No. 14		Friendly settlements (Art. 39§4)		TOTAL	
	“WECL” cases (Article 28 § 1b)		2015	2016	2015	2016
	2015	2016				
Albania	5	9	5	3	10	12
Andorra						
Armenia						
Austria	2	4	2	7	4	11
Azerbaijan	3	9	19	1	22	10
Belgium	2	1			2	1
Bosnia and Herzegovina		1	1	4	1	5
Bulgaria		8	4	11	4	19
Croatia		4	22	8	22	12
Cyprus						
Czech Republic			1	2	1	2
Denmark						
Estonia			1	2	1	2
Finland						
France	3		1	2	4	2
Georgia		1	12	4	12	5
Germany	1			4	1	4
Greece	23	18	83	80	106	98
Hungary	31	23	61	55	92	78
Iceland						
Ireland						
Italy	5		8	22	13	22
Latvia	1	1	4	1	5	2
Liechtenstein						
Lithuania		1				1
Luxembourg						
Malta			2		2	
Republic of Moldova	3	4	1	5	4	9
Monaco						
Montenegro			1	7	1	7

State	Cases judged under Protocol No. 14		Friendly settlements (Art. 39§4)		TOTAL	
	"WECL" cases (Article 28 § 1b)		2015	2016	2015	2016
	2015	2016				
Netherlands			2	8	2	8
Norway						
Poland	6	3	110	27	116	30
Portugal	5	8	30	13	35	21
Romania	10	26	63	75	73	101
Russian Federation	24	122	17	71	41	193
San Marino						
Serbia	12	13	42	5	54	18
Slovak Republic		3	20	18	20	21
Slovenia	4		1		5	
Spain		4	1		1	4
Sweden						
Switzerland						
"the former Yugoslav Republic of Macedonia"	1		10	12	11	12
Turkey	11	3	56	33	67	36
Ukraine	13	36	12	30	25	66
United Kingdom	2	1	1		3	1
TOTAL	167	303	593	510	760	813

E.4. Remarks on Unilateral Declarations

The Committee of Ministers does not supervise the respect of undertakings made by governments in unilateral declarations. Statistics with respect to unilateral declarations can be found on the Court's website, notably on [the webpage](#) devoted to statistics (in particular under the heading "analysis of statistics 2016". Note that the Court's statistics are by application and not by case, some cases containing numerous applications).

Appendix 2 – Main cases or groups of cases pending

(Classification by State at 31 December 2016)

The structural and/or complex problems presented in the table below have been identified either directly by the European Court in its judgments or by the Committee of Ministers in the course of the supervision process²⁰. The corresponding cases or groups of cases are, in principle, dealt with under enhanced supervision. The table also comprises recent “pilot” judgments, as these should automatically be classified under enhanced supervision. An overview of “pilot” judgments and cases with indications of relevance for execution (under Article 46) regarding structural problems is presented in Appendix 4.

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

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

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

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Albania	Caka (group)	44023/02	08/03/2010	3	Unfair criminal proceedings (<i>see Appendix 5, page 193</i>)
	Driza (group)	33771/02	02/06/2008	16	Various problems linked to the restitution of property (<i>see Appendix 5, page 242</i>)
	Manushaqe Puto and Others (pilot judgment)	604/07	17/12/2012		
	Luli and Others (group)	64480/09	01/07/2014	4	Excessive length of civil proceedings and lack of effective remedy in this regard (<i>see Appendix 5, page 196</i>)
Armenia	Ashot Harutyunyan (group)	34334/04	15/09/2010	2	Inadequate medical care in detention; practice of placing accused in a metal cage during trial (<i>see Appendix 5, page 157</i>)
	Chiragov and Others (group)	13216/05	16/06/2015	1	Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties in Nagorno-Karabakh and the surrounding territories – lack of effective remedies (<i>see Appendix 5, page 244</i>)
	Virabyan (group)	40094/05	02/01/2013	2	Ill-treatment and torture in police custody and ineffective investigations (<i>see Appendix 5, page 115</i>)
Azerbaijan	Ilgar Mammadov	15172/13	13/10/2014	1	Imprisonment for reasons other than those permitted by Article 5, namely to punish the applicant for having criticised the government (<i>see Appendix 5, page 259</i>)
	Insanov	16133/08	14/06/2013	1	Unfair criminal and civil proceedings; inhuman and degrading detention conditions (<i>see Appendix 5, page 158</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Azerbaijan	Mahmudov and Agazade Fatullayev	35877/04 40984/07	18/03/2009 04/10/2010	2	Unjustified convictions for defamation and/or unjustified use of imprisonment as a sanction for defamation; arbitrary application of antiterrorism legislation (<i>see Appendix 5, page 231</i>)
	Muradova (group)	22684/05	02/07/2009	4	Excessive use of force by the police against journalists during demonstrations, and lack of an effective investigation (<i>see Appendix 5, page 116</i>)
	Namat Aliyev (group)	18705/06	08/07/2010	20	Various breaches connected with the right to stand freely for elections, and the control of the legality of decisions by electoral commissions (<i>see Appendix 5, page 253</i>)
	Sargsyan	40167/06	16/06/2015	1	Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties and relatives' graves in the disputed area near Nagorno-Karabakh on the territory of Azerbaijan – lack of effective remedies (<i>see Appendix 5, page 244</i>)
Belgium	L.B. (group)	22831/08	02/01/2013	15	Persons suffering from mental health disorders detained for long periods in prison facilities unable to provide them with appropriate care (<i>see Appendix 5, page 145</i>)
	Trabelsi	140/10	16/02/2015	1	Extradition of the applicant to the United States, where he risks an irreducible life sentence; disrespect of Rule 39 indication (<i>see Appendix 5, page 262</i>)
	Vasilescu	64682/12	20/04/2015	1	Structural problem concerning overcrowding and conditions of detention in prisons (<i>see Appendix 5, page 160</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Bosnia and Herzegovina	Čolić (group)	1218/07	28/06/2010	11	Non-enforcement of final judgments ordering the state to pay certain sums in respect of war damage (<i>see Appendix 5, page 208</i>)
	Đokić Mago and Others	6518/04 12959/05	04/10/2010 24/09/2012	2	Inability for members of the former Yugoslav People's Army ("YPA") to repossess their pre-war apartments in the aftermath of the war in Bosnia and Herzegovina (<i>see Appendix 5, page 243</i>)
	Sejdić and Finci (group)	27996/06	22/12/2009	3	Ethnic-based discrimination on account of the ineligibility of persons unaffiliated with one of the "constituent peoples" (Bosnians, Croats or Serbs) to stand for election to the House of Peoples (the upper chamber of Parliament) and the Presidency (<i>see Appendix 5, page 254</i>)
Bulgaria	C.G. and Others (group)	1365/07	24/07/2008	7	Shortcomings in the judicial review of expulsion and deportation of foreign nationals based on national security grounds (<i>see Appendix 5, page 182</i>)
	Kehayov (group) Neshkov and Others	41035/98 36925/10+	18/04/2005 01/06/2015	27	Poor detention conditions in prisons and remand centres; absence of an effective remedy (<i>see Appendix 5, page 160</i>)
	Nencheva and Others	48609/06	18/09/2013	1	Lack of prompt and sufficient measures to prevent deaths of children placed in public care, during a severe economic, financial and social crisis in 1996-1997; lack of prompt and effective investigation into these deaths (<i>see Appendix 5, page 139</i>)
	S.Z. (group)	29263/12	03/06/2015	3	Systemic problem of ineffective criminal investigations into rape, sequestration and incitement to prostitution committed by private individuals (<i>see Appendix 5, page 117</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Bulgaria	Stanev (group)	36760/06	17/01/2012	2	Placement in social care homes of persons with mental disorders: lawfulness, judicial review, conditions of placement; also impossibility for partially incapacitated persons to request the restoration of their legal capacity (see Appendix 5, page 146)
	Umo Ilinden and Others	59491/00	19/04/2006	2	Unjustified refusals to register an association aiming at achieving “the recognition of the Macedonian minority in Bulgaria” (see Appendix 5, page 237)
	Velikova (group)	41488/98	04/10/2000	35	Excessive use of force by members of law enforcement agencies; ill-treatment in custody; ineffective investigations (see Appendix 5, page 118)
	Yordanova and Others	25446/06	24/09/2012	2	Eviction of persons of Roma origin, on the basis of a legislation not requiring an adequate examination of the proportionality of the measure (see Appendix 5, page 217)
Croatia	Šečić	40116/02	31/08/2007	1	Failure to carry out an effective police investigation into a racist attack on a Roma person (see Appendix 5, page 257)
	Skendžić and Krznarić	16212/08	20/04/2011	4	Lack of effective and independent investigations into crimes committed during the Croatian Homeland War (1991-1995) (see Appendix 5, page 119)
	Statileo	12027/10	10/10/2014	1	Restrictions for rented flats subject to a special tenancy scheme (see Appendix 5, page 245)
Cyprus	M.A. (group)	41872/10	23/10/2013	5	Lack of effective remedy with automatic suspensive effect in deportation proceedings and absence of speedy review of lawfulness of detention (see Appendix 5, page 183)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Czech Republic	D.H. and Others	57325/00	13/11/2007	1	Discriminatory assignment of children of Roma origin to special schools for children with special needs or suffering a mental or social handicap (see Appendix 5, page 251)
France	I.M.	9152/09	02/05/2012	1	Lack of an effective remedy to challenge a removal measure (see Appendix 5, page 184)
	Mennesson (group)	65192/11	26/09/2014	3	Refusal to grant legal recognition in France to parent-child relationships that have been legally established in the United States between children born as a result of surrogate motherhood and the French couples who had recourse to this method (see Appendix 5, page 219)
Georgia	Aliev	522/04	13/04/2009	1	Degrading treatment on account of detention conditions in prison (see Appendix 5, page 176)
	Gharibashvili (group)	11830/03	29/10/2008	6	Ineffective investigations into allegations of excessive use of force by the police (see Appendix 5, page 120)
	Identoba and Others	73235/12	12/08/2015	2	Lack of protection against homophobic attacks during a demonstration (see Appendix 5, page 139)
Greece	Beka-Koulocheri (group)	38878/03	06/10/2006	25	Failure or considerable delay in the enforcement of final domestic judgments and absence of effective remedies (see Appendix 5, page 209)
	Bekir-Ousta and Others (group)	35151/05	11/01/2008	3	Refusal to register or dissolution of associations from the Muslim minority in Thrace (see Appendix 5, page 238)
	Makaratzis (group)	50385/99	20/12/2004	11	Degrading treatment by police/port authorities; lack of effective investigations (see Appendix 5, page 122)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Greece	M.S.S (group)	30696/09	21/01/2011	14	Shortcomings in the examination of asylum requests, including risks involved in case of direct or indirect return to the country of origin; poor detention conditions of asylum seekers and absence of adequate support when they are no longer detained; absence of an effective remedy (<i>see Appendix 5, page 179</i>)
	Nisiotis (group) Siasios and Others (group)	34704/08 30303/07	20/06/2011 04/09/2009	22 12	Inhuman and degrading treatment on account of poor detention conditions in prisons (<i>see Appendix 5, page 162</i>)
Hungary	Gazsó (pilot judgment) Tímár (group)	48322/12 36186/97	16/10/2015 09/07/2003	272	Excessive length of judicial proceedings and absence of effective remedy in this regard (<i>see Appendix 5, page 199</i>)
	Horváth and Kiss	11146/11	29/04/2013	1	Discriminatory assignment of children of Roma origin to schools for children with mental disabilities (<i>see Appendix 5, page 258</i>)
	Varga and Others (pilot judgment) István Gábor Kovács (group)	14097/12 15707/10	10/06/2015 17/04/2012	18	Overcrowded pre-trial detention facilities (<i>see Appendix 5, page 162</i>)
Ireland	O’Keeffe	35810/09	28/01/2014	1	Failure during the 1970s to protect children in Church-run schools and lack of effective remedy (<i>see Appendix 5, page 140</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Italy	Abenavoli (group)	25587/94	02/09/1997	45	Excessive length of proceedings before the administrative courts (<i>see Appendix 5, page 200</i>)
	Agrati and Others (group)	43549/08	28/11/2011 (merits) 08/02/2013 (just satisfaction)	9	Retrospective application of legislation to on-going judicial proceedings to calculate the length of service of school staff (<i>see Appendix 5, page 192</i>)
	Cestaro	6884/11	07/07/2015	1	Structural problem: ill-treatment by police; inadequate criminal legislation to punish acts of torture and inhuman and degrading treatment (<i>see Appendix 5, page 122</i>)
	Ceteroni (group)	22461/93	15/11/1996	1725	Excessive length of proceedings before civil courts (<i>see Appendix 5, page 201</i>)
	Di Sarno and Others	30765/08	10/04/2012	1	Prolonged inability of the authorities to ensure the proper functioning of the waste collection, treatment and disposal service in Campania and lack of an effective remedy in this respect (<i>see Appendix 5, page 228</i>)
	Ledonne No. 1	35742/97	12/08/1999	163	Excessive length of criminal proceedings (<i>see Appendix 5, page 201</i>)
	Luordo (group)	32190/96	17/10/2003	25	Excessive length of bankruptcy proceedings (<i>see Appendix 5, page 202</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Italy	M.C. and Others (pilot judgment)	5376/11	03/12/2013	1	Legislative provision annulling retrospectively the annual reassessment of a supplementary component of an allowance for accidental contamination through blood transfusion (HIV, hepatitis...) (see Appendix 5, page 246)
	Mostacciolo Giuseppe No. 1 (group)	64705/01	29/03/2006	131	Insufficient amounts and delays in the payment of compensation awarded in the context of a compensatory remedy available since 2001 to victims of excessively lengthy proceedings and excessive length of the proceedings brought in the context of this compensatory remedy (see Appendix 5, page 202)
	Sharifi and Others	16643/09	21/01/2015	1	Collective expulsion of asylum seekers to Greece, lack of access to asylum procedure and risk of deportation to Afghanistan (see Appendix 5, page 185)
Lithuania	L.	27527/03	31/03/2008	1	Lack of legislation relating to gender reassignment medical treatment (see Appendix 5, page 224)
	Paksas	34932/04	06/01/2011	1	Permanent and irreversible disqualification from standing for election to Parliament as a result of his removal from presidential office following impeachment proceedings (see Appendix 5, page 255)
Netherlands	Jaloud	47708/08	20/11/2014	1	Shortcomings in the system of military criminal justice following the death of a civilian during an operation involving Dutch military personnel in Iraq (see Appendix 5, page 125)
Poland	Al Nashiri (group)	28761/11	16/02/2015	2	Various violations related to secret rendition operations (see Appendix 5, page 187)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Poland	Grabowski	57722/12	30/09/2015	1	Deprivation of liberty of a juvenile in the framework of correctional proceedings without a specific court order and lack of adequate judicial review thereof (<i>see Appendix 5, page 149</i>)
	Kędzior (group)	45026/07	16/01/2013	2	Unlawful placement in social care homes and deprivation of legal capacity (<i>see Appendix 5, page 149</i>)
	P. and S.	57375/08	30/01/2013	1	Problems of access to abortion for minor victims of rape, confidentiality of personal data and detention (<i>see Appendix 5, page 220</i>)
Republic of Moldova	Ciorap (group)	39806/05	10/03/2009	23	Poor conditions of detention in facilities under the authority of the Ministries of the Interior and Justice, including lack of access to adequate medical care; absence of an effective remedy (<i>see Appendix 5, page 165</i>)
	Becciev (group)	9190/03	04/01/2006	4	
	Paladi (group)	12066/02	19/09/2007	2	
	Corsacov (group)	18944/02	04/07/2006	29	Ill-treatment and torture during police detention; ineffective investigations; absence of an effective remedy (<i>see Appendix 5, page 123</i>)
	Levinta	17332/03	16/03/2009		
	Eremia	3564/11	28/08/2013	4	Failure to provide protection from domestic violence (<i>see Appendix 5, page 218</i>)
Genderdoc-M	9106/06	12/09/2012	1	Unjustified bans on gay marches; lack of an effective remedy; discrimination on grounds of sexual orientation (<i>see Appendix 5, page 239</i>)	
Luntre (group)	2916/02	15/09/2004	55	Non-enforcement or delayed enforcement of domestic judgments (<i>see Appendix 5, page 210</i>)	

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Republic of Moldova	Muşuc (group)	42440/06	06/02/2008	6	Arbitrary arrest and detention in the context of criminal and administrative proceedings; unlawful entry by the police on private premises; absence of effective remedies (<i>see Appendix 5, page 147</i>)
	Guţu	20289/02	07/09/2007	1	
	Brega (group)	52100/08	20/07/2010		
	Sarban	3456/05	04/01/2006	17	Violations mainly related to unlawful detention on remand (lawfulness, duration, justification) (<i>see Appendix 5, page 148</i>)
	Taraburca (group)	18919/10	06/03/2012	3	Ill-treatment by the police in connection with violent post-election demonstrations and ineffective investigations (<i>see Appendix 5, page 124</i>)
Romania	Association “21 December 1989” and Others (group)	33810/07	28/11/2011	11	Ineffectiveness of investigations into violent crackdowns in 1989 on anti-government demonstrations (<i>see Appendix 5, page 128</i>)
	Bragadireanu (group)	22088/04	06/03/2008	132	Overcrowding and poor conditions in police detention facilities and prisons, including failure to secure adequate medical care and lack of an effective remedy (<i>see Appendix 5, page 170</i>)
	Bucur and Toma	40238/02	08/04/2013	1	Conviction of a whistle-blower for having disclosed information on the illegal secret surveillance of citizens by the intelligence service; lack of safeguards in the statutory framework governing secret surveillance (<i>see Appendix 5, page 234</i>)
	Centre for Legal resources on behalf of Valentin Câmpeanu	47848/08	17/07/2014	1	Lack of appropriate judicial protection and medical and social care of vulnerable mentally disabled persons in psychiatric hospital (<i>see Appendix 5, page 141</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Romania	Cristian Teodorescu (group)	22883/05	19/09/2012	3	Legislative deficiencies as regards the procedure and safeguards for involuntary placement in psychiatric hospital facilities and general failure of the competent authorities to apply this procedure (see Appendix 5, page 150)
	Parascineti	32060/05	13/06/2012	1	Overcrowding and poor conditions in psychiatric facilities (see Appendix 5, page 150)
	Săcăleanu (group)	73970/01	06/12/2005	35	Failure or significant delay in enforcing judgments against the State (see Appendix 5, page 211)
	Țicu (group)	24575/10	01/01/2014	2	Inadequate management of psychiatric conditions of detainees in prison (see Appendix 5, page 170)
Russian Federation	Alekseyev	4916/07	11/04/2011	1	Repeated bans on gay marches; lack of effective remedies; discrimination on grounds of sexual orientation (see Appendix 5, page 239)
	Catan and Others	43370/04	19/10/2012	1	Violation of the right to education of children and parents from Latin script schools in the Transdnistrian region of the Republic of Moldova (see Appendix 5, page 252)
	Finogenov and Others	18299/03	04/06/2012	1	Inadequate preparation resulting in loss of life and injuries caused during a mass hostage-rescue operation and lack of effective investigation (see Appendix 5, page 128)
	Garabayev (group)	38411/02	30/01/2008	69	Various violations related to extradition and expulsion including abductions and illegal transfers of persons protected by judicial decisions; in some cases, disrespect of Rule 39 indications (see Appendix 5, page 263)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Russian Federation	Georgia (I) v. Russian Federation (inter-state case)	13255/07	03/07/2014	1	Collective expulsion of Georgian nationals by Russian authorities from October 2006 to January 2007 (<i>see Appendix 5, page 265</i>)
	Gerasimov and Others	29920/05	11/10/2014	1	Failure or serious delay on the part of the State and municipal authorities in abiding by final domestic judicial decisions concerning in-kind obligations; absence of effective remedies (<i>see Appendix 5, page 211</i>)
	Kalashnikov (group) Ananyev and Others (pilot judgment)	47095/99 42525/07	15/10/2002 10/04/2012	170	Poor conditions of detention, mainly in remand centres; absence of an effective remedy (<i>see Appendix 5, page 171</i>)
	Khashiyev et Akayeva (group)	57942/00	06/07/2005	252	Violations resulting from, or relating to, anti-terrorist operations in the Northern Caucasus, mainly in the Chechen Republic (particularly unjustified use of force, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property); ineffective investigations and absence of effective domestic remedies (<i>see Appendix 5, page 129</i>)
	Kim	44260/13	17/10/2014	2	Lack of judicial review of the lawfulness of detention of aliens pending administrative removal and poor detention conditions (<i>see Appendix 5, page 182</i>)
	Klyakhin (group)	46082/99	06/06/2005	160	Different violations of Article 5 mainly related to detention on remand (lawfulness, procedure, length) (<i>see Appendix 5, page 151</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Russian Federation	Oao Neftyanaya Kompaniya Yukos	14902/04	08/03/2012	1	Different violations concerning tax and enforcement proceedings brought against the applicant oil company, contributing to its liquidation in 2007 (see Appendix 5, page 247)
Serbia	Ališić and Others (pilot judgment)	60642/08	16/07/2014	1	Failure by the governments of Slovenia and Serbia as successor States of the SFRY to repay “old” foreign-currency savings deposited outside Serbia and Slovenia (see Appendix 5, page 248)
	EVT Company (group)	3102/05	21/09/2007	57	Non-enforcement of final court and administrative decisions, including against “socially-owned” companies (see Appendix 5, page 213)
	Grudić	31925/08	24/09/2012	1	Suspension of payment of pensions earned in Kosovo* (see Appendix 5, page 249)
	Zorica Jovanović (pilot judgment)	21794/08	09/09/2013	1	Continuing failure on the part of the authorities to provide information as to the fate of new-born babies alleged to have died in maternity wards (see Appendix 5, page 222)
Slovak Republic	Bittó and Others	30255/09	28/04/2014 (merits) 07/10/2015 (just satisfaction)	4	Disproportionate limitations on the use of property through a rent control scheme (see Appendix 5, page 249)
	Labsi	33809/08	24/09/2012	1	Expulsion notwithstanding risk of ill-treatment and disrespect of Rule 39 indications (see Appendix 5, page 189)

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

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Slovenia	Ališić and Others (pilot judgment)	60642/08	16/07/2014	1	Failure by the governments of Slovenia and Serbia as successor States of the SFRY to repay “old” foreign-currency savings deposited outside Serbia and Slovenia (see Appendix 5, page 248)
	Mandić and Jović (group)	5774/10	20/01/2012	17	Poor conditions of detention due to overcrowding and lack of effective remedy (see Appendix 5, page 172)
Spain	A.C. and Others	6528/11	22/07/2014	1	Risk of ill-treatment on account of lack of automatic suspensive effect of appeals against decisions to deny international protection taken in the framework of an accelerated procedure (see Appendix 5, page 183)
“the former Yugoslav Republic of Macedonia”	El-Masri	39630/09	13/12/2012	1	Abduction, unlawful detention, torture and inhuman and degrading treatment during and following a “secret rendition” operation of the CIA (see Appendix 5, page 186)
Turkey	Oya Ataman (group)	74552/01	05/03/2007	55	Ill-treatment as a result of excessive force used during demonstrations, ineffective investigations (see Appendix 5, page 134)
	Bati and Others (group)	33097/96	03/09/2004	130	Ill-treatment by the police and the gendarmerie; ineffective investigations (see Appendix 5, page 131)
	Okkali (group)	52067/99	12/02/2007		
	Cyprus v. Turkey (inter-state case)	25781/94	10/05/2001 (merits) 12/05/2014 (just satisfaction)	1	14 violations in relation to the situation in the northern part of Cyprus. (see Appendix 5, page 265)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Turkey	Erdogan and Others (group)	19807/92	13/09/2006	18	Actions of security forces during military operations and lack of effective investigation (<i>see Appendix 5, page 193</i>)
	Kasa (group)	45902/99	20/08/2008	19	
	Incal (group)	22678/93	09/06/1998	106	Unjustified interferences with freedom of expression, owing notably to criminal convictions (<i>see Appendix 5, page 236</i>)
	Gozel (group)	43453/04	06/10/2010		
	Nedim Sener (group)	38270/11	08/10/2014	2	Unjustified detention of investigative journalists (<i>see Appendix 5, page 155</i>)
	Opuz (group)	33401/02	09/09/2009	4	Failure to provide protection against domestic violence (<i>see Appendix 5, page 218</i>)
	Oyal (group)	4864/05	23/06/2010	8	Medical negligence and lack of effective investigation (<i>see Appendix 5, page 143</i>)
Soyler (group)	29411/07	20/01/2014	2	Ban on convicted prisoners' voting rights (<i>see Appendix 5, page 177</i>)	
Ukraine	Yildirim	3111/10	18/03/2013	2	Restriction of access to the Internet and wholesale blocking of Internet sites (<i>see Appendix 5, page 236</i>)
	Afanasyev (group)	38722/02	05/07/2005	58	Ill-treatment/torture by police and lack of effective investigation (<i>see Appendix 5, page 135</i>)
	Agrokompleks	23465/03	08/03/2012 (merits) 09/12/2013 (just satisfaction)	1	Disrespect of judicial independence by the executive and the legislature through interferences in pending proceedings; also disrespect of internal judicial independence through actions of the court president (<i>see Appendix 5, page 215</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
Ukraine	East West Alliance Limited	19336/04	02/06/2014	1	Different malpractices on the part of the authorities in respect of property rights (<i>see Appendix 5, page 250</i>)
	Kharchenko (group)	40107/02	10/05/2011	48	Unlawful arrests, unlawful and lengthy detention on remand, lack of court order for detention between the end of investigation and trial (<i>see Appendix 5, page 156</i>)
	Khaylo (group)	39964/02	05/03/2014	42	Violations of right to life and lack of effective investigation (<i>see Appendix 5, page 136</i>)
	Lutsenko Yulia Tymoshenko	6492/11 49872/11	19/11/2012 30/07/2013	2	Circumvention of legislation by prosecutors and judges in the context of criminal investigations in order to restrict liberty for reasons other than those permissible under the Convention (<i>see Appendix 5, page 262</i>)
	Nevmerzhitsky (group)	54825/00	25/01/2008	19	Inadequate conditions of detention and medical care (<i>see Appendix 5, page 174</i>)
	Salov (group) Oleksandr Volkov	65518/01 21722/11	06/12/2005 27/05/2013	5	Various violations related to the independence and impartiality of the judiciary; interference of the executive power with the judiciary; unfair disciplinary proceedings brought against a judge (<i>see Appendix 5, page 216</i>)
	Vyerentsov (group)	20372/11	11/07/2013	2	Deficiencies in the legislation and administrative practices governing the right of freedom of assembly (<i>see Appendix 5, page 241</i>)
	Zhovner (group) Yuriy Nikolayevich Ivanov (pilot judgment)	56848/00 40450/04	29/09/2004 15/01/2010	421	Long-standing problem of non-enforcement of domestic judgments, mostly delivered against the State or State enterprises; absence of effective remedies (<i>see Appendix 5, page 214</i>)

State	Main cases, including pilot judgment when appropriate	Application No. (first case)	Judgment final on	Number of cases pending before the Committee of Ministers	Violation <i>Note: For the most recent information on execution status, see Appendix 5 – Thematic Overview</i>
United Kingdom	Hirst No. 2 Greens and M.T. (pilot judgment)	74025/01 60041/08	06/10/2005 11/04/2011	5	Blanket ban on voting imposed automatically on convicted offenders serving their prison sentences (<i>see Appendix 5, page 178</i>)
	McKerr (group)	28883/95	04/08/2001	8	Deaths involving security forces in Northern Ireland in the 1980s and 1990s: shortcomings in subsequent investigations (<i>see Appendix 5, page 138</i>)

Appendix 3 – Main cases closed by final resolution during the year

The table below comprises a selection of cases closed in 2016 by final resolution. The summaries of the final resolutions are presented in Appendix 5 – Thematic Overview.

State	Case	Application No.	Judgment final on	Violation
Albania	Dybeku Grori	41153/06 25336/04	02/06/2008 07/10/2009	Poor detention conditions in prison and unlawful detention (see Appendix 5, page 157)
	Laska and Lika and 3 other cases	12315/04	20/07/2010	Unfair criminal proceedings due to various procedural shortcomings (see Appendix 5, page 194)
Armenia	Khachatryan and Others and 2 other cases	23978/06	27/02/2013	Lack of right to compensation for unlawful conviction and detention (see Appendix 5, page 145)
	Piruzyan and 1 other case	33376/07+	26/09/2012	Degrading treatment during criminal proceedings and unlawful detention (see Appendix 5, page 174)
	Saghatelyan	7984/06	20/01/2016	Domestic courts' refusal to examine a claim against a Presidential Decree (see Appendix 5, page 190)
Austria	Donner and 5 other cases	32407/04	22/05/2007	Excessive length of criminal proceedings (see Appendix 5, page 197)
	E.B. and Others	31913/07+	07/02/2014	Discriminatory refusal to delete convictions from the criminal record (see Appendix 5, page 257)
Belgium	Anakomba Yula	45413/07	10/06/2009	Discriminatory refusal to grant legal aid in paternity proceedings (see Appendix 5, page 191)

State	Case	Application No.	Judgment final on	Violation
Belgium	Muskhadzhiyeva and Others and 1 other case	41442/07+	19/04/2010	Continued detention, pending expulsion, of accompanied foreign minors in unacceptable conditions (see <i>Appendix 5, page 178</i>)
Bulgaria	Rahmani and Dineva	20116/08	10/08/2012	Impossibility for the courts to order release of a foreigner pending expulsion (see <i>Appendix 5, page 179</i>)
	Tzekov and 5 other cases	45500/99+	23/05/2006	Disproportionate use of firearms by police officers during arrests (see <i>Appendix 5, page 117</i>)
Croatia	Ajdarić	20883/09	04/06/2012	Conviction for murder on the sole basis of hearsay evidence (see <i>Appendix 5, page 194</i>)
Czech Republic	T.	19315/11	17/10/2014	Impossibility of family reunification due to lacking rules on parents' visiting or residence rights (see <i>Appendix 5, page 223</i>)
Spain	Manzanas Martin	17966/10	03/07/2012	Discriminatory treatment between Evangelical Church ministers and Catholic priests for the calculation of pension rights (see <i>Appendix 5, page 257</i>)
Estonia	Julin and 1 other case	16563/08+	29/08/2012	Ill-treatment of a prisoner due to his confinement to a restraint bed for nine hours; lack of access to court to complain about strip-search (see <i>Appendix 5, page 175</i>)
	Tunis	429/12	19/03/2014	Poor conditions of detention in Tallinn prison (see <i>Appendix 5, page 162</i>)
	Vronchenko and 1 other case	59632/09+	18/10/2013	Conviction for sexual abuse in unfair proceedings (see <i>Appendix 5, page 195</i>)

State	Case	Application No.	Judgment final on	Violation
Finland	A.S.	40156/07	28/12/2010	Conviction for sexual abuse without adequate possibility to put questions to the minor victim (see <i>Appendix 5, page 195</i>)
France	Darraj	34588/07	04/02/2011	Excessive use of force by police during an identity check of a minor at the police station (see <i>Appendix 5, page 120</i>)
	M.K.	19522/09	18/07/2013	Acquisition and retention of fingerprints during criminal investigations not leading to conviction (see <i>Appendix 5, page 221</i>)
	Renolde and 3 other cases	5608/05+	16/02/2009	Placement of mentally-ill detainees in solitary confinement in disregard of their state of health, leading to their suicide (see <i>Appendix 5, page 176</i>)
	Têtu and 1 other case	60983/09	22/12/2011	Excessive length of bankruptcy proceedings interfering with the right to peaceful enjoyment of property (see <i>Appendix 5, page 198</i>)
Georgia	Jgarkava	7932/03	24/05/2009	Refusal of the Supreme Court to award compensation for pre-trial detention despite the discontinuation of criminal proceedings (see <i>Appendix 5, page 192</i>)
	The Georgian Labour Party	9103/04	08/10/2008	Cancelling of election results without sufficient and relevant reasons, lack of effective remedy (see <i>Appendix 5, page 255</i>)
Germany	Herrmann	9300/07	26/06/2012	Obligation of landowner opposed to hunting to tolerate it on his land and to join a hunting association (see <i>Appendix 5, page 245</i>)

State	Case	Application No.	Judgment final on	Violation
Greece	Alexandridis	19516/06	21/05/2008	Obligation of a lawyer to reveal religious beliefs at the time of oath-taking (see <i>Appendix 5, page 229</i>)
	Elyasin and 1 other case	46929/06	06/11/2009	Lack of access to a court to challenge <i>in absentia</i> convictions (see <i>Appendix 5, page 191</i>)
	Papazoglou and Others and 31 other cases	73840/01+	13/02/2014	Excessive length of civil proceedings before the Court of Audit (see <i>Appendix 5, page 198</i>)
	Vallianatos and Others	29381/09	07/11/2013	Discriminatory exclusion of same-sex couples from the scope of the law establishing civil unions (see <i>Appendix 5, page 258</i>)
Iceland	Björk Eiðsdóttir and 3 other cases	46443/09+	10/10/2012	Conviction of journalists in civil defamation proceedings in violation of freedom of expression (see <i>Appendix 5, page 233</i>)
Italy	Costa and Pavan	54270/10	11/02/2013	Inconsistency in the Italian legal system in the field of medically-assisted procreation (see <i>Appendix 5, page 219</i>)
	Hirsi Jamaa and Others	27765/09	23/02/2012	Collective expulsion of Somalian and Eritrean nationals in spite of the risk of ill-treatment (see <i>Appendix 5, page 184</i>)
	Panetta	38624/07	15/10/2014	Excessive length of proceedings intended to provide assistance under the New York Convention of 1956 on the recovery of maintenance abroad (see <i>Appendix 5, page 202</i>)
	Patrono, Cascini and Stefanelli and 2 other cases	10180/04+	20/07/2006	Inability to bring criminal proceedings for defamation against members of Parliament (see <i>Appendix 5, page 191</i>)

State	Case	Application No.	Judgment final on	Violation
Italy	Roda and Bonfatti and 2 other cases	10427/02+	26/03/2007	Failure of the authorities to take appropriate measures to maintain contacts between children and their natural families while in public care (<i>see Appendix 5, page 223</i>)
	Torreggiani and Others and 1 other case	43517/09+	27/05/2013	Poor conditions of detention due to overcrowding in prison facilities (<i>see Appendix 5, page 164</i>)
	Ventorino	357/07	17/08/2011	Non-enforcement of final judgments ordering the payment of counsel fees (<i>see Appendix 5, page 209</i>)
Latvia	Kadiķis and 6 other cases	62393/00	04/08/2006	Poor conditions of administrative detention; lack of effective remedy; ban on detainee's correspondence (<i>see Appendix 5, page 164</i>)
	Miroļubovs and Others	798/05	15/12/2009	State intervention in a conflict between members of a religious community (<i>see Appendix 5, page 229</i>)
	Nassr Allah	66166/13	21/10/2015	Excessive length of appeal proceedings against first instance decisions concerning detention (<i>see Appendix 5, page 180</i>)
Lithuania	Drakšas	36662/04	31/10/2012	Disclosure of intercepted private conversation to the media; lack of effective remedy to review the lawfulness of the operational measure (<i>see Appendix 5, page 221</i>)
Malta	Suso Musa and 4 other cases	42337/12+	09/12/2013	Arbitrary and unlawful detention of asylum seekers without effective and speedy remedy (<i>see Appendix 5, page 180</i>)

State	Case	Application No.	Judgment final on	Violation
Republic of Moldova	Cebotari and 2 other cases	35615/06+	13/02/2008	Imprisonment for reasons other than those permitted under Article 5, namely to hinder the lodging of an application before the European Court (see <i>Appendix 5, page 261</i>)
	Colibaba and 1 other case	29089/06	23/01/2008	Ill-treatment in police custody and lack of effective investigations (see <i>Appendix 5, page 122</i>)
	Societatea Română de Televiziune	36398/08	15/10/2013	Violation of the right of a public television company to impart information due to the interruption of its broadcasting despite its license was still valid (see <i>Appendix 5, page 233</i>)
“the former Yugoslav Republic of Macedonia”	Atanasovic and Others and 55 other cases	13886/02	12/04/2006	Excessive length of civil, labour, criminal, enforcement and administrative proceedings (see <i>Appendix 5, page 203</i>)
Montenegro	Bijelić	11890/05	06/09/2009	Non-enforcement of final domestic decision ordering the eviction of the applicant’s former husband from the family flat (see <i>Appendix 5, page 210</i>)
	Boucke	26945/06	21/05/2012	Non-enforcement of a final domestic judgment ordering the payment of child maintenance (see <i>Appendix 5, page 211</i>)
	Koprivica	41158/09	22/02/2012	Disproportionate award of damages against a magazine editor in civil defamation proceedings (see <i>Appendix 5, page 234</i>)
	Šabanović	5995/06	31/08/2011	Conviction to suspended prison term in the context of criminal defamation proceedings, for responding to allegations of contaminated drinking water raised by a public official (see <i>Appendix 5, page 234</i>)

State	Case	Application No.	Judgment final on	Violation
Netherlands	Mathew	24919/03	15/02/2006	Poor conditions of detention (<i>see Appendix 5, page 166</i>)
Norway	Lindheim and Others	13221/08+	22/10/2012	Statutory provision allowing lessees to claim indefinite extension of certain long lease contracts on unchanged conditions (<i>see Appendix 5, page 246</i>)
Poland	Dzwonkowski and 7 other cases	46702/99+	12/07/2007	Ill-treatment by the police between 1997 and 2006 and ineffective investigations (<i>see Appendix 5, page 126</i>)
	Fuchs and 33 other cases	33870/96	11/05/2003	Excessive length of proceedings before administrative courts and bodies (<i>see Appendix 5, page 203</i>)
	Horych and 4 other cases	13621/08+	17/07/2012	Excessive use of the special detention regime for "dangerous detainees"; restrictions of detainees' contact with their families (<i>see Appendix 5, page 167</i>)
	Hutten-Czapska	35014/97	19/06/2006	Impossibility of recovering property or obtaining adequate rent from tenants (<i>see Appendix 5, page 246</i>)
	Kaprykowski and 7 other cases	23052/05	03/05/2009	Ill-treatment due to the structural problem of lack of adequate medical care in prison (<i>see Appendix 5, page 168</i>)
	Orchowski and 6 other cases	17885/04	22/10/2009	Poor conditions of detention in prisons, particularly due to overcrowding (<i>see Appendix 5, page 169</i>)

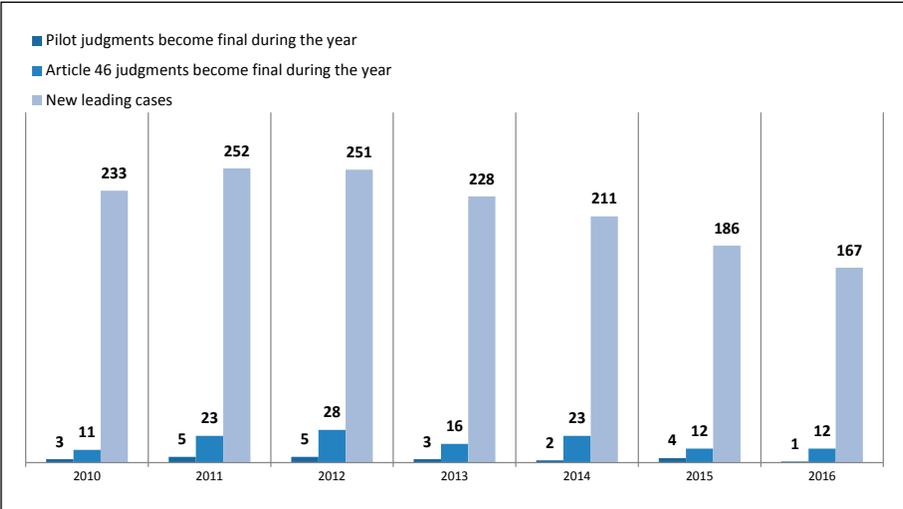
State	Case	Application No.	Judgment final on	Violation
Portugal	Martins de Castro and Alves Correia de Castro and 28 other cases	33729/06+	10/09/2008	Excessive length of civil proceedings; ineffectiveness of the compensatory remedy (<i>see Appendix 5, page 204</i>)
	Oliveira Modesto and Others and 48 other cases	34422/97+	08/09/2000	
	Stegarescu and Bahrin	46194/06	04/10/2010	Lack of effective remedy to challenge placement in security cells (<i>see Appendix 5, page 196</i>)
Romania	Barbu Anghelescu No. 1 and 35 other cases	46430/99+	05/01/2005	Inhuman and degrading treatment or torture by the police, in particular during arrests and detention; ineffective investigations, including concerning possible racist motives (<i>see Appendix 5, page 127</i>)
	Grosaru	78039/01	02/06/2010	Lack of clarity of electoral law as regards national minorities' parliamentary representation (<i>see Appendix 5, page 256</i>)
	Moldovan and Others Nos. 1 & 2 and 1 other case	41138/98 64320/01	05/07/2005 30/11/2005	Unfair and lengthy proceedings brought by Roma villagers following racially motivated violence (<i>see Appendix 5, page 259</i>)
	Nicolau and 79 other cases	1295/02+	03/07/2006	Excessive length of civil and criminal proceedings; lack of effective remedy (<i>see Appendix 5, page 205</i>)
Romania	Tătar and 1 other case	67021/01+	06/07/2009	Failure of the State to assess the risks and consequences of hazardous industrial process and to keep the public informed (<i>see Appendix 5, page 228</i>)

State	Case	Application No.	Judgment final on	Violation
Russian Federation	Konovalova	37873/04	16/02/2015	Presence of medical students during childbirth without the mother's consent (see Appendix 5, page 220)
	Timofeiev and 234 other cases	58263/00	23/01/2004	Failure or serious delay on the part of the state and municipal authorities in abiding by final domestic judicial decisions concerning in-kind obligations (see Appendix 5, page 212)
Switzerland	Borer	22493/06	10/06/2010	Unlawful detention after completion of a prison sentence, awaiting the outcome of proceedings replacing psychotherapeutic measures with preventive detention (see Appendix 5, page 153)
	Mäder	6232/09	08/03/2016	Lack of speedy review of the lawfulness of detention in a psychiatric clinic (see Appendix 5, page 154)
Slovak Republic	Lopez Guio	10280/12	13/10/2014	Lack of participation of a parent in proceedings concerning the return of his child under the Hague Convention (see Appendix 5, page 224)
	Mizigarova	74832/01	14/03/2011	Failure to protect life of Roma person in police custody (see Appendix 5, page 142)
Slovenia	Kurić and Others	26828/06	12/03/2014	Automatic erasure without prior notification of persons from the permanent residents register following Slovenian independence (see Appendix 5, page 225)
	Lukenda and 263 other cases	23032/02	06/01/2006	Excessive length of civil, criminal, enforcement or administrative proceedings (see Appendix 5, page 206)

State	Case	Application No.	Judgment final on	Violation
Sweden	F.G.	43611/11	23/03/2016	Proposed expulsion to Iran without adequate investigation of reality and implications of conversion to Christianity after arrival in Europe (see <i>Appendix 5, page 190</i>)
	Lucky Dev	7356/10	27/02/2015	Continuation of tax-surcharge proceedings after taxpayer's acquittal of tax offence arising out of the same facts (see <i>Appendix 5, page 207</i>)
Turkey	Ahmet Arslan and Others	41135/98	04/10/2010	Criminal conviction for wearing religious attire in public (see <i>Appendix 5, page 230</i>)
	Alkaya	42811/06	09/01/2013	Disclosure by large-circulation newspaper of residential address of a famous actress; failure of the courts to protect her private life (see <i>Appendix 5, page 223</i>)
	Demirel and 195 other cases	39324/98+	28/04/2003	Widespread and systemic problems concerning detention on remand (see <i>Appendix 5, page 154</i>)
	Fatma Nur Erten and Adnan Erten	14674/11	25/02/2015	Unfair civil proceedings due to the court's refusal of a request for amendment and adjustment of a compensation claim (see <i>Appendix 5, page 193</i>)

State	Case	Application No.	Judgment final on	Violation
Turkey	Gözüm	4789/10	20/04/2015	Inability of an adoptive mother to have her forename recorded on child's identity papers in place of the biological mother's one (see <i>Appendix 5, page 226</i>)
	Güzel Erdagöz	37483/02	06/04/2009	Refusal to rectify spelling of a forename in the registry of births, deaths and marriages (see <i>Appendix 5, page 227</i>)
	Kayak	60444/08	10/10/2012	Failure of the authorities to ensure supervision of school premises resulting in fatal stabbing (see <i>Appendix 5, page 143</i>)
United Kingdom	Al-Skeini and Others	55721/07	07/07/2011	Unsatisfactory investigations into deaths caused by, or involving, British soldiers in Iraq in 2003 (see <i>Appendix 5, page 137</i>)

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



A. Pilot judgments final in 2016

State	Cases	Application No.	Judgment final on	Nature of indications given by the Court in the operative part of the judgment
Belgium	W.D.	73548/13	06/12/2016	<p><i>Support for the execution of the L.B. group of cases: continued detention of offenders with mental disorders in various Belgian prisons without appropriate treatment and without any remedies capable of affording redress (Article 3 and/or Article 5 §§ 1 and 4) (see Appendix 5, page 145)</i></p> <p>GM: The State was called upon to organise its system for the psychiatric detention of offenders to ensure respect of the detainees' dignity and encouraged to take action to reduce the number of offenders with mental disorders detained in prison psychiatric wings and not receiving appropriate treatment, in particular by redefining the criteria for psychiatric detention along the lines envisaged by the legislative reform underway.</p> <p>The Court gave a period of two years to remedy both the general situation, in particular by taking steps to implement the legislative reform, and the situation of any applicant who had lodged or might lodge similar applications, and decided to adjourn proceedings in all similar cases for two years with effect from the date on which this judgment became final.</p>

B. Judgments with indications of relevance for the execution (under Article 46) final in 2016

Relevant information on the status of execution in the cases/groups of cases concerned can be found in the Appendix 5 – Thematic Overview.

State	Cases	Application No.	Judgment final on	Nature of indications given by the European Court
Albania	Topallaj	32913/03	21/07/2016	<p><i>Support for the execution of Luli and Others group of cases (see Appendix 5, page 196) – enhanced supervision</i></p> <p>GM: The State was urged, as a matter of priority, to introduce an effective domestic remedy for the excessive length of proceedings.</p>
Belgium	Bamouhammad	47687/13	17/02/2016	<p><i>New problem: conditions of detention involving continuous transfers between prisons and repeated “special measures”, delays in providing therapy and refusal to envisage adaptation of the sentence in spite of the decline of the applicant’s mental health (see Appendix 5, page 159) – enhanced supervision</i></p> <p>GM: The Court took note of the introduction under Belgian law of a specific right for prisoners to complain to a complaints board attached to the supervisory committees in each prison. However, the relevant provisions had not yet entered into force in the absence of a royal implementing decree. The State was requested to introduce a remedy for prisoners to complain about transfers and special measures.</p>
Bosnia and Herzegovina	Hadžimejić and Others	3427/13, 74569/13 and 7157/14	03/02/2016	<p><i>New problem: deficiencies in the assessment of disorders warranting placement in a social care home; deprivations of liberty not in accordance with a procedure prescribed by law</i></p> <p>IM: The State was requested to secure, without further delay, the applicants’ release from the Drin social care home and the examination of the necessity of the continued placement of a third applicant by a civil court.</p>

State	Cases	Application No.	Judgment final on	Nature of indications given by the European Court
Russian Federation	Abakarova	16664/07	14/03/2016	<p><i>Support for the execution of Khashiyev group of cases (see Appendix 5, page 129) – enhanced supervision</i></p> <p>GM: The Court found that the State had manifestly disregarded its specific findings in the cases of <i>Isayeva and Abuyeva and Others</i> within the <i>Kashiyev</i> group and that no previously identified defect in the investigation into the disproportionate use of lethal force in anti-terrorist operations in Chechnya had been resolved to date. Criminal investigations had still not succeeded in establishing the relevant factual circumstances. Furthermore, no independent expert report on the “absolute necessity” of the lethal force used had been established, nor individual responsibility between the commanders and the civilian authorities attributed. The outstanding measures should also focus on non-judicial mechanisms aimed at the prevention of similar occurrences and the protection of victims’ rights in any new proceedings, including through access to measures for obtaining reparation for the harm suffered.</p>
Russian Federation	L.M.	40081/14, 40088/14 and 40127/14	14/03/2016	<p><i>Support for certain aspects of the execution of the Garabayev group of cases: different problems linked with detention awaiting removal from the Russian Federation (see Appendix 5, page 263) – enhanced supervision</i></p> <p>IM: Since the last decision of domestic courts confirming the applicants’ expulsion order in May 2014 was in breach of Article 5, the Russian Federation must ensure the immediate release of the applicants who had so far remained in detention.</p>

State	Cases	Application No.	Judgment final on	Nature of indications given by the European Court
Russian Federation	Novruk and Others	31039/11, 48511/11, 76810/12, 14618/13 and 13817/14	15/06/2016	<p><i>Support for the execution of the Kiyutin case: discriminatory legislation, based on the health status of HIV-positive foreigners, as regards their right to entry, stay and residence – enhanced supervision</i></p> <p>IM/GM: The Court acknowledged important legal developments. In March 2015, the Russian Constitutional Court had held the legal provisions at the heart of the applicants' case incompatible with the Russian Constitution in so far as they allowed the authorities to refuse entry or residence or to deport HIV-positive non-nationals with family ties in the Russian Federation solely on account of their diagnoses. As a result, a draft law implementing that judgment was prepared and submitted to the Russian Parliament. The Court abstained from specifying any general measures for the proper implementation of the proposed future law. Concerns remain as to the scope of the legislation concerned, which is restricted to those non-nationals who have permanently resident spouses, parents or children in the Russian Federation, as well as with regard to the need for retroactive effect to allow individuals who were banned from the Russian Federation to obtain a new assessment of the grounds for their exclusion.</p>

State	Cases	Application No.	Judgment final on	Nature of indications given by the European Court
Russian Federation	Zherebin	51445/09	24/06/2016	<p><i>Support for the execution of the Klyakhin group of cases and the pilot judgment in the Ananyev case: excessive length of pre-trial detention (see Appendix 5, page 151) – enhanced supervision</i></p> <p>GM: The Court acknowledged steps taken to remedy the problems related to pre-trial detention and highlighted statistics demonstrating a reduction in the excessive use of detention as a preventive measure. However, in view of the extent of the systemic problem at issue, consistent and long-term efforts must continue, in particular with regard to the respect of presumption of innocence in criminal proceedings. Recommendations of the Parliamentary Assembly summed up in Resolution No. 2077 (2015) aimed at reducing pre-trial detention were stressed.</p>
Slovak Republic	Krahulec Rudolfer Bukovcanova and Others	19294/07 38082/07 23785/07	05/10/2016 05/10/2016 05/10/2016	<p><i>Support for the execution of the Bitto and Others group of cases (see Appendix 5, page 249) – enhanced supervision</i></p> <p>GM: In order to prevent the impugned effects of the rent-control scheme imposing limitations on the use of property by landlords, the State should introduce, as soon as possible, a specific and clearly regulated compensatory remedy in order to provide genuine effective relief for the breach found.</p>
Turkey	Aydođdu	40448/06	30/11/2016	<p><i>New issue: structural malfunctioning of health service leading to the death of a premature baby and lack of effective investigations – enhanced supervision</i></p> <p>GM: The State was called upon to take measures to allow victims to require independent and impartial administrative and disciplinary investigations to be carried out with an effective opportunity for victims to take part; bodies and/or specialists called upon to produce expert opinions should have qualifications and skills corresponding fully to the particularities of each case; forensic medical experts should give proper reasons in support of their scientific opinions.</p>

Appendix 5 – Thematic overview of the most important developments in the supervision process in 2016

A. Actions of security forces

ARM / Virabyan

Application No. 40094/05, judgment final on 02/01/2013, enhanced supervision

” **Ill-treatment in police custody:** torture of the applicant in police custody and failure to carry out an effective investigation, including into allegations of politically motivated ill-treatment; violation of the presumption of innocence; hearings held in atmosphere of constant threats; refusal of Cassation appeal on excessively formalistic grounds (Articles 3, 6 § 2, and 14 taken in conjunction with Article 3)

CM decision: In June 2015, the CM expressed its concern that, according to reports, ill-treatment by the police continued to persist, notwithstanding the first action plan of December 2013. In response, the authorities submitted an action plan informing of amendments to the Criminal Code and Code of Criminal Procedure and the creation of the Special Investigative Service (SIS).

The CM resumed consideration in December 2016. It welcomed, with respect to individual measures, the termination of criminal proceedings and the prosecution of Mr Virabyan for lack of *corpus delicti* (exculpatory reasons), in compliance with the presumption of innocence. It noted with interest the reopening of the criminal proceedings in the *Nalbandyan* case and the recent developments in the investigation into the applicant’s allegations of ill-treatment in the *Virabyan* case. The CM invited the authorities to ensure that the latter proceedings are conducted in an effective and independent manner, especially when examining possible political motives for Mr Virabyan’s ill-treatment. It invited the authorities to keep it updated on the progress of the re-opened criminal proceedings against the applicant in the *Nalbandyan* case, including the concrete steps taken to address the shortcomings identified by the Court, and expressed concern about the lack of information on the participants’ security during court proceedings and on access to court.

With respect to general measures, the CM welcomed the adoption in June 2015 of amendments to the Criminal Code criminalising acts of torture by public officials and noted with interest the progress in the adoption of the new Code of Criminal Procedure which will provide for safeguards against ill-treatment. It further invited the authorities to indicate the next steps and a time-table for its adoption and encouraged its adoption without delay.

The CM also noted with interest, the decrease, according to the latest report of the European Committee for the Prevention of Torture (CPT), of the number of allegations of police ill-treatment, but insisted that the phenomenon had not yet been entirely eradicated. As regards investigations into alleged police ill-treatment and torture, the CM welcomed the general positive assessment of the SIS's activity by the CPT and encouraged the authorities to pursue their efforts and to ensure that future investigations into alleged police ill-treatment and torture take full account of any plausible suggestion that ill-treatment was politically motivated.

■ **AZE / Muradova (group)**

Application No. 22684/05, judgment final on 02/07/2009, enhanced supervision

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

Developments: The general problems revealed in this group of cases are notably covered by co-operation activities foreseen in the Council of Europe Action Plan for Azerbaijan, which was extended in December 2016 to allow continuation of activities in 2017. Further information on relevant activities and other measures to prevent similar violations, as well as with respect to the resumed investigations into the events at issue, notably in the *Muradova* case, are awaited.

■ **BGR / Nachova and Others (group)**

Application No. 43577/98, judgment final on 06/07/2005, enhanced supervision

” **Excessive use of force by the police:** unjustified use of firearms by police and military police agents during arrest leading to death; non-compliance of the domestic legislation on the use of force during arrest with the Convention standards; lack of effective investigations into death and into possible racist motives (Articles 2, Article 14 in conjunction with Article 2)

CM decision: As of 2012, the Bulgarian authorities had adopted measures to ensure due investigation into possible racist motives in cases of excessive use of force during arrest, as well as a new legislative framework governing the use of firearms by the police. The CM has invited the authorities to adopt a similar legal framework in the area of use of firearms by the military police.

Resuming consideration of this group of cases in September 2016, the CM noted that no further individual measures were required in six cases, and thus decided to close their examination as they relate to the use of firearms by the police (see the Final resolution in the *Tzekov* case below).

The CM decided to pursue its examination of the shortcomings of the legal framework governing the use of firearms by the military police in the context of the present group. In this regard, it noted with interest the preparation by the authorities of a bill aimed at bringing the regulations concerning the use of firearms by the military police in line with the Convention, and urged them to adopt rapidly the necessary legislative measures as well as to inform the CM thereupon by 31 December 2016. The problem of ineffective investigations was to be dealt with in the *S.Z.* group (see below).

An updated action report was transmitted by the authorities in November 2016, reporting the adoption of amendments to the Military Police Act. Such amendments may permit this group of cases soon to be closed.

■ BGR / S.Z. (group)

Application No. 29263/12, judgment final on 03/06/2015, enhanced supervision

” **Ineffective and lengthy investigations into death, murder, bodily harm, rape, unlawful confinement and incitement to prostitution;** lack of independence of criminal investigations against the Chief Prosecutor (Articles 2 and 3 – procedural limb)

CM decision: In December 2016, the CM noted that no further investigations or other individual measure were possible in the S.Z. case. However, it invited the authorities to provide information on the current status of the investigation in the *Vasil Hristov* case, as well as on the possibility to reopen the investigation in the *Mulini* case. In the context of the new investigation in the *Kolevi* case, the Court had called into question the choice not to hear the former Chief Prosecutor Mr F. As a consequence, the CM invited the authorities to specify whether it was still possible to remedy this shortcoming.

Concerning the systemic problem of ineffectiveness of investigations, the CM noted with interest the measures adopted and planned and the in-depth analysis under way concerning other measures which could be taken. It invited the authorities to provide information on the results of this analysis, and encouraged them to assess particularly the need for strengthening guarantees regarding the opening of investigations and bringing charges in the light of the relevant Council of Europe instruments. The authorities were also encouraged to take measures to introduce an acceleratory remedy for criminal investigations and to eliminate the possibility of terminating investigations solely on the ground of their duration.

As regards the *Kolevi* case, the CM noted with interest the reforms adopted to enhance the autonomy of prosecutors responsible for a case. However, the problem of the lack of independence of investigations against the Chief Public Prosecutor had not been solved, and considering the complexity of the measures required to this end, the case was transferred to the enhanced supervision procedure.

■ BGR / Tzekov and 5 other cases

Application No. 45500/99+, judgment final on 23/05/2006, CM/ResDH(2016)274

” **Excessive use of firearms by police officers during arrests;** unjustified and/or disproportionate use of fire-arms; absence of adequate planning and control of police operations; insufficient legal and administrative framework governing the use of firearms by the police; lack of effective investigation into incidents and possible racist motives (Articles 2 and 3)

Final resolution: Requests for reopening of investigations were submitted: in three cases resumption of investigation was excluded due to prescription; in one case the decision to terminate the preliminary investigation had been confirmed by final judicial decision; in two cases reopened investigations were terminated with the conclusion that the officers involved had acted in compliance with the domestic legislation in force.

Legislative amendments of the Interior Ministry Act were carried out in 2012 to prevent similar violations. The new Interior Ministry Act 2014 stipulates that police officers may use firearms only where this is “absolutely necessary” in concrete, strictly defined cases. Police officers have to take all measures to protect the life of the persons against whom a firearm is used and to avoid risks to the life and health of other people. The Regulation of the Minister of the Interior 2015 provides more detailed regulation and the Code of Ethics of Civil Servants lists a number of rules of conduct for police officers. Special training courses are organised for officers entitled to use firearms.

In 2011, the Criminal Code was supplemented with qualifications for aggravated homicide and bodily injuries committed with racist or xenophobic motives and the offences of “crimes against peace and humanity”.

■ BGR / Velikova (group)

Application No. 41488/98, judgment final on 04/10/2000, enhanced supervision, Interim Resolution CM/ResDH(2007)107

” **Ill-treatment in custody:** death, torture or ill-treatment in custody under the responsibility of law enforcement agents, failure to provide timely medical care in police custody; excessive use of force during arrests; lack of effective and independent investigation to identify and punish those responsible; lack of domestic compensatory remedy (Articles 2, 3 and 13)

CM decision: Ill-treatment by police forces is a long-standing issue which led the CM to adopt an interim resolution in 2007 (CM/ResDH(2007)107). Several action plans were submitted by the authorities, most recently in July 2016.

Resuming consideration of this group of cases in September 2016, the CM noted that no further individual measures were possible in 22 cases, because of the expiry of the statute of limitations or of the time-limit for reopening of proceedings, the destruction of the criminal file or the impossibility of identifying the author of the ill-treatment. The CM hence invited the authorities to provide further information in 11 other cases of this group.

As regards general measures, the CM noted with interest the action plan submitted by the authorities following the public declaration of the CPT of March 2015 and the Sofia Round Table of July 2015, and called upon them to implement all the measures envisaged to combat ill-treatment by the security forces. In this regard, the CM noted with interest the adoption in October 2015 of an internal order reinforcing procedural safeguards in prisons and detention centres and invited the authorities to consolidate this important step by codifying these rules in a public and binding instrument. Moreover, the CM invited the authorities to improve rapidly the implementation of procedural safeguards during the 24 hours of police detention and the related supervising mechanisms of the Prosecutor’s Office.

Concerning the need to improve the effectiveness of investigations, the CM invited the authorities in particular to adopt measures to secure the independence of preliminary investigations carried out before the official opening of criminal proceedings, create an obligation for police officers from special units to display anonymous means of identification, and modify the legislation to prevent criminal investigations from being closed on the sole basis of their length.

In addition, the authorities were invited to adopt criminal provisions penalising acts of torture and to inform the CM of the results of their analysis concerning the measures necessary to prevent violations of Articles 3 and 13 related to the psychological effects of arrest and the absence of an effective compensatory remedy.

As regards excessive use of force, see also *Nachova, S.Z.* and *Tzekov* above.

■ CRO / Skendžić and Krznarić (group)

Application No. 16212/08, judgment final on 20/04/2011, enhanced supervision

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

CM decision: With a view to implementing the Court’s judgments in this group of cases, the authorities have taken a series of individual and general measures notably to ensure independent investigations and increase the effectiveness of investigations into war crimes. As regards general measures, the authorities adopted, in 2010, the Strategy for Investigation and Prosecution of War Crimes. The legislative amendments adopted in 2011 introduced special jurisdiction in war crimes cases with a view to concentrating the necessary expertise and increasing the efficiency of the investigations in these cases. Special police units dealing only with war crimes were put in place in 2012 by the Ministry of the Interior. A special database containing information on war crimes was set up to secure information on investigations of war crimes. Further, in 2013, the Code of Criminal Procedure was amended to introduce procedural time-limits to avoid excessive length of investigations. These deadlines, however, are applicable only to investigations in which the perpetrators have been identified.

With a view to facilitating co-operation in investigations initiated into war crimes, both at the national and international level, extensive cooperation was maintained between the Office of the Prosecutor General and the International Criminal Tribunal for the former Yugoslavia (ICTY) which was set up to bring to justice those responsible for the war crimes committed in the region. A protocol between the police and the military police, signed in November 2014, enabled the police and the military police to set up joint teams to investigate cases and facilitated their access to military archives. In April 2015, the Prosecutors General of Croatia and Bosnia and Herzegovina and the Prosecutor for War Crimes of Serbia, as well as the UN Resident Coordinator in Bosnia and Herzegovina, signed guidelines for improving cooperation in the prosecution of war crimes and the search for missing persons and the setting up of a coordination mechanism.

Resuming consideration of this group of cases in June 2016, the CM noted with interest, as regards general measures, the setting up of special structures responsible for investigating war crimes and the legislative measures adopted in 2014 to ensure the independence of police units responsible for investigations into such crimes. Having regard to the statistics provided by the authorities, the CM noted, however, that progress in the investigation of war crimes at domestic level had been rather slow and that a large number of investigations were still pending and therefore urged the authorities to intensify their efforts with a view to bringing the ongoing

investigations to an end while bearing in mind the relevant Convention standards, in particular that of effectiveness.

As regards individual measures, the CM noted that despite the investigatory measures taken, no tangible progress had been achieved in the ongoing investigations in the cases of *Skendžić and Krznarić, Jelić and Jularić* and urged the Croatian authorities to intensify their efforts to bring these investigations to an end without further delay, and to provide information on the state of affairs in the ongoing investigation in the case of *B. and Others*.

■ FRA / Darraj

Application No. 34588/07, judgment final on 04/02/2011, CM/ResDH(2016)216

” **Excessive use of force and handcuffing by police officers** in the course of an identity check of a minor at the police station (Article 3)

Final resolution: Targeted measures were adopted to prevent similar violations by security forces. Thus, the circular of the minister of the Interior of 11 March 2003 recalled that the use of restraint measures must be “strictly limited to the sole purpose of proceedings, proportionate to the gravity of the alleged offence, and must not jeopardise the person’s dignity”; moreover, this circular recalled Article 803 of the Code of Criminal Procedure on the use of handcuffs, which can be used only if the person is dangerous to others or her/himself or may attempt to escape. This article was also recalled by the circular of 22 February 2006 which specifies action to be taken in relation to a minor, including suspects, to ensure him/her specific protection.

In order to unify the rules and obligations on security forces to respect fundamental rights, a new common Code of Ethics for both security forces (police and gendarmerie) was adopted on 1 January 2014. In addition, training of security forces was restructured to include ethics as a priority. Furthermore, the National Police General Inspectorate (IGPN) was created with national jurisdiction to initiate judicial or administrative investigations concerning actions of police officers. Finally, disciplinary proceedings can be launched by the judicial authorities against members of police forces.

■ GEO / Gharibashvili (group)

Application No. 11830/03, judgment final on 29/10/2008, enhanced supervision

” **Lack of effective criminal investigations into complaints of ill-treatment**, or excessive use of force by the police during arrest and/or custody, and failure of the authorities to carry out effective investigations into assaults and homicides (procedural limb of Articles 2 and 3, substantial limb of Article 3)

CM decisions / Transfer: In order to remedy the deficiencies in the domestic legislation concerning the independence and impartiality of investigative bodies, the minister of Justice issued in 2013 an order setting the rules on territorial and material jurisdiction for criminal investigations. Crimes allegedly committed by police officers were to be investigated by the Prosecutor’s Office. To ensure the independence and impartiality in the investigation, the Law on the Prosecutor’s Office was amended in September 2015, preventing any interference from the government in the Prosecutor’s Office’s work. In addition, amendments of the Code of Criminal

Procedure were adopted, providing for the right of the victim to be involved in the investigation procedure and to access to certain materials of the case-file. Finally, the authorities adopted the Action Plan 2015-2016 on “combatting torture, inhuman or degrading treatment or punishment” aimed at tackling the issues concerning both of the investigation and prevention of ill-treatment.

When resuming consideration of this group of cases in June 2016, and while regretting that the new action plan had been submitted so shortly before the meeting that a detailed assessment was impossible, the CM welcomed however the presence of the Deputy Minister of Justice of Georgia and noted with interest the explanations given during the meeting. The CM instructed the Secretariat to make rapidly a detailed evaluation of all the information provided, in co-operation with the authorities, to allow for a thorough examination of these cases at their next examination by the CM.

With respect to 11 cases (friendly settlements) presenting similarities, the CM requested that a comprehensive action plan/report be provided before 1 September 2016 and decided that, in case of non-submission within the deadline of information attesting tangible progress, these cases will be transferred from the standard to the enhanced supervision procedure and joined with the *Gharibashvili* group.

In December 2016, the CM noted the updated information on the reopening of the investigations in all cases and the current state of investigations, although in some cases (*Surmanidze and Others* and *Molashvili*), the information was submitted too soon before the meeting to allow a detailed assessment thereof. Having noted that in some cases concrete results had been achieved, the CM expressed concern that in most cases (including the 11 friendly settlements) the investigations were pending. It urged the authorities to accelerate pending investigations, to reinforce resources allocated to that end and to keep it informed of any developments or steps towards bringing the pending investigations to an end. It also asked about the possibility to challenge decisions to close investigations, and if so, by what authority. The CM expressed its particular concern as to the cases *Mikiashvili* and *Dvalishvili*, where the Court’s findings appeared to be put into question by the Prosecutor’s Office; the CM therefore invited the authorities to provide clarification in this respect.

As to general measures, the CM took note of a reform of the Prosecutor’s Office, the involvement of victims in investigation, including access to case-files, the implementation of the new rules on witness interrogation and of relevant measures in the above-mentioned Action Plan 2015-2016 and requested further information on how the institutional independence of investigating bodies, in particular the Prosecutor’s Office, is guaranteed in law and practice. Further information was also requested as to measures demonstrating that the specific problems revealed in the present cases have been addressed: notably lack of adversarial public proceedings and decisions rendered *in camera*, court decisions based mainly on the testimony of the police officers involved in the incidents, lack of sufficient time and facilities to study the case materials, etc. The authorities were also invited to submit further information on the measures taken to prevent excessive use of force by the police in the course of arrest and ill-treatment of persons in custody, on the results achieved, as well as on the measures to prevent violation of Article 38.

Finally, in view of the above and in accordance with its earlier decision of June 2016, the CM decided to transfer the 11 friendly settlements from the standard to the enhanced supervision procedure and to join them with the *Gharibashvili* group.

■ GRC / Makaratzis (group)

Application No. 50385/99, judgment final on 20/12/2004, enhanced supervision

” **Ill-treatment by law enforcement officers**, notably by police authorities and coastguards, amounting to torture; absence of effective investigations, including into the possible racist motives at the origin of police acts (Article 3 substantial and procedural limbs, Article 14 in conjunction with Article 3)

Developments: At its last examination of this group of cases in September 2015, the CM noted with interest the measures taken to improve internal police investigations on complaints about acts giving rise to a risk to life or ill-treatment by law enforcement officers. In this regard, considering the Court’s findings regarding the lack of effective investigations, the CM stressed the importance of the functioning of the “Office for addressing incidents of arbitrariness” and urged the authorities to take all necessary measures to this end. It further invited the authorities to keep it informed on the effective functioning of this Office, and to provide statistical data on the outcome of its investigations on complaints about ill-treatment by law enforcement officers, so that conclusions can be drawn on the effectiveness of the investigations carried out in the light of the Court’s case-law.

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

■ ITA / Cestaro

Application No. 6884/11, judgment final on 07/07/2015, enhanced supervision

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

Action plan: In their action plan of April 2016 (DH-DD(2016)481), the Italian authorities indicated *inter alia* that a draft law on the prohibition of torture was adopted by the Italian Senate and that detailed information on that law, as well as on the progress of its adoption, would soon be transmitted to the Secretariat.

■ MDA / Colibaba and 1 other case

Application No. 29089/06, judgment final on 23/01/2008, CM/ResDH(2016)146

” **Ill-treatment in police custody and lack of effective investigation:** intimidation by the Prosecutor General of the applicant’s lawyer with a view to preventing him from exercising the right to petition to the European Court; refusal to grant access for a medical doctor to the applicant and his medical files with a view to presenting an estimate of pecuniary damage before the Court (Articles 3 and 34)

Final resolution: On 30 July 2015, the Superior Council of Prosecutors adopted a Code of Ethics of Prosecutors in to establish basic principles for the conduct of prosecutors that should ultimately enhance public confidence in the prosecution service. In this regard, a comprehensive reform process was undertaken in recent years aiming at improving the professionalism of the prosecution service, which resulted in the adoption of the new Law on the Prosecution Service and its entry into force on 1 August 2016 (see also *Cebotari* and *Corsacov* below). This new law aims, *inter alia*, at consolidating the independence and efficiency of the service and ensuring the respect of human rights in the course of criminal proceedings. In case of improper performance by a prosecutor of his/her professional duties, violation of the Code of Ethics, or undignified behaviour towards any participant in the judicial process, disciplinary sanctions may be taken by the Discipline and Ethics Council of Prosecutors.

As regards the possibility for a detainee to undergo medical examination when entering a detention facility and on release, this was recognised following amendments to the Execution Code in November 2012. General measures with regard to ill-treatment in detention and the failure to conduct an effective investigation are examined in the context of the *Corsacov* group.

■ **MDA / Corsacov (group)**

Application No. 18944/02, judgment final on 04/07/2006, enhanced supervision

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

CM decision: The issues raised in this group have been under the CM's supervision since 2006 and a series of measures have been adopted. More specifically, investigations into ill-treatment were reopened and, in some cases, the authors were tried and convicted. The authorities also adopted legislative reforms, including amendments in 2014 to the Code of Criminal Procedure (CPP) providing that the decisions of the investigative judge concerning refusal to initiate proceedings, closure and reopening of criminal proceedings, can be appealed (before this amendment these decisions were final). In 2016, the adoption of a new provision to Article 262 of the CPP ensures that any declaration, complaint or other information known to an investigative authority which gives reason to believe that a person was ill-treated shall be sent to the prosecutor for examination. In this respect, the authorities submitted several examples of domestic judicial decisions from 2015 and 2016 in which investigative judges and appeal instances considered in detail decisions by prosecutors to refuse the initiation of or close criminal investigations into ill-treatment and gave specific instructions to prosecutors on further actions to be taken.

In July 2015, the Superior Council of Prosecutors adopted a new Code of Ethics for Prosecutors which requires, in particular, that a prosecutor shall act in compliance with the Convention requirements and the Court's case law. As a result, the authorities communicated statistics, based on data of the General Prosecutor's Office, showing a decrease in recent years of the number of complaints received concerning ill-treatment.

In the same vein, the prosecution service underwent a comprehensive reform resulting in the adoption of a new Law on the Prosecution Service (in force since August 2016). Before its adoption, the draft law was reviewed jointly by the Venice Commission, the OSCE/ODIHR and the Directorate General 1 of the Council of Europe. The new law aims, *inter alia*, at consolidating the independence and efficiency of the prosecution service and ensuring the respect of human rights in criminal proceedings (see also *Colibaba* above, and *Cebotari* below).

When resuming consideration of this group in December 2016, the CM noted that no further individual measures were required in the *Buzilo* and *Gavriliță and Morgoci* cases; in the first case, police officers responsible for ill-treatment were convicted by the domestic courts; in the second, the domestic courts acknowledged the violations of Article 3. The CM noted, however, with regret that no further individual measures were possible in the *Ipate* case in which the time-limit to request the reopening of the criminal proceedings had expired. While noting that no further individual measures were possible in the cases in which it was established that it was impossible to rectify the shortcomings identified by the Court or to identify the authors of the ill-treatment following new investigations, the CM urged the authorities promptly to complete the pending investigations in the *Eduard Popa, Gurgurov, Bisir and Tulus* cases. It further invited them to submit information, by 30 June 2017, on the progress made in these cases as well as on the measures adopted in the *Tcaci, Bulgaru* and *Ciorap (No. 5)* cases and outstanding information on the *Breabin, Pruneanu, Struc, Ghimp and Others* and *Pascari* cases. The CM invited the authorities to submit all the relevant decisions of the domestic courts adopted during the re-hearing of the criminal case against the applicants in the *Levința* case.

With respect to the general measures, the CM noted with satisfaction the progress achieved by the authorities in recent years in preventing and combatting ill-treatment by the police and strongly encouraged the pursuit of these efforts, taking inspiration from the recommendations of the CPT and the CM's guidelines in respect of the fight against impunity.

Following the recent reform of the prosecution service, the CM invited the authorities to provide information on any changes made to the system of specialised units/prosecutors mandated with investigating ill-treatment allegations.

Finally, the CM invited the authorities to provide information concerning the confidentiality of medical examinations and access to medical assistance in police detention facilities, the practice of awarding monetary compensation by the domestic courts, as well as the measures taken to remedy the violations of Articles 5 § 1 in the *Gavriliță* and *Morgoci* cases and of Article 8 in the *Bisir and Tulus* case.

MDA / Taraburca (group)

Application No. 18919/10, judgment final on 06/03/2012, enhanced supervision

 **Ill-treatment by the police in connection with major violent demonstrations in April 2009 in Chișinău and ineffective investigation thereof** (Article 3 substantial and procedural); lack of effective civil remedies to claim compensation for the ill-treatment (Article 13)

CM decision: In response to the Court’s judgments in these cases, investigative measures were undertaken to remedy the shortcomings identified. These individual measures were supported by the adoption of a series of regulatory changes (notably an internal regulation on the tactic of police intervention for ensuring and re-establishing public order by the General Police Inspectorate (GPI)) and institutional measures (including the creation of an anti-torture unit within the Prosecutor General’s Office and a network of specialised prosecutors).

Following the submission by the authorities of an action report in April 2016, the CM resumed consideration of this group of cases in June 2016. As regards the individual measures, the CM noted the fresh investigatory steps taken by the prosecution service after the delivery of the Court’s judgments. It further noted that the applicant in the *Taraburca* case had not responded to the repeated calls of the prosecution service to participate in the further investigative actions requiring his involvement and further noted the authorities’ commitment to continue looking for other solutions to prompt his active participation. It also noted, as regards the *Iurcu* and *Buhaniuc* cases, the authorities’ commitment to resume the investigations should new relevant information appear. Whilst noting the abovementioned progress, the CM considered, in the light of these developments, which occurred after the delivery of the Court’s judgments, that no further individual measures were necessary.

With regard to the general measures, the CM noted the regulations adopted by the authorities on intervention tactics by the police in cases of public disturbance and invited them to provide information on the grounds and conditions where force can be used by the police during public gatherings. The CM also invited the authorities to provide information on whether an assessment is made on the proportionality of the use of force before a police intervention and whether any training for the police has been dedicated to this issue. The CM further invited the authorities to inform it whether any specific measures have been adopted in response to the Court’s findings in the case of *Tarabuca* concerning legal-aid lawyers, judges and prosecutors.

■ NLD / Jaloud

Application No. 47708/08, judgment final on 20/11/2014, enhanced supervision

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

CM decision: In response to the Court’s judgment in this case, the Dutch authorities provided on 20 May 2015 an action plan (DH-DD(2015)538). Following a series of bilateral contacts, between the Department for the Execution and the authorities, in the course of July 2015, a revised action plan has been submitted on 4 September 2015 (DH-DD(2015)902).

In the light of the revised action plan submitted in September 2015, The CM resumed consideration of this case in March 2016.

With respect to the individual measures, the CM stressed that that the procedural obligation under Article 2 to conduct an effective investigation into an alleged breach of life involving state agents entails, in particular, that the national authorities

must take all the reasonable steps available to secure the evidence concerning the incident and establish what happened, in particular as regards the cause of death or the persons responsible. Therefore, the CM noted with regret that the shortcomings during the initial stage of the investigation underlined by the Court, namely the failure to prevent any possible collusion before the officer's questioning, the shortcomings related to the autopsy and the loss of bullet fragments, were of an irremediable nature but that it was open to the applicant to put the evidence that was withheld during the initial investigation before the judicial authorities in judicial review proceedings.

With respect to the general measures, the CM welcomed the measures adopted by the authorities to improve the effectiveness of criminal investigations with respect to operations conducted by Dutch military personnel deployed abroad and encouraged the authorities to ensure that the instructions to be adopted by the Public Prosecution Service, including the investigative manual, incorporate the Convention standards as regards the investigations of serious human rights violations, including those conducted in difficult security conditions.

■ POL / Dzwonkowski and 7 other cases

Application No. 46702/99+, judgment final on 12/07/2007, CM/ResDH(2016)148

» **Ill-treatment and unintentional killing by police officers** and lack of effective investigations in this respect (Articles 2 and 3)

Final resolution: In order to regulate the use of coercive measures and firearms, the Act on Measures of Direct Coercion and Firearms came into force on 5 June 2013 providing, in particular, that such measures must be proportionate to the level of danger. In addition, two decrees of the Chief Police Commander of 2003 and 2013 were issued, aiming notably at ensuring the respect of human dignity and the protection of human rights during police officers' actions, and establishing the obligations of the superior officer when responding to irregularities or improper behaviour of a subordinate. A breach of principles of professional ethics results in disciplinary proceedings. The Ordinance of the Minister of Internal Affairs of 18 April 2012 introduced a requirement to assess all candidates to police posts as regards their psychological stability and social attitudes. Parallel criminal and disciplinary proceedings are coordinated by the Prosecutor's Office. In 2012, the necessity of medical examinations for persons arrested by the police was regulated. Complaints about excessive length of investigations can be filed according to the 2009 amendment to the Act on the Protection of the Right to a Trial without Undue Delay 2004. A special body within the Ombudsman's Office was also set up to examine complaints about police actions.

Practical measures were also adopted, including a three-year plan 2015-2017, initiated with a view to changing and shaping attitudes in the police forces, and reviewing/supplementing training and educational materials for officers. Moreover, the Directional Police Strategy for the development of a human rights protection system 2013-2015 intensified training and educational activities. A consistent system of multidisciplinary actions to prevent abuse, irregularities and dysfunctions in police units, including a system of early intervention, was set up and human rights

protection counsellors in the police were reinforced. Human Rights Advisers to the Chief Commander and Province Commanders of Police are mandated to supervise training of police officers, promote good police conduct and monitor police operations. Regarding the conduct of criminal proceedings dealing with actions of police officers leading to death and/or ill-treatment, the General Prosecutor issued Guidelines aiming at unifying practices for such cases and removing irregularities.

■ ROM / Barbu Anghelescu and 35 other cases

Application No. 46430/99+, judgment final on 05/01/2005, CM/ResDH(2016)150

” **Excessive use of force by the police resulting in death or ill-treatment and lack of effective investigations and remedy;** in some cases, racially motivated ill-treatment, ineffective investigations thereof (Articles 2, 3, 13, and 14 in conjunction with Articles 3 and 13)

Final resolution: In most cases, reopening of proceedings was impossible because criminal liability was time-barred. To prevent death/ill-treatment under the responsibility of law enforcement officers, a far-reaching reform was undertaken in 2002, resulting in the demilitarisation of police. Police staff lost their status of active officers of the armed forces, acquiring that of civil servants. A new Criminal Code and a new Criminal Procedure Code entered into force on 1 February 2014. The Code of Criminal Procedure provides that criminal investigations and trial in cases involving police staff fall henceforth within the competence of civil prosecutor’s offices and courts. In 2015, amendments to the Law governing the statute of police officers reorganised disciplinary procedure. The structure of the judicial police was also reformed. Law No. 278/2006 introduced ethnic/racial motivation as a statutory aggravating factor in the Criminal Code, which is to be examined by the prosecuting authorities in each case.

On 3 March 2014, a series of amendments was made to the *Proceedings regarding the conducting of persons to the premises of police units*, including the right to a lawyer of their own choice, to inform a member of their family regarding their situation, as well as the right to be informed of the reasons of their deprivation of liberty and the procedure applicable in their case.

Concerning the access to a doctor in detention, Law No. 254/2013 guarantees the right to medical assistance, treatment, medication and care to all detained persons, free of charge, upon request or whenever necessary. If signs of violence are found on the detainee’s body at any stage of his/her incarceration, the doctor has the obligation to inform the prosecutor of his findings. In this regard, the new CPP places a duty on the judicial authorities to react appropriately when they become aware of allegations/indications of ill-treatment. These legislative measures were carried out taking into account the CPT’s recommendations following its visit to Romania in June 2014.

Through the Government Emergency Ordinance No. 48/2014, the Romanian Ombudsman was designated as national preventive mechanism under the Optional Protocol to the UN Convention against Torture: a commission of independent experts was set up, with the main duty to carry out regular inspections in detention facilities and to monitor the impact of the measures taken for the execution of this group of cases.

Moreover, awareness-raising measures were adopted in the form of practical in-service training of police officers for the prevention of torture and ill-treatment.

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

Application No. 33810/07, judgment final on 28/11/2011, enhanced supervision

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

Developments: Following the detailed examination of this group of cases in June 2014, information was communicated by the Romanian authorities in June 2015 in respect of the individual and general measures taken and envisaged. In November 2015, the authorities also provided information on the progress in the investigation at issue in the case of *Association “21 December 1989” and Others* (DH-DD(2015)1214). This information indicates in particular that on 14 October 2015, the prosecutor’s office attached to the High Court of Cassation and Justice (military section) decided to terminate the investigation, as it found that a number of circumstances, including the status of limitation, prevented it to pursue the prosecution in the case. However, this decision was challenged by the civil parties before the High Court of Cassation and Justice. According to further information submitted in 2016, on 5 April 2016, the Prosecutor’s Office attached to the High Court of Cassation and Justice (PHCCJ) decided to invalidate the decision of 14 October 2015 and ordered the reopening of the criminal investigations. On 13 June 2016, the High Court of Cassation and Justice (HCCJ) upheld the decision of the Prosecutor’s Office attached to the PHCCJ to reopen the investigations at issue in this case. Furthermore, on 1 November 2016, the PHCCJ initiated criminal investigation *in rem* for offenses against humanity.

The applicant Mrs Vlase also submitted a number of communications, the most recent dated of 9 March 2016, in which she complained about the lack of progress in the investigations notwithstanding the European Court’s judgment and, latterly, about the decision of the military prosecutor’s office to terminate the investigations.

The Romanian authorities shall continue providing updated information as to the progress of the investigations and the general measures taken and envisaged.

■ RUS / Finogenov and Others

Application No. 18299/03 judgment final on 04/06/2012, enhanced supervision

” **Loss of life and injuries caused during a mass hostage-rescue operation** at the “Nord-Ost” theatre in Moscow and lack of effective investigation (Article 2 - procedural and substantial limbs)

CM decision: Responding to the violations found by the Court in this judgment, the Russian authorities provided an action plan on 15 May 2013 (DH-DD(2013)553) and additional information on general measures on 4 August 2016 (DH-DD(2016)899).

At its meeting of September 2016, having noted the information provided, the CM regretted, as regards individual measures, the investigating authorities' decision to not open a criminal investigation into the facts, which does not give effect to the Court's judgment in this respect. Having regard to the nature of the shortcomings identified by the Court, in particular as regards the destruction of evidence, and taking also into account the lapse of time since the events at issue, the Russian authorities were invited to assess and inform the CM in detail what investigatory steps can still be taken, what investigatory steps can no longer be taken for practical or legal reasons, what means are deployed to overcome existing obstacles, and what concrete results are expected to be achieved.

Concerning general measures, the CM welcomed the legislative, regulatory and operational measures taken to provide medical assistance and ensure the saving of the lives of persons in emergency situations in the context of rescue activities related to counter-terrorist operations, and invited the authorities to provide additional information on the practical implementation of measures adopted, including on how all possible scenarios which could arise after a mass rescue operation are effectively planned, communicated and coordinated among all the relevant services.

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

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

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

CM decisions: The CM's assessment of developments (including notably awareness raising measures and training measures for the military and security forces and certain regulatory changes) was given in an Interim Resolution of December 2011. Additional assessments were provided by the Court in its *Aslakhanova and Others* judgment (final on 29 April 2013) in particular as regards measures to clarify the fate of missing persons and care for the relatives.

Following the comprehensive strategy presented by the authorities in 2013 in response to these developments, the CM urged, in line with the Court, the authorities to consider, in view of the absence of progress of the criminal investigations, the creation of a single high-level, body mandated with the research for missing persons and the allocation of the necessary resources required for large-scale forensic and scientific work within a centralised and independent mechanism. When examining the situation in March 2015 and noting the measures adopted to improve the effectiveness of investigations and search for missing persons, the CM regretted that these had not brought any significant results and thus adopted a new interim resolution (CM/ResDH(2015)45). It strongly urged the authorities to take the measures necessary to create the above mentioned single and high-level body.

As regards criminal investigations, the CM invited the Russian authorities to provide information on the cases where criminal proceedings had been terminated or

resulted in refusals to initiate criminal proceedings. As to statutes of limitations, the CM urged the authorities to take measures to ensure that domestic law and practice concerning the applicability of such statutes take into account the Convention standards as regards the prosecution and punishment of persons responsible for grave breaches of fundamental rights. It also invited the authorities to consider whether, in line with the findings of the Court in the *Aslakhanova and Others* judgment, aggravated kidnapping should be re-qualified as aggravated murder, so that domestic courts be able to decide not to apply ordinary prescription periods.

When resuming its consideration of this group in June 2016, the CM noted the updated information provided by the authorities in response to the CM's questions put forward in December 2015 and invited the Russian authorities to provide information on the return of the victim's ashes in the *Malika Alikhadzhiyeva* case and clarification as to why the identified remains were not exhumed and returned to the applicants in the *Israilova and Others* case. The CM also noted that, in some of the cases examined by the European Court in the *Khashiyev* group, about 100 corpses had already been found, including in burial sites identified in the course of investigations, and given to the applicants for burial. The CM expressed, however, deep regret that, since the first cases in this group came before the CM in 2005, the Russian authorities have only been able to establish the fate of two persons still missing after the European Court's judgment, out of about 380 falling within this group. The CM further expressed, therefore, their growing concern about the continuing absence of tangible results in the search for missing persons in the *Khashiyev* group of cases, despite the measures undertaken so far, in particular those in the context of criminal investigations and strongly urged, accordingly, the Russian authorities to develop a viable solution capable of achieving rapidly such tangible results, notably as regards the large-scale work on the ground required with a view to locating and securing presumed mass graves and burial sites, conducting exhumations and putting in place the necessary facilities for the proper storage of human remains. The CM also invited the Russian authorities to update the table and include therein information concerning the victims' families' access to the case-files and to elements in respect of the cause or circumstances of the victims' deaths.

In December, the CM noted with interest the detailed information provided by the Russian authorities in response to its previous decisions and the questions submitted by delegations, as well as the statistics submitted by the authorities as regards the search for the missing persons. It noted with satisfaction that most of the applicants and/or their representatives have regularly been granted access to the non-confidential parts of case-files and encouraged the authorities to address rapidly any reported difficulties in respect of meaningful access to the case-file by some applicant. The Russian authorities informed the CM that, in all the cases of this group, measures are being taken to establish the factual circumstances and the related criminal responsibility, including in cases where the investigation has been suspended. Despite this information, the CM regretted however that in the vast majority of reported cases, perpetrators have not been identified, that in no case has the investigation so far led to the prosecution and punishment of those responsible and that in only five cases have the authorities been able to identify suspects, who have been put on the wanted list. In this context, the CM expressed grave concern

about the continuing failure to address the shortcomings of the successive investigations carried out into the events at issue in the *Isayeva* case, as evidenced by the *Abuyeva and others* judgment (concerning the second investigation) and the recent *Abakarova* judgment (concerning the third investigation). It stressed the importance, in order to prevent impunity, of pursuing the investigations in the cases in this group and rapidly taking further action to counter the problems observed with respect to their effectiveness, in particular the effects of prescription. The CM noted, in this last respect, that investigations into enforced disappearances may be made on the basis of a presumption of the death of the missing person to allow the exceptions to the rules on prescription in Article 78 of the Criminal Code to come into play (applicable in cases of aggravated murder).

The CM also invited the authorities to provide clarifications as regards the qualification given to the crimes at issue in three cases which have so far been reported closed on the basis of prescription and stressed further the importance of exploring other avenues, aimed at learning lessons and ensuring the non-repetition of similar occurrences in the future, including through non-judicial mechanisms, in line also with the European Court's findings under Article 46 in the *Abakarova* judgment. Finally, the CM recalled, that the question of judicial control of criminal investigations is followed by the Committee in the *Mikheyev* group of cases.

■ TUR / Batı (group)

Application No. 33097/96, judgment final on 03/09/2004, enhanced supervision

” **Ineffectiveness of investigations into deaths, torture or ill-treatment** and serious shortcomings in subsequent criminal and/or disciplinary proceedings initiated against members of security forces (Articles 2, 3, and 13)

CM decision: At its meeting of December 2015, the CM noted that the Turkish legislation needed further reinforcement and/or effective implementation to ensure that investigations are carried out in compliance with Convention standards, and urged the Turkish authorities to take a series of additional measures.

In response, Turkish authorities have provided an updated action plan in June 2016 and the CM resumed consideration of this group in September 2016.

At that meeting, the CM recalled its consistent position that respondent States have a continuing obligation to conduct effective investigations into alleged abuses by members of security forces and encouraged the authorities to give full effect to Article 90 of the Turkish Constitution by conducting *ex officio* evaluations as to the reopening of investigations in this group.

With respect to the general measures, the CM noted with interest the setting-up of an inter-institutional group with a view to assessing the administrative authorisation requirement and the status of chief police officers in this procedure and strongly encouraged the authorities to ensure that this group produces concrete proposals for legislative amendments. It also noted with interest the sample judgments of the Court of Cassation and the Constitutional Court and the recent positive trend in judicial practice complying with the procedural requirements of Articles 2 and 3 of the Convention and invited the authorities to provide information on the

outcome of the cases that were remitted by decisions of the Constitutional Court for reopening of investigations.

The CM took note of the on-going efforts made by the authorities, in particular by setting up two working groups to examine the length of prosecution periods and the sentences imposed on members of the security forces, as well as the initiation of an assessment of the 2015 Circular with a view to identifying the measures needed to ensure the effectiveness of the criminal justice system. Whilst stressing the importance of focusing on the Court's case law and the Convention requirements in respect of Articles 2 and 3, the CM invited the authorities to provide updated information on the outcome of the work carried out by the above mentioned working groups and on the assessment on the 2015 Circular.

In conclusion, the CM invited the authorities to provide an updated action plan on the above-mentioned outstanding issues in this group of cases before 1 June 2017.

TUR / Dink

Application No. 2668/07, judgment final on 14/12/2010, enhanced supervision

” **Failure of the authorities to protect the life and the freedom of expression of a journalist:** failure to conduct an effective investigation to identify and punish the authorities who failed to take actions to prevent the assassination of a journalist; impossibility to claim damages in that respect; criminal conviction of a journalist for “denigration of Turkishness” (substantial and procedural limbs of Article 2; Article 10 and Article 13 taken in conjunction with Article 2)

CM decision: The applicants' request for the investigations to be reopened following the delivery of the European Court's judgment was accepted and several investigations were initiated against a number of public officials at different hierarchical levels. It appears that all these investigations were closed between 2011 and 2014, either by means of non-prosecution or non-jurisdiction decisions delivered by public prosecutors. The applicants were subsequently compelled to lodge two applications with the Constitutional Court.

When resuming consideration of this case in December 2016, in the light of the information provided by the authorities on October 2016, the CM noted that the applicants were obliged to apply to the Turkish Constitutional Court when the authorities failed to carry out effective investigations following the Court's judgment in this case. In this regard, it noted with satisfaction that the judgment of the Constitutional Court applied the fundamental Convention principles with regard to the effectiveness of investigations, while also referring to the obligation of Contracting States to abide by the judgments of the Court. It further took note of the re-initiated investigations following the Constitutional Court's judgment and urged the authorities to intensify their efforts to ensure that these investigations be conducted effectively and in compliance with Convention standards so that all those responsible for the violations found in this case are held accountable.

Given that the authorities did not provide any information on general measures taken or envisaged, the CM strongly urged them to provide precise and detailed information on the general measures taken or envisaged with a view to protecting the right

to life of journalists when they face real and imminent threat to their lives. The CM also strongly encouraged the authorities to take into consideration the relevant materials of the Council of Europe in this respect, including the Recommendation of the CM to member States on the protection of journalism and safety of journalists and other media actors (CM/Rec(2016)4).

In conclusion, the CM invited the authorities to provide information on individual and general measures before 1 March 2017.

■ **TUR / Kasa (group) – TUR / Erdoğan and Others (group)**

Application Nos. 45902/99 and 19807/92, judgments final on 20/08/2008 and 13/09/2006, enhanced supervision

» **Deaths occurred during military operations:** death of the applicants' next-of-kin as a result of unjustified and excessive force used by members of security forces; ineffectiveness of the investigations (Articles 2 and 13)

CM decision: The CM has been following the execution of these groups of cases since 2006 and noted the adoption of a series of individual and general measures to tackle the shortcomings identified by the Court. As regards individual measures, in most of the cases, the investigations were reopened.

Furthermore, the authorities adopted measures to ensure that military operations are prepared and supervised to prevent any risk to the right to life. They indicated notably that a directive on special operations is currently being drafted and that the CM would be informed of the details of this draft. A particular attention was also paid to the training of members of the security forces who take part in military operations.

In addition, measures to prevent violations on account of unjustified and/or excessive use of force by members of security forces (the police, gendarmerie or village guards) were taken, notably Article 16 of Law on Duties and Powers of the Police which empowers the police to use gradually increasing force in compliance with the principle of proportionality. Three further circulars were issued in 2007, 2008 and 2012 providing for sanctions to be imposed on members of security forces, if disproportionate use of force during the exercise of duties would had been established.

Finally, the authorities took measures to improve the effectiveness of investigations. As far as the power of the public prosecutor in the initial stages of investigations is concerned, the authorities specified that the majority of the violations took place before the coming into force of the Code of Criminal Procedure in 2005; therefore, similar violations will not take place in the future. As to the issue of the conduct of the initial investigation by members of the security forces, the authorities referred to two circulars, issued in 2008 and 2015, providing that public prosecutors could seek assistance from members of the security forces while carrying out the initial phases of an investigation; however, investigations into allegations of ill-treatment or torture should be conducted under the sole authority of public prosecutors.

When resuming consideration of these groups of cases in March 2016, the CM noted that the progress in redressing the violations has so far been slow and therefore urged the authorities to intensify their efforts to ensure that effective investigations are conducted in compliance with the Convention so that the responsible are held accountable.

As regards general measures, the CM noted with interest the new directive on special military operations that is being prepared and strongly encouraged the authorities to ensure that this directive is drafted in compliance with Convention standards. It further invited them to provide information on the existing legislative framework with respect to the planning and conducting of operations by the gendarmerie and police officers as well as by village guards. In this respect, the CM called upon the authorities to review Article 16 of the Power and Duties of the Police Act and Section 39 of the Regulation on the Powers and Duties of the Gendarmerie in light of the findings of the Court in *Ülüfer* and *Atıman*.

Finally, the CM urged the authorities to provide information on the measures envisaged to prevent future violations of Article 34 of the Convention such as in the *Benzer and Others* case.

■ **TUR / Oya Ataman (group)**

Application No. 74552/01, judgment final on 05/03/2007, enhanced supervision

” **Repression of peaceful demonstrations:** violations of the right to freedom of peaceful assembly and/or ill-treatment of the applicants on account of the excessive force used to disperse peaceful demonstrations; in some cases, failure to carry out an effective investigation into the allegations of ill-treatment and lack of an effective remedy in this respect (Articles 3, 11 and 13)

CM decision / Transfer: The present group is under the CM’s supervision since 2007 and was transferred to the enhanced supervision in 2013, as the different orders issued to law enforcement officers following the first Court judgments to ensure proportionate interventions did not yield necessary results. Shortly afterwards, the execution was included in the general “Action plan for the prevention of Violations of the European Convention on Human Rights” of February 2014.

When examining the situation in September 2014, the CM had noted progress made but requested further information on a number of points, notably on individual measures and the content of the new proposed “Meetings and Demonstrations Marches Act”.

In March 2015, the CM noted with concern, as regards the individual measures, that the legislation introduced in April 2013 was not applicable to the majority of the cases of this group and urged the Turkish authorities to find other means to carry out fresh investigations into the applicants’ allegations of ill-treatment. As to the general measures, the CM urged the authorities to intensify their efforts to amend the relevant legislation, in particular the “Meetings and Demonstrations Marches Act”. The CM also requested the authorities to consolidate regulations concerning the conduct of law enforcement officers during demonstrations and to ensure that any force used is proportionate.

When resuming consideration of this group of cases in June 2016, in the light of the action plan submitted in April 2016, the CM noted, with respect to the individual measures, the information provided as regards two cases in this group. Expressing however its concern on the absence of tangible progress in carrying out fresh investigations into the applicants’ allegations of ill-treatment, notably in the case of

Ataykaya, the CM urged the authorities to intensify their efforts to ensure that fresh investigations are carried out in these cases and to take fresh investigative measures into the circumstances of the death of the applicant's son in the case of *Ataykaya*.

As regards the general measures, the CM noted with satisfaction the setting up of an inter-institutional working group with the aim of preparing concrete proposals for legislative amendments to be introduced to the "Meetings and Demonstrations Act". It also noted with interest that the drafting of the new directive to harmonise the legislation on the use of tear gas has been completed and invited the authorities to ensure that the draft directive requires law enforcement authorities to use force only in situations where a public gathering is not peaceful and represents a danger to the public order and that the force used should always be proportionate in the circumstances.

Further, the CM reiterated its earlier call, of March 2015, to the authorities to consolidate their legislation regulating the conduct of law enforcement officers and fixing the standards as regards the use of force during demonstrations and to ensure that the relevant legislation includes provisions for an adequate *ex post facto* review of the proportionality of any use of force.

Finally, the CM decided to examine the issues regarding the lack of effective investigations and the conduct of the authorities and the courts in criminal investigations and proceedings into allegations of ill-treatment within the context of the *Bati and Others* group of cases.

■ UKR / Afanasyev (group) - UKR / Kaverzin

Application Nos. 38722/02 and 23893/03, judgments final on 05/07/2005 and 15/08/2012, enhanced supervision

” **Ill-treatment in various detention facilities - absence of effective investigations:** use of physical or psychological force, mostly in order to obtain confessions and lack of effective investigations into such complaints and of an effective remedy; systematic handcuffing; in some cases, inadequate medical assistance; irregularities in detention on remand; excessive length of proceedings and lack of effective remedies; non-enforcement of judicial decisions; unfair trial (Article 3, Article 5 §§ 1 - 3 - 5, Article 6 §§ 1 - 3, Article 13, and Article 1 of Protocol No. 1)

CM decision: To address the problems at the origin of violations found by the Court in this group of cases, the Ukrainian authorities initiated a series of legislative reforms. The amended, in 2012, Code of Criminal Procedure provides that self-incriminating evidence cannot be admitted against a defendant during criminal proceedings and thus acts as a safeguard against the use of force by the police in order to extract confessions. Additional safeguards against ill-treatment in custody have also been provided, notably by defining the role of the new investigative judge who shall document complaints of ill-treatment. Furthermore, trainings for police officers with special emphasis on the new provisions of the above-mentioned code have been organised. These measures were supplemented, in November 2015, by the setting-up of the State Bureau of Investigations (SBI) dealing with investigations into complaints of ill-treatment by the police.

When examining this group of cases in September 2016, the CM noted with concern, with respect to the individual measures, that in a large number of cases no progress has been achieved as regards fresh investigations after the Court's judgments became final.

Concerning the general measures, the CM regretted that the authorities did not provide within a reasonable time their assessment of the impact of the reforms introduced by the new Code of Criminal Procedure. The CM further noted that effective implementation of this legislation, notably as to the improvement of safeguards in police custody, would constitute a major step for the execution of these judgments. In this respect, the CM strongly urged the authorities to provide information about the implementation of the legislation at issue, and the other measures taken to eliminate torture and ill-treatment in custody.

The CM further called upon the authorities to take measures to ensure that the State Bureau of Investigations becomes operational without delay so that effective investigations in compliance with Convention standards can be carried out. In this regard, the CM welcomed the commitment expressed by the Ukrainian authorities to engage in bilateral dialogue with the Secretariat and to participate actively in the cooperation activities offered by the Council of Europe and encouraged them to continue to take full benefit of such opportunities in the future.

■ UKR / Khaylo (group)

Application No. 39964/02, judgment final on 13/02/2009, enhanced supervision

” **Lack of effective investigations into deaths** caused, *inter alia*, by road traffic accidents, illegal acts of private individuals and in unclear circumstances (Article 2 procedural limb)

CM decision: To overcome the shortcomings found by the Court in these judgments, the authorities underwent a comprehensive legislative reform with the adoption of a new Code of Criminal Procedure (in force since November 2012). This new code provides, *inter alia*, that the investigator or prosecutor is required to initiate an investigation into a crime no later than 24 hours after it has been reported; failures of the investigator or prosecutor to act may be challenged before the domestic courts. Information on the criminal investigation is then automatically entered into the Unified Register of Pre-Trial Investigations. In addition, a comprehensive reform of law-enforcement bodies was launched in 2014 and is on-going, notably including a separation between the functions of the Ministry of Interior and the national police, a reform which is in line with the European Code of Police Ethics. The authorities have also stated that other changes aimed at promoting protection of human rights were introduced into the domestic legislation.

Resuming consideration of this group of cases in December 2016, the CM noted with concern that the authorities have not provided information on the status of the pending investigations, nor have they provided information on the measures undertaken with a view to correcting the deficiencies established by the Court in the cases in which the proceedings were terminated. Therefore it strongly invited the authorities to provide such information without any further delay.

As regards general measures, the CM noted the important judicial reforms undertaken relating to the conduct of criminal investigations in general. It regretted, however, that the authorities have not provided comprehensive information on the specific measures taken and/or envisaged with a view to addressing deficiencies in investigations into deaths, or their assessment of the practical impact of the reforms introduced by the new Code of Criminal Procedure. In this respect, the CM strongly urged the authorities to provide information about the implementation of the legislation in question as well as other measures taken to respond to the Court's criticisms concerning the investigations in the present cases.

Furthermore, the CM invited the authorities to pursue their bilateral dialogue with the Secretariat and to participate actively in the cooperation activities offered by the Council of Europe and encouraged them to continue to take full benefit of such opportunities in the future.

In conclusion the CM invited the authorities to submit the information requested by 15 March 2017 at the latest and decided to resume consideration of these cases in September 2017 at the latest.

■ UK / Al-Skeini and Others

Application No. 55721/07, judgment final on 07/07/2011, CM/ResDH(2016)298

” **Lack of independent and effective investigations into the deaths of Iraqi nationals** during operations conducted by UK Armed Forces in Iraq (Article 2 procedural limb)

Final resolution: The UK Ministry of Defence established specialised investigative processes that combine criminal investigations by the Iraq Historic Allegations Team (IHAT) with either an inquest-style inquiry (an “Iraq Fatality Investigation”) by a retired High Court judge or judicial oversight by a designated judge of the High Court. The designated judge provides oversight of the timeliness and effectiveness of all of the investigative processes and holds regular case management hearings. The individual investigations in the present cases are all either complete or nearing completion.

The reason for the different processes is that whilst in 2013 the High Court found the IHAT to be sufficiently independent, it also decided that in some cases a further process may be required in order to satisfy fully the other requirements of the Convention. The High Court provided further directions and detailed guidance in this regard, in response to which, the Ministry of Defence decided to set up Iraq Fatality Investigations in certain circumstances at the conclusion of an IHAT investigation when no prosecution will follow. Iraqi Fatality Investigations involve the families of the victims and the wider public, providing them with a great deal of information relating to how the deaths occurred.

The judgment was also widely disseminated across Government and published in a number of legal journals.

■ UK / McKerr (group) – UK / McCaughey and Others – UK / Collette and Michael Hemsworth

Application Nos. 28883/95, 43098/09 and 58559/09, judgments final on 04/08/2001 and 16/10/2013, enhanced supervision

” **Actions of security forces in Northern Ireland in the 1980s and 1990s:** shortcomings in investigations of deaths; lack of independence of investigating police officers; lack of public scrutiny and information to victims’ families on reasons for decisions not to prosecute (Article 2, procedural limb)

CM decisions: In 2014 and 2015, the CM had welcomed the proposal to create a single investigation mechanism (the Historical Investigations Unit – “HIU”) in response to its serious concern that the investigations in some cases were still outstanding. As specified in the Stormont House Agreement, this unit will take over the investigations into legacy cases, currently carried out by the Police Ombudsman and the Historical Enquiries Team, and will have full policing powers and dedicated family support staff. In addition, appropriate steps were announced in this agreement aiming at improving legacy inquests’ functioning.

Resuming consideration of these cases in June and December 2016, the CM expressed concern that the HIU and other legacy institutions agreed in the Stormont House Agreement have still not been established. Indeed, in spite of the significant progress made on this issue at the cross-party talks in autumn 2015, the CM deeply regretted that the talks concluded without the necessary consensus to bring forward legislation required. As a consequence, twice in June and December, the CM called upon the authorities to take all necessary measures to ensure the HIU can be established and start its work without any further delay, particularly in the light of the length of time that has already passed since these judgments became final and the failure of previous initiatives to achieve effective, expeditious investigations. In addition in December, the CM noted the authorities’ ongoing engagement and strongly encouraged them to ensure that the proposed public consultation phase regarding the HIU legislation is launched and concluded within a clear timescale to ensure that the legislation presented to Parliament and the HIU established and made operational without any further delay.

As regards legacy inquests, the CM noted with satisfaction in June the assumption of the presidency of the coroners’ courts by the Lord Chief Justice of Northern Ireland and his constructive new approach to the backlog of legacy inquests. It further considered that such an approach, as well as a reformed inquest system, has the potential to make significant progress. The CM therefore urged the authorities to take all necessary measures to ensure that the Legacy Inquest Unit is established, properly resourced and staffed, without delay, in order to enable effective investigations to be concluded, and that the coroners’ courts receive the full cooperation of the relevant statutory agency. In December, the CM renewed its call, regretting that the necessary resources had not been provided to enable the Legacy Inquest Unit to be established and for effective legacy inquests to be concluded within a reasonable time.

B. Right to life – Protection against ill-treatment: specific situations

BGR / Nencheva and Others

Application No. 48609/06, judgment final on 18/09/2013, enhanced supervision

” **Failure of the authorities to take practical and sufficient measures to protect lives of children with severe mental disorders placed in public care;** lack of prompt and effective investigations into deaths (Article 2)

CM decision: In December 2016, the CM assessed the revised action report submitted by the authorities and noted with regret the impossibility to conduct fresh criminal investigations into the fifteen deaths which occurred between December 1996 and March 1997 in the Dzhurkovo children’s home, since the statute of limitations period had elapsed. As a consequence, the CM accepted that no further individual measures were possible in this case.

As regards general measures, the CM noted with satisfaction the improvement of the material conditions of children with mental disorders since the closure of the previously existing care homes and the opening of nine family-type residential centres offering medical care for children with serious disabilities. However, the CM invited the authorities to indicate whether there are enough of these centres to cater for all children requiring permanent medical care.

The assessment of the living conditions and medical care given to children in family-type residential centres and medico-social care homes is carried out through inspections by different domestic bodies; the CM invited the authorities to provide precise information on the frequency and outcome of these inspections. In this regard, the CM invited the authorities to adopt measures aimed at affording independent representation to children with mental disabilities placed outside their families, enabling them to have complaints relating to their health and treatment examined before a court or other independent body.

The CM took note with interest of the reform imposing a mandatory and systematic autopsy in the event of the death of a child placed outside the family. It encouraged the authorities to introduce additional guarantees to ensure effective investigations into cases where parents have lost interest in their child since his/her placement in an institution, and to provide information on internal practices with regard to the criminal liability of officials responsible for the running or monitoring of residential centres.

All requested information is to be submitted by 1 September 2017.

GEO / Identoba and Others

Application No. 73235/12, judgment final on 12/08/2015, enhanced supervision

” **Violent attacks on LGBT marches and Jehovah’s Witnesses:** failure to adequately protect against inhuman and degrading treatment inflicted by private individuals to LGBT activists (in May 2012) and Jehovah’s witnesses (in 1999-2001) during marches or meetings; absence of any effective investigation (procedural violations of Article 3, taken separately and in conjunction with Article 14).

CM decisions / Transfer: Resuming consideration of these cases in December 2016, given the similarities between the cases of *Identoba and Others*, *Gldani Congregation* and *Begheluri and Others*, the CM decided to examine them jointly under the enhanced procedure.

Having considered the information provided by the Georgian authorities in the revised action plan of November 2016, the CM noted that a new investigation has been opened in July 2016 in the case of *Identoba and Others*. In this respect, it invited the authorities to ensure that this investigation is conducted in a prompt and effective manner and also invited the authorities to provide, without further delay, information on the individual measures taken or envisaged concerning the cases of *Gldani Congregation* and *Begheluri and Others*.

As regards the general measures, the CM noted with interest the legislative measures aimed at prohibiting discrimination, specifically the amendment of Article 53 of the Criminal Code in 2012 and the adoption of the Law on the Elimination of All Forms of Discrimination in 2014. It further noted the training measures undertaken, notably the introduction of several training programs for law enforcement officials. At the same time, bearing in mind the conclusions of the latest report of the European Commission against Racism and Intolerance (ECRI) on Georgia and the concerns expressed by NGOs, the CM invited the authorities to provide further information on the practical impact of these measures and on possible additional measures envisaged, notably in the light of ECRI's recommendations.

■ IRL / O’Keeffe

Application No. 35810/09, judgment final on 28/1/2014, standard supervision

” **Failure to protect children against sexual abuse:** responsibility of the State for the sexual abuse of the applicant in 1973 by a lay teacher in a National School owned and managed by the Catholic Church: the state had entrusted the management of the primary education to National Schools, without putting in place any mechanism of effective State control against the risks of such abuse; absence of effective remedies (substantive limb of Article 3 in conjunction with Article 13)

CM decision / Transfer: Since the early 1970s, when the abuse in this case took place, Ireland has developed and improved its child protection arrangements. Specifically, in relation to child protection arrangements in schools, the Department of Education issued guidelines to both primary and secondary schools in three phases between 1991 and 2011. In February 2016, the Department of Education also updated the procedures for responding to child protection concerns.

Moreover, in 2012, it became a criminal offence to fail to disclose to the police information relating to certain serious offences, including sexual offences against children. Furthermore, on 1 January 2014, the Child and Family Agency, a dedicated state agency responsible for improving safety, wellbeing and outcomes for children, was established. The Agency works closely with the police and intervenes on cases related to the protection of children.

In addition, a number of pieces of legislation were enacted in 2015 to put key elements of the above national child protection guidance on a statutory basis. The

legislation *inter alia* requires mandatory reporting of child protection concerns to the Child and Family Agency by certain professionals, including teachers and other persons working with children; introduces vetting arrangements for people involved in working with children; and places an obligation on all organisations working with children, including schools, to undertake a risk assessment and prepare a Children Safeguarding Statement outlining procedures to manage and reduce risks and safeguard children. Parts of the legislation came into force in December 2015 and April 2016. The Government are implementing the legislation on a phased basis to ensure that the necessary resources, support and training are in place.

When resuming consideration of this case in June 2016, the CM noted, with respect to the individual measures, that the just satisfaction awarded by the European Court has been paid. It recalled that the Court found no violation of the procedural obligations under Article 3, because, as soon as a complaint had been made to the state authorities, a criminal investigation was initiated which led to the criminal conviction of the teacher involved. The CM considered therefore that no further individual measures were necessary.

As regards the general measures, the CM welcomed the significant developments in child protection mechanisms in the school system, aimed at ensuring the detection and direct reporting of child sexual abuse to the police and state authorities, and the fact that those mechanisms will be kept under review. It encouraged the authorities to ensure that the recent legislation referred to in the Action Plan, in particular the Children First Act 2015, is brought into force and fully implemented without any delay and also noted with interest that the authorities have signed the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and invited them to consider ratifying it.

As to the possibility to obtain compensation for history abuse in schools, the CM noted with satisfaction that the State Claims' Agency is making settlement offers to those whose claims fall within the terms of the judgment and thus urged the authorities to ensure that it continues to take a holistic and flexible approach when dealing with these claims and concludes its work without delay.

In addition, the CM noted the existence of a remedy under the European Convention on Human Rights Act 2003 in case a child suffers sexual abuse in the school system today.

In the light of the above, the CM invited the authorities to keep it informed of all relevant developments and decided, in view of the progress achieved, to continue their supervision of this case under the standard procedure.

■ ROM / Centre for legal resources of behalf of Valentin Câmpeanu

Application No. 47848/08, judgment final on 17/07/2014, enhanced supervision

” **Placement of a HIV positive orphan with severe mental disabilities in a psychiatric hospital**, following his release from public care upon turning 18, under appalling conditions leading to his untimely death shortly afterwards; failure to carry out an effective investigation into the circumstances surrounding his death; lack of an appropriate legal framework that would ensure access of persons with mental

disabilities to independent representation, thus allowing examination of their complaints by an independent authority (Articles 2 and 13)

CM decision: Following discussions between the Department for the Execution of Judgments of the European Court and the Romanian authorities in April 2015, the authorities submitted a revised action plan on 7 July 2016. As regards the individual measures, the CM invited the authorities to clarify whether it is still possible to reopen the investigation into the death of Mr Câmpeanu as regards the facts alleged against state services and persons other than medical personnel involved in his care prior to his death and, if so, to keep the CM informed of the outcome of the investigation.

As regards general measures to guarantee the effectiveness of investigations, the CM welcomed the measures adopted by the by the General Prosecutor's office and invited the authorities to provide information on the measures envisaged to guarantee an effective judicial review of such investigations.

The CM further took note of the measures adopted since 2004 to improve the situation in the Poiana Mare neuropsychiatric hospital; however it invited the authorities to increase the medical staff and to ensure the budgetary stability of this facility. Information is also expected on how they have remedied the critical deficiencies in the management of patients' nutritional needs.

Recalling that Mr Câmpeanu was subject to serious shortcomings in the decision-making process regarding his placement after he had attained majority, the CM invited the authorities to ensure that the legal framework in this field guarantees that such decisions fully take into account the specific needs of the protected person. In this respect the authorities were invited to inform the CM of their assessment and of any measures envisaged in the light of this assessment. In addition, information on remedies allowing persons in institutions to complain before the courts or before other independent bodies about their treatment is expected.

Recalling the importance of ensuring that persons with mental disabilities benefit from independent and effective legal protection, tailored to their specific needs, the CM invited the Romanian authorities to provide updated information on the progress made in the adoption of the general measures required by the end of December 2016 and decided to resume the consideration of this issue in March 2017.

■ SVK / Mizigarova

Application No. 74832/01, judgment final on 14/03/2011, CM/ResDH(2016)17

” **Alleged suicide of a person of Roma origin:** Failure of authorities to protect the life, health and well-being of the applicant's husband while in police custody (the applicant eventually shot himself with the gun of a police officer) and failure to conduct an independent and effective investigation (Article 2 procedural and substantial limbs)

Final resolution: Criminal proceedings cannot be reopened due to the suicide of the police officer involved. As a result of the Strategy for Combatting Extremisms for 2011-2014, new guidelines for the police were drafted and a Committee for Prevention and Elimination of Racism, Xenophobia, Anti-Semitism and Others forms of Intolerance acts was created as an advisory body under the Ministry of Interior. Members of the Police Corps were specifically acquainted in 2012 with the conclusion

of the judgment, in particular relating to their obligation to be aware of the legal regulation on the use of service weapon and to care for the allocated weapon not to be stolen or lost. As regards independent police investigations, the inspection service became a fully independent service of the Police Corps, whose members are selected upon strict criteria.

TUR / Kayak

Application No. 60444/08, judgment final on 10/10/2012, CM/ResDH(2016)302

” **Death after being stabbed by a pupil outside school:** failure of the authorities to ensure supervision of the school premises; excessive length of administrative compensation proceedings (Articles 2 and 6 § 1)

Final resolution: Several awareness raising measures were undertaken to prevent peer violence in the schools. As part of them, a strategic action plan was prepared by the Ministry of Education, according to which executive boards in charge of preventing and deescalating violence among peers were set up in provinces, districts and schools.

In addition, an EU-sponsored biannual project “*Prevention of Violence against Children*” was carried out in 2013-2015, with a view to protect children from all kinds of physical, emotional, verbal and psychological violence and to protect their well-being, welfare and integrity. In this regard, a guide for early alert practices as well as training activities on these practices among the school teachers were carried out to raise their awareness on the issue and skills to adequately address the related risks. In the context of this project, the Ministry of Education also prepares since 2013 psychological and social intervention studies aimed at addressing difficult situations in cooperation with pupils, parents and teachers.

Prevention of violence among children is also ensured through a *National Strategy Paper on Children’s Right* for the period 2013/2017. In the school where the incident took place, additional security measures were taken: a wire fence was erected, a guardian was stationed at the security gate, the number of teachers on duty was increased and a video security system was installed. That kind of measures was extended to other schools countrywide.

TUR / Oyal (group)

Application No. 4864/05, judgment final on 23/06/2010, enhanced supervision

” **Failure to protect the right to life** on account of medical negligence or medical errors committed by healthcare providers employed mainly by state-run hospitals (substantial and/or procedural limbs of Article 2)

CM decision: This group of cases has been on the CM’s agenda since 2010 and the authorities, in response to the Court’s judgement, adopted a series of measures to tackle the shortcomings underlined. Specifically, the authorities ensured that in cases similar to *Oyal*, the Social Security Institution will cover the medical expenses of persons who may face similar incidents of medical negligence related to infection with the HIV. This measure was supported by the alignment of domestic blood donation procedures with international standards to prevent infection of patients with the HIV during blood transfusion.

Another issue was the hospitals' refusal to admit patients in critical medical conditions. In this regard, the authorities indicated that the legislation regarding the admission of patients to hospitals has been modified since the violations in the present cases took place. They referred in particular to the Notification of the Ministry of Health, dated 16 October 2009, which provides that any patient who arrives or who is brought to emergency sections shall be admitted for treatment, regardless of whether he or she can pre-pay the fees or has medical insurance. In addition, Circular No. 2008/13 of the Prime Ministry provides that any person who requires urgent medical treatment shall benefit, free of charge, from emergency services of private or public medical institutions.

As to the lack of diligence and excessive length of judicial proceedings regarding medical negligence identified by the Court, whilst recalling the CM's Final resolution in the *Ormanci* group of cases, the Turkish authorities indicated that the statistics presented in the action report to the CM demonstrated an important decrease in the length of proceedings.

As regards the necessity to obtain administrative authorisation to initiate criminal proceedings, the authorities provided general information on the authorisation procedure under Law No. 4483 on the Prosecution of Civil Servants and Public Officials. The law determines the authorities who are empowered to give permission for a state employee or public servant to be prosecuted for an offence committed when exercising official duties and regulates the procedure to be followed. The power is exercised by the highest administrative authority in the province where the state employee is working.

When resuming consideration of this group of cases in June 2016, the CM noted with satisfaction that the applicant's medical expenses in the *Oyal* case will be covered by the Social Security Institution throughout his life-time. Having taken note of the compensation awarded to the applicants by the Court and by the domestic courts in two cases, the CM concluded that no further individual measures are required in these cases.

As regards general measures, the CM noted with satisfaction the large number of measures taken with a view to increasing the quality of health care services in state-run hospitals, notably measures to ensure admission of any patient in a critical medical condition to emergency services without having to pre-pay for services as well as the improvement of the coordination between hospitals during the transfer of patients.

The CM further invited the authorities to provide information on the measures taken to ensure that the domestic courts examine cases of medical negligence with reasonable diligence, notably whether the relevant legislation and its implementation are adequate and effective.

Finally the CM invited the authorities to consider taking measures with a view to remove the requirement of administrative authorisation prior to bringing charges against health care providers or ensuring that this authorisation is applied solely under specific circumstances and conditions.

C. Detention

C.1. Lawfulness of detention and related issues

ARM / Khachatryan and Others and 2 other cases

Application No. 23978/06+, judgment final on 21/07/2013, CM/ResDH(2016)184

” Wrongful conviction, unlawful detention and ensuing right to compensation:

deprivation of liberty without reasonable suspicion; wrongful conviction of Jehovah's witnesses for abandoning military (or alternative) service; lack of enforceable right to compensation for non-pecuniary damage suffered as a result of miscarriage of justice or unlawful detention; lack of effective remedy (Articles 3 of Protocol No. 7, Articles 5 §§ 1c - 5 and 13)

Final resolution: All the applicants were released and none requested reopening of the impugned proceedings. The Law on “Making changes and additions to the Civil Code of the Republic of Armenia” entered into force on 1 November 2014, and was amended in 2016, establishing a mechanism for compensation of non-pecuniary damages for violation of fundamental rights and freedoms guaranteed by the Convention, and stipulating benchmark amounts of compensation that can be awarded. Domestic courts can determine the amount of compensation to be awarded in accordance with the principle of reasonableness, equitableness and proportionality. According to new provisions of the Civil Code, the person wrongfully convicted, unlawfully detained, or convicted and then acquitted, has a right to claim compensation for non-pecuniary damage suffered.

The act of abandoning a military unit or the place where one performed alternative service without authorisation was incorporated in the Criminal Code as an offence on 1 June 2006.

BEL / L.B. (group) - BEL / W.D. (pilot judgment)

Application Nos. 22831/08 and 73548/13, judgments final on 02/01/2013 and 06/12/2016, enhanced supervision

” **Prison facility unsuited for psychiatric pathologies:** continuing detention of persons suffering from mental disorders in prison psychiatric wings unable to provide them with appropriate care; lack of effective remedy to challenge detention conditions (Article 5 § 1; Articles 3 and 5 § 4)

CM decision: In 2007, before the delivery by the Court of judgments in this group of cases, the Belgian authorities had put in place a multi-year internment plan; its implementation continues and aims at progressively releasing internees from prisons and placing them in institutions offering the care required.

After the delivery of the *L.B.* judgment, a new law on internment was adopted in 2014, recognising, for the first time, the delivery of care as an objective of internment and creating an enforceable right for internees to care adapted to their needs. Commissions for Social Defence were replaced by Chambers for Social Defence, organised so as to ensure a better consideration of internees' needs as regards

social reintegration and mental health care; the new Chambers can also decide on granting temporary leave, conditional release or final release.

In the light of the revised action plans submitted by the authorities in September 2015 and April 2016, the CM resumed consideration of this group of cases in June 2016.

At that meeting the CM noted that, following the judgments of the Court, the situation of 20 applicants had been reviewed, that only four of them were still in prison psychiatric wings and that their situation was very closely followed. In this connection, the CM invited the authorities to continue to ensure that all applicants, in particular those remaining in prisons, receive the psychiatric care required. Having regard to the progress achieved on individual measures, the CM decided to continue its supervision of the execution of these cases under the “structural problem” criterion only, thus removing the criterion of “urgent individual measures”.

Having further noted the additional measures adopted by the authorities with respect to general measures since its last examination of this group in December 2015, the CM underlined the persistence of the structural problem of prolonged detention of internees in prison psychiatric wings. It reiterated firmly its call to the authorities promptly to resolve the problem, the persistence of which was also affecting the effectiveness of the preventive remedy before the Commissions for Social Defence. In this context, the CM underlined that these measures had to form part of a global strategy capable of solving the structural problem, taking into account the jurisprudence of the Court and the relevant recommendations and standards of the CTP. Having noted the discussions of a “federal masterplan” aimed at releasing internees from prison by 2019, the CM invited the authorities to provide further information in this respect and, more generally, to keep it regularly informed of relevant developments, so as to allow an assessment of the impact of the measures taken and envisaged.

Finally, regarding actions for compensation before the civil courts, the CM took note of the indication that in the eight judgments delivered since 2014 the applicant’s claims for damages were all granted and invited the authorities to explain why, of the 46 applications for compensation lodged since 2012, only 8 had been decided. The CM further invited the authorities to keep it informed of developments of this jurisprudence, including whether it is in accordance with the jurisprudence of the Court and the relevant practice of the CM.

In its pilot judgment in the *W.D.* case, the Court gave the government two years to remedy this general situation, which originated in a structural deficiency specific to the Belgian psychiatric detention system. The Court held that the State was required to organise its system for the psychiatric detention of offenders in such a way that the detainee’s dignity was respected. In particular, it encouraged the Belgian State to take action to reduce the number of offenders with mental disorders who were detained in prison psychiatric wings without receiving appropriate treatment.

BGR / Stanev (group)

Application No. 36760/06, judgment final on 17/01/2012, enhanced supervision

 **Placement in a psychiatric institution and inhuman conditions of detention:**
unlawful placement in a psychiatric institution, lack of judicial review and impossibility

to obtain redress; inhuman and degrading conditions of detention (2002 and 2009) and lack of an effective remedy in this respect; lack of possibility to request before a court the restoration of legal capacity (Article 5 §§ 1-4-5, Articles 3, 13 and 6 § 1)

CM decision: The most updated information submitted by the Bulgarian authorities in April 2016 in the form of a revised action plan was assessed by the CM in June 2016. The CM noted that the amended legislation which entered into force in January 2016 did not introduce all the safeguards required as regards voluntary placement in institutions: it therefore invited the authorities to introduce them in respect of the placement of persons under partial guardianship, temporary placement by the administration and termination of the placement. Concerning the placement of persons unable to express their will, the authorities were invited to clarify the procedure that will be followed.

Moreover, the CM noted that the relevant provisions of the on-going reform of the regime of legal protection of adults comply with the indications of the Court as regards direct access to a court to request revocation of partial guardianship. However, it invited the authorities to ensure that, pending this reform, persons under partial guardianship will have direct access to a judge to request the restoration of their legal capacity. In the present cases, the authorities were invited to take the necessary measures to accelerate the proceedings concerning the restoration of the legal capacity of Mr Stanev, and to guarantee to Mr Stankov effective access to a court for him to request, if he so wishes, the revocation of his partial guardianship. In addition, the CM noted that, regarding the placement of the applicants in institutions, no further measure was required as they live in protected housing and consent to do so.

Considering the persistence of the problems concerning living conditions in certain social care homes, the CM invited the authorities to explain the concrete measures envisaged to remedy these problems, to specify whether there is a remedy to seek improvement in living conditions, and to adopt additional measures to ensure the effectiveness of the compensatory remedy provided by the State Responsibility Act.

■ **MDA / Muşuc (group) – MDA / Guğu – MDA / Brega (group)**

Application Nos. 42440/06, 20289/02, 52100/08, judgments final on 06/02/2008, 07/09/2007 and 20/07/2010, enhanced supervision

” **Arrest and detention without reasonable suspicion** (Article 5 § 1); **failure to promptly inform about charges** (Article 5 § 2); **insufficient compensation for illegal arrest** (Article 5 §§ 1 - 5); **other violations** (Articles 3, 18+5, 8, 11, 13+5, 8 and 34)

CM decision / Final Resolution: On 7 April 2016, the authorities provided a new action plan presenting the measures adopted so far. These included the adoption in 2006, 2007 and 2012 of a series of amendments to the Code of Criminal Procedure (CCP) introducing the notion of reasonable suspicion, in particular in the context of the initiation of criminal proceedings and the application of surveillance and preventive measures, including arrest. In this respect, Article 166 of the CCP clearly provides that a person can be arrested only if a reasonable suspicion exists that he/she committed an offence. Articles 63 and 64 further provide that if the reasonable suspicion has not been confirmed, the person should be immediately released and

cleared of the charges with the right to compensation and rehabilitation. These amendments were subsequently supported by the adoption, in May 2015, of mandatory guidance by the Ministry of Internal Affairs for police officers to be applied in case of arrest. The guidance note reiterates that all arrests should be made in strict conformity with the national legislation, the European Convention and the Court's case law and stipulates that, when arresting a person, the police officer must check if reasonable suspicion exists.

In addition, in April 2014, in the framework of the Justice Sector Reform 2011-2015, the authorities carried out a compatibility study of national legislation with Article 5 standards. On the basis of this study, amendments to the CCP were drafted seeking to introduce a clearer definition of reasonable suspicion in line with the Court's case law better to guide the domestic courts in performing their duty to verify continuously the existence of such suspicion when deciding on detention on remand and its extension. Upon the request of the authorities, an expert opinion on the draft amendments was prepared by Council of Europe experts in October 2014 in the framework of the co-operation project "Support to a coherent national implementation of the European Convention on Human Rights in the Republic of Moldova", supported by the Human Rights Trust Fund.

When the CM resumed consideration of these groups of cases in June 2016, it welcomed the above-mentioned plan of 7 April 2016 summarising the measures set out above. As regards violation of Article 5 § 1, the CM encouraged the authorities to adopt rapidly the remaining legislative measures envisaged, while bearing in mind the opinion submitted by Council of Europe's experts. Regarding the violations of Article 13 taken in conjunction with Article 8, the CM invited the authorities to provide information on the measures envisaged and/or adopted in order to address the lack of effective remedies underlined by the Court in the *Guțu* case.

As to the violations of Article 5 §§ 1, 2 and 5, Article 18 taken in conjunction with Article 5, Article 11 and Article 34, the CM considered that the general measures taken appear capable of preventing similar violations and therefore closed the examination of these aspects of the general measures required in these cases. As all individual measures had also been taken in the cases concerned with these violations, the CM decided to close its examination of the three cases concerned – *Cebotari*, *Ganea* and *Cristina Boicenco* cases – and adopted in this respect the Final resolution CM/ResDH(2016)147 (see also the *Cebotari* Final resolution below).

■ MDA / Șarban (group)

Application No. 3456/05, judgment final on 04/01/2006, enhanced supervision

” **Pre-trial detention:** unlawfulness; continuing detention despite higher court's decision quashing the detention order; lack of relevant and sufficient reasons for ordering or extending detention; impossibility to obtain release pending trial; failure to ensure a prompt examination of the lawfulness of the detention; non-confidentiality of lawyer-client communications; various breaches of the principle of equality of arms; (Articles 5 §§ 1, 3 and 4; Articles 3 and 34)

Action plan: Following the CM's decision of December 2014, in their updated action plan of October 2015 ([DH-DD\(2015\)1057E](#)), the authorities indicated that a draft law,

amending the Code of Criminal Procedure with a view to securing compliance with Article 5 of the Convention, had been pending before Parliament since August 2015. The authorities provided an action report in May 2016 with respect to measures taken to overcome violations stemming from the general practice of detaining defendants without a court order following the submission of their case files to the trial court. This particular aspect being resolved, the CM terminated the supervision thereof. An updated action plan is expected in view of the detailed examination of this group planned for September 2017.

■ POL / Grabowski

Application No. 57722/12, judgment final on 30/09/2015, enhanced supervision

” **Unlawful deprivation of liberty of a juvenile** in the framework of correctional proceedings without a specific court order and lack of adequate judicial review thereof (Article 5 §§ 1 and 4)

CM decision: To prevent similar violations in future, the authorities initiated a legislative process to amend Article 27 of the Act on Procedure in Juvenile Cases which, according to the European Court, did not satisfy the test of “quality of law” for the purposes of Article 5 § 1 of the Convention. With a view to addressing problem even before the amendments are adopted, the authorities also implemented various awareness-rising measures (translation, publication and extensive dissemination of the judgment, training sessions) together with, in 2016, the introduction of new rules governing the internal functioning of ordinary courts (the “Rules”). According to the authorities, these rules indirectly confirm that a new decision on placement in detention has to be given before the expiry of the detention period set in a previous decision.

When resuming consideration of this group of cases in December 2016, the CM noted that the applicant was no longer detained, the just satisfaction had been paid, and consequently that no other individual measure was necessary.

As to the general measures, the CM noted with interest the authorities’ intention to amend Article 27 of the Act on Procedure in Juvenile Cases, as well as the measures implemented in the meantime, thus allowing a change in the practice of almost all the relevant courts and invited the authorities to provide the content of the legislative amendment envisaged together with a time-table for its adoption.

■ POL / Kedzior (group)

Application No. 45026/07, judgment final on 16/01/2013, enhanced supervision

” **Judicial review of decisions to make and continue placements in a social care home:** lack of judicial review of decisions to make and continue placements in a social care home; impossibility independently to challenge continuing institutionalisation in view of the lack of legal capacity (Article 5 §§ 1 and 4, Article 6 § 1)

CM decision: In response to the Court’s judgments, the Polish authorities provided a first action plan in July 2014 and an updated version in December 2015.

In the light of this information, the CM resumed consideration of this group in March 2016. At this meeting it noted, in respect of the individual measures, that both

applicants remained in social care homes and that, although they could access the domestic courts to obtain a review of their situation and had done so, this procedural safeguard was not reliable for the applicant in *Kedzior*, as it was not guaranteed in law but depended on the courts' practice. The CM considered that both the creation of a robust procedural safeguard for the applicant in *Kedzior*, and the obligation on the authorities regularly to verify the need for the applicants' continued detention, were linked to the general measures to be adopted and urged the authorities to ensure in the meantime that the need for both applicants to remain in social care homes was regularly reviewed.

In respect of the general measures, the CM noted that the failure of the guardianship court to review the request for placement of the applicant in *Kedzior* in a social care home was an isolated incident and that the authorities had undertaken awareness-raising measures to remedy it. The CM also invited the authorities to clarify whether guardianship courts consider the mental health of the persons when deciding on compulsory confinement.

Noting with interest the information on the envisaged amendments to the Psychiatric Protection Act, which would introduce important safeguards, the CM encouraged the authorities to ensure that those amendments will also give the incapacitated person a right to appeal against a decision for his/her compulsory placement in a social care home. It expressed concern however that these amendments did not appear to introduce a mechanism obliging the authorities to conduct periodic automatic reviews to assess whether a person admitted to a social care home needs to remain there and invited them to confirm that these legislative amendments will introduce such a mechanism and, if not, to indicate the measures planned in this respect.

In conclusion, the CM strongly encouraged the authorities to ensure that the necessary measures were adopted without further delay and invited them to provide by 1 July 2016 the outstanding information in an updated action plan/report, including a time-table for the legislative amendments and any other planned measures.

■ ROM / Parascineti (group) – ROM / Cristian Teodorescu (group)

Application Nos. 32060/05 and 22883/05, judgments final on 13/06/2012 and 19/09/2012, enhanced supervision

” **Lack of procedural safeguards regarding involuntary placement in psychiatric hospitals;** ill-treatment caused by overcrowding and poor sanitary and hygiene conditions; provision of medical treatment without the person's consent and without validation by a medical commission (Articles 3, 5 § 1 and 8)

CM decision / Transfer: In response to the Court's findings, the Romanian authorities adopted a series of measures reported in their revised action plan of 7 July 2016, according to which the material, general and individual hygiene conditions have been improved and the number of staff was increased in the psychiatric unit of the Sighetu Marmației Hospital. In addition, the statistical data provided indicated that since 2010 the average occupancy rate in the five sections of this unit had always been below official capacity.

Moreover, since 2010, an accreditation mechanism for hospitals and a National Preventive Mechanism (“NPM”) have been established and are now fully operational. In 2014, the Ombudsman was designated to serve as “NPM” and since 2015, it carries out visits to places of deprivation of liberty, including psychiatric hospitals, and draws up reports and makes recommendations to the facilities.

In addition, the authorities were in the process of setting up a monitoring mechanism for the implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). This role would be filled by an independent administrative authority, placed under parliamentary control. Once operational, it will be tasked with, *inter alia*, monitoring public and private facilities which accommodate persons with disabilities, including psychiatric hospitals and psychiatric units of general hospitals concerned.

As regards the issue of involuntary placement in psychiatric hospitals, the Mental Health Act 2002 was amended in 2012. The new legal framework sets out two procedures for involuntary psychiatric placement: an ordinary and an emergency procedure. The law exhaustively lists the persons and authorities that may request a placement and also the circumstances that may justify it.

When examining this group in September 2016, the CM noted, as regards the living conditions of patients in psychiatric hospitals, that the problems highlighted in the case of *Parascineti* appear to persist in some facilities and hence invited the authorities to provide information on the concrete measures envisaged to resolve them. The CM welcomed, however, the establishment of a NPM and of a council responsible for monitoring the implementation of the CRPD and encouraged the authorities to ensure that the latter becomes operational rapidly.

As regards the issue of involuntary placement in psychiatric hospitals, the CM welcomed the fact that the law now provides for an *ex officio* review by the courts of an involuntary placement decision. In this respect, the CM further invited the authorities to introduce such a review in respect of decisions to renew a placement, to ensure that the applicable legal provisions are in compliance with the Convention. However, the CM noted with concern that the problems highlighted by the Court persist and consequently invited the authorities to provide information on the concrete measures envisaged to ensure the rigorous and consistent application of the legal procedure and safeguards for involuntary placement in all the facilities concerned. Given the necessity rapidly to solve these problems, the CM decided to pursue the examination of the cases in the *Cristian Teodorescu* group under the enhanced surveillance procedure.

Finally, the CM invited the authorities to provide information on the measures taken or envisaged in response to the violation of Article 8 of the Convention found by the Court in the case of *Atudorei*.

■ **RUS / Klyakhin**

Application No. 46082/99, judgment final on 06/06/2005, enhanced supervision

» **Different violations related to detention on remand:** absence of a court decision or absence of a reasoned decision for detention on remand or its extension; failure to

provide information on the reasons for arrest; excessive length of judicial proceedings to review the lawfulness of detention; failure to examine the applicants' complaints against detention orders; hearings conducted in the absence of the applicant and his counsel; absence of an enforceable right to receive compensation in case of violations of Article 5 (Articles 5 §§ 1, 2, 3, 4 and 5); also violations of the right to a fair trial (Article 6)

CM decisions: The measures taken in 2008-2013 to address the structural problems relating to the use of pre-trial detention examined in this group of cases, including legislative reforms and a series of rulings of the Constitutional Court and the Supreme Court, have improved the safeguards surrounding detention on remand and ensured that detention is covered by reasoned court decisions containing clear time-limits. These developments had also ensured that hearings regarding detention on remand are always conducted in the presence of the accused and his counsel. As a consequence, the CM adopted in December 2015 the Final Resolution [CM/ResDH\(2015\)249](#) in the *Bednov* case. Only a limited number of questions relating to Article 5 remain to be examined in the *Klyakhin* group, mainly those related to the lack of clarity of the law relating to extensions of detention to allow the studying of the case file where legislative amendments were underway, and all violations of Article 5 § 4 except those related to lengthy appeal proceedings.

When examining the group in June 2016, the CM noted with satisfaction, as regards individual measures, the information provided confirming that the necessary measures have been taken in most of the cases and that none of the applicants is still detained in violation of Article 5. Furthermore, excessively lengthy proceedings have been brought to an end and, in the cases involving unfair trials, new proceedings were held in two cases and, in a third case, one of the applicants was pardoned and the other applicant saw his sentence reduced and was set free.

The CM noted, however, that questions remained with respect to individual measures in two of the cases - the *Pichugin* case and the *Khodorkovskiy and Lebedev* case – linked with the violation of the right to fair trial (general measures are examined in the context of other groups of cases) and, in the last mentioned case, also with the violation of Article 1 of Protocol No. 1 because the applicant had been made personally liable for tax penalties imposed on the company he managed (*OAO Neftyanaya Kompaniya Yukos*), notwithstanding the Court's conclusion that the decision was arbitrary as neither the primary legislation in force at the time nor the case law of the Russian courts had allowed for the imposition of civil liability for unpaid company taxes on a company's executives at the time. The CM urged the Russian authorities to provide rapidly comprehensive information on the developments in these two cases. In this context, the CM noted also the information submitted by the applicant in the *Pichugin* case that he had sought a presidential pardon, and invited the Russian authorities, if possible, to submit further information in this regard.

In September 2016, when pursuing its examination of individual measures, the CM recalled with satisfaction that in most of the cases no further individual measures were necessary, except for the two above-mentioned cases. The CM noted in their regard the information on the reopening, in the light of the European Court's judgments, of the proceedings by the Supreme Court in both cases, and on the quashing

by the Supreme Court of the impugned decisions on pre-trial detention in respect of Mr Pichugin and Mr Lebedev, of the recalculation of the duration of the penalties of Mr Khodorkovskiy and Mr Lebedev and their absolving from serving the remainder of their sentences, and holding, in the light of the European Court's findings and the concrete circumstances of the cases, that:

- ▶ in the *Khodorkovskiy and Lebedev* case, the violations identified by the European Court did not reach such a severity as to cast doubt on the fairness of the whole proceedings, or the lawfulness, validity and fairness of the delivered sentences, including as regards the impugned civil award of damages against the first applicant in this case;
- ▶ in the *Pichugin* case, there were no grounds to conclude that the examination of the applicant's criminal case *in camera* violated the fair balance between the interests of the applicant and the requirements of the proper administration of justice, and that the lack of a proper and effective possibility to challenge the statements of a witness did not influence the outcome of the proceedings and did not affect the legality, validity or fairness of the sentence.

In response, the CM noted, however, with concern that the information provided did not demonstrate that necessary progress had been achieved with regard to the issue of redress for the violations of the right to a fair and public trial in the *Pichugin* case and the maintenance in force of the impugned award of damages made against the first applicant in the *Khodorkovskiy and Lebedev* case and therefore called upon the authorities to provide rapidly information on the availability of other avenues for redress.

As regards the just satisfaction awarded, the CM noted that the sums awarded had been paid to Mr Pichugin in full in accordance with the bank details provided by him, and invited the Russian authorities to provide information as to whether the subsequent "sequestration"/withdrawal of the sums from the applicant's bank account was made on the initiative of a State authority to secure payment of debt to the State. The CM also invited the Secretariat to explore avenues to receive additional information from the applicant as to the ground of the withdrawal and to share any information received with the Russian authorities; and, in the *Khodorkovskiy and Lebedev* case, the CM invited the authorities to provide information as to whether the seizure of the just satisfaction awarded to Mr Khodorkovskiy was made partially to recover the debt due under the impugned award and, if so, which measures are envisaged to remedy the situation.

■ SUI / Borer

Application No. 22493/06, judgment final on 10/06/2010, CM/ResDH(2016)240

” **Unlawful detention of the applicant after having served his prison sentence**, while awaiting the final outcome in proceedings replacing psychotherapeutic measures with preventive detention (Article 5 § 1)

Final resolution: In this case, the European Court considered that the applicant's detention had no legal basis, and that the Federal Court's previous case-law, invoked by the respondent State, was not a sufficient legal basis, notably because it concerned different cantons than the one where the applicant was detained.

In order to satisfy the requirement of foreseeability of law, the new Federal Criminal Procedure Code entered into force on 1 January 2011, replacing the former cantonal procedural codes for criminal matters. The kind of detention suffered by the applicant in the present case is nowadays covered by the provisions relating to detention during trial.

■ SUI / Mäder

Application No. 6232/09, judgment final on 08/03/2016, CM/ResDH(2016)182

” **Lack of a speedy review of the lawfulness of detention** in a psychiatric clinic on grounds of protective care due to an obligation to obtain a decision on release from a guardianship authority before being able to apply to a court (Article 5 § 4)

Final resolution: On 1 January 2013, the Swiss Civil Code was amended so that appeals against involuntary detention/placement in a medical institution can be brought directly before a court.

■ TUR / Demirel and 195 other cases

Application No. 39324/98+, judgment final on 28/04/2003, CM/ResDH(2016)332

” **Widespread and systemic problems concerning detention on remand** arising out of the malfunctioning of the Turkish criminal justice system and legislation: excessive length of detention on remand and absence of sufficient reasons given by domestic courts for extending such detention; lack of domestic remedy to challenge the lawfulness of detention on remand; absence of a right to compensation for unlawful detention on remand (Article 5 §§ 3, 4 and 5); in some cases, lack of a fair trial on account of excessive length of criminal proceedings; interference with detainee’s correspondence in violation of private life (Articles 6, 13 and 8)

Final resolution: All the applicants have either been released or convicted.

The Code of Criminal Procedure (CCP) was adopted in 2005, setting-up strict time-limits for detention on remand, with a maximum of five years for the most serious crimes. Following amendments of the CPP in 2012 in the context of the “Third Reform Package”, detention on remand cannot be ordered for offences punishable by imprisonment for up to two years and judicial fines, and alternative measures can be applied for all crimes irrespective the maximum sentence. As regards terror suspects, Article 10 of the Anti-Terrorism Act 2014 allowing detention on remand for up to ten years was repealed.

As a result, the alternative measures used have increased significantly. In 2015, over 90% of detainees on remand were held for less than two years. To ensure compliance with the European Court’s case-law, the Constitutional Court assesses the length of detention on remand taking into account the specific circumstances of each case and its complexity: indeed, the five-year limitation does not in itself mean that suspects shall be placed in detention on remand for five years.

To improve the efficiency of the domestic courts’ work and to speed up procedures concerning detention on remand, an integrated IT system was introduced across the judiciary. In addition, the Ministry of Justice initiated in 2012 a project aiming at

raising awareness of judges and prosecutors about the Court's case-law (e.g. study visits to Strasbourg etc.).

The amended CCP includes the obligation for domestic courts to provide sufficient reasons for ordering or extending detention on remand: courts must clearly indicate the evidence against the suspect, which should be based on concrete facts, and must explain why an alternative measure is not possible. The CCP was amended in 2013 in the context of the "Fourth Reform Package" to provide a solid legal basis for ensuring that anyone can challenge the lawfulness of detention on remand in an adversarial procedure. According to this new procedure, courts shall decide on extension of detention on remand after hearing a detainee or his/her legal representative and in his or her presence. A right to compensation for unlawful detention on remand was also introduced in the CCP: this right can be exercised before the underlying criminal proceedings are brought to an end, as acknowledged by the Court of Cassation and the Constitutional Court in their case-law.

■ TUR / Nedim Sener

Application No. 38270/11, judgment final on 08/10/2014, enhanced supervision

” **Unjustified detention of investigative journalists** on account of accusations by the domestic authorities of aiding and abetting a criminal organisation due to the involvement in publication of certain books; impossibility to consult the case-file to challenge effectively the detention on remand; chilling effect of the unjustified lengthy pre-trial detention on the right to freedom of expression (Article 5 §§ 3 and 4, Article 10)

CM decision: After the delivery by the Court of its judgment in this case, the journalists were all released and Mr Şık's book was published.

To prevent further violations of the Convention, an Informal Working Group was established in January 2015, under the auspices of the Secretary General of the Council of Europe and the Minister of Justice of Turkey, concentrating, among other issues, on the application of anti-terror legislation and provisions within the Penal Code affecting freedom of expression.

In addition, the Council of Europe is currently running the EU-Council of Europe Joint Project on Strengthening the Capacity of the Turkish Judiciary on Freedom of Expression, which is co-funded by the European Union, the Council of Europe and the Republic of Turkey. The main objective of the Project is to contribute to a better protection of human rights and fundamental freedoms, especially the right to freedom of expression.

Resuming consideration of this case in March 2016, the CM recalled the Court's well-established case-law that the taking of custodial measures against journalists creates a chilling effect and a climate of self-censorship. In this respect the CM urged the authorities to take targeted and specific measures and put in place safeguards to ensure that domestic law and practice do not allow the imposition of disproportionate measures, such as custodial measures, within the context of the exercise of freedom of expression.

Given the need for general measures to put an end to this practice, the CM invited the authorities to submit, before September 2016, statistics covering the period from March 2012 to June 2016 and highlighting how many journalists have been detained and/or convicted, on what grounds, and how long the detention lasted.

The CM further noted with satisfaction the co-operation of the authorities with the Informal Working Group to prevent violations of the Convention and further invited them to inform it of the work carried out by this Group and the resulting measures foreseen to prevent future similar violations.

■ UKR / Kharchenko (group)

Application No. 40107/02, judgment final on 10/05/2011, enhanced supervision

” **Detention on remand:** structural problem of unlawfulness and excessive length of detention on remand, as well as lack of adequate judicial review of the lawfulness of detention, mainly due to the deficiencies in legislation and practice (Articles 5 §§ 1 and 5)

CM decision: With a view to tackling the problems identified by the Court, the authorities undertook a series of measures, notably the adoption, in 2012, of a new Code of Criminal Procedure, thus resolving the deficiencies in the legislation, in particular those stemming from the 1960 Code of Criminal Procedure. In the light of the promising results, the authorities envisaged further amendment of the 2012 Code with a view to bringing the procedure for detention on remand into compliance with the Court’s case-law and ensuring the existence of effective remedies in case of unlawful detention.

When resuming its examination of this group of cases in September 2016, the CM recalled that none of the applicants were in detention on remand at the time the Court delivered its judgment, as they had either been released or convicted. However, the CM requested information on the acceleration and possible termination of the proceedings in the cases of *Baryshevskyy*, *Pleshkov*, *Taran* and *Rudenko* and on the reopening of the criminal proceedings in the *Ruslan Yakovenko* case.

As to the general measures, the CM noted that the Code of Criminal Procedure in force since 2012 had largely improved the procedure for detention on remand. However, certain violations of Article 5 have not been resolved by the new Code, in particular those demonstrated by the Court’s conclusions in the *Chanyev* judgment, highlighting that detention on remand continues to be imposed in the absence of any court order in certain situations, as well as by the 2015 evaluation report prepared by Council of Europe’s experts on the practical implementation of the 2012 Code of Criminal Procedure. In this respect, the CM strongly invited the authorities to provide, by 31 January 2017 at the latest, a comprehensive action plan or report, fully addressing all the violations of Article 5 found by the Court in the light of the developments of judicial practice, including the absence of effective remedies in respect of unlawful detention, and to provide relevant statistical information.

Recalling the importance for the authorities to continue to benefit from the ongoing cooperation programmes with the Council of Europe in the area of criminal justice, the CM insisted on the urgency of rapidly bringing to a conclusion the remaining legislative reforms needed and on the necessity of ensuring in the meantime that all

possible practical measures are taken by courts and prosecutors to prevent further similar violations of Article 5.

C.2. Conditions of detention – medical care

■ ALB / Dybeku – ALB / Grori

Application Nos. 41153/06 and 25336/04, judgments final on 02/06/2008 and 07/10/2009, CM/ResDH(2016)273

” **Ill-treatment due to inadequate medical care for seriously ill prisoners in prisons**; poor detention conditions incompatible with their state of health; non-compliance with the European Court’s interim measure prescribing the transfer of the applicant to a civilian hospital (Articles 3, 5 § 1 and 34)

Final resolution: Both applicants serving life sentences were placed in appropriate conditions of detention with adapted medical treatment. The legal framework for health care provision in detention was improved by the Law on the Rights and Treatment of Prisoners and Detainees of 17 April 2014, covering many aspects of the medical treatment of persons deprived of liberty, including diagnosis, health care, supply of medicines and equipment. It also integrates prisoners in the compulsory health insurance scheme, guaranteeing free access to medical services. Procedures for the provision of medical care were improved. Treatment of prisoners with mental health disorders is regulated by the Mental Health Law of April 2012.

■ ARM / Ashot Harutyunyan (group) – ARM / Piruzyan

Application Nos. 34334/04 and 33376/07, judgments final on 15/09/2010 and 26/09/2012, enhanced supervision, Final resolution CM/ResDH(2016)37

” **Poor medical care in prison amounting to ill-treatment; practice of placing and keeping the applicants in cage during court hearings** without any real security risk amounting to degrading treatment (Article 3)

CM decision / Final resolution: The issue of access to medical care in prisons has been on the government’s agenda before the Court delivered its judgment in the *Ashot Harutyunyan* case. In 2006, the government issued a Decree establishing new regulations on medical care detained persons through access to medical institutions. The Decree provided *inter alia* that inmates shall be able to have access to a doctor at any time, irrespective of their detention regime and without undue delay. It also indicated that prison health care services shall ensure qualified regular out-patient consultations, emergency treatment and hospital-type units with beds, as well as special dietary regimes, physiotherapy, and rehabilitation. In parallel, in response to, at that time, the recently communicated *Piruzyan* case, metal cages were removed from courts in Armenia.

A series of training events were carried out to acquaint the administrative and health care staff in prisons with the Council of Europe’s standards on detention conditions. Moreover, following the signature in 2015 of the Memorandum of Cooperation between the Ministry of Justice and Yerevan State Medical University, clinical units for prison health care or related professions in penitentiary institutions have been established. More recently, the authorities informed the CM that a new draft of the

Code of Criminal Procedure introducing further safeguards for the medical care of inmates was envisaged to be finalised by the end of summer 2016.

When resuming consideration of this group of cases in March 2016, the CM welcomed the removal of metal cages from all courtrooms in Armenia and decided to adopt the Final Resolution [CM/ResDH\(2016\)37](#) in the *Piruzyan* case.

The CM further noted with interest the adoption of the above mentioned decree and invited the authorities to provide information on its implementation. It also welcomed the safeguards foreseen in the draft Criminal Procedure Code and requested information on its adoption. It encouraged the continuation of training and awareness-raising measures amongst all relevant law-enforcement bodies, in particular those aimed at ensuring proper access to health care for prisoners. It further invited the authorities to present information about the remedies available and on how they guarantee – in theory and in practice – that prisoners have access to the health care services they need. Finally, having welcomed the Council of Europe project “Strengthening Health Care and Human Rights Protection in Prisons in Armenia”, the CM invited the authorities to take full benefit from this project and to provide an updated action plan/report responding to all outstanding questions.

Echoing the CM’s invitation, the authorities provided an updated action plan in June 2016, which is currently being assessed.

■ AZE / Insanov

Application No. 16133/08, judgment final on 14/06/2013, enhanced supervision

” **Inhuman and degrading detention conditions and unfair criminal and civil proceedings:** unlawful refusal by the domestic courts to ensure the applicant’s (a former Minister of Health Care) personal attendance of hearings in civil proceedings concerning his detention conditions and the alleged lack of adequate medical assistance; impossibility to question witnesses about decisive evidence; insufficient opportunities to consult a lawyer in confidential setting; detention in inhuman and degrading conditions (Articles 3, 6 § 1 and Article 6 § 1 taken together with Article 6 § 3c and 3d)

CM decision: In response to the findings of the Court the Azerbaijani authorities provided a first action plan in April 2014 ([DH-DD\(2014\)492](#)), informing the CM *inter alia* of the reopening by the Plenum of the Supreme Court of the civil proceedings concerning the applicant’s conditions of detention in November 2013.

Having received several communications from the applicant, at its meeting in September 2015, the CM strongly urged the authorities to respond to the applicant’s complaints concerning the conditions of his current detention. Noting further the re-opening of the criminal proceedings as a significant step towards erasing the consequences of the violation of Article 6, the CM urgently requested information on the progress of the applicant’s reopened civil proceedings. It further invited the authorities to confirm that the proceedings were attended by witnesses identified by the Court as necessary to ensure the fairness of the trial, that the applicant (or his representative) was able to question those witnesses, and also to explain in detail

how the applicant was able to consult with his lawyers in a confidential setting during the trial.

As to the general measures, the CM noted the demolition and replacement in 2009 of the Baku Detention Facility No. 1 and the renovation of sanitary facilities in Penal Facility No. 13. It considered these developments as encouraging and asked for further information concerning the current situation of prison overcrowding.

In the light of the information submitted by the authorities in February 2016, the CM resumed consideration of this case in March 2016 and recalled that it was imperative that the applicant be detained in conditions complying with Article 3 and that the CM be provided with concrete information confirming that this was the case. It insisted anew on the necessity for the authorities to respond, as a matter of urgency, to the applicant's complaints and to ensure the appropriateness of his detention conditions. The CM has furthermore underlined its deep concern that the reopened civil proceedings about the applicant's conditions of detention, did not appear to be advancing and reiterated its firm request to the authorities to provide information about the likely timetable. Although noting that the reopened criminal proceedings were pending before the Supreme Court, the CM expressed its deep concern about the postponement of its consideration *sine die* by the Supreme Court and similarly requested the authorities to inform it as to when the Supreme Court hearing was likely to take place.

As to the general measures, the CM noted that with the introduction of a heating system and the recent renovation of the sanitary facilities, two of the three cumulative elements found by the Court to contribute to an overall situation of degrading treatment in Prison Facility 13 appeared to have been addressed. It further considered that, whilst the situation of overcrowding in the Facility remained unclear, in light of the Court's finding that this element alone was not severe enough to amount to ill-treatment, it would be more appropriate to focus the supervision as regards general measures on the other violations in this case. In this respect, the CM strongly urged the authorities to take rapidly a position in respect of the general measures needed to remedy the violations of Article 6.

■ BEL / Bamouhammad

Application No. 47687/13, judgment final on 17/02/2016, enhanced supervision

” **Inhuman and degrading treatment on account of repeated transfers between prisons and prolonged prison security measures suffered by a detainee with mental health problems**, administration's delay in providing him with therapy, authorities' refusal to envisage an adaptation of his sentence; lack of effective remedy in this regard (Article 3 in conjunction with Article 13)

Action plan: Under Article 46, the Court recommended that the State should adopt general measures to introduce a remedy adapted to the situation of prisoners who were subjected to transfers and to special measures. In response, the Belgian authorities submitted an action plan on 12 October 2016, currently under assessment.

■ BEL / Vasilescu

Application No. 64682/12, judgment final on 20/04/2015, enhanced supervision

” **Inhuman and degrading treatment on account of conditions of detention in prison:** overcrowding, problems of hygiene and dilapidation (Article 3)

CM decision: Since the events at issue in this case, the authorities have adopted a series of measures, notably the implementation of two master plans resulting in the opening of three new prisons which significantly increased prison capacity; the construction of further prison facilities is envisaged over the next few years. A third Master plan aims at reducing prison overcrowding and renovating the prison infrastructures. A number of measures have also been taken to promote the use of alternatives to detention, including notably electronic surveillance and community service. The authorities have provided statistics showing a decrease of overcrowding in prisons over the years 2013-2015.

When resuming consideration of this case in September 2016, in the light of the revised action of July 2016, the CM noted with interest the comprehensive measures taken and envisaged by the Belgian authorities, aimed both at reducing the prison population and renovating the prison infrastructure with a view to, in particular, implementing an appropriate penological policy. In this respect, it invited the authorities to pursue determined action rapidly to achieve concrete results while drawing from all the relevant recommendations of the Council of Europe, including those of the Committee for the Prevention of Torture (CPT), and to keep the CM informed on a regular basis. It also noted the information provided regarding the decrease in prison overcrowding and invited the authorities to provide updated information on current prison capacity and current levels of occupation, with a view to making a full assessment of the progress achieved. Having further taken note of the measures indicated to overcome the problems of lack of hygiene and dilapidation, the CM invited the authorities to specify, with regard to Antwerp Prison, what steps they planned to address the findings of the Court and to avoid repetitive violations pending the opening of the new prison. Finally, it invited them to continue keeping the CM informed of any development aimed at demonstrating the effectiveness of the preventive remedy with respect to complaints concerning problems of overcrowding, lack of hygiene and dilapidation in prisons.

As to the individual measures, having noted that the applicant's detention ended and the just satisfaction awarded by the Court paid, the CM concluded that no further individual measure is required in this case.

■ BGR / Kehayov (group) - BGR / Neshkov and Others (pilot judgment)

Application Nos. 41035/98 and 36925/10+, judgments final on 18/04/2005 and 01/06/2015, enhanced supervision

” **Pre-trial detention facilities and prisons:** cases mainly concerning inhuman and degrading treatment due to overcrowding and poor sanitary and material conditions; lack of appropriate medical care; lack of effective remedies (Article 3, Article 13 taken in conjunction with Articles 3 and 5, Article 6 §§ 1, 3e, 8 and 13)

CM decision: Continuing systemic problems relating to prison overcrowding and poor material conditions of detention is a long-standing concern, that compelled

the Court to adopt a pilot judgment and the CPT a public statement in 2015. In addition, several meetings and seminars took place in Sofia in December 2013 and 2014, within the framework of the HRTF project, with a view to addressing these structural problems. Moreover, the Bulgarian authorities have been repeatedly invited by the CM to draw full benefit from this HRTF project and all the opportunities for co-operation offered by the Council of Europe.

Resuming consideration of this group of cases in March 2016, the CM strongly encouraged the authorities to adopt rapidly the legislative amendments and other promising measures elaborated in response to the Court's pilot judgment and the CPT's public statement, and to integrate these reforms into a long term strategy aimed at combatting prison overcrowding and poor material conditions of detention. It further recalled that improvements in these areas were vital for ensuring the proper functioning of remedies, in particular the preventive remedy, which had to be put in place before the 1 December 2016 deadline set by the Court. The CM invited the authorities to inform it of the progress made by 30 April 2016.

Noting with satisfaction the intention of the Bulgarian authorities to reassess the accommodation capacity of their penitentiary system on the basis of the CPT standards, the CM invited them rapidly to adopt all the measures foreseen to combat overcrowding and to provide information on the impact of the measures to facilitate access to out-of-cell activities.

Regarding material conditions, the CM noted with interest the on-going or envisaged renovation work as well as the creation of a confidential medical file for each detainee. However, it reiterated its invitation to proceed rapidly with the urgent renovations foreseen for 2016 and to secure adequate funding for this purpose, and to take concrete measures ensuring the proper medical care of inmates and sufficient numbers of health professionals. In addition, the CM invited the authorities to clarify whether the current reform of the "special regime" envisages the possibility for detainees to request, on their own initiative, a review of the regime as it applies to them, and to apply this reform to persons accused of offences punishable by a life sentence.

As regards individual measures, the CM recalled that no further individual measures were necessary in 19 older cases as well as in respect of the applicants Chervenkov, Tzekov, Zlatev, Neshkov, Tolumov and Manolov. However, it invited the authorities to provide information concerning the applicants Harakchiev and Halil Adem Hasan, as well as in the case *Jordan Petrov* concerning the fairness of reopened criminal proceedings against the applicant.

The Bulgarian authorities submitted a revised action plan in December 2016 and additional information in January 2017, stating notably the adoption of legislative reforms, and the postponement of the entry into force of the preventive remedy to 1 May 2017. This information is currently under assessment.

■ EST / Tunis

Application No. 429/12, judgment final on 19/03/2014, CM/ResDH(2016)22

” **Poor conditions of detention** in Tallinn prison amounting to degrading treatment (Article 3)

Final resolution: In 2014, the minister of Justice Regulation No. 72 (2000) on Internal Prison Rules was amended determining at least 3 m² (instead of former 2,5 m²) of floor space per prisoner in a cell. The requirement was implemented in practice. In 2015, an amendment to the Imprisonment Act determined that the number of prisoners in a prison shall not exceed the quota fixed.

■ GRC / Nisiotis (group)

Application No. 34704/08, judgment final on 20/06/2011, enhanced supervision

” **Degrading treatment in overcrowded prisons:** inhuman and degrading treatment by reason of poor detention conditions, between 2005 and 2013, in overcrowded prisons of Ioannina, Korydallos, Larisa, Alikarnassos and Tripoli (Article 3)

Developments: At its last detailed examination of this group of cases in June 2015, the CM considered that, in the light of the statistics presented by the authorities, overcrowding remained a concern and urged the Greek authorities to enhance their efforts to draw up a comprehensive strategy capable of providing a lasting and sustainable solution to the problem. In the same vein, the CM also requested updated information on the impact on the reduction of the prison population (both remand and sentenced prisoners) as compared to the official prison capacity, as well as information on the current situation of the applicants in the cases of *Tsokas* and *Athanasidou*. Bilateral consultations are under way with a view to presenting an updated action plan or report.

■ HUN / Istvan Gabor and Kovacs - HUN / Varga and Others (pilot judgment)

Application Nos. 15707/10 and 14097/12, judgments final on 17/04/2012 and 10/06/2015, enhanced supervision

” **Structural problem of overcrowding in Hungarian prison facilities:** inhuman and degrading treatment on account of poor conditions of detention in both pre-trial and post-conviction facilities; lack of effective preventive and compensatory remedies (Article 3, alone and in conjunction with Article 13)

CM decision: In its *Varga and Others* pilot judgment, the Court requested the authorities to “produce, under the supervision of the CM, within six months from the date on which this judgment becomes final”, that is by 10 December 2015, “a time frame in which to make appropriate arrangements and to put in practice preventive and compensatory remedies in respect of alleged violations of Article 3 of the Convention on account of inhuman and degrading conditions of detention”. In their communication in response to the pilot judgment, the authorities listed a number of measures already taken or envisaged to solve the problem of overcrowding. In this regard, “reintegration custody” was introduced in April 2015 for persons convicted of minor offences or misdemeanours, allowing them to spend the last six months of their detention at home using electronic locating devices. In addition, a new decree in force since 2015 fixes minimum living space per detainee. Finally, the authorities

envisaged the introduction of a new remedy, to be put in place by the end of 2016, providing for financial compensation to detainees whose rights have been infringed.

Resuming consideration of these cases in March 2016, the CM noted with satisfaction that, in response to the pilot judgment, the authorities submitted their action plan on December 2015, within the deadline indicated by the European Court.

As to the individual measures, the CM regretted that no information had been provided on the applicants' situation in a number of cases and that certain applicants were still detained in conditions not meeting the minimum standard for personal living space in prisons facilities. It therefore called on the authorities to provide the outstanding information and to rectify urgently the situation of these applicants by ensuring that their conditions of detention are in line with the Convention.

With respect to the general measures, the CM welcomed the recent introduction of "reintegration custody" and encouraged the authorities to take the necessary further steps significantly to increase the number of approvals of such requests and to enlarge the application of this option. More generally, the CM encouraged them to intensify their efforts to promote alternative non-custodial punitive measures and to minimise recourse to pre-trial detention, and invited them to submit updated information on the impact and further promotion of the alternative sanctions already announced.

The CM further noted with interest the legislative measures taken, in particular the fixing of a minimum living space per detainee, as well as the modification of existing remedies to allow compensation for poor conditions of detention. In this regard, the CM invited the authorities to submit information on the existence of settled domestic practice that would prove the effectiveness of these remedies, their scope of applicability as well as the planned additional compensatory remedy.

Concerning the necessary introduction of a preventive remedy in respect of inhuman and degrading conditions of detention, the CM noted with regret that no information had been received; it therefore called on the authorities urgently to provide information on a time-frame for the putting in practice of such a preventive remedy, as requested by the Court in its pilot judgment.

The CM further noted with regret that no information was provided on the measures taken to address the violations found on account of the conditions of detention under special security regimes and the lack of an effective remedy to challenge the security classification, and thus called on the authorities urgently to submit information in this regard.

Finally, the CM noted with regret that no information was provided on the content of the amended legislation on family visits and on the domestic remedies in case of denial of requests for visits. It further invited the authorities urgently to submit information.

In conclusion the CM invited the authorities to provide the above information by 1 July 2016. Updated action plans were submitted in July and October 2016.

■ ITA / Torreggiani and Others and 1 other case

Application No. 43517/09+, judgment final on 27/05/2013, CM/ResDH(2016)28

” **Overcrowding in prisons:** inhuman or degrading treatment due to poor detention conditions caused by the excessively confined space in Italian detention facilities (Article 3)

Final resolution: The applicants were released or transferred to cells which are not overcrowded.

To address the problem of overcrowded detention facilities, legislative measures were adopted with due consideration given to the CM's Recommendations, to reduce prison entry flows and improve the access to community sanctions and measures. In particular, the Law-Decree No. 146/2013 increased possibilities for early release, increased use of electronic tagging as an alternative to imprisonment, as well as house arrest, etc. The Department for Probation was established as an autonomous body within the Ministry of Justice, charged with the management of community sanctions and measures.

As from 2014, the detention system is under continuous monitoring, through two different tools: the NPM mechanism (“Garantor” of persons deprived of liberty by a public authority) and a computerised system (software application) designed to monitor the living space allocated to each inmate in all the penitentiary structures of Italy. These tools inform the reallocation of prisoners detained in overcrowded facilities. All the above-mentioned measures have permitted a significant increase in the application of sanctions and measures alternative to detention at different stages of proceedings.

These measures were supplemented by a new preventive remedy allowing inmates to complain to a supervisory judge about any violation of their rights, including overcrowded conditions, conferring on the judge the power to order the transfer of the complainant (Law-Decree No. 146/2013). In addition, the Law-Decree No. 92/2014 established a new compensatory remedy enabling inmates to apply to a supervisory judge for a reduction of their remaining sentence: one day of reduction, for each ten days spent in over-crowded detention conditions. Persons already released can apply to civil courts for pecuniary compensation of eight euros per day spent in overcrowded detention conditions.

■ LVA / Kadiķis and 6 other cases

Application No. 62393/00+, judgment final on 04/08/2006, CM/ResDH(2016)122

” **Poor conditions of administrative detention amounting to degrading treatment** in various detention facilities; lack of effective and accessible remedy; ban on correspondence with the family and opening by the prison authorities of letters addressed to the European Court (Articles 3, 8 and 13)

Final resolution: Applicants were either released or transferred to other detention facilities.

To address the conditions of detention in detention facilities, a proper legal framework was introduced and financial resources provided. On 13 October 2005, the Law on Procedure of Keeping of Apprehended Persons was adopted, setting a minimum

living space of 4m² per detainee, mandating access to natural and artificial light, and providing for half an hour of outdoor walking per day. All detention facilities which did not comply with this law were closed. Following a Constitutional Court ruling of 2010, the above-mentioned law was amended to ensure that toilet facilities are partitioned to ensure privacy. Accordingly, major repair and renovation works were carried out in many short-term detention facilities as of 2012, and several places of deprivation of liberty were renovated or reconstructed in 2014 in the light of the Constitutional Court's findings. In addition to the minimum space allocated to each detainee, regulations were adopted by the Cabinet of Ministers in 2006 providing *inter alia* for items of personal hygiene and ensuring to convicts a bath or a shower.

As regards life-sentenced prisoners, the Law on Enforcement of Sentences was amended in 2012 repealing the provision that permitted their detention in a solitary cell for up to six months. In addition, according to this law, special measures (e.g. handcuffs) may be used only after an individual assessment of their necessity by individual risk assessment commissions. This rule was strengthened by the Cabinet of Ministers' Regulation No. 283 of 2015, limiting the use of special measures to exceptional cases only, for the purpose of preventing an offence, disturbance or an escape attempt.

Following legislative amendments in 2004 and 2005, correspondence of convicted persons or those in pre-trial detention with international and national human rights institutions and organisations, the Prosecutor Office, courts and defence counsel may not be subjected to censorship. Concerning the lack of effective remedy to complain about the conditions of detention, State authorities' decisions and *de facto* actions are now subject to the administrative court scrutiny.

■ MDA / Becciev (group) - MDA / Ciorap (group) - MDA / Paladi

Application Nos. 9190/03, 12066/02 and 39806/05, judgments final on 04/01/2006, 19/09/2007 and 10/03/2009, enhanced supervision

” **Poor detention conditions amounting to degrading treatment:** poor detention conditions in penitentiary establishments under the authority of the Ministries of the Interior (*Becciev* group) and of Justice (*Ciorap* group), lack of access to medical care in detention and lack of effective remedy; (Articles 3 and 13, Article 5 §§ 3 and 4); other violations (Articles 3, 8, 34, 6 § 1, 5 §§ 1, 3 and 4)

CM decision: To address the problems at the origin of violations found by the Court in these cases, the Moldovan authorities engaged a series of legislative reforms to introduce effective domestic remedies in respect of poor conditions of detention, and to reduce criminal sanctions related to deprivation of liberty, broaden the spectrum of alternatives to detention and introducing other measures aimed at the humanisation of criminal policy.

Reconstruction and renovation works were conducted in nine penitentiary institutions between 2012 and 2014 and specific resources for the renovation of prisons were allocated in the annual state budget.

In response to the Article 46 judgment in the case of *Shishanov*, the authorities - as part to the Council of Europe Project “Implementing pilot, quasi-pilot judgments and judgments revealing systemic and structural problems in the field of detention on

remand and remedies to challenge conditions of detention” between July 2012 and December 2014 –drafted legislative amendments to introduce effective preventive and compensatory remedies.

When resuming consideration of these cases in September 2016, the CM took note with interest of the updated action plan of July 2016.

As to the individual measures, the CM noted that the applicants in 20 cases had been released or transferred to serve their sentences in another country. Having noted that no further individual measures were required in these cases, the CM invited the authorities to provide information on the current situation of the applicants in the *Segheti, Silvestru* and *Mescereacov* cases. As regards other violations, the CM noted the measures adopted by the authorities and invited them to submit information on the outstanding issues in the cases of *I.D., Mitrofan* and *Holomiov*.

As to the general measures, the CM noted the steps taken by the authorities to improve material conditions in penitentiary institutions and invited them to intensify their efforts in this field. However, it considered with concern the increase in prison overcrowding in recent years and thus strongly urged the authorities to adopt, as a matter of priority, a comprehensive strategy, drawing inspiration from the relevant recommendations of the CPT as well as expert opinion from the project funded by the Human Rights Trust Fund (HRTF). Having further noted the information on the creation of judicial remedies with preventive and compensatory effects required by the quasi-pilot judgment in the *Shishanov* case, it invited the authorities to provide it with the text of the relevant draft legislation. The CM also invited the authorities to provide information on the outstanding issues, notably on further improvement to material conditions of detention, including the construction of a new prison in Chişinău, provision of food to detainees, sanitary conditions, out-of-cell activities, placement of persons in police detention facilities beyond the statutory 72 hours, medical care, censorship of correspondence, family visits and questions related to the finding of a violation of Article 34.

Finally, the CM strongly encouraged the authorities to take full advantage of the technical assistance which the Council of Europe could provide through its various cooperation projects.

■ NLD / Mathew

Application No. 24919/03, judgment final on 15/02/2006, CM/ResDH(2016)126

” Solitary confinement for an excessive and unnecessarily protracted period in the Aruba Correctional Institution (KIA), in a cell which failed to provide adequate protection against the weather and in a location from which he could only gain access to outdoor exercise and fresh air at the expense of unnecessary and avoidable physical suffering (Article 3)

Final resolution: The Governor of Aruba granted the applicant early release on 30 April 2004.

The KIA was renovated, as a result of which the prison cells and the place designated for outdoor activity are now on the ground floor. Disciplinary cells were renovated. Following the publication on 29 January 2008 of the CPT report (CPT/Inf(2008)2), the

State Secretary of Internal Affairs and Kingdom Relations requested the governor of Aruba to submit a report every six months on the measures adopted to address the problems in the prison system. The Aruban Ministry of Justice has also set up a Commission on the Supervision of Prison Cells and Treatment of Detainees to supervise the renovation of the prisons and to deal with legal, individual and personnel aspects. Special attention was paid to training and expanding prison staff and police personnel. In compliance with the CPT's recommendation, all KIA prisoners are guaranteed the care – including specialist care – required by their state of health, free-of-charge to prisoners who do not have the necessary resources to pay.

In addition, the policy regarding disciplinary punishment was amended. Constraint measures are no longer imposed automatically. All cases of placement in punishment cells are directly reported to medical staff who visit such prisoners daily. If they consider continued solitary confinement to be a danger to the health of the prisoner, it is stopped. The judgment was published in several law journals.

■ POL / Horych and 4 other cases

Application No. 13621/08+, judgment final on 05/04/2010, CM/ResDH(2016)128

” **Special detention regime for “dangerous detainees”:** application to “dangerous detainees” of strict prison measures (placement in solitary confinement in high-security cells, constant monitoring, deprivation of adequate mental and physical stimulation) between 2001 and 2012; extended duration of the application of that regime; restrictions on visiting rights and correspondence (Articles 3, 8, 5 §§ 3 and 4, 6 § 1)

Final resolution: The “dangerous detainee” regime has been deeply reviewed in order to comply with the Court's judgments as well as with the CPT's recommendations. On 5 June 2013, the Act on the Measures of Direct Coercion and Firearms entered into force, requiring that the application of measures of direct coercion to the “dangerous detainees” shall be limited to “particularly justified cases”.

As regards the application of that regime, the Code of Execution of Criminal Sentences (CECS) was amended on 10 September 2015 so as to eliminate the automatic qualification of detainees to this category, and to provide for a gradual lessening of the restrictions applied to detainees categorised as “dangerous”. The regime is now applied only if an imprisoned person poses a threat to security of prison during the current imprisonment. In addition, among other factors, the person's behaviour in prison has to be taken into account by the penitentiary commission at each classification review. Moreover, the commissions are obliged to provide meticulous reasons to justify decisions to uphold the status of dangerous detainee to break the cycle of schematic successive duplications of decisions on the extension of incarceration.

Concerning the restrictions related to the regime, the amended CECS provides for more flexibility. Penitentiary commissions notably have the possibility to decide that there is no need for the application of a particular type of measure. Measures were taken to improve the treatment of detainees subject to the regime, e.g. through the organisation and conduct of penitentiary impact activities. The issues concerning “dangerous detainee” status were included in training curricula of prison staff. A reduction in the number of “dangerous detainees” is confirmed by the CPT.

Furthermore, improvements were made to visiting centres in two locations (Gdansk and Crakow) and appropriate conditions for family visits were established in almost every penitentiary unit in Poland.

■ **POL / Kaprykowski and 7 other cases**

Application No. 23052/05+, judgment final on 03/05/2009, CM/ResDH(2016)278

” **Ill-treatment of detainees suffering from physical and mental health problems** due to the lack of adequate medical care in detention, inadequate detention conditions or insufficient consideration of detainees’ state of health by the domestic courts when deciding on detention (Article 3)

Final resolution: The just satisfaction awarded by the Court has been paid. In addition, the issues related to individual health care have been resolved.

The Regulation on the provision of medical services available to persons deprived of liberty, adopted on 14 June 2012, defines the scope of medical services offered to detainees. In addition, a joint Regulation of the Minister of Justice and the Minister of Health was issued on 9 May 2012 to define the conditions, scope and procedure for cooperation between prison health care establishments and public health care facilities. The confidentiality of relationships between prisoners and their doctors has been ensured following a Constitutional Court judgment of 26 February 2014 nullifying Article 115(7) of the Code of Execution of Sentences, thus abolishing the requirement for a prison guard to be present during the provision of health care services to inmates.

Regarding the consideration of the detainees’ state of health in decisions on detention, the Ordinance of the Ministry of Justice of 24 March 2010 compels the prosecutor to ensure the suspect is examined by a doctor if informed that he or she has health problems, and thus to evaluate the appropriateness of continuing the detention on remand. Furthermore, the Minister of Justice established a team on 29 April 2016 in charge with overseeing the modernisation of the Prison Service, notably regarding health care. On 5 July 2012, the monitoring of the Prison Service had permitted the adoption of an Ordinance on detailed requirements which should be met by facilities and equipment of medical units for persons deprived of their liberty, resulting in improvements to medical units in prisons. An additional Ordinance was adopted on 28 January 2014 on the living conditions of imprisoned persons in penitentiary institutions and remand centres with a view notably to introduce higher standards of provision of clothing, underwear, hygienic items, and the renovation of cells, hospitals, infirmaries and doctor’s clinics in penitentiary institutions and remand centres. Further administrative measures were adopted to adapt detention premises and conditions to the needs of disabled persons, pregnant women etc.

Detainees have a right to submit complaints about conditions of detention to different domestic authorities, including prison authorities, penitentiary judges, the Patients’ Rights Ombudsman, the Ombudsman and domestic courts. The penitentiary judge can order the authorities to ensure that a person is detained in appropriate conditions, including with access to adequate health care. There is a right of appeal against a decision of the penitentiary judge to the domestic courts. Courts and prosecution authorities are obliged to verify whether a detainee’s state of health

permits the imposition, maintenance or extension of detention on remand at the moment they make the relevant decision, or *ex officio* at any other time during the detention.

Finally, prisoners and detainees have the possibility to claim compensation in the domestic courts if they were detained in inappropriate conditions, including being deprived of access to health care. According to the authorities, the average waiting time for consultation with a medical doctor (general and specialist) is shorter in penitentiary health care services than for the general population, and persons deprived of liberty usually stay in hospital longer.

All the judgments were translated and published on the website of the Ministry of Justice. Training on health care in prison was organised for judges, prosecutors and prison staff. Training and awareness-raising activities were organised with the Prison Service and the Prosecution Service.

POL / Orchowski and 6 other cases

Application No. 17885/04, judgment final on 22/01/2010, CM/ResDH(2016)254

 **Structural problem of inadequate detention conditions**, mainly due to overcrowding, aggravated by factors such as the lack of outdoor exercise, lack of privacy, insalubrious conditions, frequent transfers (Article 3)

Final resolution: The applicants have either been released or provided with adequate detention conditions. According to the Constitutional Court's case-law abrogating Article 248 of the Code of Execution of Criminal Sentences, the placing a detainee in a cell with personal space below statutory 3m² (but not less than 2m²) is possible only in exceptional circumstances and for a specified period of time. Amendments to this Code were also adopted on 8 June 2010 with a view to broadening the list of entities in which a convicted person may perform unpaid, supervised work for social purposes. In this regard, the Criminal Code was amended by the Act of 20 February 2015 so as to promote the use of alternative penalties in the place of imprisonment. Further amendments were adopted to the Criminal Code, establishing an electronic surveillance system as a way of serving sentences of deprivation of liberty, and increasing the availability of an earlier conditional release. In 2013, legislative changes were adopted for the depenalisation of certain offences.

The creation of new accommodation units, improvement of living conditions, transfer of detainees to less populated penitentiary institutions have permitted to eliminate the overcrowding of Polish detention facilities. The prison population is continuously monitored by the Department of Enforcement of Judgments and Probation in the Ministry of Justice.

A remedy against a decision of the Prison Administration to reduce cell space or placement in an overcrowded cell was introduced in the Code of Execution of Criminal Sentences. Following developments in national jurisprudence, prisoners are able to bring compensation claims for periods of detention in overcrowded conditions under the relevant provisions of the Civil Code.

■ ROM / Bragadireanu (group)

Application No. 22088/04, judgment final on 06/03/2008, enhanced supervision

” **Overcrowding and poor detention conditions:** overcrowding and poor material and hygiene conditions in prisons and police detention facilities, inadequacy of medical care and several other dysfunctions regarding the protection of prisoners’ rights; lack of an effective remedy (Articles 3 and 13).

Action plan: Following the CM decision of March 2015, the Romanian authorities provided a revised action plan for the execution of this group of cases on 19 June 2015, followed by an updated version on 2 October 2015. This revised action plan was then supplemented with information on additional general measures envisaged, provided on 9 February and 13 May 2016, based on which an exchange of views took place on 26 May 2016 with the Romanian authorities. A consolidated action plan (DH-DD(2016)1326), in the light of these discussions, was provided on 11 November 2016. This information is being assessed.

Regarding the individual measures, the outstanding issues, as of 17 February 2016, are presented in the document H/Exec(2016)3.

■ ROM / Enache

Application No. 10662/06, judgment final on 01/07/2014, enhanced supervision

” **Special detention regime for “dangerous” detainees:** classification of the applicant, sentenced to life imprisonment for murder, as “dangerous” prisoner, resulting in long periods of de facto solitary confinement and systematic handcuffing outside the cell, against the background of poor overall detention conditions; lack of information contesting the allegation that the authorities pressured him to withdraw his application before the European Court (Articles 3 and 34)

Action plan: In addition to the information provided earlier, the Romanian authorities provided updated action plans in May (DH-DD(2016)715) and November (DH-DD(2016)1330) 2016. This information is being assessed.

■ ROM / Țicu (group) – ROM / Gheorghe Predescu

Application Nos. 24575/10 and 19696/10, judgments final on 01/01/2014 and 25/05/2014, enhanced supervision

” **Ill-treatment of detainees with psychiatric condition:** placement of the applicants in ordinary detention facilities severely overcrowded; lack of adequate medical care in prison and penitentiary hospitals; failure to ensure constant psychiatric supervision or assistance and counselling to help accepting and dealing with the illness; lack of investigation in the alleged repeated acts of violence suffered from other prisoners in the Iași prison; inaction of the Prosecutor’s Office despite being informed by the prison administration (Article 3 procedural and substantial limbs)

CM decision: Since the last examination of these cases by the CM, the authorities envisaged a series of measures to improve the situation of detainees with serious mental health problems in prisons. They have notably indicated the establishment of specialised psychiatric institutions, as provided by the Law on Execution of Safety Measures and Prison Sentences of 2013 and by its implementing regulations adopted

in April 2016. The establishment of such sections is subject to the adoption of the order currently pending before the National Prison Administration. The draft order, which has been subject to public debate, provides that sections designed to accommodate inmates with serious mental health problems but in a stable condition are to be established within the medical units of each detention wing receiving such inmates. These sections will be completely separate from the common detention areas.

When resuming consideration of these cases in December 2016, in the light of the updated action plan of October 2016, the CM considered that no further individual measures are required.

As regards the general measures, the CM noted with interest the comprehensive action envisaged by the authorities to improve the care afforded to prisoners with mental health problems. It noted, in this regard, the ongoing measures aimed at putting in place, in prisons, separate medical sections for prisoners with severe mental health problems and strongly encouraged the authorities to deploy all efforts for these sections rapidly to become operational. Furthermore, the CM urged the authorities to ensure that these sections are equipped with the necessary resources, including qualified medical and nursing staff, so that they are fully operational and capable of effectively fulfilling their mission. Noting the shortage of psychiatrists mentioned by the authorities, the CM asked whether, in addition to the proposal to offer training in psychiatric care to nursing staff working in prisons, the authorities have explored or intend to explore the possibility of taking measures to attract psychiatrists to work in prisons.

In conclusion, the CM invited the authorities to provide updated information on the adoption of the provisions to be elaborated jointly by the Ministries of Justice and Health on the medical supervision of prisoners with severe psychiatric problems and to continue regularly to inform the CM about the progress in the implementation of all the envisaged measures and their impact.

■ **RUS / Kalashnikov (group) - RUS / Ananyev and Others (pilot judgment)**

Application Nos. 47095/99 and 42525/07, judgments final on 15/07/2002 and 10/04/2012, enhanced supervision

” **Poor detention conditions in remand centres (SIZO):** poor conditions of detention (acute lack of personal space, shortage of sleeping places, unjustified restrictions on access to natural light and air etc.) in various remand centres pending trial and lack of effective remedies (Articles 3 and 13)

Developments: The Russian authorities have undertaken the series of measures aimed at solving the problems revealed by the European Court’s judgment, as reflected notably in documents DH-DD(2012)1009E, DH-DD(2013)936E, DH-DD(2014)580E, DH-DD(2015)862E. At its last detailed examination of this group, the CM invited the authorities to provide information as regards the distribution of the burden of proof, the scope and nature of the remedial measures which can be ordered by courts and the mechanism for the reduction of court fees and other costs for the complainants. In response, the authorities reported the adoption in March 2015 of a new Code of Administrative Procedure which would considerably improve

remedies against poor detention conditions. An assessment of the measures taken so far is under way with a view to identifying the outstanding issues.

■ **SVN / Mandić and Jović (group)**

Application No. 5774/10, judgment final on 20/01/2012, enhanced supervision

” **Overcrowding in prison:** degrading treatment on account of poor conditions of detention in overcrowded Ljubljana prison and lack of an effective remedy (Articles 3 and 13)

CM decision: The applicants having been released in all cases and the just satisfaction awarded by the Court having been paid, the execution of this judgment is now only subject to the adoption of general measures.

In this respect, the authorities have indicated that, in December 2011, the layout of Ljubljana prison was restructured to increase its official accommodation capacity from 128 to 135 prisoners. According to the authorities, the most sustainable solution for preventing overcrowding in prison was the construction of a new prison facility. To this end, in 2008 the authorities acquired a plot of land and construction is expected to start in 2018 and to be concluded by 2020.

Meanwhile, in 2012, the prison authorities built a roof over the outdoor yard in Ljubljana Prison to make it possible for prisoners to spend time outdoors even in bad weather. As to the issue of high temperatures in summer, the authorities have ensured that temperatures are monitored in prison cells twice a day during summer; prisoners are allowed to use fans or to ventilate their cells by opening their cell windows. In addition, responding also to the CPT report (CPT/Inf(2013)16), the time that prisoners can spend outside their cells has been increased, so as prisoners in the remand section now spend four hours a day out of cell, while the prisoners in the closed section spend just under ten hours out of cell, including four hours a day outdoors.

Moreover, the authorities have introduced a preventive remedy by amending in 2015 Article 83 of the Enforcement of Penal Sanctions Act, thus allowing prisoners to lodge applications before district courts to complain about detention conditions. A compensatory remedy for inadequate conditions of detention has also been made available to released prisoners under Article 179 of the Civil Code. As regards prisoners who are still serving their terms, they can claim compensation directly from the person who inflicted the damage.

The authorities provided a revised action plan in March and the CM resumed consideration of this case in June 2016.

Whilst noting the temporary measures introduced for the transfer of convicted and remand prisoners from Ljubljana prison to other facilities, the CM invited the authorities to develop a long lasting solution to the problem of overcrowding in Ljubljana prison and to improve the living conditions there through the development of a strategy for that purpose, while bearing in mind the possibility of increased application of non-custodial measures, as highlighted by the CPT in its relevant reports.

As regards the conditions of detention itself, the CM invited the authorities to provide their assessment of the measures taken to resolve the problem of high temperatures

in Ljubljana prison during the summer months. It further encouraged the authorities to increase the amount of time remand prisoners can spend outside their cells and to continue their efforts in developing a varied programme of activities so that prisoners can spend their out-of-cell time engaged in purposeful activities.

Regarding the necessity to adopt an effective remedy, the CM welcomed the strengthening of the preventive remedy enabling judicial protection in cases of poor conditions of detention for convicted prisoners; it however regretted that such a remedy has not been made available to remand prisoners and urged therefore the authorities to put in place an effective remedy ensuring speedy reaction and redress for their complaints of inadequate conditions of detention on remand, ordering the transfer to another prison if necessary.

Finally, the CM invited the authorities to provide clarifications as to the scope and the practical use of the compensatory remedy provided by Article 84 of the Enforcement of Penal Sanctions Act.

■ TUR / Gülay Çetin

Application No. 44084/10 judgment final on 05/06/2013, standard supervision

” Inhuman or degrading treatment of a remand prisoner diagnosed with cancer

(Article 3, Article 14 in conjunction with Article 3)

CM decision / Transfer: During its supervision of execution of this judgment, the CM called upon the authorities to align the situation of remand prisoners with those of convicted prisoners in terms of release on medical grounds. In response, in 2013, the authorities introduced legislative amendments to Articles 16 and 116 of the Penal Enforcement Law; remand prisoners may be released by a decision of a public prosecutor if they cannot maintain their life in prison due to a serious disease or disability and if their release does not pose a serious and concrete danger in terms of public safety. If the public prosecutor rejects the request for release, the decision can be judicially reviewed. After the amendments to the abovementioned law, the domestic courts started changing their practice as regards decisions taken to release remand prisoners on medical grounds. In addition, the Constitutional Court, following the recognition of the right to individual petition on September 2012, has the authority to issue interim measures and order the release on medical grounds.

Moreover, based on Article 16 § 3 of Law No. 5275, the Forensic Medicine Institute can also issue an opinion on the release of a remand prisoner, without conducting a physical examination where the medical file contains sufficient evidence that the detainee is suffering from a serious medical condition.

When resuming consideration of this case in March 2016, in the light of the action report submitted in January 2016, the CM noted that no individual measure, apart from the payment of just satisfaction which had already taken place, was possible because the applicant died in prison on July 2011.

With respect to the general measures, the CM noted that the difference of treatment between remand and convicted prisoners in terms of their release on medical grounds has been remedied following the above mentioned legislative changes introduced in 2013, as well as the change of practice of domestic courts and the

introduction of a judicial review procedure. In this respect, the CM strongly encouraged the authorities to continue ensuring that all judicial safeguards for the release of detained prisoners are implemented effectively and appeal proceedings are concluded without delay.

In view of preventing similar situations in future, the CM invited the authorities to bring the implementing legislation (i.e. the Rules governing the Prison Service and the Execution of Sentences and Security Measures) into compliance with the above-mentioned legislative changes and provide information on the applicability of the relevant legislation on presidential pardon to remand prisoners.

As regards the activity of the Institute of Forensic Medicine, the CM noted with interest the improvements in the change of practice and encouraged the authorities to pursue their efforts with a view to maintaining this positive trend so that opinions on the basis of medical files, where sufficient evidence exists indicating the detainee's medical condition, are issued without delay.

In light of the above, the CM decided to transfer this case to the standard supervision procedure.

■ **UKR / Nevmerzhitsky (group) - UKR / Yakovenko (group) - UKR / Melnik (group) - UKR / Logvinenko (group) - UKR / Isayev (group)**

Application Nos. 54825/00, 15825/06, 72286/01, 13448/07 and 28827/02, judgments final on 12/10/2005, 25/01/2008, 28/06/2006, 14/01/2011 and 28/08/2009, enhanced supervision

” **Poor detention conditions:** violations resulting mainly from poor detention conditions, inadequate medical care in various police establishments, pre-trial detention centres and prisons; lack of an effective remedy; other violations: unacceptable transportation conditions; unlawful detention on remand; abusive monitoring of correspondence by prison authorities, impediments in lodging a complaint with the Court; excessively lengthy proceedings (Articles 3, 5 §§ 1, 4 and 5, 6 § 1, 8, 34, 38 § 1a and 13).

Developments: A comprehensive action plan remains awaited.

C.3. Actions of detention authorities in remand centres and prisons

■ **ARM / Piruzyan and 1 other case**

Application No. 33376/07+, judgment final on 26/09/2012, CM/ResDH(2016)37

” **Failure to provide adequate medical assistance in detention:** placement of the accused in a metal cage during court hearings without any real risk of their absconding; lack of legal basis or sufficient reasons for ordering or extending detention on remand and when examining lawfulness of detention (Articles 3 and 5 §§ 1 - 3 - 4)

Final resolution: The applicants did not avail themselves of the possibility to request reopening of proceedings.

In the context of the Joint Programme between the European Union and the Council of Europe *Reinforcing the fight against ill-treatment and impunity*, the Armenian Penitentiary Service conducted training for medical personnel of penitentiary institutions in March 2014. This training was organised with a view to ensure inmates' and

detained persons' right to have access to the same range and standard of treatment as any other potential patient. In addition, a two-day workshop on enhancing skills on specific aspects of Articles 3 and 5 of the Convention was organised for professionals from the Ministry of Justice, the Prosecutor's Office and the Judicial Department, in the presence of Council of Europe international experts.

In compliance with the CPT's recommendations, and in the framework of the 2012-2016 *Strategic Programme of Legal and Judicial Reforms*, a new Criminal Code started being drafted. The government issued guidelines for prison health care services, stipulating in particular the inmates' right of access to a doctor, the principle of regular out-patient consultations and emergency treatment as well as the accessibility of diets, physiotherapy and rehabilitation. The new draft Criminal Procedure Code also envisages that, in addition to the medical examination carried out by a doctor chosen by the police authorities, an arrested person, prior to acquiring relevant rights of an accused, shall be granted the right to request a medical examination by a doctor of his or her own choice. The violations of Article 5 §§ 1, 3 and 4 are being supervised in the *Poghosyan* group of cases under standard supervision (not included in the present Thematic Overview). Concerning the right to health care in prison, the project "*Penitentiary reform – Strengthening the health care and human rights protection in prisons in Armenia*" is under implementation to improve the capacity of penitentiary staff to apply European prison standards. Metal cages were removed from all courtrooms immediately following the issuing of the European Court's judgments.

■ **EST / Julin** and 1 other case

Application No. 16563/08+, judgment final on 29/08/2012, CM/ResDH(2016)307

» **Ill-treatment of a prisoner due to his confinement to a restraint bed for nine hours**; lack of access to court to complain about strip-search (Articles 3 and 6 § 1)

Final resolution: The just satisfaction awarded by the Court has been paid and the administrative complaint proceedings were reopened in the *Julin* case.

On 5 September 2011, the Minister of Justice adopted Ruling No. 44 on "*Supervisory control in prison*" regulating the imposition of direct coercion and supervision of prisoners' health. The appendix of Ruling No. 44 provides a blank form to be completed to record the use of direct coercion and results of the medical examination after physical force, a service weapon, special equipment or means of restraint have been used. This form must specify the reasons for use of a special measure.

In addition, the Imprisonment Act was amended (§ 71) on 1 June 2015 to ensure the examination of the state of health of the prisoner by a health care professional after use of direct coercion. Under this Act, means of restraint – *i.e.* handcuffs, leg-irons, means of fixation, restraint jacket, restraint stool or bed – are considered as prison's special equipment and their use must be recorded (Ruling No. 44). The prisoner must also be examined by a health care professional (§ 71).

The Supreme Court's case-law takes into account the present judgments to assess the proportionality of the use of a restraint bed in prison and determine the amount of non-pecuniary damage.

Domestic law and practice guarantee the right of prisoners to access to a court and, in this respect, the violation found was of isolated nature. The judgment was translated, published and disseminated.

■ FRA / Renolde

Application No. 5608/05, judgment final on 16/02/2009, CM/ResDH(2016)24

” **Placement of mentally disturbed prisoners in disciplinary cell without prior consideration of their state of health and leading to their suicide;** lack of adequate medical care in penitentiary facilities (Articles 2 and 3)

Final resolution: The authorities initiated a strategic action plan 2010-2014 aiming at improving the management of psychiatric care in prison. It provides for a graduated three-level care allowing the facility in which mentally-ill detainees can be held to be determined according to their health status. Two circulars were adopted in 2012 in order to explain this graduated care to the professionals involved, and to establish health as a criterion to be taken into account in decisions concerning detainees.

With a view to improving the follow-up of vulnerable detained persons, the *methodological guide regarding healthcare of persons placed in judicial safekeeping* was revised in 2012. It now includes a detailed sheet related to the management of pharmaceutical and medication provision in detention facilities, setting out the conditions for prescription, delivery and administration of medication to sick detainees.

As regards the improvement of the prevention and detection of the risk of suicide in prison, an action plan of the minister of Justice was adopted on 15 June 2009. It provides for the systematic consideration of this risk before any placement of a detainee in a disciplinary cell through an adequate reception procedure including an interview with an officer. Awareness-raising and staff training measures were adopted, and a better sharing of information on persons presenting a suicide risk is ensured between all actors involved. Among these actors, the doctor has to be informed daily of placements in disciplinary cells, is charged with the examination of each detainee at least twice a week, and can deliver a medical certificate to the head of the prison facility to suspend the enforcement of the disciplinary measure if he/she considers that the detainee's state of mental or physical health is incompatible with it.

In addition, the Penitentiary Law of 24 November 2009 provides that any placement or lockdown cannot exceed 30 days for the most serious facts, thus repealing the former limit of 45 days set by decree. It also provides for measures aimed at improving the detention conditions of detainees placed in disciplinary wards.

■ GEO / Aliev

Application No. 522/04, judgment final on 13/04/2009, enhanced supervision

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

CM decision: Several action plans/reports with relevant information on measures taken have been submitted by the Georgian authorities with a view to the

implementation of this judgment. One of the issues initially at stake in this case - the conditions of detention - was closed through the adoption of the Final Resolution [CM/ResDH\(2014\)209](#) in the *Ghavitadze* group, after the introduction, in 2011, of a new remedy to complain about detention conditions and the construction of new prison buildings, equipped with modern infrastructure.

As to the use of force and the effectiveness of investigations into ill-treatment by state agents, the CM continued the execution supervision thereof within the *Aliev* case, as well as, more broadly, under the *Gharibashvili* group of cases. In this connection, the authorities amended the Code of Criminal Procedure, to ensure that the victim is involved in the investigation procedure. In addition, a special training programme for judges and assistants to judges was taught within the Georgian High School of Justice. A National Action Plan was approved by the Inter-Agency Council on combating torture and ill-treatment foreseeing:

- ▶ strengthening the legal, procedural and institutional mechanisms for combating ill-treatment;
- ▶ measures for efficiently identifying ill-treatment cases and conducting timely, independent and effective investigations;
- ▶ protection, compensation and rehabilitation of victims;
- ▶ awareness-raising activities.

In the light of the action plan provided by the authorities in July 2016, the CM pursued its examination of this case in September 2016. It noted that no other individual measure was necessary to remedy the substantive violation of Article 3, since the applicant was no longer detained and the just satisfaction for non-pecuniary damage has been paid.

Noting the initiation of a new investigation, as well as the authorities' undertaking to provide updated information in this regard by end of November 2016, the CM invited them to respect this deadline and to ensure that they would make an assessment and inform it of what can be still done, what can no longer be done for practical or legal reasons, what means are deployed to overcome existing obstacles and what concrete results are expected to be achieved and within what time-limit.

As to the general measures concerning conditions of detention, the CM recalled the adoption of the Final Resolution [CM/ResDH\(2014\)209](#) in the *Ghavitadze* group and welcomed the authorities' commitment to continue their cooperation with the CPT.

Finally, concerning the effectiveness of investigations, the CM recalled that this item is examined under the *Gharibashvili* group of cases.

C.4. Detention and other rights

TUR / Söyler

Application No. 29411/07, judgment final on 20/01/2014, enhanced supervision

- » **Prisoners' voting rights:** automatic and indiscriminate ban on voting for any person found guilty of an intentional offence, irrespective of the nature and gravity of the offence (Article 3 of Protocol N° 1)

Action report: After having submitted an action plan in December 2014, the Turkish authorities provided an updated action report in November 2016 (DD(2016)1345) describing developments ensuring prisoners' right to vote, which is currently under assessment.

■ **UK / Hirst No. 2 - UK / Greens and M.T (pilot judgment)**

Application Nos. 74025/01 and 60041/08, judgments final on 06/10/2005 and 11/04/2011, enhanced supervision, Interim Resolution CM/ResDH(2015)251

” **Voting rights of convicted prisoners:** blanket ban on voting imposed automatically on convicted offenders serving their sentences (Article 3 of Protocol No. 1)

CM decision: In 2015, the CM had adopted an interim resolution expressing profound concern that the blanket ban on the right of convicted prisoners in custody to vote remains in place. The CM recalled not only the obligation of the United Kingdom to abide by judgments of the Court under Article 46, but also the pilot judgment *Greens and M.T.* adopted by the Court in 2011 stating the authorities' obligation to introduce legislative proposals to amend the blanket ban on prisoner voting. Following the three options proposed in 2012 to amend the voting rights of convicted offenders detained in prison, the CM had, in 2014, welcomed the specially appointed Parliamentary Committee's recommendation that all prisoners serving sentences of 12 months or less should be entitled to vote as a constructive contribution to the legislative process.

Resuming consideration of these cases in December 2016, the CM welcomed the presence of the Minister of State for Courts and Justice. The CM noted the information provided by the authorities on the enhanced dialogue which had taken place since December 2015, as foreseen in the abovementioned interim resolution. In addition, the CM noted that the authorities are actively working on measures to respond to these judgments. In this regard, it invited them to submit, at the latest by 1 September 2017, concrete proposals to comply with these judgments together with an indicative timetable for their implementation. As in its previous decisions, the CM emphasised the obligation of the United Kingdom, as for all Contracting Parties, to abide by the Court's judgments.

The CM decided to resume consideration of these cases in the light of the proposals submitted at the latest in December 2017.

D. Reception / Expulsion / Extradition

D.1. Lawfulness of detention and reception conditions

■ **BEL / Muskhadzhiyeva and Others (group)**

Application No. 41442/07+, judgment final on 19/04/2010, CM/ResDH(2016)41

” **Continued detention, awaiting expulsion, of accompanied foreign minors** in closed facilities inappropriate to their young age (Articles 3 and 5 § 1)

Final resolution: The Law of 15 December 1980 on access to the territory, stay, establishment and return of the foreigners was amended in 2011 to enshrine the

principle of non-detention of families with minor children. According to this principle, families with minor children must not be kept in detention in closed facilities, unless the detention location is suitable for these families.

In this context alternatives to detention have been developed, placing the emphasis on open single-family homes or residence in private housing. Detention in a closed facility remains exceptional and only where the reception conditions are designed for vulnerable groups, notably families with minors. Measures ordering placement or extending the detention can be appealed against before the council chamber.

■ **BGR / Rahmani and Dineva**

Application No. 20116/08, judgment final on 10/08/2012, CM/ResDH(2016)54

” **Lack of a timely review of an appeal contesting the lawfulness of detention pending deportation** and lack of possibility for the court to order release of the foreigner even though the detention was considered unlawful (Article 5 § 4)

Final resolution: The applicant was released and granted a residence permit. Following legislative changes in 2009, domestic courts examining an appeal against a detention order pending deportation or expulsion are now competent to order the release of the foreigner, if detention is found to be unlawful or no longer justified. To ensure prompt examination of appeals against detention, the relevant provisions foresee specific time-limits: one month at first instance and two months on appeal. The judgment was translated, published and disseminated.

■ **GRC / M.S.S. (group) – GRC / Rahimi**

Application Nos. 30696/09 and 8687/08, judgments final on 21/01/2011 and 05/07/2011, enhanced supervision

” **Transfer by Belgium of asylum seekers to Greece under the Dublin II Regulation:** degrading conditions of detention and subsistence once in Greece, special problems with regard to unaccompanied minors, deficiencies in the Greek asylum procedure and risk of expulsion without any serious examination of the merits of asylum applications or access to an effective remedy (Articles 3 and Article 13 in conjunction with Articles 2 and 3)

Developments: Since the last CM decision in December 2015, in response to observations made by Amnesty International, the Greek authorities provided additional information in March 2016 (DH-DD(2016)182) outlining issues related to the asylum procedure, administrative detention, reception conditions for asylum seekers and unaccompanied minors. This information is being assessed.

■ **GRC / S.D. (group)**

Application No. 53541/07, judgment final on 11/09/2009, enhanced supervision

” **Unlawful detention of asylum seekers, unaccompanied minors and irregular migrants pending execution of deportation orders;** lack of effective remedy to challenge the lawfulness of the detention (Article 5 §§ 1 and 4)

CM decision / Transfer: According to the information provided by the authorities, all the applicants were released from detention. As to the general measures, a legal

basis was created in 2008 for the detention of asylum seekers. In 2016, new legislation was adopted (Article 46 of L. 4375/2016 transposing EU Directives 2013/32 and 2013/33). According to this legislation, third country nationals shall not be held in detention for the sole reason that they have applied for international protection, in the absence of specific reasons provided in law, and after the possibility to apply less coercive alternative measures has been examined. Another Law adopted in 2011, transposing the EU “Return” Directive, provided for the application of less coercive measures than that of detention for irregular migrants against whom a deportation order has been issued. Furthermore, as of 1 January 2011, Article 76(3) of Law 3386/2005 enabled administrative courts to examine the lawfulness of detention.

When resuming consideration of this group of cases in September 2016, in the light of the authorities’ action report of July 2016, the CM welcomed the above-mentioned legislative measures, as well as the domestic courts’ case law on the lawfulness of the detention of asylum seekers and irregular migrants, in line with the European Court’s case law. In view of the legislative changes concerning the administrative detention of asylum seekers and irregular migrants and the European Court’s case law in this connection, the CM considered that the necessary measures in response to the violations of Article 5 § 1 had been taken and decided to close its supervision of this issue.

The CM further invited the authorities to provide it with more information on the domestic courts’ case law concerning the examination of the lawfulness of the detention of asylum seekers and irregular migrants and, pending its submission, the CM decided to transfer the cases to standard procedure.

■ LVA / Nassr Allah

Application No. 66166/13, judgment final on 21/10/2015, CM/ResDH(2016)192

” Excessive length of proceedings related to the review of an asylum seeker’s detention (Article 5 § 4)

Final resolution: The applicant was issued a temporary one-year residence permit on the basis of the subsidiary protection status granted. His current whereabouts are unknown.

To provide for specific time-limits for effective and speedy review of an asylum seeker’s detention, the new Asylum Law entered into force on 19 January 2016, authorising the State Border Guard Service to detain an asylum seeker up to six days. The asylum seeker has a right to appeal against the detention to the district (city) court within 48 hours, to be decided by the court within 24 hours. The asylum seeker participates in the hearing and is assisted by an interpreter if necessary. The decision of the district (city) court is sent to the asylum seeker and the State Border Guard Service within 24 hours, if necessary ensuring its translation. An asylum seeker has a right to request the court to review the further necessity of detention at any time.

■ MLT / Suso Musa and 4 other cases

Application No. 42337/12+, judgment final on 09/12/2013, CM/ResDH(2016)277

” Arbitrary and unlawful detention of asylum seekers: excessive delay in the examination of asylum request and inadequate conditions of detention, without

an effective and speedy remedy under domestic law to challenge the lawfulness of detention; continued detention after the determination of asylum claims; degrading treatment due to the cumulative effect of lengthy detention in poor conditions inappropriate for persons in a vulnerable position because of their immigration status and their fragile health (Article 5 §§ 1 and 4 and Article 3)

Final resolution: Following the European Court’s judgments, Malta underwent an overall review of the National Immigration Policy, giving up its systematic across-the-board detention policy. Former policies were then replaced by a new “Strategy for the Reception of Asylum Seekers and Irregular Migrants” published in December 2015, which was drafted in cooperation with NGOs and the UNCHR.

As part of administrative measures, the staff of the Office of the Refugee Commissioner (ORC) has been increased to speed up the processing of asylum applications. Improvements in the management of applications were made, notably through the introduction of a scheduled time-table for each asylum determination officer, the development of a core group of interpreters assisting officers during interviews, and the ongoing training system enabling each officer to keep abreast of the new legislation. In addition, the ORC implemented several European Refugee Fund (ERF) projects, introducing notably a database for the electronic management of documentation during the asylum process and issuance of new protection certificates, and enhancing structural and material facilities of the ORC.

As part of legislative changes, the Immigration Act was amended on 4 December 2015 to empower the Immigration Appeal Board (IAB) to order release from custody where the detention of a person is not or is no longer required and also in those cases where there is no prospect of return within a reasonable time. A person’s release can be ordered even if his/her identity is unknown: in this regard, the Office of the Principal Immigration Officer holds regular meetings with consuls officials from countries whose nationals are awaiting deportation in order to request their identity and travel documents. When deciding, the IAB has to take into consideration the reasonableness of the duration of detention and the lawfulness of the detention decision itself; it also has to provide individualised reasoning.

Legal Notice 417 of 2015 entitled “Reception of Asylum Seekers (Minimum Standards) Regulations” transposes the provisions of Council Directive 2013/33/EU. Under this Notice, the review of the lawfulness of detention has to be made after seven working days by the IAB, with the possibility to extend detention for another seven working days. Extension must be applied only for “duly justified reasons”. During the review, individuals have access to free legal assistance and representation. Concerning detention for the purpose of removal, time-limits were introduced: six months, which may be extended by twelve months in case of lack of cooperation by the third country national and delays in obtaining travel documents from the country.

Under Legal Notice 417, improvements to detention conditions were introduced: access to fresh air, information, facilities for families, sanitary facilities and less overcrowding. A system for the official lodging of complaints about conditions of detention is in place and detainees have access to the Board of Visitors for Detained Persons.

■ RUS / Kim

Application No. 44260/13, judgment final on 17/10/2014, enhanced supervision

” **Detention of stateless persons for breach of residence regulations:** arbitrary detention because the grounds for detention did not remain valid for the whole period due to the lack of a realistic prospect of the applicant’s removal; lack of judicial review of the lawfulness of detention; poor conditions of detention in the detention centre for aliens in St Petersburg, designed for short-term detention (notably because of overcrowding, inadequate hygienic facilities and insufficient outdoor exercise) (Articles 3 and 5 §§ 1 and 4)

Action plan: In their action plan of May 2015, the authorities informed the CM that they were considering the necessity of legislative reform setting a time-limit for detention in the centres for aliens pending removal. They also indicated that information concerning conditions of detention in these centres would be submitted later. In May 2016, the NGOs Human Rights Centre “Memorial” and Anti-Discrimination Centre “Memorial” submitted a communication (DD(2016)864) concerning the general measures in this case. Detailed information about the measures taken to ensure adequate conditions of detention in special facilities in view of administrative expulsion and deportation were submitted in the framework of the execution of the *Adeishvili (Mazmishvili)* case (DH-DD(2016)417).

D.2. Lawfulness of expulsion or extradition

■ BGR / C.G. and Others (group)

Application No. 1365/07, judgment final on 24/07/2008, enhanced supervision

” **Shortcomings in judicial oversight in the context of expulsion or deportation based on national security grounds:** lack of adequate safeguards in deportation proceedings and shortcomings of judicial oversight (insufficient review of the relevant facts and lack of judicial oversight of the proportionality of the expulsion measure, non-compliance with the principle of adversarial proceedings, and lack of publicity of judicial decisions); lack of suspensory remedy in case of risk of ill-treatment in the destination country; different violations related to the applicants’ detention pending the implementation of the expulsion measures (unlawful detention and unjustified extension) (Article 1 of Protocol No. 7 and Articles 8, 5 § 1f, 5 § 4, 3 and 13).

Action plan: The basic legislative framework for the judicial review required was developed in response to the *Al-Nashif* group of cases – see the Final Resolution CM/ResDH(2015)44. In response to the additional problems raised in this group of cases and the CM decision of March 2015, the Bulgarian authorities provided an action plan in July 2015, supplemented by a further one in December 2016 (DH-DD(2017)8), detailing individual measures taken and providing further information on the developments of the procedure in expulsion cases, and in particular cases involving national security considerations, under the Aliens Act of 2007 as amended in 2009 and 2011. This information is currently being assessed.

■ CYP / M.A.

Application No. 41872/10, judgment final on 23/10/2013, enhanced supervision

” **Arbitrary deportation:** decision taken in 2010 to deport the applicant to Syria despite the fact his asylum claim was pending, entailing his subsequent detention; absence of an effective remedy with automatic suspensive effect to challenge the erroneous deportation decision; also absence of effective and speedy review of the lawfulness of detention (Article 5 §§ 1 and 4, Article 13 in conjunction with Articles 2 and 3)

CM decision: To implement the Court’s judgment, the authorities have notably adopted, in 2015, two laws establishing an administrative court with jurisdiction to hear challenges to the lawfulness of both deportation and detention orders under Article 146 of the Constitution; that court became operational in January 2016. In addition, a bill to amend the Refugee Law was submitted to the Council of Ministers and was tabled before Parliament in March 2016.

When resuming consideration of this case in March 2016, the CM noted, that the applicants were no longer detained and the applicant in the *M.A.* case had been granted refugee status and was no longer at risk of deportation. Having noted that the just satisfaction awarded by the Court had been paid to all the applicants, the CM considered that no further individual measures were necessary. The CM also noted the authorities’ indication that the violations of Article 5 § 1 in the *M.A.* case were the result of isolated errors and that broad dissemination of the judgment to the relevant authorities should be sufficient to avoid similar violations in the future. The CM invited the authorities to submit information on the measures proposed to respond to the separate violations of Article 5 § 1 in the cases of *A.H. and J.K.* and *H.S. and Others*.

The CM welcomed the authorities’ decision to establish an administrative court to enable speedy examination of challenges to detention orders, as well as the proposed amendment to the Refugees Act creating an obligation on the domestic courts to consider such claims, and urged the authorities to ensure rapid implementation of these measures.

The CM further noted the authorities’ proposal to introduce an automatically suspensive remedy when an individual alleges that his or her expulsion would violate Articles 2 and/or 3 of the Convention and strongly encouraged them to ensure that these amendments are adopted and come into force without delay.

In response to the CM’s invitations, the authorities submitted an updated action plan in July 2016.

■ ESP / A.C. and Others

Application No. 6528/11, judgment final on 22/07/2014, enhanced supervision

” **International protection requests:** lack of an effective remedy with automatic suspensive effect to challenge decisions denying international protection taken in the framework of an accelerated procedure on account of risk to life or risk of ill-treatment in case of return to the country of origin (Article 13 taken in conjunction with Articles 2 and 3)

Action report: An action report was submitted by the Spanish authorities in November 2015 (DH-DD(2015)1307). Its assessment led to the identification of outstanding issues with respect to the general measures; bilateral discussions in this respect with the Department for the Execution of Judgments took place in 2016.

■ FRA / I.M.

Application No. 9152/09, judgment final 02/05/2012 enhanced supervision

” Lack of access to an effective remedy to challenge a removal measure

(Article 13 taken together with Article 3)

CM decision: When examining this case in December 2016, the CM recalled that the violations found by the Court mainly resulted from the automatic classification of the applicant's application for asylum under priority procedure, the short deadlines for the remedies available to him and the material and procedural difficulties involved in submitting evidence while he was deprived of his liberty and making his first asylum application. It further noted that the applicant had obtained refugee status and that the just satisfaction awarded by the Court was paid and concluded that no further individual measure was required.

The CM noted further the removal of automatic classification under accelerated procedure of application for asylum submitted by an applicant in detention, in favour of an individual examination. It also noted the possibility for the Office for the Protection of Refugees and Stateless Persons (OFPRA) to oppose the classification of an application for asylum under accelerated procedure and request reclassification under normal procedure, which is an additional guarantee. To assess the effectiveness of the new mechanism, the CM invited the authorities to confirm the allocation of the burden of proof and provide clarification regarding the proof of the dilatory nature of an asylum application submitted by an applicant in detention. The CM further invited the authorities to explain how the new remedy before the administrative court to challenge continued detention offers more guarantees than the existing remedy to challenge expulsion, criticised by the Court. Lastly, the CM invited the authorities to clarify whether, following the reform, the remedy to appeal an OFPRA decision before the National Asylum Court became suspensive, in respect of applications for asylum submitted in detention.

In conclusion, the CM invited the authorities to provide a revised action report, answering these questions, as soon as possible and at the latest by the end of March 2017. An action report was submitted in December 2016.

■ ITA / Hirsi Jamaa and Others

Application No. 27765/09, judgment final on 23/03/2012, CM/ResDH(2016)221

” Collective expulsion to Libya of Somalian and Eritrean nationals intercepted

at sea, in spite of the risk to suffer ill-treatment there, and insufficient guarantees protecting them against being arbitrarily returned to their countries of origin, having regard to the lack in Libya of any asylum procedure or recognition of the refugee status granted by the UNHCR; lack of effective remedy (Article 3, Article 4 of Protocol No. 4, Article 13 together with Article 3 and Article 4 of Protocol No. 4)

Final resolution: The whereabouts of nine of the applicants remains unknown. Just satisfaction for them was placed in an account at their disposal. The Italian authorities made contact with the Libyan authorities who stated that if found, the applicants would be well treated and not repatriated arbitrarily.

Operations to intercept the vessels on the high seas and to push the migrants back to Libya were the consequence of bilateral agreements, suspended following the 2011 events in Libya. In July 2012, the authorities confirmed that the policy of push-backs would not be resumed and that guarantees as regards the treatment of refugees and asylum seekers, in particular as regards their access to relevant domestic procedures, would be consistently applied in all circumstances, including during military and coast guard operations on the high seas. Naval units have the necessary instructions to this effect and that, when migrant boats are intercepted, all passengers are to be disembarked in Italy where they can make a claim for asylum or humanitarian protection before Territorial Commissions. Legislative Decree 142/2015 was adopted to implement Directive 2013/33/EU on laying down standards for the reception of applicants for international protection and Directive 2013/32/EU on common procedures for granting and withdrawing international protection. This Decree provides *inter alia* for special training for police officers dealing with migrants.

■ ITA / Sharifi and Others²¹

Application No. 16643/09, judgment final on 21/01/2015, enhanced supervision

» **Indiscriminate collective expulsions:** Collective expulsion of aliens to Greece, risk of deportation to Afghanistan and lack of access to asylum procedure (Article 4 of Protocol No. 4, Article 3, Article 13 combined with Article 3 and with Article 4 of Protocol No. 4).

CM decision: Following the events referred to in this judgment (2008-2009), the authorities introduced a reception policy enabling irregular migrants to have access to international protection procedures. This policy was subsequently supported by a circular of 29 June 2011 sent by the Department of Public Security assuring that there will not be any repatriation without examination of the individual situation. Furthermore, Legislative Decree No. 142 of 18 August 2015 has incorporated into national law the directives 2013/33/EU (laying down standards for the reception of applicants for international protection) and 2013/32/EU (on common procedures for granting and withdrawing international protection). This decree addresses, *inter alia*, the provision of information for migrants, personal interviews, the detection and protection of vulnerable persons and training for police officers and members of the territorial commissions tasked with receiving and assessing asylum applications. In addition, the authorities have concluded co-operation agreements with UNHCR and various NGOs to provide migrants with information, interpretation and cultural mediation services in the Adriatic ports.

As regards the readmission agreement between Italy and Greece, the authorities ensured that it is being applied in compliance with the principles reiterated by the Court in its judgment; this agreement does not apply to asylum seekers. In this

21.. Case against Italy and Greece. The violations in respect of Greece are examined in the context of the *M.S.S.* group.

respect, there has been a significant reduction in the number of people returned to Greece in recent years.

When resuming consideration of this case in September 2016, in the light of the revised action plan submitted in July 2016, the CM encouraged the authorities to provide information on the steps taken to clarify the current situation of Mr Karimi, Mr Zaidi and Mr Azimi, who were not granted international protection in Italy.

With respect to the general measures, the CM noted with interest the measures adopted by the authorities to ensure that migrants arriving in the Adriatic ports have effective access to international protection procedures in Italy. It further noted that there is still some uncertainty as to the effectiveness of these measures and invited the authorities to provide information on the current organisation and functioning of the reception system in these ports and on the financial and human resources allocated. The CM also took note of the assurances provided by the authorities that the readmission agreement concluded between Italy and Greece is now being applied in compliance with the requirements of the Convention. It noted, however, that the available information related to 2012-2013 and thus invited the authorities to provide clarification of the current procedure being followed from the arrival of these persons, on how their effective access to the services provided by NGOs in the Adriatic ports is assured, and on the time-frames and arrangements for sending them back.

Finally, whilst noting the significant reduction in the numbers of migrants returned to Greece communicated by the authorities, the CM considered that statistical clarifications were necessary to be fully able to evaluate the situation. It consequently invited the authorities to provide this information and, in any event, to confirm that they have stopped transferring persons to Greece who seek international protection in Italy.

█ MKD / El-Masri

Application No. 39630/09, judgment final on 13/12/2012, enhanced supervision

» **Secret “rendition” operation to CIA agents:** German national, of Lebanese origin, victim of a secret “rendition” operation during which he was arrested, held in isolation, questioned and ill-treated in a Skopje hotel for 23 days, then transferred to CIA agents who brought him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months (Articles 3, 5 and 13, the latter also in conjunction with Article 8)

CM decision: Following the events of this case, in 2009 the Criminal Code was amended to increase the maximum term of imprisonment from five to eight years for cases of ill-treatment and torture by law-enforcement officials.

In 2013, in co-operation with the European Commission and the Council of Europe, the authorities started implementing the ten-year project “Capacity building of law enforcement institutions for appropriate treatment of persons detained or deprived of their liberty”, which aimed at strengthening the compliance of law enforcement officials with Convention requirements, in particular as regards detention. Following the European Court’s judgment in this case, in 2013 the Prosecutor General issued a binding instruction to all prosecutors in the country aimed at preventing similar

violations: this obliges prosecutors to report to the Prosecutor General cases allegedly involving ill-treatment and torture at the hands of State agents.

In addition, training and awareness-raising measures were implemented to support the legislative measures and ensure that members of the special forces, intelligence services and border police are continuously trained and made aware of the inadmissibility of ill-treatment, torture and arbitrary detention while bearing in mind the findings in the present judgment.

More recently, the authorities informed the CM that they intend externalising the supervision of the operations of the intelligence and security service and, to this end, to amend the Police Law so as to set up a new independent body with powers to investigate effectively allegations of misconduct by law-enforcement officials. These amendments were envisaged by the end of 2016; in the meantime, the supervision is carried out by the Ombudsman and Parliament.

As regards the lack of an effective remedy, the Criminal Procedure Act was amended in 2010, to introduce a right to appeal a prosecutor's decision to a higher prosecutor. The authorities also envisaged amending the Constitution by the end of 2015 to introduce the right to lodge a constitutional complaint in cases of human rights abuses.

The authorities provided an updated action plan in November 2015. When resuming consideration of this case in September 2016, the CM noted with profound regret that the authorities had so far provided no information in response to the CM's decision of December 2015 on the outstanding general measures.

Bearing in mind that the authorities intend to set up an *ad hoc* commission to establish the relevant facts and responsibility of the individuals involved, the CM firmly urged them to accelerate the setting-up of this commission and to provide an indicative timetable as well as information on how its members would be appointed to ensure its independence, impartiality and capacity to carry out an effective investigation into the facts of the present case.

In conclusion, the CM instructed the Secretariat to prepare a draft interim resolution for their DH meeting in March 2017, unless information was provided on tangible progress for the execution of this judgment.

POL / Al Nashiri - POL / Husayn (Abu Zubaydah)

Application Nos. 28761/11 and 7511/13, judgments final on 16/02/2015, enhanced supervision

” **Secret “rendition” operation to CIA agents:** complicity of Polish authorities in the CIA High-Value Detainees Programme, that enabled the US authorities, in 2002, to secretly detain, torture and ill-treat the applicants in a CIA detention facility in Stare Kiejkuty in Poland, and to transfer them from its territory in 2003 despite the existence of a real risk that they would be subjected to treatment contrary to Article 3, or could face a flagrant denial of justice, or that the applicant (*Al Nashiri*) would be exposed to death penalty (Article 2, Article 3 - procedural and substantial limbs, Articles 38, 5 and 8, Article 13 in conjunction with Articles 5 and 8, Article 6 § 1 and Article 1 of Protocol No. 6)

CM decisions: Given the importance and the urgent character of the individual measures needed to tackle this issue as underlined by the Court, the CM has been examining this case at each of its Human Rights meeting since March 2015. In February 2016, the Polish authorities indicated that the United States authorities had informed them that their request for diplomatic assurances could not be supported. The United States authorities had further indicated that the Convention and decisions of the Court did not reflect the obligations of the United States under international law.

Resuming consideration of these cases in March 2016, the CM expressed deep concern about the United States authorities' decision not to support the request for diplomatic assurances despite the active steps taken by the Polish authorities.

The CM recalled its recent declaration on the death penalty in the United States of America, underlining that capital punishment contravenes the principles set out in the Universal Declaration of Human Rights and in the Convention. It further recalled at each of its meeting in 2016 that the United States has observer status with the Council of Europe thus sharing its ideals and values and consider that this status and such ideals and values encourage cooperation. It therefore urged the United States authorities to reconsider their response to the Polish authorities in the context of any future request for assurances. The CM also welcomed the readiness of the Polish authorities to repeat their request for assurances and urged them to raise the issue at high political levels, calling also on the Secretary General and representatives of the member States of the Council of Europe to raise the issue of diplomatic assurances in their contacts with the United States authorities. In this respect, the CM invited the Secretary General to transmit the present decision to the Permanent Observer of the United States to the Council of Europe.

At its meeting in June, in the light of the information provided by the authorities in May, the CM noted with satisfaction that a new request for diplomatic assurances was being prepared by the Chancellery of the President of Poland to be sent to its United States counterpart and urged them to submit this request without delay.

As regards the domestic investigation, the CM remained concerned that concrete results had still not been achieved and urged the authorities to ensure that it is completed without further delay.

In September, the CM noted with satisfaction that a new request for assurances was sent by the Secretary of State of the Chancellery of the President of the Republic of Poland to the Deputy Secretary of State of the United States of America. Recalling that the Court found that Mr Abu Zubaydah's indefinite detention without trial amounted to a flagrant denial of justice, the CM noted with interest the information that his request for release was being reviewed by the United States authorities for the first time since 2007, with the potential to provide redress. In this regard, the CM strongly encouraged the Polish authorities proactively to follow up on the current situation of the applicants and invited them to keep the CM fully informed of any developments, both concerning the proceedings in the United States and the request for diplomatic assurances.

The CM pursued examination of these cases in December 2016 in the light of the updated action plan submitted in October 2016 and expressed anew serious concern at the absence of reply from the United States authorities to the latest Polish request for diplomatic assurances submitted in July 2016.

As to the domestic investigation into the events, the CM expressed regret at the response given by the United States authorities to the latest Polish request for mutual legal assistance and, in particular, at their declared unwillingness to process any further similar request. It further noted with concern the continuing absence of tangible results in the domestic investigation in Poland and called upon the Polish authorities to increase their efforts, without further delay, to make progress.

Regarding the violation of Article 38 of the Convention, the CM noted with satisfaction that the Polish authorities had started reflecting on the possibility of putting in place a procedure for unhindered communication and exchange of documents with the European Court, and encouraged them to complete their reflections as soon as possible. Confronted by the absence of information convincingly addressing the root causes of the other violations, the CM called on the authorities to reflect not only on the oversight of the daily operational work of the intelligence services, but also to scrutinise high-level decision making in this area.

In conclusion, the CM decided to resume consideration of the urgent individual measures at their next DH meeting in March 2017 and invited the authorities to provide updated information concerning the other individual and general measures in good time for their Human Rights meeting in June 2017.

■ SVK / Labsi

Application No. 33809/08, judgment final on 24/09/2012, enhanced supervision

” Expulsion in violation of Article 3; failure to comply with interim measures:

expulsion of a person suspected of terrorist activities from the Slovak Republic to Algeria on 19 April 2010, despite a real risk of being subjected to treatment contrary to Article 3 and despite an interim measure indicated by the Court under Rule 39 of its Rules, leading to a violation also of the right to individual petition as the level of protection that the Court was able to afford was irreversibly reduced; also lack of suspensive effect of appeals against expulsion to the Constitutional Court (Article 13)

CM decision: When examining this case in March 2016, the CM recalled that it had closed its examination of individual measures, as the applicant had been at liberty since 2012 and enjoys his constitutional rights in Algeria. Examination of measures related to the violations of Article 3 and 34 has also been closed, as the CM considered that these violations were of an isolated nature, following the assurances given by the authorities that in the light of the *Labsi* judgment, the domestic courts apply the same test as the European Court in respect of Article 3, as well as the authorities' engagement to respect any interim measure indicated in the future by the European Court.

In light of the above, the general measures relating to the violation of Article 13 are the only aspect of the case that is still under the CM's examination. In this regard, the CM noted with concern that the complaint procedure before the Constitutional

Court remains unchanged despite its decision in December 2014 highlighting that the developments in the practice of the Constitutional Court did not permit to establish a remedy with automatic suspensive effect.

Having taken note of the new information presented in the revised action report of 2015 concerning the general domestic legal framework governing the expulsion of foreigners, the CM reiterated its call to the authorities to put in place without further delay a remedy with automatic suspensive effect, in line with the requirements of the Convention.

■ SWE / F.G.

Application No. 43611/11, judgment final on 23/03/2016, CM/ResDH(2016)355

” **Proposed expulsion to Iran without adequate investigation of reality and implications of conversion to Christianity after arrival in Europe;** obligation of authorities to proceed to an ex nunc assessment of the consequences of the religious conversion to Christianity when deciding on the applicant’s deportation to Iran (Articles 2 and 3)

Final resolution: According to Swedish law, once an expulsion order has expired, it is up to the applicant to reapply and initiate new proceedings to get a residence permit. Even if the applicant did not avail himself of this possibility, the Migration Agency made use of the extraordinary remedy of applying for relief to the Migration Court of Appeal. On 12 July 2016, the Migration Court of Appeal granted the petition for relief and referred the case back to the Migration Agency for new proceedings. A permanent residence permit, together with refugee status, was granted to the applicant on 1 September 2016.

E. Slavery and forced labour

F. Functioning of justice

F.1. Access to a court

■ ARM / Saghatelyan

Application No. 7984/06, judgment final on 20/01/2016, CM/ResDH(2016)211

” **Refusal by domestic courts to examine a claim** against the Presidential Decree terminating a judge’s term of office, which the domestic courts considered within the exclusive competence of the Constitutional Court and to which the judge had no right of access (Article 6 § 1)

Final resolution: To prevent similar violations, Article 160 § 1 of the Civil Procedure Code (CCP), on which the courts relied to refuse systematically to review the lawfulness of the acts of certain public bodies and officials, was repealed following the Constitutional Court’s finding of unconstitutionality on 16 November 2006. For better ensuring the right of access to a court, a three-tier judicial system was introduced in

the field of administrative justice, composed of a specialised Administrative Court of first instance, an Administrative Court of Appeal, and the Court of Cassation.

Regulations for contesting the lawfulness of the acts of public bodies and officials were laid down in the new Code of Administrative Procedure of 7 January 2014. In addition, following amendments in 2005 and 2015, the right of an individual to apply to the Constitutional Court to dispute the constitutionality of the concrete provision of legal acts was enshrined in the Constitution.

■ BEL / Anakomba Yula

Application No. 45413/07, judgment final on 10/06/2009, CM/ResDH(2016)243

” **Discriminatory refusal by domestic courts to grant legal aid to a Congolese mother** in proceedings for contesting her ex-husband’s paternity of her child, on the ground that she was not lawfully resident in Belgium (Article 6 § 1 in conjunction with Article 14)

Final resolution: The domestic courts changed their case-law immediately, granting legal aid to irregular foreigners despite the wording of Article 668 of the Judicial Code. In the context of a larger reform of legal assistance, an amendment of 6 July 2016 to the Judicial Code extended the availability of legal aid to all foreigners residing irregularly in Belgium, provided that they had tried to regularise their stay, their request was of urgent nature and concerned the exercise of a fundamental right. The judgment was published and disseminated.

■ GRC / Elyasin and 1 other case

Application No. 46929/06, judgment final on 06/11/2011, CM/ResDH(2016)313

” **Lack of access to a court** to challenge in absentia convictions (Article 6 §§ 1 and 3)

Final resolution: The criminal proceedings were reopened on the basis of Article 525 § 5 of the Code of Criminal Procedure and a change of the domestic courts’ case-law.

The Code of Criminal Procedure was amended by Law No. 3904/2010 providing for the nullity of any procedural act violating the rights of accused persons enshrined in the Convention.

■ ITA / Patrono, Cascini and Stefanelli and 2 other cases

Application No. 10180/04+, judgment final on 20/07/2006, CM/ResDH(2016)119

” **Inability to bring criminal proceedings for defamation** against members of Parliament enjoying parliamentary privilege, due to disproportionate application of the respective law on parliamentary immunity, although the comments at issue were not strictly linked to the exercise of the parliamentarians’ role as legislators (Article 6 § 1)

Final resolution: If in judicial proceedings a legislative chamber states that the behaviour of one of its members falls within the scope of the Parliamentary privilege guaranteed by Article 68 of the Constitution, the judge shall raise a conflict of State powers before the Constitutional Court. The Constitutional Court’s case-law changed, acknowledging that parliamentary privilege of Article 68 of the Constitution should not be extended to comments not linked to the exercise of

the parliamentary function. According to its case-law, the burden of proof of a link between speech and the exercise of parliamentary function falls on the legislative chamber invoking it.

F.2. Fairness of judicial proceedings – civil rights

■ GEO / Jgarkava

Application No. 7932/03, judgment final on 24/05/2009, CM/ResDH(2016)25

” **Unfair trial due to the arbitrary refusal to award compensation for continued detention on remand** despite the discontinuation of criminal proceedings, on the basis of a Supreme Court ruling distinguishing between “rehabilitation” and “restoration of rights” for the first time and without clear and sufficient reasons (Article 6 § 1)

Final resolution: No request for reopening was submitted. A new Code of Criminal Procedure came into force on 10 October 2010. Under this Code, the notion of “rehabilitation” was removed: a detained person shall receive compensation for illegal or unjustified detention, regardless of whether she/he is convicted, to be paid from the State budget. In addition, the Civil Code provides for compensation, regardless of the fault of the officials of investigative and prosecution bodies and court, for unlawful conviction, prosecution, detention or correctional labour as an administrative penalty. In case of intentional misconduct or gross negligence, the officials at fault shall be held jointly responsible with the State for the damage sustained. A complaint regarding the compensation for damage may also be brought on the basis of the Code of Administrative Procedure, according to which the claim can be raised in respect of administrative bodies’ decisions impacting legal rights or interests.

■ ITA / Agrati and Others (group)

Application No. 43549/08, judgment final on 28/11/2011 (merits) and 08/03/2012 (just satisfaction), enhanced supervision

” **Unjustified retrospective application of legislation:** retrospective application of legislation to on-going judicial proceedings to calculate the length of service of school staff, in breach of their right to a fair trial and in detriment of the right to respect of their possessions (Article 6 § 1 and Article 1 of Protocol No. 1)

CM decision: The issue of the transfer of “ATA staff” (i.e. State administrative, technical and auxiliary school staff) from the local authorities to the Ministry of Education and the retroactive application of Law No. 206/2005 calculating the length of service and pecuniary rights of ATA staff had been under the CM’s supervision since 2011 and was also a reference for a preliminary ruling before the Court of Justice of the European Union in September 2011. Following these judgments, the authorities indicated that the domestic courts had returned to the interpretation prevailing before the adoption of the law of 2005 for determining the length of service and the pecuniary rights of ATA staff.

Resuming consideration of this case in December 2016, the CM, invited the authorities, as regards the individual measures, to clarify, first, the procedures available under national law to determine and remedy the consequences stemming from the retroactive application of Law No. 266/2005 for the applicants in the cases of *Agrati*

and Others, *De Rosa and Others* and *Bordoni and Others*, for the period subsequent to 31 December 2011 and, secondly, the possibility to ensure that the benefit of the internal decision in favour of Mrs Peduzzi and Mr Arrighi which was delivered before the application of the disputed legislation, is retained. In this regard, the CM further invited the authorities to clarify whether the other applicants suffered pecuniary damage and if it was possible to seek compensation at domestic level.

As to the general measures, the CM noted that the practice of the national courts concerning the application of the disputed provisions of Law No. 266/2005 did not appear to be fully aligned with the requirements of Article 6 and invited the authorities to provide their assessment in this respect as well as clarification as to how they envisaged, if necessary, to solve this problem. The CM also requested information on the measures adopted or envisaged to ensure that laws with retroactive effect are adopted in strict conformity with the requirements of the Convention, as underlined in the present cases.

Finally, the CM invited the authorities to provide a revised action plan containing clarification on the outstanding questions identified in this group of cases.

■ **TUR / Fatma Nur Erten and Adnan Erten**

Application No. 14674/11, judgment final on 25/02/2015, CM/ResDH(2016)115

” **Denial of a fair trial** on account of the fact that the applicants’ request for rectification in respect of compensation was rejected by the Supreme Military Administrative Court for being lodged outside of the statutory deadlines (Article 6 § 1)

Final resolution: Following the reopening of proceedings, the applicants were awarded the amount claimed as compensation.

In addition, Article 46 of the Law No. 1602 was amended in April 2013 to address the violations found by the Court. In this respect, the current law allows for a readjustment request in respect of the initial claim before the domestic judgment becomes final.

F.3. Fairness of judicial proceedings – criminal charges

■ **ALB / Caka (group)**

Application No. 44023/02, judgment final on 08/03/2010, enhanced supervision

” **Procedural irregularities – defence rights:** unfair criminal proceedings - failure to secure the appearance of certain witnesses and to have due regard to testimony given in favour of the applicant; lack of convincing evidence justifying criminal conviction; insufficient guarantees of criminal proceedings in absentia; denial of the right to defend oneself before the Court of Appeal and the Supreme Court; use of incriminating statements obtained as a result of torture (Article 6 §§ 1, 3, 3c and 3d, Article 3)

CM decision / Final resolution: To implement the Court’s judgments in this group of cases, the Albanian authorities focused on the reopening of impugned criminal proceedings and on a series of legislative measures, with a view to guarantying the fairness of criminal proceedings and notably of proceedings *in absentia* in particular.

Resuming consideration of this group in September 2016, the CM noted, with respect to the individual measures, that all the applicants have had an effective possibility to obtain reopening of the impugned proceedings; for those applicants who requested it, guarantees were given that the new proceedings either had been or would be conducted in accordance with the requirements of Article 6 of the Convention and that, pending these proceedings, the applicants could request release. The CM considered accordingly that no further individual measures were required.

Having assessed the information communicated with respect to general measures, the CM welcomed the measures taken by the authorities to prevent ill-treatment and the use of incriminating statements obtained as a result of such treatment, as well as measures taken to address the issues concerning the lack of access to a lawyer in police custody, procedures for identification of suspects and access to the Constitutional Court. In view of the above, it considered that the cases concerning only these aspects could be closed, namely *Laska and Lika*, and *Kaçiu and Kotorri*.

Regarding the envisaged reforms, the CM encouraged the authorities rapidly to finalise the ongoing reform of the judicial system to prevent further violations related to the lack of guarantees surrounding criminal proceedings *in absentia*, the right to defend oneself in court and the appearance of witnesses and decided to continue its supervision of these issues in the cases of *Caka, Cani and Izet Haxhia*, and to close the similar cases *Berhani* and *Shkalla*. In consequence, the CM adopted a final resolution relating to all aspects that could be closed [CM/ResDH\(2016\)272](#), concerning *Laska and Lika* and three other cases, and, for the cases remaining under its supervision, invited the authorities to provide information on progress with the adoption of general measures in relation to the outstanding issues.

■ ALB / *Laska and Lika* and 3 other cases

Application No. 12315/04, judgment final on 20/07/2010, CM/ResDH(2016)272

” Unfair criminal proceedings due to various procedural shortcomings; lack of access to a lawyer in police custody; lack of access to the Constitutional Court; excessive length of proceedings as well as ill-treatment during interrogation by the police (Article 6 §§ 1, 3c and 3d and Article 3)

Final resolution: The impugned proceedings were reopened. Amendments to the Code of Criminal Procedure set out principles concerning the identification of suspects, access to a lawyer from the first moment of arrest or detention, the rights of the accused during interrogation and the prohibition of the use of statements obtained in violation of these rights. Wide-ranging awareness-raising measures were adopted to ensure that the relevant legal provisions are properly implemented in practice. The general measures required in response to the other aspects of these cases, i.e. criminal proceedings *in absentia*, appearance of witnesses and excessive length of proceedings, continue to be examined in the *Caka* and *Luli* groups of cases.

■ CRO / *Ajdarić*

Application No. 20883/09 judgment final on 04/06/2012, CM/ResDH(2016)38

” Conviction of a Bosnian national for murder solely on the basis of hearsay evidence and contradictory statements of a witness suffering from mental

illness; the respondent State was requested by the European Court to secure the reopening of the impugned criminal proceedings (Article 6 § 1)

Final resolution: The impugned proceedings were reopened on 30 August 2012 on request of the applicant, who was serving his sentence in Bosnia and Herzegovina. The Bosnian authorities refused to extradite the applicant, who was released in January 2013. In view of his subsequent absconding and unknown whereabouts, the court summons could not be served and the reopened proceedings not be brought to an end. The domestic courts changed their case-law, confirmed by the Constitutional Court with a reference to the present case, underlining the need to secure the proper adducing of evidence in trials. The judgment was translated, published and disseminated.

■ **EST / Vronchenko and 1 other case**

Application No. 59632/09+, judgment final on 18/10/2013, CM/ResDH(2016)309

” **Unfair criminal trial due to the conviction of accused persons for sexual abuse of a child without granting them the possibility to have questions put to the victims** whose video-recorded testimonies given during the pre-trial proceedings served as basis for convictions (Article 6 §§ 1 and 3d)

Final resolution: Requests for reopening were denied in both cases, the Supreme Court concluding that the domestic courts had sufficiently and properly evaluated the circumstantial evidence to establish the accused’s guilt. In 2011, legislative amendments to the Code of Criminal Procedure were introduced, according to which in cases relating to domestic violence or sexual abuse, the court can refuse a party’s request to summon a minor to a hearing and can allow as evidence the testimony given by the minor during the pre-trial procedure only on certain criteria: the testimony must be video-recorded and the defence counsel must have the opportunity to question the witness at the pre-trial stage.

■ **FIN / A.S.**

Application No. 40156/07, judgment final on 28/12/2010, CM/ResDH(2016)288

” **Deprivation of the opportunity to put questions to the minor victim of the offence** with respect to the latter’s videotaped account which was used as the only direct evidence leading the conviction (Article 6 § 1 taken together with 6 § 3d)

Final resolution: Reopening is available under domestic law if the applicant wishes. The Code of Judicial Procedure was amended on 1 October 2003 with the effect that the testimony of a person under 15 years of age, or a mentally disturbed person, recorded on audio or videotape during a pre-trial investigation may be used as evidence on condition that the accused has been provided with an opportunity to have questions put to the person giving the testimony. At the time of the trial in the present case, these provisions were not yet in force and the trial courts, the Court of Appeal in particular, gave detailed reasons for their derogation from those procedural rules. The judgment was translated, published and disseminated.

■ PRT / Stegarescu and Bahrin

Application No. 46194/06, judgment final on 04/10/2010, CM/ResDH(2016)264

» **Lack of domestic remedy to challenge placement in security cells** (Article 6 § 1)

Final resolution: Article 200 of the Code of Execution of Sentences of 2009 was deemed unconstitutional by the Constitutional Court in its decision of 12 January 2012: thus, the detainee, and not only the public prosecutor, has a right to bring a claim against a decision adopted against him/her in the course of the execution of sentences, including against a decision ordering his/her placement in security cell. In addition, the Regulation of penitentiary facilities was adopted on 11 April 2011, providing for decisions ordering a placement in security cell to be reasoned and notified to the person concerned.

F.4. Length of judicial proceedings

■ ALB / Luli and Others (group)

Application No. 64480/09, judgment final on 01/07/2014, enhanced supervision, Final resolution CM/ResDH(2016)357

» **Lengthy civil proceedings:** failure of the judicial system to manage properly a multiplication of proceedings on the same issue; lack of remedy (Article 6 § 1)

CM decision / Final resolution: Initially, the CM examined the issue of lengthy proceedings and effective remedies thereto under the *Gjonboçari and Others* (final on 31 March 2008) and the *Marini* (final on 7 July 2008) cases. Following the delivery by the Court of an "Article 46" judgment in the *Luli and Others* case in 2014, these cases were re-grouped and transferred to the enhanced supervision procedure with *Luli and Others* as the new group-leading case.

In their subsequent action plans of January 2015 and October 2016, the Albanian authorities have presented a series of legislative and practical measures adopted from 2001 onwards. With a view to reducing the workload of civil courts, administrative courts were established in 2012. In response to *Luli and Others* judgment, a working group for the preparation of draft laws necessary for a comprehensive reform of the justice system, including amendments to the codes of procedure was established in 2014. These measures culminated in 2016 in a broad justice system reform, resulting notably in a reduction of the backlog before the Supreme Court and an increase of its case-processing capacity. In parallel, the workload of civil courts has also decreased since the establishment in 2012 of administrative courts. In addition, measures addressing the problem of repeated remittals have also been adopted.

In the light of the updated action plan of October 2016, the CM resumed consideration of this group at its meeting of December 2016.

With respect to individual measures, the CM invited the authorities closely to supervise the proceedings still pending before the domestic courts and to keep it informed of all developments in this respect.

Regarding the issue of the lack of access to the Constitutional Court in case of a tied vote found in the *Marini* case, the CM welcomed the general measures taken and

therefore adopted the Final Resolution [CM/ResDH\(2016\)357](#) closing its supervision of this case.

Concerning the issue of excessive length of proceedings, the CM noted with interest the legislative and practical measures adopted so far and invited the authorities to submit information on their impact, as well as on measures taken or envisaged to address multiplication of proceedings on the same issue. In this context, the CM strongly encouraged the authorities to finalise rapidly the adoption of an effective remedy for excessive length of proceedings, in line with the indications made by the European Court under Article 46 in the *Luli and Others* and *Topallaj* (32913/03) judgments.

The CM decided to continue the examination of this group of cases in the light of the additional information requested, which the authorities were invited to submit by 31 March 2017.

■ **AUT / Donner and 5 other cases**

Application No. 32407/04, judgment final on 22/05/2007, CM/ResDH(2016)212

” **Excessive length of criminal proceedings** and lack of an effective remedy in this respect (Articles 6 § 1 and 13)

Final resolution: Domestic proceedings with respect to all cases are closed, and the just satisfaction awarded by the Court in certain cases was paid.

As regards remedies for excessive length of proceedings, Section 108a was introduced in the Code of Criminal Procedure aimed at improving the remedies available. According to this new provision, which entered into force on 1 January 2015, the duration of the investigation procedure (counting from the first investigation against an accused which interrupts the criminal limitation period) must not exceed a period of three years. If the investigation procedure cannot be completed within this time, the Public Prosecutor is obliged *ex officio* to report to the competent court on the reasons for the delay. If there are no legal grounds for closing the proceedings, the court will prolong the period for two more years and, considering all the aspects of the case, decide whether the Public Prosecutor is responsible for the delay. If the investigation procedure is not completed within the following two years, the Public Prosecutor is obliged to inform the court and the court will once again proceed as mentioned above.

The level of human resources (judges, public prosecutors and judicial officers) was partially increased and statistics show an acceleration of criminal proceedings.

■ **BGR / Kitov (group) - BGR / Djangozov (group)**

Application Nos. 37104/97 and 45950/99, judgments final on 03/07/2003 and 08/10/2004, enhanced supervision

” **Excessive length of civil** (*Djangozov* group) **and criminal proceedings** (*Kitov* group); lack of effective remedies (Articles 6 § 1 and 13)

Developments: Following the closure of the execution of pilot judgments *Finger* and *Dimitrov and Hamanov* (see Final Resolution [CM/ResDH\(2015\)154](#)) after the introduction of domestic compensatory remedies and the adoption of general

measures to eliminate the main recurrent causes for delays highlighted in these judgments (namely the high number of hearings and the slowness of the cassation procedure in civil matters, as well as the lengthy intervals between hearings in criminal matters), the CM has continued to monitor in the present groups of cases the efforts deployed by the authorities to reduce the length of judicial proceedings before those courts which were overburdened, avoid delays during the pre-trial investigation and put in place an effective acceleratory remedy in criminal matters. Following further measures taken, the authorities submitted in December 2016 an action report (DH-DD(2016)1415), which is being assessed.

■ FRA / Têtu

Application No. 60983/09, judgment final on 22/12/2011, CM/ResDH(2016)250

” Excessive length of liquidation proceedings amounting to a disproportionate interference with the right to peaceful enjoyment of property; lack of effective remedy in this regard (Article 6 § 1, Article 1 of Protocol No. 1, Article 13 in conjunction with 6 § 1)

Final resolution: Relying on fair trial requirements, the Court of Cassation changed its case-law on 16 December 2014, recognising the right of a bankrupt debtor to engage the State’s responsibility on account of the excessive length of liquidation proceedings. It can be noted that even before this new case-law, prosecutors had stopped refusing claims engaging the State’s responsibility by bankrupt debtors during hearings.

■ GRC / Papazoglou and Others and 31 other cases

Application No. 73840/01+, judgment final on 13/02/2004, CM/ResDH(2016)94

” Excessive length of proceedings before the Court of Audit and lack of an effective remedy in this regard (Articles 6 § 1 and 13)

Final resolution: All domestic proceedings are closed.

By virtue of the Law No. 4055/2012, several measures were taken to accelerate proceedings before the Court of Audit (e.g. pilot proceedings, reinforced filtering of appeals, possibility to join appeals, possibility to submit documents electronically, etc.). These measures were codified in the Law No. 4129/2013 “Ratification of the Code of Laws for the Court of Audit”.

On 12 December 2014, the Law No. 4239/2014 was adopted following the pilot judgments in the *Michelioudakis* and *Glykantzi and Others* cases, establishing a compensatory remedy to address the problem of possible excessive length criminal and civil proceedings and proceedings before the Court of Audit. The European Court recognized the effectiveness of this remedy stating that it meets the requirements of Article 13 in *Xynos v. Greece* (30226/09).

On 21 November 2014, the Court of Audit further adopted new internal rules on the organisation and functioning of the judicial services with a view to reducing the length of proceedings.

■ HUN / Tímár (group) – HUN / Gzásó (pilot judgment)

Application Nos. 36186/97 and 48322/12, judgments final on 09/07/2003 and 16/10/2015, enhanced supervision

» Excessive length of civil and criminal proceedings and lack of an effective remedy (Articles 6 § 1 and 13)

CM decisions: In response to the problems at the origin of the violations found by the Court in these cases, the authorities adopted, in April 2006, a law providing for acceleratory remedies aimed at expediting proceedings pending before the domestic courts. Confronted, however, with the lack of progress and, in particular, with a new judgment indicating the systemic nature of the problem as far as criminal domestic proceedings are concerned in *Barta and Drajkó* (No. 35729/12, final on 17 March 2014), the CM decided to transfer the group of cases for examination under the enhanced procedure in March 2012. In response to the CM's decision, the authorities again indicated a number of measures taken to solve the problem of lengthy court proceedings and the lack of effective remedy in this respect. They referred, in particular, to a liability mechanism introduced in July 2003 as regards civil proceedings, different legislative amendments introduced to ensure the timely completion of criminal proceedings, and judicial reform restructuring the organisation and administration of justice.

In their updated action plan of January 2015, the authorities acknowledged that general measures were required to shorten the length of judicial proceedings, improve the effectiveness of existing acceleratory remedies and create a compensatory remedy for excessively lengthy proceedings or a combination of the two types of remedies. In this respect, in May 2015, the authorities submitted that a new remedy for criminal cases would be introduced in the new Code of Criminal Procedure. In their communications of December 2015, they submitted that new procedural codes were being drafted to expedite and streamline proceedings.

Resuming consideration of this group of cases in March 2016 and later in December 2016, the CM recalled that the Court's new pilot judgment in the case of *Gzásó* concerned the structural problem of excessive length of civil proceedings and the lack of effective domestic remedies. In this respect, the CM required the authorities to "introduce without delay, and at the latest by 16 October 2016, an effective domestic remedy or combination of such remedies capable of addressing, in an adequate manner, the issue of excessively long court proceedings, in line with the Convention principles as established in the Court's case law". The CM welcomed the authorities' indication that they would introduce such a compensatory remedy for excessively lengthy proceedings in October 2016 and strongly urged the authorities to respect this deadline and intensify their efforts to reduce the length of domestic judicial proceedings and to introduce effective domestic remedies in compliance with the Convention standards. The CM also invited the authorities to provide information as regards the functioning of justice and the conditions of the new remedies to be enacted and as to whether the available remedies will be also applicable for cases already pending before the European Court. However the CM noted with regret that the authorities did not meet the deadline set in the Court's pilot judgment; in this respect, it took note of the new calendar provided and strongly encouraged

the authorities to review it so that the required compensatory remedy enters into force as soon as possible.

As to individual measures, the CM invited the authorities to provide updated information on the current state of the proceedings still pending at domestic level and on measures taken to accelerate these proceedings as well as on the outstanding questions on the payment of just satisfaction. In December, the CM reiterated its request to the authorities.

As regards general measures, the CM noted with regret that no tangible progress has yet been achieved on the issue of excessive length of judicial proceedings and reiterated its call on the authorities to intensify their efforts and to provide information, in particular as regards the content of the relevant position of the new draft procedural codes, their applicability to administrative proceedings as well as detailed statistical information on the impact of measures taken as regards the length of judicial proceedings.

In light of the above, the CM invited the authorities to provide, by 1 February 2017 at the latest, information on the content of the draft law setting up a compensatory remedy in respect of excessively lengthy civil, criminal and administrative proceedings and as to whether the remedy will also be applicable for cases already pending before the European Court.

■ **ITA / Abenavoli (group) - ITA / Di Bonaventura** and 74 other cases

Application Nos. 25587/94 and 14147/88, judgments final on 02/09/1994 and 01/03/1995, enhanced supervision, Final resolution CM/ResDH(2016)358

” **Excessive length of proceedings before the administrative courts** since 1990s
(Article 6 § 1)

CM decision / Final resolution: To address the problems at the origin of the violations found by the Court in these cases, the authorities adopted in 2010 a new Code of Administrative Procedure providing procedural tools aimed at reducing the backlog of pending cases and dealing more efficiently with new cases. In addition, other measures were adopted to support this trend: Law Decree No. 90 of 2014 introduced measures into the above mentioned Code to speed up judicial proceedings concerning public procurement. Moreover, a major reform of the public administration was adopted in 2015, aimed at making the organisation of the public administration simpler and more efficient and to facilitate the administration's interaction with citizens and businesses. Statistics show that these measures have a positive trend with a significant constant and consolidated fall in the number of cases pending before the Council of State and the regional administrative courts.

After the CM's decision of December 2015 to follow separately the execution of judgments related to administrative proceedings in the *Abenavoli* group, the CM resumed consideration of this group of cases in December 2016.

It first noted the significant measures adopted by the authorities, showing their determination to continue their efforts to solve the problem of the excessive length of administrative proceedings. In this regard, the CM noted with satisfaction that the positive trend observed with respect to reducing the backlog of cases had been

consolidated since 2011 and that encouraging results were obtained regarding the average length of certain proceedings before the Council of State. In the light of these positive developments, the CM decided to end the monitoring of the execution of 75 cases in which the question of individual measures had been settled and adopted Final Resolution [CM/ResDH\(2016\)358](#).

As to the still pending issues, the CM decided to continue their supervision in the framework of the remaining cases, and in this context, encouraged the authorities to continue closely monitoring the impact of the measures adopted, especially with regard to the average length of administrative proceedings at first instance.

In conclusion, the CM invited the authorities to provide their analysis of the situation based on complete statistics as soon as possible, so as to be fully able to assess the status of execution of this group of cases.

■ ITA / Ceteroni (group)

Application No. 22461/93, judgment final on 15/11/1996, enhanced supervision

» Excessive length of judicial proceedings before civil courts since the 1990s

(Article 6 § 1)

Developments: At its last examination of this long-standing problem in December 2015, the CM closed its supervision of the execution of 149 cases concerning civil proceedings under the jurisdiction of first instance courts and 28 cases concerning divorce and legal separation proceedings (CM/ResDH(2015)248 – see Annual Report 2015). In the light of this progress, the CM encouraged the Italian authorities to continue co-operating closely with the Execution Department with a view to identifying other areas in which targeted measures could yield positive results in the future. Bilateral consultations in that sense continue.

■ ITA / Ledonne (No. 1) (group)

Application No. 35742/97, judgment final on 12/08/1999, enhanced supervision

» Excessive length of proceedings before the criminal courts since the 1990s

(Article 6 § 1)

CM decision: The excessive length of proceedings before judicial courts has been a longstanding issue in Italy. Since the 1990s, the authorities and the CM have engaged bilateral contacts and close cooperation to achieve a permanent solution. In December 2015, in order better to target the outstanding questions, the CM decided to follow the execution of the cases concerning excessive length before criminal courts in the *Ledonne (No. 1)* group.

When resuming consideration of outstanding questions in this group of cases in December 2016, the CM noted with interest the criminal law reform bill currently being examined by the Senate and invited the authorities to provide information on the outcome of the legislative process. Furthermore, the CM invited the authorities to provide information, where appropriate, of any other measures adopted since June 2013, or in the process of being adopted, aimed at solving the issue of excessive length of criminal proceedings.

In light of the above, the CM invited the Italian authorities to provide, by April 2017, a thorough evaluation of the situation together with statistical data for the period 2011-2016, particularly as regards the average length of criminal proceedings, the ratio between incoming cases and cases solved and the number of cases pending at the end of each year by level of jurisdiction.

■ ITA / Luordo (group)

Application No. 32190/96, judgment final on 17/10/2003, enhanced supervision

” Restrictions on individual rights following bankruptcy proceedings and excessive length of certain bankruptcy proceedings since 1990s (Articles 6 § 1, 8 and 13, Article 1 of Protocol No. 1, Article 3 of Protocol No. 1 and Article 2 of Protocol No. 4)

Developments: Since the CM's last decision in December 2012, regular bilateral meetings have taken place, including in 2016, with a view to following developments, notably in the light of recent reforms efforts aiming at accelerating bankruptcy proceedings, and to presenting an action plan/report.

■ ITA / Mostacciolo Giuseppe No. 1 (group)

Application No. 64705/01, judgment final on 29/03/2006, enhanced supervision

” Insufficient amount and delays in the payment of compensation awarded in the context of a compensatory remedy available since 2001 (Pinto Law) to victims of excessively lengthy proceedings; excessive length of the “Pinto” proceedings brought in the context of “Pinto” compensatory remedy (Article 6 § 1 and/or Article 1 of Protocol No. 1)

Developments: Following the CM's last examination of these cases in September 2015, the Italian authorities provided, in October 2015 (DH-DD(2015)1123), an updated action plan on additional, new measures aimed at accelerating compensation proceedings and statistics outlining improvements made since 2012. This information is being assessed.

■ ITA / Panetta

Application No. 38624/07, judgment final on 15/10/2014, CM/ResDH(2016)63

” Excessive length of national proceedings intended to provide assistance under the New York Convention of 1956 on the recovery of maintenance abroad (Article 6 § 1)

Final resolution: The just satisfaction awarded by the Court has been paid.

The Council Regulation (EC) No. 4/2009 removed the *exequatur* procedure, which duration was deemed excessively long by the Court, therefore shortening maintenance recovery proceedings. It also provides modern technical methods of communication (fax, email) and forms to be translated automatically, using the internet page of the European judicial network in civil matters. The Regulation foresees strict deadlines for informing the creditor on the state of recovery of the debt, and allows location of debtors and access to information on their property/income.

■ MKD / Atanasovic and Others and 55 other cases

Application No. 13886/02, judgment final on 12/04/2006, CM/ResDH(2016)35

” Excessive length of civil, labour, criminal and enforcement proceedings

and lack of an effective domestic remedy in respect of excessive length of civil or enforcement proceedings; in one case, excessive length of criminal proceedings due to the failure of the domestic courts to secure the accused's attendance in criminal proceedings, resulted in claims of defamation to become time-barred (Articles 6, 8, 13 and Article 1 of Protocol No. 1)

Final resolution: In September 2010, the Code of Civil Procedure was amended to increase efficiency of civil proceedings, notably setting tight deadlines, eliminating multiple remittals, limiting the time required for production of expertise and service of documents, and enabling the parties to civil proceedings to resort to mediation. These amendments also apply in labour proceedings, and compel domestic courts to conduct the proceedings within a reasonable time.

As regards criminal proceedings, a new Code of Criminal Procedure (2010) entered into force in 2013, according to which the criminal prosecutor has a key role as regards the efficiency of the investigation procedure. As in civil matters, the practice of multiple remittals was eliminated. In addition, reassignment of judges to a case does not make it necessary to recommence the case examination from the beginning.

The Enforcement Act was adopted in 2005 and amended in 2010 so as to accelerate and streamline the enforcement proceedings: the concept of private bailiffs was introduced, giving them exclusive responsibility for enforcement from 2012.

For measures taken to increase efficiency of administrative proceedings see CM/ResDH(2011)81 in the *Dumanovski* group.

■ POL / Fuchs (group)

Application No. 33870/96, judgment final on 11/05/2003, enhanced supervision

” Excessive length of proceedings before administrative courts and bodies and lack of effective remedy in this respect (Article 6 § 1 and 13)

CM decision / Final resolution: The issue of excessive length of proceedings before administrative courts and bodies has been on the CM's agenda since 2003. To tackle the issues identified by the Court in its judgments, the authorities adopted a series of measures providing for a simplification of the proceedings before the above-mentioned bodies and aimed at creating an effective remedy. In this respect, legislative change took place, notably through the adoption of an amendment to the Law Proceedings before Administrative Courts, which entered into force in 2015. As regards the necessity to set-up an effective remedy against excessive length of judicial proceedings, such a remedy was introduced in 2004 and applies to proceedings before administrative courts and the Supreme Administrative Court. In their most recent action plan of November 2016, the authorities indicated that an on-going legislative process aims at improving this remedy, in line with the indications given by the European Court in the pilot judgment in *Rutkowski and Others*, concerning excessive length of proceedings before ordinary courts.

Resuming consideration of this group of cases in December 2016, the CM noted with interest the recent legislative changes in the Law on Proceedings before Administrative Courts introduced to simplify the procedure before these courts and to provide them with power to give judgment on the merits and reform the system of remedies against excessive length of proceedings before administrative bodies. In this regard, the CM found that these measures have enabled to bring an end to the practice of remittals of cases after annulment of administrative decisions which was a cause of many delays in proceedings. It therefore decided to close the supervision of those cases in which this practice was a primary source of violation and adopted the Final Resolution [CM/ResDH\(2016\)359](#).

The CM however considered that additional information was necessary for a full assessment of the status of execution in the remaining cases. It thus invited the authorities to submit their assessment of the impact of the adopted measures on the length of proceedings before administrative bodies and courts and on the necessity for additional measures.

Moreover, the CM invited the authorities to submit clarifications as to the functioning in practice of the remedies concerning administrative bodies and to keep it informed of any developments in the reform of remedies concerning courts.

■ **PRT / Martins de Castro and Alves Correia de Castro** and 28 other cases
Application No. 33729/06+, judgment final on 10/09/2008, CM/ResDH(2016)99

” **Absence of effective remedies for excessive length of criminal, civil and administrative proceedings (including enforcement proceedings)**, lack of effectiveness of the compensatory remedy (action in tort against the State) available (Article 6 § 1 and 13)

Final resolution: The European Court recognised, in its judgment in the *Valada Neves v. Portugal* case (73798/13, final on 29 October 2015) that the action in tort for State liability, based on Article 12 of Law No. 67/2007, constituted an effective remedy to get compensation for any violation of the right to a decision within a reasonable time, which has to be exhausted before lodging an application before the European Court.

This recognition is based on changes in the domestic administrative courts' case-law. Indeed, the Supreme Administrative Court's judgment of 27 November 2013 consolidated the case-law, notably regarding the criteria of trial duration, allocation of non-pecuniary damage and its payment.

■ **PRT / Oliveira Modesto and Others** and 48 other cases
Application No. 34422/97+, judgment final on 08/09/2000, CM/ResDH(2016)149

” **Excessive length of criminal, civil and administrative proceedings (including enforcement proceedings)** and absence of effective remedies (Article 6 § 1 and 13)

Decision / Final Resolution: The CM noted with satisfaction the major legislative measures adopted by the Portuguese authorities to address this longstanding problem (see notably Interim Resolutions (2007)108 and (2010)34), which demonstrated their commitment to pursue efforts to resolve the problem of excessive

length of judicial proceedings. The CM also noted that encouraging results had been obtained and had been consolidated with regard to criminal proceedings, first instance civil declaratory proceedings and civil proceedings in general before the higher courts. It recalled that the Court had recognised the effectiveness of the remedy established in Portugal for obtaining compensation in respect of excessive length of proceedings – see *Martins de Castro* above. The CM indicated that it would continue to follow, within the framework of several recent cases (regrouped in the *Vicente Cardoso* group), the outstanding questions concerning the impact of the adopted measures on the length of the proceedings in which no positive trend had been observed to date.

■ ROM / Nicolau and 79 other cases

Application No. 1295/02+, judgment final on 03/07/2006, CM/ResDH(2016)151

” **Excessive length of civil or criminal proceedings** resulting in interference with property rights and absence of an effective remedy in this respect; in some cases lack of effective means to obtain payment of compensation awarded by courts due to the excessive length of proceedings; unfairness of proceedings; lack of access to court due to excessive court fees; delayed enforcement of a final court decision (Articles 6 § 1, 13 and 1 of Protocol No. 1)

Final resolution: The proceedings at issue in these cases were completed. A wide-ranging judicial reform completed in September 2013 addressed *inter alia* excessive length of civil and criminal proceedings. New Codes of Civil and Criminal Procedure introduced a number of measures: diversification of the methods by which judicial acts can be served, simplification of the contentious procedure and improvement of the system of evidence-taking; in criminal matters broadening the scope of conciliation, streamlining of the stages of the ordinary procedure, simplified procedures and limitation of the possibility of referring cases back to the prosecutor’s office.

In both matters, the reform simplified the appeals system: suppression of the possibility to lodge appeals on points of law for certain types of dispute, introduction of more restrictive admissibility criteria when this appeal remains available to the parties and restriction of the possibilities for the appellate courts to quash a ruling and refer the case back to the first instance court. To ensure the viability of the reform, the authorities increased the budget of the Ministry of Justice by 46% between 2013 and 2015, allowing the creation of 390 posts for judges and auxiliary staff.

The judicial organisation will be reformed by merging or suppressing a number of first instance courts and prosecutors’ offices. The Superior Council of Magistracy (SCM) monitors the performance of the courts, using a methodology inspired in particular by the SATURN Guidelines developed by the CEPEJ. In case of under-performance, the SCM determines the measures to improve the efficiency of the court at issue. The Public Prosecutor’s Office carries out reinforced monitoring of criminal proceedings pending for more than two years before prosecutors’ offices. Preliminary data show a decrease in the backlog and a slight decrease in the average length of civil proceedings between 2013 and 2015. The average length of criminal proceedings increased between 2014 and 2015, but the authorities indicate that

this is a transitional situation, related to the efforts made by the criminal courts to adapt to the substantial changes introduced by the new Code of Criminal Procedure.

The new Codes also introduced acceleratory remedies. A compensatory remedy consists of a civil action against the State: several shortcomings of this remedy have been overcome and no longer hinder its effectiveness. The CM will assess the impact of these measures and continue to supervise questions related to the setting up of effective remedies in this field in the context of the remaining cases of the groups of *Nicolau* and *Stoianova and Nedelcu*, and in particular *Vlad and Others*. General measures required in response to the other violations in some of these cases are/were examined in the *Săcăleanu* group of cases, the case of *Weissman and Others* (Final Resolution CM/ResDH(2011)249) and the *Calmanovici* group (Final Resolution CM/ResDH(2014)13) as well as in the case of *Albina* (Final Resolution CM/ResDH(2010)181).

■ SVN / Lukenda and 263 other cases

Application No. 23032/02+, judgment final on 06/01/2006, CM/ResDH(2016)354

” Excessive length of civil, criminal, enforcement or administrative proceedings and lack of an effective remedy in this respect (Articles 6 § 1 and 13)

Final resolution: All domestic proceedings are closed except in four cases. All issues concerning the payment of just satisfaction are settled.

Between 2005 and 2012, the Lukenda Project was implemented with the goal of eliminating backlogs in domestic courts and to provide for the structural and organisational reform of judiciary. The legislative and capacity-building measures aimed at reducing excessive length of proceeding included:

The adoption of the Act on the Alternative Dispute Resolution in Judicial Matters 2010; amendments of the Civil Procedure Act 2008 reducing the possibility of multiple remittals; the introduction of upgraded IT systems and improved case management; the adoption of the 2010 Rules on Court Experts and Certified Appraisers (amended in 2015), obliging experts to carry out their work diligently and regularly within a maximum period; amendments to the Courts Act in 2015 changing the system of appointment of court experts; the strengthening of procedural discipline in labour proceedings in the Labour and Social Courts Act 2005; the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (ZFPIPP), amended in 2013, introducing compulsory mediation in insolvency proceedings and consented mediation before bringing an action to speed up proceedings related to insolvency cases; increase in the number of judges and assistants; amendments of the Criminal Procedure Code in 2011 introduced plea bargaining and pre-trial hearings; human resources were increased, audio recording of hearings was introduced; amendments to the enforcement legislation were adopted in 2010 and 2014.

In addition, several amendments to the General Administrative Procedure Act 2000 were adopted in 2004, 2007 and 2013: these amendments introduced notably the possibility to communicate and file the necessary papers with the administrative decision-making bodies electronically, making it possible further to streamline and simplify administrative procedure. Moreover, possibilities for multiple remittals were significantly reduced. To speed up proceedings, the authorities making decisions at

the appeal stage are now encouraged to make a decision on the merits whenever possible.

Access to the Supreme Court was reduced by an amendment of the Civil Procedure Code. Amendments to the Constitutional Court Act 2007 ensure expedient and fast-track decision-making without extensive reasoning and modified the threshold to grant leave for constitutional complaints.

Two sets of remedies to prevent excessive length of proceedings were provided for by the Act on the Protection of the Right to a Trial without undue Delay (“the 2006 Act”), namely an acceleratory and a compensatory remedy in civil and criminal proceedings. In 2009, the compensatory remedy was also made available in the proceedings pending before the Supreme Court. Pursuant to the amendments introduced in 2012, compensatory remedy was also made available to parties of lengthy proceedings brought to an end before the 2006 Act entered into force but who had not until then filed an application complaining before the European Court about the length of proceedings. Statistics confirm the effectiveness of the remedies.

F.5. Prohibition of double conviction

■ SWE / Lucky Dev

Application No. 7356/10, judgment final on 27/02/2015, CM/ResDH(2016)141

” **Ne bis in idem:** Conviction in tax proceedings despite an acquittal in criminal proceedings for the same offence (Article 4 of Protocol No. 7)

Final resolution: Amendments to the relevant legislation ensuring the respect of the principle of *ne bis in idem* entered into force on 1 January 2016. A new provision in the Tax Procedure Act prohibits the Tax Agency from deciding on tax surcharges if a prosecutor has already initiated proceedings on tax offences concerning the same individual and relating to the same error or omission. Conversely, a new provision in the Tax Offences Act prohibits proceedings on tax offences if the Tax Agency had decided on tax surcharges. In conformity with the principle of *lis pendens*, these provisions go further than the principle of *ne bis in idem*, which applies only once a matter has become *res judicata*.

F.6. Respect of the final character of judicial decisions

■ RUS / Ryabykh

Application No. 52854/99, judgment final on 03/12/2003, enhanced supervision

” **Principle of legal certainty:** quashing of final courts’ decisions by way of supervisory-review procedure provided by the Code of civil procedure and ensuing violations of the right to the peaceful enjoyment of possessions (Article 6, Article 1 of Protocol No. 1)

Developments: Since the *Ryabykh* judgment, the Russian authorities have engaged in comprehensive reforms of the supervisory-review procedure. The first reform took place in 2002 with the adoption of the new Code of Civil Procedure. The second reform took place in 2007 notably in response to the ruling of the Russian Constitutional Court of 5 February 2007. On 12 February 2008 this reform was

supplemented by a decree of the Plenum of the Supreme Court of the Russian Federation (Decree No. 2) in which it provided lower courts with guidelines with a special emphasis on the need to comply with the Convention requirements and in particular with the principle of legal certainty. However, notwithstanding tangible changes introduced by these reforms, the European Court found that supervisory review still could not be regarded as compatible with the Convention (see *Martynets* (No. 29612/09) decision of 5 November 2009). In the meantime, the supervisory-review procedure as provided by the Code of Commercial Procedure was found to be in compliance with the Convention (see *Kovaleva and Others* (No. 6025/09) decision of 25 June 2009 and *OOO Link Oil SPB* (No. 42600/05) decision of 25 June 2009).

A third reform of the Code of Civil Procedure was adopted in December 2010, in the context of an important co-operation programme with the Council of Europe aiming at the introduction of appeal courts within the system of courts of general jurisdiction, thus limiting the recourse to the supervisory-review procedure. This reform came into force on 1 January 2012.

The new system was examined by the European Court in the judgment of *Trapeznikov and Others v. Russian Federation* (No. 5623/09, judgment of 5 April 2016, final on 5 July 2016). The European Court concluded that “the supervisory review as applied in the particular circumstances of these cases was not incompatible with the principle of legal certainty” (§§ 36, 37). The European Court additionally observed that in the cases examined, the supervisory review had been necessary to correct grave mistakes and to ensure a uniform application of the domestic case-law (§ 38). Following certain additional clarifications through bilateral contacts with the Secretariat, a final resolution was adopted in March 2017.

F.7. Enforcement of domestic judicial decisions

■ BIH / Čolić and Others

Application No. 1218/07, judgments final on 28/06/2010, enhanced supervision

” Non-enforcement of final judgments ordering the state to pay certain sums in respect of war damages (Article 6 § 1 and Article 1 of Protocol No. 1)

Action plan: Following the European Court’s judgment in *Čolić and Others*, in 2012 the Republika Srpska introduced a settlement plan envisaging the enforcement of final domestic judgments ordering cash payment of war damages within 13 years starting from 2013; the time-frame was extended to 20 years in 2013. However, in its judgment in *Durić and Others* (Application No. 79867/12, final on 20 April 2015), the Court found that the 20 years’ time-frame was too long in the light of the lengthy delays that had already occurred and had been found by the Court as contrary to Article 6 of the Convention. In response to this finding, the Minister of Finance of the Republika Srpska issued on 15 September 2016 a new settlement plan with a 13 years’ time-frame starting from 2016 for the enforcement of the above-mentioned final judgments.

■ GRC / Beka-Koulocheri (group)

Application No. 38878/03, judgment final on 06/10/2006, enhanced supervision

” **Non-enforcement or delayed enforcement of domestic judicial decisions (mostly judgments ordering the annulment of expropriation orders);** lack of an effective remedy (Article 6 § 1, Article 1 of Protocol No. 1, Article 13).

CM decision: The execution of domestic judgments is supervised within the framework of Law No. 3068/2002 establishing a mechanism for execution through councils of compliance within the courts that delivered the initial judgments. This execution mechanism is completed by Law No. 4067/2012. In this respect, the CM, in 2014, noted that the cases of this group concerned mainly the non-execution of judgments ordering the annulment of expropriation orders and the modification of district boundary plans, due to the reluctance of the planning authorities to modify urban plans in compliance with domestic court judgments. It thus invited the authorities to consider amending Article 32 of Law No. 4067/2012 in compliance with the Court's case law. In December 2014, the CM noted that the execution mechanism presented positive results; the number of non-executed domestic court judgments between 2004 and 2010 was relatively small. The authorities presented more recent statistics covering the period 2012/2014 confirming the positive trend.

Resuming consideration of this group of cases in March 2016, in the light of the information communicated by the authorities in November 2015, the CM invited the authorities to pursue the execution of all pending judgments in this group and promptly to provide updated information in this respect.

With respect to the functioning of the execution mechanism, the CM noted with interest the positive statistics submitted by the authorities. It further noted with interest the intention of the authorities to reform the legislation regulating the execution of judgments ordering the lifting of expropriation orders and the modification of urban plans in light of the Court's case-law. In this respect, it invited the authorities to provide further information on the content of the envisaged reform, as well as data on the number of cases pending before the councils of compliance concerning non-executed judgments ordering the lifting of expropriation orders.

■ ITA / Ventorino

Application No. 357/07, judgment final on 17/08/2011, CM/ResDH(2016)316

” **Non-payment by the authorities of counsel fees,** and non-enforcement of a final order of payment (Article 6 § 1 and Article 1 of Protocol No. 1)

Final resolution: Several legislative measures were adopted to simplify and speed up payment proceedings. The Article 35 of the Legislative Decree No. 1 of January 2012, “Measures for the promptness of payments and extinction of old debts of the State administrations and the Treasury”, introduced special budgetary funds for prompt payment and also provided for the possibility of issuing State bonds replacing the payment by the State (subject to the creditor's approval) and the possibility of concluding friendly settlements.

The Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on “combating late payment in commercial transactions” was transposed by the Legislative Decree No. 192/2012 and is applicable since 1 January 2013.

Legal and financial means were earmarked to address the problem of debt payment by the public administration. In this respect, Decree-Law No. 35/2013 created a fund to ensure liquidity for the payment of debts and legislative Decree-Law No. 102/2013 triggered the second phase, granting additional means. Finally, by Decree-Law No. 66/2014, additional resources made it possible for the State to guarantee payment of debts contracted by public administrations.

In addition, a computer platform was created to allow creditors of the State to obtain a debt bond and facilitated payment.

■ MDA / Luntre and Others (group)

Application No. 2916/02, judgment final on 15/09/2004, enhanced supervision

” **No or delayed enforcement of final domestic judgments:** failure or substantial delay in the enforcement of final domestic judicial decisions most of which were delivered against the State or State companies and lack of an effective remedy; violations of the right to respect for property (Articles 6 § 1 and 13, Article 1 of Protocol No. 1)

Action report: The measures taken within the context of the *Luntre and Others* group of cases concern the reforms undertaken to remedy the root cause of the problem of non-enforcement of domestic court decisions in the Republic of Moldova, welcomed by the CM in June 2015. It is recalled that the question of the effectiveness of remedies is examined in the context of the *Olaru and Others* pilot judgment (2009) transferred in March 2012 to standard supervision to follow the implementation of the new legislation (Law No. 87).

In response to the CM’s invitation in its above mentioned decision of June 2015 to provide certain additional information with respect to the substantive reforms adopted, the Moldavian authorities submitted an action report in January 2017 (DH-DD(2017)42) on both individual and general measures, notably on amendments to the Code of Execution and the Code of Civil Procedure. This information is being assessed.

■ MON / Bijelić

Application No. 11890/05, judgment final on 06/11/2009, CM/ResDH(2016)277

” **Failure to enforce a final domestic court decision** in 1994, ordering the eviction of a third party from the applicants’ flat (Article 1 of Protocol No. 1)

Final resolution: The eviction order was enforced. A new Enforcement Act 2011 introduced measures to ensure rapid and full enforcement of final decisions. Additional measures were taken to reduce the backlog of unenforced decisions. In 2007, a remedy was introduced in respect of excessive length of court proceedings, including enforcement proceedings.

MON / Boucke

Application No. 26945/06, judgment final on 21/05/2012, CM/ResDH(2016)165

” **Failure to enforce a final domestic judgment** ordering payment of child maintenance (Article 6 § 1)

Final resolution: Payment of child maintenance is enforced through monthly attachments on the debtor’s salary. A new Enforcement Act was adopted in July 2011 entrusting the enforcement of final decisions to public enforcement officers with the aim of reducing workload in courts and increasing the efficiency of enforcement proceedings in general. The Act included special provisions concerning enforcement of decisions in respect of child maintenance, imposing special diligence for their enforcement. The on-going reform of enforcement proceedings is part of the Ministry of Justice Strategy for the Reform of the Judiciary 2014-2018. An IT system in respect of enforcement cases will be put in place.

ROM / Sacaleanu (group)

Application No. 73970/01, judgment final on 06/12/2005, enhanced supervision

” **Failure of the administration to abide by final court decisions:** failure or significant delay of the Administration or legal persons under the responsibility of the State in abiding by final domestic court decisions (Articles 6 § 1 and/or Article 1 of Protocol No. 1).

Action plan: In addition to the information provided in December 2014, *i.e.* after the delivery of the judgment in the *Fondation Foyers des Élèves de l’Église et Statornicescu* case (final on 7 April 2014), the authorities provided, in December 2016, updated information (DH-DD(2017)38), notably on the progress achieved by the working group constituted to find a comprehensive solution to the issue of non-implementation by the administration of final domestic court decisions. This information is currently being assessed.

RUS / Gerasimov and Others (pilot judgment)

Application No. 29920/05, judgment final on 01/10/2014, enhanced supervision

” **Failure or serious delay by the State and municipal authorities in abiding by final domestic judicial decisions** concerning different obligations in-kind, such as housing or the issuance of documents; lack of an effective domestic remedy (Article 6 § 1, Article 1 of Protocol No. 1 and Article 13)

Developments: It is recalled that the CM noted with satisfaction the measures adopted to resolve the problem of non-enforcement of domestic judicial decisions concerning the State’s monetary obligations as well as the effectiveness of the remedy established in the context of the case *Burdov No. 2* for obtaining compensation in respect of non-enforcement of domestic judicial decisions concerning such obligations. These aspects have also been closed – see the final resolution in the *Timofeiev* case below.

In response to the aspect of the problem relating to obligations in kind, the Russian authorities have taken a number of individual and general measures (see documents DH-DD(2015)772 and DH-DD(2015)1131), including the adoption of the Code

of Administrative Procedure and the drafting of the Law on Amendments to the Compensation Act. The authorities have also made various efforts aimed at the resolution of the problems underlying the violations related to provision of housing, reflected in the CM's decisions of 24 September 2015 and 10 December 2015. Information is now awaited as to the entry into force of draft amendments to the Compensation Act 2010 and regarding the introduction of a preventive remedy.

■ **RUS / Timofeiev and 234 other cases**

Application No. 58263/00, judgment final on 23/01/2004, CM/ResDH(2016)268

” **Non-enforcement or serious delay in abiding by final judicial decisions, lack of effective remedies:** failure or serious delay of the State and municipal authorities in abiding by final domestic judicial decisions concerning in-kind obligations resulting in violations of the right of access to court and, in cases with pecuniary obligations, of the right to peaceful enjoyment of possessions (Article 6 § 1, Article 1 of Protocol No. 1, Article 13)

Final resolution: Interim Resolution CM/ResDH(2009)43 acknowledged the continuous improvement of the legislative and regulatory framework resulting in the setting up of execution and enforcement mechanisms and the organisational measures taken better to monitor the execution of court decisions by the State and its entities. Among measures noted figure the following:

A specific procedure for the execution of judicial decisions delivered against the State and its entities was introduced in 2005 in the Budgetary Code and daily monitoring of the enforcement introduced by the Ministry of Finance's Order No. 271 in 2006. A new federal Law on enforcement proceedings was adopted in 2007.

New Administrative Rules were introduced in 2009 with respect to the execution by the Federal Treasury of court decisions delivered against budgetary institutions and provided for uniform procedures for all territorial departments of the Federal Treasury and for a procedure to challenge actions of the Federal Treasury or its employees for improper implementation of these procedures.

In parallel, in 2006, the Supreme Commercial Court held that bailiffs have competence to initiate enforcement proceedings in respect of public authorities' assets when such authorities fail to comply with judicial decisions after the expiry of the three-month period provided for by the Budgetary Code. Between 2004 and 2008, the number of bailiffs was increased by almost a third.

As regards Chernobyl victims, the Compensation Act 2010, which provided for a domestic remedy in case of excessive length of judicial and enforcement proceedings, was considered an effective remedy by the European Court. In November 2011, the Interim Resolution CM/ResDH(2011)293 closed the examination of the execution of the judgments in this respect.

■ SER / EVT Company (group)

Application No. 3102/05, judgment final on 21/09/2007, enhanced supervision, Final resolution CM/ResDH(2016)152

» **Non-enforcement of decisions against socially-owned companies:** non-enforcement of final court or administrative decisions, mainly concerning socially-owned companies, implying also interferences with the right to peaceful enjoyment of property and the right to respect for family life; lack of an effective remedy (Articles 6 § 8 and 13, Article 1 Protocol No. 1)

CM decision / Final Resolution: The CM has been following this group of cases since 2007 and called upon the authorities to address the shortcomings identified by the Court. In this respect, the authorities prepared in 2010 a draft Enforcement Act which was adopted in 2015, resolving all the main issues identified by the Court concerning enforcement in civil, commercial and family-related matters. Specific provisions of the Act aimed at preventing excessive length of enforcement proceedings and securing police presence when needed. With respect to the enforcement of decisions rendered against socially-owned companies, the CM, in December 2012, invited the authorities to set up a payment scheme to settle the debts on account of non-payment of salary arrears or commercial debts by March 2013. Concerning the effectiveness of enforcement procedures in administrative matters, notably eviction orders within the context of special the “protected tenancy regime”, the 2015 Enforcement Act gave the authority to enforce such order to private bailiffs. Regarding other administrative decisions, specifically demolition orders in respect of unauthorised constructions, a special law adopted in 2015 allows the holders of unauthorised constructions to “legalise them”.

As to the lack of an effective remedy concerning non-enforcement of decisions, whilst the right to individual petition before the Constitutional Court was introduced in 2006, such a right was only recognised as effective in 2011 with respect to applications for non-enforcement of domestic courts’ decisions rendered against socially-owned companies.

Resuming consideration of this group of cases in June 2016, the CM noted with satisfaction the measures taken and the progress made on the issues of enforcement of decisions in civil, commercial and family-related matters, as well as eviction orders within the context of the special “protected tenancy regime”. It thus adopted Final Resolution [CM/ResDH\(2016\)152](#).

As to the individual measures, the CM strongly invited the authorities to take the necessary steps, without further delay, to ensure the enforcement of the domestic decisions in the two cases *EVT Company* and *Kostić and Raguž*.

The CM further noted that the authorities had established the exact number of unenforced decisions against socially-owned companies in respect of salary arrears and calculated the amount of aggregate debt. In this respect, the CM firmly invited them to put in place a payment scheme to settle these debts without further delay. The CM also urged them to intensify their efforts with a view to establishing the exact number of unenforced decisions delivered against socially-owned companies in respect of their commercial debts. Furthermore, the CM invited the authorities

to provide information on the measures aimed at ensuring the enforcement of decisions rendered against municipal authorities, demolition orders in respect of unauthorised constructions and in pension matters.

Finally, as regards the introduction of the new remedy in respect of excessive length of enforcement proceedings, the CM invited the authorities to provide information on the following questions:

- ▶ can enforcement proceedings with respect to decisions rendered against socially-owned companies also be accelerated and terminated on the basis of the application of this new remedy ?
- ▶ what are the consequences of a failure to enforce a decision despite the order of the president of a court to accelerate enforcement proceedings ?
- ▶ what is the experience of the authorities in the implementation of the new remedy ?

■ **UKR / Zhovner (group) - UKR / Yuriy Nikolayevich Ivanov (pilot judgment)**

Application Nos. 56848/00 and 40450/04, judgments final on 29/09/2004 and 15/01/2010, enhanced supervision

” **Non-enforcement of domestic judicial decisions:** failure or serious delay by the administration in abiding by final domestic judgments and lack of effective remedies; special “moratorium” laws providing excessive legal protection against creditors to certain companies (Articles 6 § 1, 13 and Article 1 of Protocol No. 1)

CM decisions: The issue of non-enforcement or delayed enforcement of domestic judicial decisions has persisted in Ukraine for more than a decade, notwithstanding the guidance given by the CM over the years, notably through five interim resolutions, and the Court’s pilot judgment in the *Yuriy Nikolayevich Ivanov* case. The CM has underlined in particular that non-enforcement of domestic court decisions “represents an important danger, not least for the respect of the Rule of Law, frustrates citizens’ confidence in the judicial system and questions the credibility of the State”. Despite several attempts made by the authorities, in particular the introduction of a remedy in 2013, the measures taken so far have not been successful in solving the problem. Consequently, the influx of applications lodged with the Court has continued to grow.

Resuming consideration of this group of cases in June 2016, the CM welcomed the presence of the Deputy Minister of Justice of Ukraine and took note with interest of the explanations given during the meeting.

Reiterating its decision adopted at the 1236th meeting (September 2015) (DH), the CM strongly urged the authorities to provide systemised information with regard to the payment of just satisfaction, including a calculation of the outstanding debt, as well as with regard to the enforcement of still unenforced domestic judicial decisions.

With respect to general measures, the CM insisted on the necessity for the authorities to intensify their efforts to settle the applications pending before the Court without further delay, bearing in mind that the settlement of presently pending applications is part of Ukraine’s obligations under the *Ivanov* pilot judgment. In this respect, the CM strongly urged the authorities to adopt a three-step strategy

to find a viable long term solution to the problem of non-enforcement of domestic court decisions, including:

- ▶ calculation of the amount of debt arising out of unenforced decisions;
- ▶ introduction of a payment scheme with certain conditions, or containing alternative solutions, to ensure the enforcement of decisions;
- ▶ introduction of the necessary adjustments in the State budget so that sufficient funds are made available for the effective functioning of the above-mentioned payment scheme, as well as necessary procedures to ensure that budgetary constraints are duly considered when passing legislation, so as to prevent situations of non-enforcement of domestic court decisions rendered against the State or State enterprises.

In September 2016, the CM expressed its profound regret that no action had been taken in response to the CM's decision adopted in June 2016, in particular with a view to settling the pending similar applications before the Court and adopting the three-step strategy aimed at finding a long-lasting solution to the problem of non-enforcement or delayed enforcement of domestic judicial decisions. The CM further stressed that, in view of the increasing number of new applications brought before the Court, the continuing inaction of the authorities would put an additional undue burden on the Convention system. Therefore, the CM called upon the authorities to take resolute action without further delay and decided to resume consideration of this group of cases at its Human Rights meeting in March 2017 at the latest.

F.8. Organisation of the judiciary

■ UKR / Agrokompleks

Application No. 23465/03, judgments final on 08/03/2012 and 09/12/2013 (just satisfaction), enhanced supervision

” **Interference by the executive and the legislature with the judiciary's independence:** lack of independence and impartiality of the domestic courts hearing an insolvency case brought against a big, largely state-owned, oil company (including persistent attempts by the executive and the legislature to intervene and lack of internal judicial independence as the President of the Higher Arbitrage Court gave direct instructions to his deputies to reconsider a particular ruling), excessive length of the proceedings due to the authorities attempts to have the amount awarded diminished after the final ruling (1997-2004) and breach of the principle of legal certainty due to the quashing of the final judicial decision, the mere size of the sum awarded being disguised as a newly discovered circumstance (Article 6 § 1, Article 1 of Protocol No. 1)

CM decisions: The CM has been following the execution of this case since 2012 and has concentrated its action in on the issue of internal judicial independence only; broader issues surrounding the independence of the judiciary vis-à-vis the executive and legislative branches of power being examined in the *Oleksandr Volkov* case and the *Salov* group of cases.

When resuming consideration of this case in June 2016, the CM noted the additional efforts made by the authorities to pay two more installments of the just satisfaction and their commitment to pay the outstanding amounts in the nearest future. In

this respect, the CM urged the authorities to pay the remaining balance, including the default interest owed, without further delay. In December 2016, the CM noted that the authorities had paid the full amount of just satisfaction to the applicant company but that a minor issue of default interest was still pending resolution and, therefore, invited the authorities to pursue their co-operation with the Secretariat to find a solution to this outstanding issue.

As regards the general measures, specifically internal judicial independence, at its meeting of March 2016, the CM invited the authorities to take specific measures, in particular by introducing sufficient safeguards in the legal framework governing internal judicial independence coupled with appropriate disciplinary and/or criminal sanctions against members of the judiciary who interfere or apply pressure on their fellow judges. The authorities indicated that in the past few years they had adopted important legislative changes with regard to the judiciary. In this respect, they indicated that the current legal framework, notably the Law “On the Judiciary and the Status of Judges”, provides sufficient safeguards against undue pressure from fellow judges or any other undue influence by hierarchically superior judges. More recently, these legislative changes were supported by constitutional amendments that entered into force on 30 September 2016. In December, the CM invited the authorities to provide additional information on the internal independence of judges in light of the most recent constitutional amendments on the judiciary and on measures other than legislative aimed at eradicating the practice of undue influence on judges, in particular as to the exclusion of the influence of hierarchically superior judges over their peers.

In June, the CM also invited the authorities to provide information on the measures taken and/or envisaged with a view to better circumscribing in the legislation the review of final domestic judgments in commercial cases on the ground of newly-discovered circumstances, both as regards the criteria and the time-frame for such a review. The authorities indicated that the review of final judicial decisions in commercial cases is regulated by the Code of Commercial Procedure, which was significantly amended in 2010 to include an exhaustive list of five grounds for judicial review under new circumstances, reducing the period to lodge a request for the review from two months to one month. In addition, on 26 December 2011, the Higher Commercial Court of Ukraine issued a ruling on the review of judicial decisions upon newly discovered circumstances, providing guidance to courts on its application. In this respect, the CM considered that the measures taken in respect of the review of final judicial decisions are sufficient to prevent similar violations.

■ UKR / Oleksandr Volkov - UKR / Salov (group)

Application Nos. 21722/11 and 65518/01, judgments final on 27/05/2013 and 06/12/2005, enhanced supervision

” Unlawful dismissal of a Supreme Court judge: unlawful dismissal of the applicant from his post as a judge of the Ukrainian Supreme Court in June 2010, serious systemic problems concerning the functioning of the Ukrainian judiciary, notably as regards the system of judicial discipline (Articles 6 § 1 and 8)

CM decision: Issues surrounding the independence of the judiciary *vis-à-vis* the executive branch of power have been followed by the CM for a long time (starting with *Sovtransavto Holding* in 2002). In 2014, given the urgent individual measures to be adopted, the CM adopted four decisions; confronted with the absence of progress, the CM further adopted an interim resolution in December 2014. In February 2015 the Supreme Court reinstated the applicant in his post.

With respect to general measures, since 2015 the authorities have taken a series of measures to improve the legal framework for judicial discipline in Ukraine, notably the “Law on ensuring the right to fair trial”. However the CM, in 2015, recalled the Court’s findings and considered that constitutional amendments were necessary to solve the problems at issue, notably with regard to the restructuring of the institutional basis of the system of judicial discipline. In 2016, the authorities indicated that the constitutional reform on the judiciary had been adopted, with the direct support of the Council of Europe, notably through the Project “Support to the Implementation of the Judicial Reform in Ukraine”.

Resuming consideration of this group of cases in December 2016, in the light of the action report submitted in October, the CM welcomed the adoption of the constitutional amendments, in force since 30 September 2016, which provide for a new legal framework for the judiciary in Ukraine, including in respect of judicial discipline.

In this respect, the CM instructed the Secretariat to prepare a detailed assessment of the information provided as well as the measures taken and envisaged to execute the *Oleksandr Volkov* judgment before its 1280th meeting (March 2017) (DH) with a view to a full assessment of the progress made.

In conclusion, the CM invited the authorities to provide information on the execution of the *Salov* group of cases by 15 December 2016 at the latest and decided to resume consideration of all these cases at its 1280th meeting.

G. No punishment without law

H. Home / Private and family life

H.1. Right to home

■ BGR / Yordanova and Others

Application No. 25446/06, judgment final on 24/07/2012, enhanced supervision

” **Eviction of persons of Roma origin:** planned eviction of unlawful occupants of Roma origin from an unlawful settlement in Sofia where many had lived for decades with the authorities’ acquiescence, on the basis of legislation not requiring any examination of proportionality of the removal orders (potential violation of Article 8 in the event of enforcement of the removal order)

CM decision: Following the submission of an updated action plan by the authorities in April 2016, the CM resumed consideration of this case in June 2016. In compliance with the indications of the Court under Article 46, the authorities have suspended

the implementation of the removal decision at issue until suitable rehousing solutions have been found. The CM recalled also the necessity to carry out in advance an examination of the proportionality of each eviction measure: to this end, it invited the authorities to submit, by 1 September 2016, information on the concrete measures taken to secure such examination of the solutions to the unlawful occupation and to put an end to the uncertainty which the applicants have been facing for almost four years.

The CM further recalled the findings of the Court that it is necessary to amend the relevant domestic law and practice and, considering the absence of any proposal in this area to date, urged the authorities to adopt rapidly the necessary legislative and regulatory reforms. It noted that the setting-up of a legal framework providing for substantial safeguards and an adequate and fair decision-making procedure is important to ensure an adaptation of domestic judicial and administrative practice.

Information on the progress achieved and the time-table foreseen for the adoption of the necessary legislative reforms was expected by 1 December 2016. In December 2016, new information was submitted pointing out that the current political crisis hindered the adoption of the necessary legislative measures.

H.2. Domestic violence

■ MDA / Eremia and Others (group)

Application No. 3564/11, judgment final on 28/08/2013, enhanced supervision

” **Domestic violence:** failure by the authorities to take effective measures to protect the applicants from ill-treatment from their husband/ex-husbands; the authorities’ repeated condoning of domestic violence, on account of the manner in which they had handled the applicants’ cases, reflecting a discriminatory attitude towards women (Articles 3, 8 and 14)

Developments: At its last examination of this group in December 2015, the CM notably invited the authorities to sign and ratify the Istanbul Convention on Preventing and Combating Violence against Women. On 16 February 2017, the Moldovan authorities signed this Convention. Information on measures taken in view of its ratification is awaited.

■ TUR / Opuz

Application No. 33401/02, judgment final on 09/09/2009, transfer to enhanced supervision

” **Inadequate measures to protect against domestic violence:** failure of the police to react to warnings of violence by the husband against his wife and her mother, with the result that the mother was killed; inadequate investigations into the killing and ill-treatment, inadequate legal framework to establish and apply effectively a system punishing all forms of domestic violence and providing sufficient safeguards for the victims; general and discriminatory judicial passivity in face of domestic violence against women creating a climate conducive to such violence (Articles 2, 3 taken alone and in conjunction with Article 14)

Action plan: Responding to the CM's request at its March 2015 meeting for updated information, notably on the applicant's situation, the Turkish authorities submitted an action plan (DD(2015)526) in May 2015 and a revised action plan (DD(2017)16) in December 2016. The plan refers to legislative measures, effectiveness of investigation, training and awareness-raising measures, as well as an array of other measures aimed at preventing similar violations. The authorities also reiterated the general measures taken within the scope of the "Action Plan on the Prevention of Human Rights Violations" and the measures mentioned in the former action report delivered on 7 May 2015. The information is currently being assessed.

H.3. Abortion / Procreation / Filiation

■ FRA / Mennesson - FRA / Labassee

Application Nos. 65192/11 and 65941/11, judgments final on 26/09/2014, enhanced supervision

» **Recognition in France of a surrogate child born in USA:** refusal to grant legal recognition in France to parent-child relationships that have been legally established in the United States between children born as a result of surrogate motherhood and the French couples, living in France, who had recourse to this method (Article 8)

Action plan: In addition to the information presented in 2015 on the individual and general measures taken with a view to the execution of these judgments, the authorities submitted an updated action plan in April 2016 (DH-DD(2016)503) providing notably information on the change of the Court of Cassation's case law, now authorizing the entry in the national registers of foreign birth certificates of children born under a surrogacy arrangement, subject to compliance with the provisions of Article 47 of the Civil Code. The Action plan also indicated that national courts are gradually applying the case-law of the Court of Cassation. However, according to the French authorities, the execution of this judgment raises a series of complex issues requiring the adoption of a cross-border approach. The government wishes to avoid circumvention of the national law and to maintain the principle of prohibition on grounds of public order of agreements related to reproductive or gestational surrogacy set out in articles 16-7 and 16-9 of the Civil Code. Further avenues aiming at reaching these solutions are under way.

■ ITA / Costa and Pavan

Application No. 54270/10, judgment final on 11/02/2013, CM/ResDH(2016)276

» **Inconsistency in allowing medically assisted procreation** to healthy carriers of cystic fibrosis, and refusing access to medically-assisted procreation and, in this context, to an embryo screening in order to procreate a child who is not affected by this disease, while being authorised to terminate pregnancy on medical grounds if the foetus is affected by the same pathology (Article 8)

Final resolution: On 23 September 2013, at the applicants' request, the court of first instance issued an injunction ordering the public health agency to perform the medical procedures at issue (medically assisted procreation and an embryo screening). On 14 May 2015, the Constitutional Court declared the impugned legal

provisions unconstitutional, thereby abrogating the prohibition of access to medically assisted procreation of healthy carriers of cystic fibrosis. Two draft laws reforming procedures for medically-assisted procreation in the light of the judgment are pending before Parliament.

■ **POL / P. and S.**

Application No. 57375/08, judgment final on 30/01/2013, enhanced supervision

” **Information on abortion:** Failure in 2008 to provide effective access to reliable information on the conditions and procedures to be followed to access lawful abortion; unwarranted disclosure of the applicants’ personal data to the public by the hospital eventually carrying out the lawful abortion; unjustified 10-day detention in a juvenile shelter to convince the applicant not to abort (Articles 3, 5 and 8)

Developments: Possible avenues for the solution of the issues at the origin of the violations found in this judgment are being discussed bilaterally with a view to the elaboration and presentation of an action plan or report by the Polish authorities.

■ **RUS / Konovalova**

Application No. 37873/04, judgment final on 16/02/2015, CM/ResDH(2016)72

” **Presence without mother’s consent of medical students during child birth**
(Article 8)

Final resolution: A set of rules regulating the participation of medicine students was adopted in 2007 in the form of a Ministry of Healthcare and Social Development Order under the Healthcare Act requiring the patient’s consent for such participation. Pursuant to the new Federal Law on “Fundamental Health Protection Principles” 2012 and the Federal Law on Personal Data, information concerning medical consultation, an individual’s health, diagnosis and other data obtained in the course of medical examination or treatment shall be considered as confidential (medical secrecy). In addition, an Order of the Ministry of Healthcare adopted in 2013 under the Education Act 2012 provides that such participation is only possible with the consent of patients or their lawful representatives, in accordance with medical ethical standards and under supervision of the teaching staff and/or medical institution staff.

H.4. Acquisition, use, disclosure or retention of private information

■ **BGR / Association for European Integration and Human Rights and Ekimdzhiev**

Application No. 62540/00, judgment final on 30/04/2008, enhanced supervision

” **Insufficient guarantees against abuse of secret surveillance measures:** deficiencies of the legal framework on functioning of secret surveillance system; lack of effective remedy (Articles 8 and 13).

Developments: The action report provided by the authorities in June 2012 and their additional clarifications of January 2013 (DD(2013)76) were examined by the CM in March 2013. Subsequently, a series of legislative reforms have been adopted, comprising notably further limitation of the use of special surveillance means to investigate or to prevent serious criminal offences, the imposition of a time-limit

for conservation of data stored on the ground of protection of national security. In addition, the competence to apply special surveillance means was transferred from the Ministry of the Interior to a new agency, operating under the direct responsibility of the Council of Ministers. Moreover, the National Bureau for Control of Special Surveillance, established in 2013, can, under certain conditions, inform the persons concerned that they have been subject to illegal secret surveillance measures. Bilateral consultations in view of the presentation of an updated action plan/report have taken place.

■ FRA / M.K.

Application No. 19522/09, judgment final on 18/07/2013, CM/ResDH(2016)30

” **Collection and retention of fingerprints in the context of criminal investigations which did not lead to the applicant’s conviction**, without any subsequent possibility for him to obtain the erasure of his personal data (Article 8)

Final resolution: The applicant’s personal data were deleted from the *Automated Fingerprint File* following a decision of the Public Prosecutor.

Following the European Court’s judgment, a decree modifying the conditions for collecting, retention and deletion of fingerprints was adopted on 2 December 2015. According to this decree, the collection of fingerprints is only possible for crimes and misdemeanors.

The deletion of fingerprints collected in the context of investigations which did not lead to a conviction (case dismissal, decision not to prosecute, unknown offender) is granted automatically and the person concerned does not have to claim it. However, the prosecutor can order the retention of fingerprints; the prosecutor’s decisions can be appealed against before the liberty and custody judge.

■ LIT / Drakšas

Application No. 36662/04, judgment final on 31/10/2012, CM/ResDH(2016)124

” **Disclosure to the media of a politician’s telephone conversation in violation of private life**, which had been intercepted by the State Security Department and lack of an effective remedy allowing for an examination of the legality and the implementation of the surveillance measures (Articles 8 and 13)

Final resolution: Criminal prosecution of the perpetrators became time-barred. The Law on Operational Activities, applicable at the material time, was replaced on 1 January 2013 by the Law on Criminal Intelligence, which provides effective domestic remedies for the protection of human rights enabling *inter alia* judicial examination of the legality and the implementation of surveillance measures. In June 2015, the Supreme Court of Lithuania published on its website a survey of the domestic case-law with regard to application of Article 154 of the Code of Criminal Procedure and Article 10 of the Law on Criminal Intelligence as concerns the monitoring, recording and storage of the information transmitted through the electronic communications networks explaining criteria for secret surveillance measures to comply with Article 8.

■ SER / Zorica Jovanović

Application No. 21794/08, judgment final on 09/09/2013, enhanced supervision

” **Fate of new-born “missing babies”:** continuing failure by the authorities to provide credible information to the applicant as to the fate of her son, allegedly deceased in a maternity ward in 1983: his body was never transferred to her and she was never informed of where he had allegedly been buried. In addition, his death was never properly investigated and officially recorded (Article 8)

CM decisions: In response to the Court’s findings and bearing in mind the significant number of potential applicants in a similar situation, the authorities set up a working group which prepared a draft law aimed at introducing a mechanism providing for individual redress to parents of “missing babies”. Four high courts will be competent to examine complaints from the parents provided that they established contact with the authorities to obtain information as to the fate of their missing babies before September 2014, regardless of the date of the child’s birth.

Resuming consideration of this case in 2016, the CM noted with interest that the revised draft law prepared by the authorities to execute this judgment took into consideration a number of questions identified by the CM, as well as certain concerns raised by civil society, in particular as regards the eligibility criteria and procedure for obtaining evidence. The CM noted, however, that the revised draft law still leaves various issues outstanding, including that of the powers to be vested in the civil courts and the special police unit, and the procedure for declassification of medical information. It thus encouraged the authorities to address the outstanding issues and concerns of parents of “missing babies” in consultation with civil society. Given the time elapsed and the importance of this case, the CM invited the authorities to take the necessary measures to adopt the draft law with the highest priority.

At its meeting in September 2016, the CM recalled the European Court’s findings in its judgment, notably the necessity to secure the establishment of a mechanism aimed at providing individual redress to parents of “missing babies”, supervised by an independent body. In view of the time elapsed since the expiry of the deadline set by the European Court (September 2014), the CM stressed that it was crucial that the legislative process necessary for the execution of this judgment be brought to an end and the shortcomings addressed without further delay. In this respect, the CM strongly urged the authorities to intensify their efforts with a view to adopting the revised draft law as a matter of utmost priority and, in that context, to continue the discussions with the Secretariat in order to ensure that the law addresses the outstanding issues identified by the CM.

The CM pursued the examination of this case in December 2016 and noted the detailed explanations given by the authorities on the outstanding issues identified by the CM in March 2016, notably on the power to be vested in the civil courts and the police and the procedure for declassification of medical information. In addition, the CM noted the assurances given by the authorities that the revised draft law would be adopted before the end of 2016; it therefore strongly urged them to sustain their efforts to adopt it within this time frame.

In conclusion, the CM decided to resume examination of this case at its meeting in March 2017 in the light of the progress made, and in the event that the draft law was not adopted, instructed the Secretariat to prepare a draft interim resolution.

TUR / Alkaya

Application No. 42811/06, judgment final on 09/01/2013, CM/ResDH(2016)209

” **Protection of private and family life:** dismissal of proceedings against a newspaper (which had disclosed the applicant’s residential address in an article concerning the burglary of her home) relying on the fact that the applicant was a public figure and subject of public-interest (Article 8)

Final resolution: This isolated case concerns the failure of the domestic courts in their assessment of conflicting interests and the notion of public interest. The Court of Cassation aligned its case-law with the Convention requirements and the European Court’s findings. In particular, the Court of Cassation holds the view that some articles aimed solely at satisfying the curiosity of a particular readership regarding the details of a person’s life, however well known that person might be, could not be deemed to contribute to any debate of general interest to society.

The judgment was translated, published and disseminated and used in training activities for national judges.

H.5. Placement of children in public care, custody and access rights

CZE / T.

Application No. 19315/11, judgment final on 17/10/2014, CM/ResDH(2016)248

” **Failure to ensure the maintenance of family ties:** absence of any possibility of family reunification between a father and his daughter, who was placed in care following the death of her mother (the father was in prison) due to the absence of rules on visiting or residence rights and the lack of any formal decision which could be challenged before courts (Article 8)

Final resolution: In May 2016 the domestic court issued a judgment with regard to custody and visitation rights. The child was placed in foster care and the father’s written contact with his child was confirmed. In accordance with the new legislation (Act No. 401/2012 amending Act No. 359/1999 on the Social and Legal Protection of Children), contact decisions must be taken by the courts and not by directors of facilities for children requiring immediate assistance. Related training activities for judges are organised by the Judicial Academy.

ITA / Roda and Bonfatti and 2 other cases

Application No. 10427/02+, judgment final on 26/03/2007, CM/ResDH(2016)27

” **Failure to take the necessary measures to maintain contacts between children and their natural families** while the children were in care (and partly declared adoptable), in particular through the organisation of regular visits (Article 8)

Final resolution: The supervision of care measures was strengthened through legislative changes in 2012 and 2013 in the field of family law, in particular with regard

to the possibilities of minors to be heard by the judge in procedures concerning them, including those relating to the minor's adoptability. New provisions included in Article 337 of the Civil Code govern the relations between biological parents and the child in proceedings relating to divorce, physical separation and interruption of cohabitation. Legislative Decree No. 154 of 2013 underlines the purpose of the social services' intervention which is to provide support for the family of origin.

■ SVK / Lopez Guio

Application No. 10280/12, judgment final on 13/10/2014, CM/ResDH(2016)235

” **Lack of procedural protection of a parent in proceedings concerning the return of his child** under the Hague Convention after the child's abduction, resulting in the status of the child remaining undetermined for a protracted period of time (Article 8)

Final resolution: In March 2015, special civil proceedings were introduced concerning the return of a child, wrongfully removed or retained. Strict time frames were introduced to ensure swift ruling on these cases and to avoid delays caused by the procedural behaviour of the parties to the proceedings. Moreover, the possibility to apply for extraordinary remedies was excluded in this type of proceedings to ensure swift and effective rulings. Under the new Article 51 of the Constitutional Court Act (Law No. 353/2014), if the Constitutional Court decides at the preliminary hearing to proceed with a complaint it shall notify all the interested parties who shall have the right to submit observations in the time-limit given. The judgment was published and disseminated among all judges of the Constitutional Court and regional courts. It is also used in training activities organised by the Judicial Academy.

H.6. Protection against defamation and hate speech

H.7. Gender identity

■ LIT / L.

Application No. 27527/03, judgment final on 31/03/2008, enhanced supervision

” **Private life - gender reassignment:** lack of implementing legislation regulating the conditions and the procedure for gender reassignment and the change of entries in official documents (Article 8)

CM decision: At its meeting in March 2015 the CM considered that the applicant's situation had been resolved (in 2008 the government had paid the sums necessary for a gender assignment operation abroad) and therefore decided to close examination of the individual measures.

As to the general measures, in March 2013 Parliament gave its initial approval to two draft laws: the Law providing for the revocation of the litigious provision of the Civil Code (Article 2.27) at the origin of the violation in this case, and the Law on civil acts and their registration, which would simplified the procedure for changing entries in official documents subsequent to gender reassignment. At its meeting of

September 2014, the CM however urged the authorities to complete the legislative process to provide for the necessary legal certainty and transferred this case to the enhanced supervision procedure.

In response to that decision, Parliament decided, in October 2014, to send the entire package of laws back to the government. The latter, in turn, excluded the draft laws relating to the execution of the present judgment and adopted a more comprehensive approach, in line with the CM's earlier decision. In January 2015, a working group led by the Deputy Minister of Health (consisting of professors of medicine, officials of the Ministries of Health and Justice as well as the Government Agent) was set up to establish further legislative steps with a view to full execution of this judgment. A draft law prepared by the Ministries of Health and Justice, in consultation with independent experts from NGOs and in co-ordination with other ministries, was sent to the government in November 2015. On 3 December 2015, a new Law on Registration of Civil Status Acts was adopted (and entered into force on 1 January 2017).

Meanwhile, on 18 February 2016, the government approved the legislative programme for 2016. In the light of the newly adopted law on Registration of Civil Status Acts a new draft law amending Article 2.27 of the Civil Code has been prepared and widely discussed under the coordination of the Governmental Agent with a view to ensuring a comprehensive approach of the issue. Three options for the legislative change were proposed and comments on the draft were expected by 27 February 2017. A meeting will subsequently be organised to establish further steps.

When resuming consideration of this case in June 2016 in the light of the information provided in the updated action plan of April 2016, the CM noted with interest the adoption by the government of the legislative programme for 2016, indicating that the relevant draft laws were expected to be adopted by the Seimas' autumn session. The CM however expressed its concern that the legislative amendments necessary for the full execution of this judgment have still not been adopted despite the fact that the judgment became final more than eight years ago and urged the authorities to complete the legislative process (including sub-statutory legislation) in line with the proposed programme and to take all necessary measures.

The authorities were invited to provide updated information by on the legislative process, by 2 January 2017 at the latest. The updated action report submitted in December 2016 is being currently assessed.

H.8. Specific situations

■ SVN / Kurić and Others

Application No. 26828/06, judgment final on 26/06/2012 (merits), 12/03/2014 (just satisfaction), CM/ResDH(2016)112

” **Discriminatory and automatic deprivation without prior notification of the permanent resident status in Slovenia** after its declaration of independence. The “erasure” of the resident status concerned former citizens of the Socialist Federal Republic of Yugoslavia (the “SFRY”) with permanent residence in Slovenia and citizenship of one of the other SFRY republics at the time of Slovenia’s declaration of independence; lack

of an effective remedy in respect of the status deprivation; discrimination against the applicants whose situation was significantly altered after independence in comparison to aliens who did not originate from other SFRY republics (Articles 8, 13 and 14) The Court applied the pilot judgment procedure and requested the introduction within one year of an ad hoc domestic compensation scheme for the “erased” who are still denied compensation for the infringement of their fundamental rights.

Final resolution: The applicants’ residence status was regularised and the just satisfaction for pecuniary and non-pecuniary damage paid. The Act on Compensation for Damage to Persons Erased from the Register of Permanent Residents entered into force on 18 December 2013 and became applicable on 18 December 2014. Beneficiaries of the compensation scheme are defined as those “erased” persons who have acquired a permanent residence permit or citizenship as well as those “erased” persons who made an unsuccessful application to that effect under the legislation applicable prior to the enactment of the Amended Legal Status Act 2010. Awareness-raising measures were organised to inform potential beneficiaries of the compensation scheme.

Special attention was devoted to those whose applications for citizenship or permanent residence permits had been rejected. Claims for compensation under the Act will have to be filed no later than three years after its entry into force or after notification of the decision on permanent residence or citizenship. The amount of compensation is calculated on the basis of a lump sum of EUR 50 for each completed month of “erasure” covering both pecuniary and non-pecuniary damage sustained. In addition, claims for additional compensation can be lodged under the general rules of the Code of Obligations. Beneficiaries are entitled to other forms of allowance: compulsory health insurance, benefits and preferential treatment under social security programmes; access to other forms of public assistance and State grants; benefits and preferential treatment in housing (non-profit rent); access to the education system; and, lastly, preferential treatment under programmes for aliens who are not citizens of EU member States, with a view to their integration into cultural, economic and social life.

Adequate funds have been set aside to meet the compensation claims. The European Court highlighted that various legislative reforms, notably the amended Legal Status Act, were implemented after July 2010, enabling the “erased” to take steps to regularise their residence in Slovenia. The government also set up an intergovernmental commission in order to monitor the implementation of the amended Legal Status Act.

TUR / Gözüm

Application No. 4789/10, judgment final on 20/04/2015, CM/ResDH(2016)331

” Impossibility for a single adoptive mother to have her forename recorded on child’s identity papers in place of the biological mother’s forename (Article 8)

Final resolution: On 9 November 2010, the applicant’s forename was registered as that of the mother of her adoptive son. The Regulation on the Adoption of Juniors was amended on 15 March 2009 to clarify the application of the Civil Code, thus

enabling a single adoptive parent to have his or her forename registered in the place of that of the biological parent.

■ TUR / Güzel Erdagöz

Application No. 37483/02, judgment final on 06/04/2009, CM/ResDH(2016)116

” **Domestic court’s refusal of the applicant’s request for rectification of her name in the registry of births, deaths and marriages**, in the absence of clear legislation in this regard (Article 8)

Final resolution: Following the reopening of proceedings, the applicant’s name was rectified as demanded.

The Civil Code (Law No. 4721) was amended in 2003 and the Civil Registration Act (Law No. 1587) was repealed in 2006 providing for the possibility to request name changes on justified demand. The assessment of the reason put forward shall be made by the judge on a case-by-case basis.

A change of the Court of Cassation’s case-law occurred; applications for name change cannot be dismissed on the ground that the requested name is not available in the Turkish language.

■ TUR / Özmen (group)

Application No. 28110/08, judgment final on 04/03/2013, enhanced supervision

” **Child abduction:** inadequate measures taken in order to implement orders of return of abducted children under the Hague Convention on the Civil Aspects of International Child Abduction (Article 8)

CM decision / Transfer: When considering progress of execution in March 2016, the CM noted that the enforcement of the order for the return of the applicant’s daughter (*Özmen* case) to Australia under the Hague Convention on the Civil Aspects of International Child Abduction was no longer an issue since the applicant now resided in Turkey. In this respect, the CM strongly urged the authorities to take the necessary measures to establish the daughter’s exact whereabouts and to ensure that, once she is found, she benefits from psychological support given that she has not seen her father for more than ten years.

Since no information had been provided by the authorities on general measures to prevent future violations and since similar violations continue to occur despite the general measures adopted in the *Hansen* case in 2008, the CM decided to transfer the cases of *Ilker Ensar Uyanik* (60328/09) and *Övüş* (42981/04) from the standard to the enhanced supervision procedure, to join them with the *Özmen* case.

In conclusion, the CM urged the authorities to prepare a comprehensive action plan. The CM has since been informed that the child has been found.

I. Environmental protection and hazards

ITA / Di Sarno and Others

Application No. 30765/08, judgment final on 10/04/2012, enhanced supervision

” **Region polluted by uncollected waste:** prolonged inability of the authorities to ensure the proper functioning of the waste collection, treatment and disposal services in Campania in breach of the right to respect for private life and home, and lack of an effective remedy in this respect (Article 8 substantive limb, Article 13)

CM decision: The CM has been following these cases since 2012 and noted, in this respect, the adoption of a large number of measures between 2009 and 2016 to resolve the problems linked to the treatment and disposal of waste in Campania. The legislative measures concern, in particular, the acceleration of the implementation of energy-producing waste incinerators, the setting of minimum objectives for the separate collection of waste, the fight against the phenomenon of unlawful waste fires and the illegal disposal of waste in general. In this respect, a draft regional law was introduced in December 2015 containing new provisions aimed at reducing the production of waste and, since 2012, an operational group has been established in Campania to monitor the collection and management of waste from the point of view of its impact on health and the environment. In their communications, the authorities have indicated that episodes of accumulation of refuse in the region concerned by the judgment have not re-occurred for more than four years.

Resuming consideration of this case in June 2016, in the light of the revised action plan submitted in April 2016, the CM took note of the measures adopted by the authorities, including those adopted recently, to resolve the problems linked to the treatment and disposal of urban waste in the region of Campania as well as the establishment of mechanisms to monitor waste management. In this respect, the CM noted that the situation has improved given that there has been no episode of accumulation of refuse in the public streets for more than four years and noted that encouraging results have been obtained with regard to the sorting of waste. In light of the above, the CM invited the authorities to keep it informed of the impact of the measures already adopted and rapidly to adopt the still envisaged additional measures to ensure there is no repetition of the situation. It also invited them to provide information on the monitoring mechanisms established and specifically whether they are entitled to make recommendations and, in the affirmative, on the follow-up given as well as on the effective domestic remedies available to citizens to obtain redress for the damage suffered by poor management of waste collection and treatment.

Finally, in view of the information provided, the CM considered that no other individual measure was required.

ROM / Tatar and 1 other case

Application No. 67021/01+, judgment final on 06/07/2009, CM/ResDH(2016)349

” **Breach by the State of its obligations to assess risks and consequences of hazardous industrial process** and to keep the public informed on potential risks for human health and/or environment (Article 8)

Final resolution: A new legislation regulating hazardous industrial activity was adopted: Law No. 86/2000 ratifies the United Nations Economic Commission for Europe (UNECE), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Industrial Emissions Act No. 278/2013, Act No. 59/2016 on the Control of Major Accident Hazards involving Hazardous Substances, Emergency Ordinance No. 152/2005 on the Prevention and Integrated Control of Pollution, Emergency Ordinance No. 195/2005 on Environmental Protection and the Order No. 818/2005 on Environmental Protection of the Minister for Agriculture, Forestry, Water and Environment.

Conditions and operating parameters of an existing or new industrial activity, which may have a significant impact on the environment, shall be established by the competent authority for the protection of the environment, within the framework of an environmental authorisation.

With regard to the activities of the industrial plants concerned, S.C. Romaltyn Mining ceased to function in 2006 and sanitation work was undertaken on its site. The company requested an integrated authorisation; its demand was rejected in 2016. Water management activities on the site are closely monitored. S.C. Sometra SA interrupted its activities temporarily in 2009. An integrated authorisation was obtained for a partial production sector. Air and water quality is regularly monitored by the competent government agencies.

J. Freedom of thought, conscience and religion

■ GRC / Alexandridis

Application No. 19516/06, judgment final on 21/05/2008, CM/ResDH(2016)312

» **Interference with the right not to divulge one's religious beliefs** since the applicant was obliged to reveal that he was not an Orthodox Christian when taking the oath of office as a lawyer; lack of an effective remedy in this respect (Articles 8 and 13)

Final resolution: Following an amendment to the Lawyers' Code of 2013, it is not obligatory to reveal one's religious beliefs during the procedure for taking the oath of office before a court.

■ LVA / Mirojubovs and Others

Application No. 798/05, judgment final on 15/12/2009, CM/ResDH(2016)319

» **Freedom of religion:** intervention by the Religious Affairs Directorate in a dispute between two groups of parishioners of the Old Orthodox Church by a decision without sufficient reasons, without consideration of all the relevant circumstances and in disregard of the State's duty of neutrality in religious matters, resulting in the expulsion of one group of parishioners from the temple (Article 9)

Final resolution: The applicants had the possibility to request the reopening of administrative proceedings, but did not avail themselves of this opportunity.

In 2008, the registration of religious organisations was passed from the Ministry of Justice to the Enterprise Register which maintains the Registry of Religious

Organisations. Registration can be refused on the basis of an opinion by the Ministry of Justice, which can be appealed against before the administrative court.

In 2009, amendments were introduced in the Law on Religious Organisations, according to which the obligation of parishioners belonging to the same cult/denomination to unite under one leadership was lifted.

■ **TUR / Ahmet Arslan and Others**

Application No. 41135/98, judgment final on 16/05/2010, CM/ResDH(2016)300

” **Criminal convictions for wearing religious headgear and garments**, which were banned in public areas under domestic law as contrary to the principle of secularity. (Article 9)

Final resolution: The applicants’ criminal records were deleted. Article 526 § 2 of the Criminal Code providing for criminal sanctions for wearing of religious headgear and garments in contravention of the Law No. 671 and Law No. 2596 was abrogated in 2014.

■ **TUR / Sinan Işık**

Application No. 21924/05, judgment final on 02/05/2010, enhanced supervision

” **Violation of the applicant’s freedom not to disclose his religion** in that he was under an obligation to disclose his beliefs as a result of the obligatory indication of religion on his identity card (Article 9)

CM decisions / Transfer: To resolve the problems at the origin of the violation found by the Court in this judgment, the Turkish authorities have undertaken a series of measures, of which they kept the CM informed through communications and action plans provided since 2011. In the light of an action plan of April 2016, the CM resumed consideration of this case at its meeting of June 2016.

At that meeting the CM noted with satisfaction that the new identity cards that will be distributed in the second half of 2016 will no longer contain a “religion box”. It noted however that further clarification is needed on the content of the information that will be stored in the electronic chips on the new identity cards and therefore invited the authorities to provide the following information before 1 September 2016:

- ▶ as to whether the electronic chips on the new identity cards are designed to store information on the religious affiliation of citizens and, if so, on what legal basis and according to which procedures this information will be stored;
- ▶ which public authorities will be able to have access to the information that will be stored on the new identity cards and for what purposes;
- ▶ as to whether the information currently contained in civil registers regarding religious affiliation will be transferred to electronic chips.

In December 2016, in the light of the updated action plan submitted in October 2016, the CM noted the clarifications provided by the authorities in response to the questions raised at the above-mentioned meeting and invited them to provide explicit information as to which authorities would have access to the information

on religious affiliation stored on the electronic chip embedded in the card upon consent of the person.

In conclusion, in the light of the progress achieved in the execution of this judgment, the CM decided to transfer this case from enhanced to standard supervision procedure.

K. Freedom of expression

AZE / Mahmudov and Agazade – AZE / Fatullayev

Application Nos. 35877/04 and 40984/07, judgments final on 18/03/2009 and 04/10/2010, enhanced supervision, Interim Resolutions CM/ResDH(2013)199, CM/ResDH(2014)183 and CM/ResDH(2015)250

» **Excessive and arbitrary sanctions limiting freedom of expression:** use of prison sentences for defamation and arbitrary application of criminal legislation to sanction journalists (Articles 10, 6 § 1 and 6 § 2)

CM decisions / Interim Resolution: Since the very beginning, the CM has followed the developments in this group very closely. In the absence of tangible progress, the CM adopted a first interim resolution [CM/ResDH\(2013\)199](#), strongly urging the authorities of Azerbaijan to take, without any further delay, all necessary measures with a view to aligning the relevant legislation pertaining to defamation and its implementation with the Convention requirements as interpreted by the Court's case law and calling upon the authorities to provide the CM without further delay with tangible information on the measures taken or envisaged to guarantee a non-arbitrary application of legislation by domestic courts and to ensure the right to an impartial tribunal as well as the respect of the presumption of innocence.

In their second Interim Resolution ([CM/ResDH\(2014\)183](#)) adopted in 2014, the CM took note, with respect to the legislation on defamation, of the authorities' intention to submit the legislative proposal of the Plenum of the Supreme Court, aimed at reducing the imposition of prison sentences in defamation cases, to the parliamentary session of autumn 2014 and invited them to specify, given the Court's case-law, the situations in which it remains possible to impose prison sentences, as well as to report on the state of progress of the larger draft Law on defamation submitted to the Venice Commission in 2012 and on the measures adopted with a view to resuming co-operation with the latter. As regards the arbitrary application of criminal legislation to limit freedom of expression, the CM expressed serious concerns, in particular on account of the reported use of different criminal laws - similar to the ones used in the present group of with cases - against journalists, bloggers, lawyers and members of NGOs, whilst noting at the same time with interest the reintroduction of a special working group to promote dialogue with civil society. It also noted with interest measures aimed at reinforcing the independence of the judiciary, notably the budgetary independence of the Judicial and Legal Council, but urged, nonetheless, the authorities to explore further measures to this end. It also urged the authorities urgently to take other measures to ensure a non-arbitrary application of criminal legislation (notably strengthening training activities for judges and prosecutors; a new decision of the Plenum of the Supreme Court in order to guide

the application by judges and prosecutors of criminal legislation which may have close links with freedom of expression). The CM invited the authorities, in the pursuit of the reforms, to seize the opportunities offered by the Action Plan of the Council of Europe for Azerbaijan.

In face of the continued absence of tangible progress, the CM adopted, at its December meeting of 2015, a third interim resolution ([CM/ResDH\(2015\)250](#)), in which it deplored that the necessary amendments to the law on defamation had not been introduced and reiterated, in this context, its deep concern about the criminal conviction of Mr Intigam Aliyev, the applicants' representative notably in the case of *Mahmudov and Agazade*. The CM stressed anew that freedom of expression constitutes one of the essential foundations of a democratic society and exhorted the authorities to adopt without further delay measures demonstrating their determination to solve the problems revealed, in particular that of the arbitrary application of criminal legislation to limit freedom of expression.

In March 2016, the CM expressed regret that the action report submitted by the authorities shortly before the meeting to a very large extent repeated earlier information submitted and deemed insufficient by the CM. The CM noted nevertheless with satisfaction the continuation of the practice of the courts since 2011 of not resorting to criminal convictions for defamation. It stressed the importance of achieving rapid and tangible progress in the adoption of necessary measures to secure freedom of expression and ensure respect for the rule of law in Azerbaijan and urged anew the authorities to take concrete steps to achieve such progress, in particular by further strengthening judicial independence and through reinforced action under the Action Plan for Azerbaijan 2014-2016 as well as constructive dialogue with all relevant Council of Europe bodies/institutions, including the Venice Commission.

As regards the criminal conviction of the applicants' representative in the case of *Mahmudov and Agazade*, the CM recalled the concerns expressed in the Interim Resolution [CM/ResDH\(2015\)250](#).

In June 2016, the CM adopted a new interim resolution ([CM/ResDH\(2016\)145](#)) by which it recalled that the problems revealed by the present cases had been pending before the CM since 2009 and 2010 respectively. It further recalled its previous decisions and resolutions and in particular the call on the authorities to take concrete measures to achieve rapid and tangible progress in the adoption of the necessary measures to secure freedom of expression and ensure respect for the rule of law in Azerbaijan.

The CM noted, nevertheless, with interest the authorities' responses to a number of specific questions asked by delegations regarding recent awareness-raising measures and confirming the practice developed by the courts not to resort to criminal convictions for defamation, as well as the conditional release of the applicants' lawyer in the case of *Mahmudov and Agazade*.

Considering, however, that this information did not relieve the necessity for further reforms, the CM called on the highest competent authorities to appreciate fully the Convention requirements concerning the respect for freedom of expression and the rule of law and to strengthen judicial independence *vis-à-vis* the executive and

prosecutors, to ensure the legality of the action of prosecutors and the adequacy of the legislation on defamation. In this context, the CM insisted on the necessity to strengthen without further delay the dialogue with all the relevant bodies / institutions of the Council of Europe, including in the framework of the Action Plan for Azerbaijan.

When resuming consideration of these cases in December, the CM reiterated firmly its previous calls to the highest competent authorities and recalled in this respect the indications provided in their previous decisions and interim resolutions. The CM deeply regretted that no information had been submitted since their last examination of this group in June 2016 on any measure taken to address the problem of arbitrary application of criminal law to limit freedom of expression, in particular to strengthen judicial independence vis-à-vis the executive and prosecutors, and to ensure the legality of the action of prosecutors. It regretted similarly the absence of information on measures taken to ensure the adequacy of the legislation on defamation and expressed, in this context, grave concern in face of the recent legislative amendments to the Criminal Code introducing new defamation offences subject to imprisonment irrespective of whether incitement to violence or hatred was involved. Finally, the CM reiterated once again the importance of meaningful dialogue between Azerbaijan and the CM and the Secretariat regarding the problems revealed by this group of cases, and of the adoption of measures demonstrating Azerbaijan's determination to solve these problems; in this context, it noted the willingness expressed by Azerbaijan to cooperate with the Council of Europe.

Shortly thereafter, on 14 December 2016, Azerbaijan and the Council of Europe prolonged the Action Plan for Azerbaijan 2014-2016 to ensure continued action in 2017.

■ ISL / Björk Eiðsdóttir and 3 other cases

Application No. 46443/09+, judgment final on 10/10/2012, CM/ResDH(2016)26

” **Convictions of a newspaper editor and journalists in civil defamation proceedings** brought on the basis of articles published in good faith consistent with the diligence expected of a responsible journalist reporting on a matter of public interest (Article 10)

Final resolution: No request for reopening of proceedings was submitted by the applicants. Training was organised and awareness-raising measures were taken to promote a change of case-law of the domestic courts. Criminal legislation regarding defamation and freedom of speech is currently being reviewed with a view to abolishing prison sentences for defamation, even if this sanction is no longer applied in practice.

■ MDA / Societatea Română de Televiziune

Application No. 36398/08, judgment final on 15/10/2013 (friendly settlement), CM/ResDH(2016)164

” **Impossibility of a public television company (“SRTV”) to impart information** due to the interruption of its broadcasting despite a valid broadcasting licence (Article 10 and Article 1 of Protocol No. 1).

Final resolution: In accordance with a National Audiovisual Coordinating Council's decision of 15 November 2013, the State Company “Radiocomunicații” entered into

a contract with the SRTV company to test the technology of digital terrestrial television providing broadcast services in digital format MPEG-4SD DVBT2, in particular the SRTV's TV programme "TVR Moldova", in Chişinău. The contract was renewed on an annual basis. In January 2016, the SRTV company was granted a broadcasting licence for a slot in the first digital terrestrial multiplex with national coverage for the retransmission of the programme "TVR Moldova" for a term of seven years until 2023.

■ MON / Koprivica

Application No. 41158/09, judgment final on 22/02/2012 (merits), 23/09/2015 (just satisfaction), CM/ResDH(2016)45

” Order for a magazine editor to pay excessively high damages for defamation of a fellow journalist (Article 10)

Final resolution: The impugned judgment was quashed and further action withdrawn. The inadequate case-law of the domestic courts was brought into compliance with the Convention requirements. The judgment was translated, published and widely disseminated among the legal community. On 29 March 2011, the Supreme Court adopted a binding legal opinion on the obligation to respect Convention standards concerning freedom of expression.

■ MON / Šabanović

Application No. 5995/06, judgment final on 31/08/2011, CM/ResDH(2016)44

” Conviction to a suspended prison term for defamation of a public official (water inspector) in a matter of public interest (Article 10)

Final resolution: The impugned judgment was quashed. Criminal proceedings were reopened and the applicant acquitted on the basis of new favourable legislation. On 22 June 2011, amendments to the Criminal Code abolished defamation and criminal insult.

■ ROM / Bucur and Toma

Application No. 40238/02, judgment final on 08/04/2013, enhanced supervision

” Conviction of a whistle-blower and lack of safeguards in national security-related legislation: public disclosure, in 1996, by an employee of Romanian Intelligence Service (the "SRI") of information on illegal telephone tapping by the SRI department where he worked, entailing his sentence, in last instance by the Supreme Court of Justice on 13 May 2002, to a suspended sentence of two years' imprisonment for having unlawfully collected and disclosed classified information (Article 10); lack of statutory safeguards applicable to secret surveillance measures in the event of any alleged threat to national security (Article 8)

CM decision: With a view to preventing similar violations to those found by the Court in this case, the Romanian authorities have adopted a series of measures. Although the offences for which the applicant was convicted continue to be criminalised under the National Security Act and the new Criminal Code, the National Security Act now provides that prohibition on disclosing confidential information regarding national security cannot restrict freedom of expression and the right to impart information, when these rights are exercised in accordance with domestic

law. On a more general note, the Parliament enacted a law in 2004 broadening the protection of persons who report breaches of the law within public bodies, including the SRI. This law provides, *inter alia*, that employees of public bodies can report acts amounting to misconduct in public office through a variety of channels, such as judicial authorities, parliamentary committees, mass-media and NGOs. It further provides for a presumption of good faith in the absence of proof to the contrary and a number of safeguards for whistle-blowers in any disciplinary proceedings that may be brought against them.

As regards the violation of Articles 8 and 13 of the Convention, in 2013 the authorities amended the National Security Act and Law No. 14/1992 on the Organisation and Operation of the SRI. These amendments introduced a number of safeguards to remedy the deficiencies identified by the Court in the *Bucur and Toma* case, notably as regards the SRI's activities of secret surveillance.

Resuming consideration of this case in December 2016, in the light of the revised action plan submitted in October, the CM noted with satisfaction that the domestic courts had reopened the impugned criminal proceedings and acquitted the first applicant of all charges. It also noted with satisfaction that the relevant authorities no longer retain recordings of the telephone conversations between the second and third applicants. In this respect, the CM considered that no other individual measures are required in this case.

As regards general measures, the CM noted with interest the important guidance delivered by the High Court of Cassation and Justice in its judgment of 11 February 2016 on the balancing of the competing interests in criminal proceedings triggered by the public disclosure of information evidencing misconduct in public office within the intelligence services. It further noted that the domestic courts can review the classification status of the information disclosed in order to assess the importance of maintaining its confidentiality. In this regard, the CM considered that no other measure is required in response to the Court's findings under Articles 10 and 6 § 1.

Regarding the violations of Article 8 and 13 of the Convention, the CM, whilst noting with interest the amendments brought by Law No. 255/2013 to the legal framework on secret surveillance measures justified on considerations of national security, considered that additional measures are required to ensure that this framework fully complies with the requirements of the Convention. It further underlined the crucial importance of independent and effective oversight of the activity of the intelligence services. It thus invited the authorities to provide information on the additional measures envisaged to remedy the remaining deficiencies in the legal framework, as identified in document [H/Exec\(2016\)6](#), and also encouraged them to provide clarification as to the other outstanding issues highlighted in this document.

Finally, the CM noted with satisfaction the commitment of the Romanian authorities to continue fully to cooperate with the Court and, in this context, the avenues identified by them for the transmission of information requested by the Court irrespective of its classification status. It thus considered that no other measure is required in response to the Court's findings under Article 38.

■ TUR / Ahmet Yildirim

Application No. 3111/10, judgment final on 18/03/2013, enhanced supervision

” **Restriction of access to Internet:** domestic court order blocking access to Google Sites, “host websites”, in the context of criminal proceedings brought against a third person who owned a website hosted by Google Sites; as a result of this blocking order, access to the applicant’s website, also hosted by Google Sites, was also blocked (Article 10)

Developments: Access to the websites was rapidly restored following the Court’s judgments. In September 2014, the CM found that the legislative framework was still not in compliance with the Court’s findings notwithstanding a recent amendment to the relevant law (Law No. 5651), and noted with satisfaction two judgments of the Constitutional Court to the same effect. The CM thus called upon the Turkish authorities to amend the relevant legislation to ensure that it meets the requirements of foreseeability and clarity and provides effective safeguards to prevent abuse by the administration. The CM also called upon the authorities to ensure that measures blocking access to websites do not produce arbitrary effects and do not result in wholesale blocking of access to a host website.

A new action plan/report is awaited in response to this decision adopted.

■ TUR / Inçal (group) - TUR / Gözel and Özer (group)

Application Nos. 22678/93, 43453/04, judgments final on 09/06/1998 and 06/10/2010, enhanced supervision

” **Freedom of expression:** different violations of the freedom of expression on account of criminal convictions under different legislative provisions for statements, articles, books, publications etc., which did not incite hatred or violence (Article 10)

CM decision: To address the problems at the origin of violations identified by the Court in these judgments, the Turkish authorities introduced numerous legislative initiatives, training and awareness-raising measures and also constitutional amendments. Certain progress has been achieved, notably following amendments to the Anti-Terrorism Law and the Criminal Code restricting the scope of certain provisions related to incitement to hatred and violence and improvements in the integration of the Convention requirements in the domestic courts’ practice. In addition, the Code of Criminal Procedure was amended in 2013 providing for a possibility to request the reopening of proceedings to have unjust convictions erased.

When resuming consideration of these groups of cases in September 2016, in the light of the action report submitted in July 2016, the CM noted that all the applicants who had requested the reopening of proceedings, apart from the applicant in the *Belek* case, were acquitted. The CM requested information on the reasons for the refusal of the request for reopening of proceedings in the *Belek* case.

Concerning the general measures, the CM recalled its earlier decisions, notably those adopted at the 1201st and 1230th DH meetings (June 2014 and 2015) and urged the authorities to revise, without further delay, Article 301 of the Criminal Code in line with the Court’s “quality of law” requirement.

Noting with concern that, despite the emerging case law of the Constitutional Court, which is in compliance with the Court's case law, the number of investigations initiated or indictments lodged still remains high, the CM urged the authorities to take the measures needed to ensure that all levels of the judiciary apply the principles set out in the case-law of the Constitutional Court and the Court in the implementation of the relevant legislation, with a view to reducing the number of investigations opened and preventing any chilling effect on those who wish to exercise their freedom of expression.

L. Freedom of assembly and association

■ BGR / United Macedonian Organisation Ilinden and Others (Nos. 1 and 2) (group)

Application Nos. 59491/00 and 34960/04, judgments final on 19/04/2006 and 08/03/2012, enhanced supervision

” **Refusals to register an association:** unjustified refusals of the courts to register an association aiming at achieving “the recognition of the Macedonian minority in Bulgaria”, based on considerations of national security, protection of public order and the rights of others (alleged separatist ideas) and on the constitutional prohibition for associations to pursue political goals (Article 11)

CM decisions: The issue of unjustified refusal to register associations has been under the CM's supervision since 2006. The authorities indicated that dissemination and awareness-raising measures were taken between 2006 and 2012, completed by additional measures in 2013. However, in 2013 and 2014, the domestic courts again refused to register two associations similar to UMO Ilinden aimed at defending the interests of persons who considered themselves “Macedonians”. To support the measures already taken, the authorities started working in 2015 on a reform of the Non-Profit Legal Entities Act aimed at transferring competence for the registration of associations from the courts to the Registration Agency within the Ministry of Justice. The draft law was adopted by the Bulgarian Parliament on 9 September 2016.

Resuming consideration of this group of cases in September 2016, the CM noted with concern that the new refusals to register United Macedonian Organisation Ilinden and one similar association, which became final in 2015, were still at least partially based on grounds criticised by the European Court.

As to the general measures, the CM welcomed the adoption by the Bulgarian Parliament of a legislative reform which aims to put in place a simplified administrative procedure for the registration of associations. Further noting that the entry into force of the new mechanism was foreseen only in January 2018, the CM invited the authorities to submit further information concerning its implementation and the time-frame, and in the meantime to ensure the examination of any future request for registration by the applicant association in full compliance with the requirements of Article 11 of the Convention.

Resuming consideration of this group in December, the CM noted with interest the information provided by the authorities on the functioning of the new system for registration of associations and also took note of the steps which should allow

the entry into force of this new mechanism on 1 January 2018. Whilst reiterating its previous call to ensure that any future registration request from the applicant association will be examined in full compliance with the requirements of Article 11 of the Convention, the CM invited the authorities to provide, by 31 March 2017 at the latest, clarification as to the precise scope of the future review of the lawfulness of a registration request, to enable an assessment of the safeguards which will be implemented in this area. The CM also invited the authorities to provide, as soon as possible, and in any event by 30 June 2017, information on the secondary legislation prepared for the implementation of the new registration mechanism, as well as any awareness-raising measures foreseen in respect of the officials in charge of registration, to draw their attention to the need to ensure an examination which is in line with the requirements of Article 11 of the Convention.

In conclusion, the CM decided to resume examination of this group of cases in June 2017 to assess the steps taken to execute them, as concerns both the necessary individual and general measures.

■ GRC / Bekir-Ousta (group)

Application No. 35151/05, judgment final on 11/01/2008, enhanced supervision, Interim Resolution CM/ResDH(2014)84

” **Refusal to register or dissolution of associations:** refusal to register or dissolution of associations on the ground that they were considered by the courts to be a danger to public order as they promoted the idea of the existence of an ethnic minority in Greece as opposed to the religious minority provided by the Lausanne Treaty (Article 11).

CM decision: When resuming consideration of this group of cases in March 2016, the CM regretted that there had been no response to its Interim Resolution (CM/ResDH(2014)84) adopted in June 2014, which stressed that the applicants had not succeeded in having their cases re-examined in light of the Court’s findings and more generally that the Greek authorities failed to provide concrete and tangible information on the measures explored to implement the individual measures. The CM therefore again urged the authorities to take, without any further delay, all necessary measures to allow the applicants to benefit from proceedings in compliance with the Convention and to provide tangible information on the measures taken or envisaged to achieve this goal, accompanied by an indicative calendar for their adoption. The CM further expressed its regret that, despite the information provided in June 2013 on the other avenues which would have enabled the applicants to benefit from proceedings, including an amendment to the non-contentious procedure provided in the Code of Civil Procedure, no tangible result had been achieved so far.

The CM took note with interest of the information provided by the authorities during the meeting according to which a procedure had been initiated aiming at establishing a special structure responsible for the execution of the Court’s judgment.

The CM furthermore strongly urged the authorities, in the light of the European Court’s findings, notably in its recent inadmissibility decision of 17 November 2015, to take all necessary measures, without further delay, including, if necessary, legislative measures to allow the reopening of proceedings in civil matters and to ensure

that the requests of the applicant's associations for registration are subjected to re-examination on the merits; it therefore called upon the authorities to provide updated information regarding the domestic courts' decision examining requests for registration by associations in the Thrace region.

■ **MDA / Genderdoc-M**

Application No. 9106/06, judgment final on 12/09/2012, enhanced supervision

” **Ban on gay marches:** unjustified ban of a demonstration organised in 2005 by an NGO to encourage the adoption of laws for the protection of sexual minorities from discrimination; no effective remedy in the absence of any guarantee that appeal decisions intervene before the planned event; discrimination as the sole justification given related to the homosexual orientation of the demonstration (Article 11 and Articles 13 and 14 in conjunction with Article 11)

Action report: In response to the CM's requests of September 2015 as regards a number of practical aspects of the new legislative framework for the holding of public assemblies, the authorities provided an updated action report in January 2017 (DH-DD(2017)21) with information on individual and general measures undertaken. This information is being assessed.

■ **RUS / Alekseyev**

Application No. 4916/07, judgment final on 11/04/2011, enhanced supervision

” **Bans on gay marches:** bans on the holding of gay-rights marches and pickets, and enforcement of the ban by dispersing events held without authorisation and by finding the participants guilty of an administrative offence; absence of effective remedies (Articles 14 and 13 in conjunction with Article 11)

CM decision: Ever since the beginning of its supervision of the execution of this judgment, the CM has constantly expressed concern regarding the impossibility for the applicant to hold events similar to those examined by the Court. Having noted that the situation was closely linked to the question of general measures, the CM focused on the practice of local authorities, framed by the 2013 federal law prohibiting “homosexual propaganda among minors” and the Code of Administrative Procedure adopted in 2015, as well as by the indications given by the Constitutional Court in its judgment of 23 September 2014. As the statistical information provided in 2015 showed that only around 5% of announced events could eventually take place, the CM expressed its concern and requested, at its meeting in June 2015, that the authorities ensure that the above-mentioned federal law of 2013 did not constitute an obstacle to the holding of events and freedom of association. It also invited them to provide a comprehensive action plan, including awareness-raising measures and to harmonise divergent practice.

Resuming consideration of this case in March 2016, the CM expressed serious concern about the local authorities' continued refusals for the holding of public events, mostly on the basis of the above-mentioned federal law of 2013, and that domestic courts continued rejecting appeals against the local authorities' decisions, mainly on the basis of the same law. The CM also noted that the decisions of certain domestic courts, including the Supreme Court, had interpreted the judgment of

the Constitutional Court of 23 September 2014 in a manner that would uphold the right to peaceful assembly for public events, but that this court practice wasn't yet harmonised throughout the Russian Federation. In the face of continued refusals to grant requests to hold events of this nature, the CM noted with deep regret the insufficient recognition and protection of the right to assembly and urged the authorities to take concrete and targeted measures, including awareness-raising measures, directed towards the promotion and the implementation of the rulings of the Constitutional Court of 23 September 2014 and 27 October 2015 by the local authorities and domestic courts.

Noting the non-interference by the Russian authorities during the May 2015 events in St Petersburg, the CM encouraged such an approach throughout the Russian Federation and further invited the authorities to provide information on all requests, between 1 October 2015 and 30 June 2016, to hold public events similar to the one in the present judgment in Moscow and St. Petersburg, as well as in four other regions, including reasons for refusal, appeal decisions and whether the event proceeded in line with the original request.

Finally, the CM reiterated its invitation to the Russian authorities to submit a comprehensive action plan. An updated action plan was submitted on 21 October 2016.

In December, the CM noted the additional measures presented in the updated action plan, notably the actions of the Supreme Court intended to harmonise judicial practice in line with the requirements of the Constitution, the European Court's judgments and the CM's decisions; the creation within the judiciary of a database of relevant international materials; and continued training and other awareness-raising activities for local authorities and judges. It noted also the authorities' declaration that Russian law affords the LGBT community the opportunity fully to exercise the rights guaranteed by the Constitution and the Convention, including by using the "mass event format" and that the courts appear now to be deciding on the lawfulness of refusals to allow public events of the kind here at issue before the date planned for the events in question.

The CM expressed, however, serious concern that, notwithstanding the measures presented, the situation did not attest any improvement, as the number of public events allowed continued to be very limited: only one of all the requests to hold an assembly, deposited during the last period examined by the CM (1 October 2015 to 30 June 2016), was allowed. The CM noted with concern that the courts regularly uphold the refusal decisions of the local authorities and that the emerging signs of improvement in judicial practice, including compliance with the Convention requirements in some cases and an award in 2013 of non-pecuniary damages to compensate for an unlawful refusal to allow an event, do not appear to have been followed. In that respect, the authorities were urged to ensure that the practice of local authorities and the courts develops in accordance with the rights to freedom of assembly and to be protected against discrimination, including by ensuring that the law on "propaganda of non-traditional sexual relations" among minors does not pose any undue obstacle to the effective exercise of these rights.

In view of the above, the CM invited the authorities to consider reinforcing training of all the authorities involved, elaborating a code of conduct for local authorities in charge of handling notifications for public events and for the police when handling assemblies and the possibility of further guidance by the highest courts to prevent violations of the kind at issue in the present case, as well as further measures to address continued widespread negative attitudes towards LGBT persons.

Finally, the CM invited the authorities to continue providing statistical information on developments, this time for the period from 1 July 2016 to 31 March 2017.

■ UKR / Vyerentsov

Application No. 20372/11, judgment final on 11/07/2013, enhanced supervision

” **Legislative lacuna regarding the right to peaceful assembly:** absence of clear and foreseeable legislation laying down the rules for the organising and holding of a peaceful assembly (applicant sentenced to 3 days of administrative detention in 2010 for organising and holding a peaceful demonstration); different violations of the right to a fair trial (Articles 11 and 7, Article 6 §§ 1, 3b, 3c and 3d)

CM decision: In its judgement, the Court gave specific indications for the resolution of the issues identified, notably that the authorities should bring the legislation and practice into line with the Convention requirements. In this respect, progress had been achieved since 2013 given that the applicant’s conviction was quashed in 2014. Since the CM’s last examination of these cases in December 2015, the Constitutional Court of Ukraine issued a judgment of 8 September 2016 notably underlining that restrictions on holding peaceful demonstrations should be established by law. In addition, two draft laws are currently pending before Parliament.

Resuming consideration of these cases in December 2016, in the light of the updated action plan submitted in October 2016, the CM welcomed the adoption by the Constitutional Court of the judgment declaring unconstitutional the Decree of the “Presidium of the Supreme Soviet of the USSR” of 28 July 1988 on the procedure for organising and holding meetings, rallies, street marches and demonstrations.

Furthermore, the CM noted that two draft laws are currently pending before Parliament and that they had been positively assessed by the Venice Commission, the Directorate of Human Rights of the Directorate General of Human Rights and the Rule of Law (DGL) of the Council of Europe and the OSCE/ODIHR. In this respect, the CM called upon the authorities to accelerate the legislative process with a view to adopting the legislation required for the execution of these judgments. The CM further urged the authorities to take the necessary measures to ensure that, pending the adoption of the relevant legislation, the practice of the municipal authorities, domestic courts and the police is aligned with the principles of the Convention.

Finally, the CM welcomed the authorities’ active cooperation with the Secretariat and encouraged them to continue such co-operation in the future. It therefore decided to resume consideration of these cases at their 1288th meeting (June 2017) (DH).

M. Right to marry

N. Protection of property

N.1. Expropriations, nationalisations

■ **ALB / Driza (group) - ALB / Manushaqe Puto and Others (pilot judgment)**

Application Nos. 33771/02 and 604/07+, judgments final on 02/06/2008 and 17/12/2012, enhanced supervision, Interim Resolution CM/ResDH(2013)115

” **Restitution of nationalised properties:** failure to enforce final administrative and judicial decisions relating to the restitution of, or compensation for properties nationalised under the communist regime, and lack of effective remedies (Articles 6 § 1, 13 and Article 1 of Protocol No. 1)

CM decision: The issue of restitution or compensation for properties nationalised under the communist regime in Albania has been followed by the CM since 2007. Over the years, the Albanian authorities, under the CM’s supervision, have focused their efforts on establishing effective enforcement and compensation mechanisms for properties nationalised under the communist regime; this approach was endorsed in the Court’s pilot judgment in the case of *Manushaqe Puto and Others*, fixing a deadline until 17 June 2014 for putting in place such a mechanism.

Following a series of bilateral consultations, a draft Law on Compensation for Property Expropriated during the Communist Regime was presented at the CMDH meeting in December 2015. The law entered into force on 24 February 2016 and three by-laws, regulating certain implementation aspects, were adopted in March 2016.

When resuming consideration of this group of cases in June 2016, the CM recalled that the adoption of the above mentioned law and of the three by-laws was a very positive step in the process of execution of judgments in this group of cases. It also welcomed the establishment of a periodic monitoring mechanism, involving the Director General of the Agency, the Minister of Justice, the Prime Minister, as well as the Parliamentary Commission on Economy and Finance and the Parliamentary Commission on Legal Affairs, Public Administration and Human Rights.

In this context, the CM noted that certain questions related to the constitutionality of the new Law were currently pending before the Albanian Constitutional Court, which had however decided not to suspend the application of the new law pending its decision.

Given the importance of bringing a definitive solution to the longstanding problem revealed in the judgments in this group, the CM the authorities to continue deploying all necessary efforts for the effective functioning of the mechanism in practice and invited them to keep it regularly informed about the progress achieved in its implementation, particularly as regards the adoption of the by-laws, the concrete results noted in the process of treatment of applications and the first results of the periodic monitoring.

■ BIH / Đokić - BIH / Mago

Application Nos. 6518/04 and 12959/05, judgments final on 04/10/2010 and 24/09/2012, enhanced supervision

” **Deprivation of occupancy rights over military apartments:** inability of members of the army of the former Yugoslavia (mainly Serbs of the former Yugoslav People's Army) to obtain the restitution of their military apartments (some formally bought by their owners, others originally possessed by virtue of special occupancy rights), taken from them in the aftermath of the war in Bosnia and Herzegovina, or to receive alternative accommodation or compensation reasonably related to the market value of the apartments (Article 1 of Protocol No. 1)

CM decision: As indicated in the Court's judgments in these cases (§ 70 in *Đokić* and § 121 in *Mago and Others*), all the applicants expressly agreed to compensation in lieu of restitution of the flats concerned. The European Court thus awarded them just satisfaction in respect of non-pecuniary and pecuniary damage sustained, which covered the current value of the flats in issue.

In their revised action plan of July 2016 (DH-DD(2016)825), the authorities of Bosnia and Herzegovina indicated that the amounts awarded were paid within the time-frame set by the European Court. As regards the general measures addressing the violations found by the Court concerning approximately 800 persons, the authorities intended to adopt amendments to the Privatisation of Flats Act of 1997 with a view to introducing a compensation mechanism for the individuals concerned; the legislative amendments were withdrawn. A new set of revised amendments were prepared with the intention to present them to Parliament in September 2016.

At its September 2016 meeting, the CM took note of the draft legislative amendments prepared by the authorities with a view to putting in place a scheme to compensate eligible beneficiaries in the light of the European Court's findings in its recent decisions. Having considered, however, that in a number of cases, the amounts of compensation envisaged in the scheme did not appear to comply with the Court's findings and those of the Constitutional Court of Bosnia and Herzegovina, the CM strongly encouraged the authorities to ensure that the amounts of compensation envisaged in the draft legislative amendments are aligned with the European Court's indications and asked to be kept informed of the progress achieved in this regard.

■ ROM / Străin and Others (group) - ROM / Maria Atanasiu and Others (pilot judgment)

Application Nos. 57001/00 and 30767/05, judgments final on 30/11/2005 and 12/01/2011, enhanced supervision

” **Property nationalised during the communist regime:** sale by the State of nationalised property, without securing compensation for the legitimate owners; delay in enforcing, or failure to enforce, judicial or administrative decisions ordering restitution of the nationalised property or payment of compensation in lieu (Article 1 of Protocol No. 1 and Article 6 § 1)

Action plan: In 2014, the CM closed its supervision of cases concerning situations covered by the new reparation mechanism as it was deemed, in principle, capable of offering appropriate redress (*Drăculeț* group of cases CM/ResDH(2014)274). It

continued, however, to follow the effective functioning of the reparation mechanism as well as other outstanding issues identified by the Court in the *Preda* judgment of 29 April 2014, final on 29 July 2014. The authorities provided information, in November 2015, on the progress achieved in the implementation of the new reparation mechanism. A further update in this respect was provided on 19 February 2016 (DH-DD(2016)229), indicating that in the context of several applications communicated to the Romanian government, the European Court had invited it to submit observations on the application of the new mechanism to the situations found not to be covered by it in *Preda*.

The Committee of Ministers received several communications from NGOs, mostly questioning the compliance of the new reparation mechanism with the European Court's indications in the pilot judgment and its effectiveness. In response to these communications (DD(2016)808), the authorities provided information on the status of implementation of the new mechanism, which, in their view, demonstrated that it is effective. On 30 May 2016, the Execution Department requested from the Romanian authorities more detailed information, in particular as regards the progress in the examination of restitution/compensation claims at the level of central and local competent authorities. In October 2016 the authorities provided detailed information on this issue (DD(2016)1147).

N.2. Other interferences with property rights

■ ARM / Chiragov and Others

Application No. 13216/05, judgment final on 16/06/2015, enhanced supervision

” Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties in Nagorno-Karabakh and surrounding territories; lack of effective remedies (continuing violations of Article 1 Protocol No. 1, Article 8 and Article 13)

In its final judgment, the European Court indicated that “*pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment*”. The Court reserved the question of the application of Article 41.

Developments: On 2 November 2016, the NGO European Human Rights Advocacy Centre (EHRAC) submitted a communication to the CM (Rule 9.2) (DH-DD(2016)1281). An action plan remains awaited.

■ AZE / Sargsyan

Application No. 40167/06, judgment final on 16/06/2015, enhanced supervision

” Impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties and relatives' graves in the disputed area near Nagorno-Karabakh on the territory of Azerbaijan; lack of effective remedies. (continuing violations of Article 1 Protocol No. 1, Article 8 and Article 13)

In its final judgment, the European Court indicated that “pending a comprehensive peace agreement it would appear particularly important to establish a property claims mechanism, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicants and others in their situation to have their property rights restored and to obtain compensation for the loss of their enjoyment”. The Court reserved the question of the application of Article 41.

Developments: On 2 November 2016, the NGO European Human Rights Advocacy Centre (EHRAC) submitted a communication to the CM (Rule 9.2) ([DH-DD\(2016\)1281](#)). An action plan remains awaited.

■ CRO / Statileo

Application No. 12027/10, judgment final on 10/10/2014, enhanced supervision

” **Legislation concerning protected leases:** obligation under protected tenancy legislation for landlords to let property for an indefinite period without adequate rent (Article 1 of Protocol No. 1)

CM decision: In response to the Court’s findings under Article 46, the Croatian authorities provided an action plan in June 2015 indicating, with respect to general measures, that a legislative process was envisaged to be undertaken before December 2015. The process was however interrupted by the elections in November 2015. The new government, formed in February 2016, reviewed the draft amendments and planned to table them before Parliament in June 2016. However, in June 2016 the Prime Minister was dismissed and Parliament was dissolved on 15 July 2016.

When resuming consideration of this case in September 2016, in the light of the updated action plan submitted in July 2016, the CM recalled that the European Court had indicated that the problem underlying the violation concerned arose from shortcomings in the legislation itself, namely the inadequate level of protected rent, the restrictive conditions for the termination of protected leases and the absence of any temporal limitation to the protected lease scheme. The CM further recalled that the respondent State “should take appropriate legislative and/or other general measures to secure a rather delicate balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community – including the availability of sufficient accommodation for the less-well-off” and invited them to provide the latest text of the draft legislative amendments so that an assessment could be made in the light of the Court’s findings.

Noting that the judgment became final almost two years ago, the CM strongly encouraged the authorities to intensify their efforts with a view to finding a global solution to the problem.

■ GER / Herrmann

Application No. 9300/07, judgment final on 26/06/2012, CM/ResDH(2016)188

” **Obligation of landowner opposed to hunting to tolerate it on his land and to join a hunting association** (Article 1 of Protocol No. 1)

Final resolution: The 2013 amendment to the Federal Hunting Act allows property owners who belong to a hunting association and oppose hunting on their premises for ethical reasons to withdraw from the hunting association upon request.

■ **ITA / M.C. and Others (pilot judgment)**

Application No. 5376/11, judgment final on 03/12/2013, enhanced supervision

” **Retroactive legislation:** legislative provision retroactively cancelling the annual adjustment of the supplementary part of an allowance paid in respect of accidental contamination during blood transfusions (HIV, hepatitis...) (Article 6 § 1, Article 1 of Protocol No. 1 alone and taken in conjunction with Article 14).

Developments: In April 2016, the Italian authorities provided information on general measures adopted (DH-DD(2016)487) to liquidate the arrears corresponding to the adjustment of the IIS (“Idennità Integrativa Speciale”) at regional level. In this perspective, a bilateral meeting was organised in December 2016.

■ **NOR / Lindheim and Others**

Application No. 13221/08+, judgment final on 22/10/2012, CM/ResDH(2016)46

” **Shortcomings in the legislation regulating certain long term leases:** statutory provision allowing lessees to claim the indefinite extension of certain long lease contracts on unchanged conditions with the result that rent due bears no relation to the actual land value (Article 1 of Protocol No. 1)

Final resolution: Under Article 46, the European Court held “that the problem (...) concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case” (there appear to be between 300,000 and 350,000 ground lease contracts in a population of 5 million inhabitants). After the adoption of provisional measures on 14 December 2012, the amended Ground Lease Act entered into force on 1 July 2015 introducing a mechanism allowing one-off rent increases on extension which reflect the market value of the undeveloped plot: lessees still have a right to extension of the ground lease when the contract expires. However, if the lessee now chooses to extend the contract, the amended law grants the lessor a one-off upward rent adjustment fixed to maximum 2% of the market value of the undeveloped plot. This rent adjustment is modified by a rent “ceiling”, adjusted every year in accordance with inflation. Furthermore, a mechanism was introduced granting both parties the right to adjust the rent in relation to the market value of the undeveloped plot every 30 years after extension of the contract. The amended Ground Lease Act has prospective effect, so that lessors are entitled to claim *ex nunc* rent adjustment according to the new rules.

■ **POL / Hutten-Czapska**

Application No. 35014/97, judgment final on 19/06/2006, 28/04/2008 (friendly settlement), CM/ResDH(2016)259

” **Malfunctioning of national legislation on housing** in that it imposed restrictions on landlords’ rights and did not provide for any procedure or mechanism enabling them to recover losses incurred in connection with property maintenance (Article 1 of Protocol No. 1)

Final resolution: From 2006 to 2010, comprehensive legislative reforms addressed the possibilities for rent increases, a system for monitoring the levels of rent, the creation of a freely determined rent and funding for social accommodation.

A clear definition of expenses incurred in the maintenance of rented property, and a rule that they had to be covered by the rent derived from a flat, were introduced. Investment in the construction of social accommodation and the adaptation, development and renovation of municipal buildings with residential dwellings was promoted. After 2009, the owner of an unoccupied flat could conclude a lease agreement based on flexible rules and the eviction procedure was simplified and did not depend on the provision of social accommodation to the tenant.

The vast majority of lease contracts are currently concluded on the basis of the Civil Code and restricted only by the will of the parties, in particular regarding the length of the contract, its termination and the rent. Financial assistance for social housing, protected accommodation, night shelters and houses for the homeless can be obtained from municipalities, unions of municipalities and public benefit organisations in connection with the construction, renovation, conversion, alteration of use or purchase of buildings for social accommodation.

A new tool for monitoring rent levels – the so-called “rent mirror” was introduced in 2007 to ensure transparency of rent increases. Enforcement of judgments ordering the evacuation of premises was enhanced. The governmental housing programmes aim at improving the existing housing stock. Since 2010, landlords may obtain a compensatory refund without the need to take out a bank loan to secure investment in suitable maintenance and renovations.

RUS / OAO Neftyanaya Kompaniya Yukos

Application No. 14902/04, judgment final on 08/03/2012, enhanced supervision

” **Violations related to tax and enforcement proceedings** brought against the applicant oil company, contributing to its liquidation in 2007 (Article 6, Article 1 of Protocol No. 1)

CM decisions: Following the judgment on the merits of 20 September 2011, in response to which the government sent an action plan on 15 May 2013, the Court delivered on 15 December 2014 its judgment on just satisfaction. It indicated that the Russian authorities were to produce by 15 June 2015, in co-operation with the CM, a comprehensive action plan, including a binding time-frame, for the distribution of the just satisfaction award in respect of pecuniary damage.

In September 2015, the CM expressed serious concern that no plan had been submitted and strongly urged the authorities to present the required plan without further delay.

When examining the case in March 2016, the CM noted with regret the prolonged absence of information concerning the distribution plan and called upon the Russian Federation fully to co-operate and to continue its dialogue with the CM and the Secretariat.

The CM firmly reiterated this call in June and recalled the unconditional obligation under Article 46 of the Convention to abide by the judgments of the European Court, including to pay the just satisfaction. The CM also urged the authorities to supplement the information submitted at the meeting with precise explanations, including on possible constitutional issues which the authorities believed they could face during the execution of this judgment.

In December 2016, the CM noted with concern the information provided by the Russian authorities that, on 12 October 2016, the Ministry of Justice had seized the Constitutional Court with a request concerning the possibility of executing the European Court's judgment on just satisfaction in the present case. It firmly reiterated the unconditional obligation assumed by the Russian Federation under Article 46 of the Convention to abide by the judgments of the European Court, including to pay any just satisfaction awarded by it. The CM further reiterated the call upon the Russian Federation to co-operate fully and to continue its dialogue with it and the Secretariat with a view to executing the judgment. It requested the Russian authorities to provide the CM with a translation of the request which they had made to the Constitutional Court and a translation of the Constitutional Court's decision once it became available.

Throughout its examination, the CM also requested information on the payment of costs and expenses.

■ **SER + SVN / Ališić and Others (pilot judgment)**

Application No. 60642/08, judgment final on 16/07/2014, enhanced supervision

” **Repayment of “old” foreign currency savings:** violations of the applicants' right to peaceful enjoyment of their property on account of their inability to recover their “old” foreign-currency savings deposited before the dissolution in 1991-1992 of the Socialist Federative Republic of Yugoslavia in branches of banks located in what is today Bosnia and Herzegovina with head offices in what are today Serbia and Slovenia, respectively (Article 1 of Protocol No. 1)

CM decisions: In response to the violations found by the Court in this judgment, the Serbian and Slovenian authorities prepared draft laws aimed at introducing repayment schemes in their respective States.

Regarding the situation in Serbia, the CM noted at its March 2016 meeting, that the authorities had revised the draft law to allow depositors who are nationals of other successor States to recover foreign currency savings under the same conditions as Serbian citizens. Recalling the deadline imposed by the Court, which expired on 16 July 2015, the CM firmly urged the authorities to bring the legislative process to an end without further delay.

At its meeting in June 2016, whilst noting with regret that the draft law had still not been adopted even though the deadline set by the European Court expired on 16 July 2015, the CM urged the authorities to ensure that it was adopted as a matter of priority and to provide information in this respect no later than 1 October 2016. The CM decided to resume consideration of this issue in December 2016 and, in the

event that no progress had been achieved in the adoption of the above-mentioned draft law, instructed the Secretariat to prepare a draft interim resolution.

In December, the CM noted the assurances given by the authorities that the revised draft law would be adopted before the end of December 2016 or at the beginning of January 2017 at the latest and strongly urged them to continue their efforts to adopt it. In this regard, the CM decided to resume examination of this item with respect to Serbia In March 2017 and, in case the revised draft law had not by then been adopted, instructed the Secretariat to prepare a draft interim resolution.

With respect to the situation in Slovenia, the CM in March 2016 welcomed the fact that the scheme aimed at the repayment of “old” foreign currency savings became operational in December 2015 as regards the Zagreb branch of *Ljubljanska Banka*. Furthermore, the CM noted that consultations between the authorities of Bosnia and Herzegovina and Slovenia took place in 2015 and that further consultations would be held in Sarajevo before the end of April 2016 as regards the repayment of “old” foreign currency savings held in the Sarajevo branch of *Ljubljanska Banka*. Resuming consideration of this case in June, the CM welcomed the conclusions of the consultations held between the above-mentioned authorities, and invited them to keep it updated on the steps taken to start the verification procedure as well as other relevant developments concerning the functioning of the repayment scheme.

■ **SER / Grudić**

Application No. 31925/08, judgment final on 24/09/2012, enhanced supervision

” **Non-payment of pensions:** unlawful suspension, for more than a decade, by the Serbian Pensions and Disability Insurance Fund (SPDIF) of payment of pensions, based on a Government Opinion without any basis in domestic law that the Serbian pension system ceased to operate in Kosovo²² (Article 1 of Protocol No. 1)

Developments: A new communication from an NGO (DD(2016)395) was made available in March 2016, notably emphasising the necessity to reassess all applications from Kosovo residents for the resumption of pension payments. A response from the Serbian authorities to the issues raised in the communication is awaited.

■ **SVK / Bitto and Others**

Application No. 30255/09, judgment final on 28/04/2014, enhanced supervision

” **Rent control scheme:** unjust limitations on the use of property by landlords, notably through the rent control scheme (Article 1 of Protocol No. 1)

Action plan: The information provided by the Slovak authorities in their action plans of January (DD(2016)176) and June (DD(2016)776) 2016 is being assessed.

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

■ UKR / East/West Alliance Limited

Application No. 19336/04, judgment final on 02/06/2014, enhanced supervision

” **Arbitrary and unlawful actions leading to violations of property rights:** seizure of several aircraft and abusive criminal investigations on allegations of tax evasion and lack of effective remedy in this respect (Article 1 of Protocol No. 1, Article 13)

CM decisions: In response to the European Court’s judgment, the authorities recalled that the Ukrainian Law provided for criminal and administrative liability of officials for failure to comply with a final judicial decision. To strengthen further the domestic legislation in force, the authorities adopted, in June 2016, two new laws aimed at reforming the procedure for enforcement of court decisions, namely the Law on Enforcement Proceedings and the Law on Authorities and Individuals Carrying Compulsory Enforcement of Court Decisions and Decisions of Other Authorities. On 6 October 2016, these laws entered into force. Under the new legislation, private bailiffs shall be entitled to enforce certain types of judicial decisions.

Resuming consideration of this case in June 2016, the CM noted with concern that the authorities have still not paid a large part of the just satisfaction and therefore urged them to pay the outstanding amount without further delay.

As to general measures, the CM strongly invited the authorities to consider taking specific measures to ensure that similar types of violations are prevented, including by way of issuing instructions by the highest authorities stressing the need for the tax and other competent authorities to act in accordance with the law and recalling that failure to do so could result in criminal and/or disciplinary sanctions. The CM also invited the authorities to consider taking additional measures to prevent the arbitrary application of law by state officials, as well as to enhance the principle of rule of law, including measures aimed at providing effective judicial review against decisions of the tax authorities.

When pursuing its examination of this case in December 2016, the CM noted that the authorities have paid in full the just satisfaction, including the default interest, and that no further individual measure was required.

As regards general measures, the CM noted the information provided by the authorities with regard to the liability of officials for failure to comply with final judicial decisions and the reform of the enforcement procedure; It thus invited them to provide additional information in this respect, in light of the recent constitutional amendments on the judiciary, as well as on implementation.

In addition, the CM noted that the authorities did not provide the information requested in June 2016 with regard to other measures required for the full execution of the present case. In this respect the CM strongly invited the authorities to provide the requested information without any further delay. Finally, it invited the authorities to provide information on the existence of effective remedies for similar complaints, taking into account the Court’s findings in this judgment.

O. Right to education

— CZE / D.H. (group)

Application No. 57325/00, judgment final on 13/11/2007, enhanced supervision

” **Right to education – discrimination against Roma children:** assignment of Roma children to special schools (designed for children with special needs, including those suffering from a mental or social handicap) on account of their Roma origin (Article 14 in conjunction with Article 2 of Protocol No. 1)

CM decision: Since the beginning of the execution of the judgments in this group of cases, the Czech authorities have transmitted several action plans informing the CM of the measures taken to resolve the problems underlined by the Court. In 2012, given the lack of substantial progress in the inclusion of Roma children in the Czech education system, the CM invited the authorities to produce a new action plan highlighting the measures taken or envisaged to tackle this issue. In response, the authorities submitted a consolidated action plan with a series of proposed legislative amendments aimed at preventing placement of “socially disadvantaged” pupils in groups/classes for children with a “mild mental disability”. From this action plan flowed short and medium term measures, notably the establishment of regular and independent monitoring and reviews by the Czech Schools Inspectorate and a variety of legislative and practical measures, as well as long term measures such as the reform of the Education Act. The reform is intended to put in place an inclusive education system by removing the current categorisation of pupils (social disadvantage, health disadvantage and health disability). Pupils will instead be classified as having “special educational needs” and receive support measures in education.

When resuming consideration of this case in June 2016, the CM noted with interest the ongoing reform of the education system in the Czech Republic, as well as the legislative and practical measures adopted or envisaged by the authorities with a view to putting in place a policy of inclusive education and ensuring that it is fully operational in practice. However, in light of the absence of a substantial change in the education of Roma pupils, as shown in the most recent statistics, the CM urged the authorities to implement rapidly the reform of the education system, so that it would impact on the upcoming school year. In this respect, it encouraged the authorities to ensure that sufficient financial and human resources were allocated to all actors involved and that a relevant monitoring body was duly equipped with all necessary powers, and requested them to provide information in this regard.

In view of the complexity of this problem, the CM recalled the importance of the role of NGOs and national human rights institutions in providing solutions and advised the authorities to continue their close cooperation.

In conclusion, the CM invited the authorities to provide, no later than 7 September 2016, confirmation of the entry into force of the new reform, as well as, by 10 February 2017, information showing its impact in practice, including the first statistics. It thus decided to resume consideration of this case, in the light of the requested information, as well as of the awaited report of *ad hoc* Committee of Experts for Roma issues (CAHROM) on diagnostic tools.

RUS / Catan and Others

Application No. 43370/04, judgment final on 19/10/2012, enhanced supervision, Interim Resolutions CM/ResDH(2015)46 and CM/ResDH(2015)157

” **Closure of schools and harassment of pupils wishing to be educated in their national language:** forced closure, between August 2002 and July 2004, of latin script schools located in the Transnistrian region of the Republic of Moldova, as well as continuing measures of harassment of children or parents of children; responsibility of the Russian Federation under the Convention because of Russia’s “effective control” over the Moldovan Republic of Transdniestria (the “MRT”) during the period in question and its continued military, economic and political support for the “MRT”, which could not otherwise survive – responsibility notwithstanding the absence of any evidence of direct participation by Russian agents in the measures taken, nor of Russian involvement in, or approbation of, the “MRT”’s language policy in general (Article 2 of Protocol No. 1 with respect to the Russian Federation)

CM decision: The absence of response to the violations established, including the absence of payment of just satisfaction awarded, has been a major source of concern and has led to the adoption of three interim resolutions in March 2014, and June and September 2015. During the procedure the Russian authorities repeatedly referred to ongoing reflections in Russia on issues of concern for the execution of the judgment (results presented in document DH-DD(2015)265).

In the last interim resolution, the CM underlined the need for the Russian Federation to comply with the obligation to pay just satisfaction and urged them fully to implement this judgment. The CM also underlined the importance of the High Level Conference of Saint Petersburg in October 2015, which it saw as an opportunity to make progress towards a common understanding as to the scope of the execution measures flowing from this judgment and their modalities.

In March 2016, the CM again underlined the fundamental importance of primary and secondary education for each child’s personal development and future success and insisted upon the applicant’s right to continue to receive education in the language of their country, without hindrance or harassment. It also called upon the Russian authorities to redouble their efforts to explore all appropriate avenues for the full and effective implementation of the judgment and to continue the dialogue with it and the Secretariat in this regard.

In June 2016, the CM noted the information provided by the Russian authorities concerning their intention to elaborate on the conclusions of the high level conferences, including the Saint Petersburg conference, with a view to seeking a response in relation to the Court’s judgment.

In December 2016, the CM invited the authorities to complete their reflections and reiterated its invitation to engage in constructive dialogue and cooperation with it and the Secretariat to find an acceptable response.

P. Electoral rights

P.1. Right to vote and stand for elections

■ AZE / Namat Aliyev (group)

Application No. 18705/06, judgment final on 08/07/2010, enhanced supervision

” **Irregularities connected with the oversight of parliamentary elections:** arbitrary and unreasoned rejection, by the electoral commissions and the courts, of complaints of members of the opposition parties or independent candidates regarding irregularities or breaches of electoral law in the 2005 elections (Article 3 of Protocol No. 1).

CM decision: With a view to addressing the problems at the origin of violations found by the Court, the Azerbaijani authorities at first limited themselves to training and awareness-raising activities for the members of the electoral commissions. The CM however considered, notably in its decision of September 2014, that these measures, together with the reforms adopted and, in particular, the introduction of expert groups, did not provide sufficient safeguards against arbitrariness, and resolve the problems revealed concerning the independence, transparency and legal quality of the procedure before these commissions. In addition, the reform of 30 December 2014 on the effectiveness of judicial review, aimed notably at further limiting the influence of the executive within the Judicial and Legal Council, had to demonstrate its efficiency in practice.

In view of the imminence of the legislative elections in November 2015, the CM reiterated the importance of the proper functioning of electoral commissions and of courts capable of reviewing the legality of the decisions of these commissions. It also urged the authorities further to improve the system of oversight of the regularity of these elections to prevent any arbitrariness and, in particular, to co-operate with the Venice Commission, make full use of the additional possibilities offered by the Action Plan of the Council of Europe for Azerbaijan and ensure that the highest competent authorities send a clear message to electoral commissions that neither illegality nor arbitrary action would be tolerated. At its meetings in June and September, confronted by the continued absence of additional information, the CM reiterated its previous calls and requests to the authorities to adopt the necessary measures to eliminate the causes of the violations found in this case. At its December meeting, the CM had to confront the fact that the recent parliamentary elections in Azerbaijan had been held without the necessary reforms having been adopted. In this respect, the CM invited the authorities to provide further information on the general measures envisaged or taken before 1 July 2016; however no information had been communicated.

Resuming consideration of this group of cases in September 2016, the CM deeply regretted the silence of the authorities concerning the measures required to ensure the review of the regularity of elections in conformity with the Convention and to prevent any arbitrariness. Expressing its concern as to the further execution process in this group of cases, the CM recalled, once again, the opportunities for dialogue offered by the Council of Europe in the framework of its cooperation activities in

electoral matters and regretted that they were not sufficiently used by the authorities. The CM therefore invited them to make full use of them in the future. The CM also insisted that the authorities resume their cooperation with the CM and the Secretariat in this group of cases and that they provide the expected information without further delay, including information related to the violations of the right of individual petition and to the *Sejdzade* judgment, joined to this group of cases. In conclusion, the CM decided to resume consideration at its CMDH meeting in March 2017.

■ BIH / Sejdić and Finci

Application No. 27996/06, judgment final on 22/12/2009, enhanced supervision

” **Ineligibility to stand for elections due to the non-affiliation with a constituent people:** impossibility for citizens of Bosnia and Herzegovina of Roma and Jewish origin to stand for election to the House of Peoples and to the Presidency of Bosnia and Herzegovina, due to their lack of affiliation with one of the constituent peoples (Article 14 taken in conjunction with Article 3 of Protocol No. 1, Article 1 of Protocol No. 12)

CM decision: Since the judgment of the Court became final, the CM has constantly called the authorities and political leaders to ensure that the constitutional and legislative framework be brought in line with the Convention requirements, though several decisions and three interim resolutions in 2011, 2012 and 2013. In October 2014, in the absence of any decisive progress in the efforts to achieve the necessary changes to the electoral system, elections were held under the same regulatory framework as that impugned by the Court. Noting this fact with profound concern and disappointment in December 2014, the CM however noted with satisfaction, in June 2015, the written commitment of the Presidency of Bosnia and Herzegovina to devote special attention to the execution of this group of cases, signed by the leaders of the major political parties and endorsed by Parliament on 23 February 2015.

Resuming consideration of this group of cases in December 2016, the CM noted with deep concern that no tangible progress had been made, and that the Court continued to deliver judgments finding similar violations. As part of these judgments, the Court in the *Zornić* case highlighted its expectations that “democratic arrangements be made without further delay”, and stressed that “the time has come for a political system which will provide every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples ... without discrimination based on ethnic affiliation and without granting special rights for constituent people to the exclusion of minorities or citizens”.

In view of the above, the CM noted that all the efforts made so far by the authorities to put in place appropriate measures to start preparing the necessary constitutional amendments continued to be blocked by the absence of consensus between leaders of the political parties. Once again, the CM firmly recalled the unconditional obligation of respondent States to abide by the European Court’s judgments. Therefore, it exhorted the political leaders to intensify their dialogue to enable the adoption of the necessary amendments without further delay. Member States and the European Union were invited to raise this issue of the implementation of this group of cases in their contacts with Bosnia and Herzegovina.

■ GEO / The Georgian Labour Party

Application No. 9103/04, judgment final on 08/10/2008, CM/ResDH(2016)42

” **Infringement of the Labour Party’s right to have candidates stand for legislative elections** on account of the Central Electoral Commission’s (CEC) decision of 2 April 2004 to cancel the election results in two electoral districts without relevant and sufficient reasons or the possibility of legal remedies. (Article 3 of Protocol No. 1)

Final resolution: The Labour Party participated in the Georgian Parliamentary and Presidential Elections of 2008, Parliamentary Elections of 2012 and Presidential Elections of 2013. In 2014 and 2015, legislative amendments set out grounds for the invalidation of election results by the CEC. A new mechanism was put in place for dispute settlement in case of complaints against the decisions of the Precinct Election Commissions. Reports by the OSCE/ODIHR and the Council of Europe Congress Rapporteur indicated improvement in the practice of election administration on the basis of the new legislative framework.

■ LIT / Paksas

Application No. 34932/04, judgment final on 06/01/2011, enhanced supervision

” **Right to free elections:** permanent disqualification from the possibility to stand for election as a result of impeachment proceedings brought against Lithuania’s former president (Article 3 of Protocol No. 1)

CM decisions: In response to the findings of the Court and the decisions of the CM supervising execution of this case since 2011, the Lithuanian Constitutional Court held, in September 2012, that constitutional amendments were necessary to bring the legal situation in line with Article 3 of Protocol No. 1. In that respect, a draft law with the necessary constitutional amendments was submitted in November 2012 to Parliament. In December 2012, Parliament preliminarily approved it, and parliamentary committees were appointed for its consideration. During these considerations, certain amendments were agreed upon and in September 2013 the amended draft law was submitted to Parliament.

In September 2014, the CM urged the authorities to achieve tangible progress regarding the required constitutional changes and decided to transfer the case to the enhanced supervision procedure. In response, the authorities prepared a new legislative proposal. The proposed constitutional amendment consisted of adding a paragraph to Article 56 of the Constitution to limit the ban from standing for elections to the Seimas to ten years for a person removed from office through impeachment proceedings.

In March 2015, the CM renewed its urgent call for concrete results without further delay and invited the authorities to provide updated information by 31 July 2015, at the latest. In line with this deadline, the authorities indicated that the new draft law had been preliminarily approved by the Seimas and scheduled for adoption in June 2015. However, at the request of members of the applicant’s party, the Seimas again decided to postpone the vote. In September 2015, the draft law amending the Constitution was adopted in the first reading; on 15 December 2015, the Seimas rejected the draft law amending the Constitution at the second reading. In response to these developments,

the authorities submitted that the same constitutional amendment could only be resubmitted to the Seimas one year after it had initially been rejected.

When resuming its consideration of this case in March 2016, the CM welcomed the presence of the Vice-Minister of Justice of Lithuania and noted with interest the efforts undertaken so far by the government and the explicit commitment expressed to the Convention system as well as the assurance that all necessary further joint efforts would be put in place to ensure the execution of the present judgment.

However, the CM noted with deep regret that, on 15 December 2015, at the second reading, the Seimas rejected the draft law amending the constitution which would have allowed the applicant to stand in the upcoming parliamentary elections in October 2016. In this respect the CM urged the authorities to adopt the necessary constitutional amendments to lift the permanent and irreversible nature of the applicant's disqualification from standing for election to Parliament, to enable him to stand in the election in October 2016. In view of the possibility that the issue could be resolved during the Seimas' spring session, which will be concluded by the end of June 2016, the CM invited the authorities to provide updated information by 15 July 2016 at the latest. An updated action plan was submitted in July 2016.

Resuming consideration of this case in December 2016, the CM reiterated that the violation continued and that the applicant had since 2004 been banned from standing for parliamentary elections. Moreover, the CM expressed its deep concern that, despite its repeated call, the constitutional amendments initiative had, once again, failed before Parliament and that in consequence the applicant was unable to stand in the parliamentary elections held in October 2016.

The CM further emphasised that the authorities were under an unconditional obligation to find without further delay the necessary ways and means to lift the permanent and irreversible nature of the applicant's disqualification from standing for elections to Parliament; accordingly, all the competent authorities had rapidly to take all necessary remedial actions within their competence to enable him to stand in future elections as well as any additional action necessary effectively to prevent similar violations in the future.

The CM renewed its urgent call on all competent authorities to intensify their actions to ensure the execution of this judgment without further delay and, in this respect, invited the authorities to provide updated information on actions taken and progress made by 31 March 2017 at the latest.

P.2. Control of elections

■ ROM / Grosaru

Application No. 78039/01, judgment final on 02/06/2010, CM/ResDH(2016)322

” **Lack of clarity of the 1992 electoral law provisions** governing the allocation of parliamentary seats to the representatives of national minorities, under which the electoral authority refused to allocate to the applicant a seat to the Chamber of Deputies; lack of sufficient safeguards guaranteeing the electoral bodies' impartiality (Article 3 of Protocol No. 1 taken alone and in conjunction with Article 13)

Final resolution: The impugned law was replaced in 2015. In the current system there are two autonomous bodies competent in the electoral field: the Permanent Electoral Authority and the Central Electoral Bureau. According to decision No. 325 of the Constitutional Court of 14 September 2004, the rulings delivered by the Central Electoral Bureau are defined as jurisdictional administrative acts and thus can be challenged before ordinary administrative courts.

Q. Freedom of movement

R. Discrimination

AUT / E.B. and Others

Application No. 31913/07+, judgment final on 07/02/2014, CM/ResDH(2016)280

» **Discriminatory refusal to delete criminal record:** dismissal of requests under former Article 209 of the Criminal Code to delete convictions from the criminal record despite a declaration of unconstitutionality of the provision by the Constitutional Court in 2002 and lack of an effective remedy to challenge the refusal (Article 14 taken in conjunction with Article 8, Article 13)

Final resolution: In 2016, the Federal Law (No. 154/2016) providing for the deletion convictions from criminal records entered into force. Convicted persons, their relatives or the Public Prosecutor's Office are entitled to apply for the deletion of convictions from criminal records if the relevant conduct is no longer a criminal offence.

CRO / Šečić

Application No. 40116/02, judgment final on 31/08/2007, enhanced supervision

» **Ineffective investigation into a racist attack on a Roma person** (Article 3, Article 14 taken in conjunction with Article 3)

Action plan: In July 2015, the authorities submitted an action plan (DH-DD(2015)802) providing detailed information on measures taken to improve the effectiveness of investigations, notably amendments of the Code of Criminal Procedure, the Police Law and of the Anti-Discrimination Act, as well as adoption of the Crime Victims Compensation Act. The assessment of the impact of these measures is underway.

ESP / Manzanas Martin

Application No. 17966/10, judgment final on 03/07/2012 (merits) – 05/03/2013 (just satisfaction), CM/ResDH(2016)205

» **Unjustified difference of treatment between Evangelical Church ministers and Catholic priests** as regards number of years of pastoral activity taken into account when calculating pension rights (Article 14 taken together with Article 1 of Protocol No. 1)

Final resolution: Just satisfaction paid on the basis of an agreement. The conditions for evangelical pastors' integration into the General Social Security Scheme were aligned to the system established for Catholic priests. The Royal Decree No. 839/2015 modified the conditions for pastors of all churches, which are part of

FEREDE (Federation of Evangelical Religious Entities of Spain), allowing account to be taken of their years of pensionable service pre-dating their integration into the social security scheme. It applies retroactively as from 1 January 2015.

■ **GRC / Sampani and Others - GRC / Lavidia and Others**

Application Nos. 59608/09 and 7973/10, judgments final on 29/04/2013 and on 30/08/2013, enhanced supervision, CM/ResDH(2017)96

” **Discrimination on account of the placement of Roma children in public schools attended exclusively by Roma children** (Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1)

CM decision / Action report: When resuming consideration of these cases in June 2016, in the light of the action report submitted in April 2016, the CM welcomed the individual measures taken by the authorities and noted with satisfaction the general measures aiming at eliminating the segregation of Roma children and integrating them in the education system.

The CM further invited the authorities to take all necessary measures to desegregate the 4th primary school in Sofades in the light of the European Court’s judgments and inform the CM in this respect.

In conclusion, the CM invited the authorities to provide information on the impact of the measures taken and possible further measures to tackle any possible segregation in schools.

In response, the Greek authorities submitted an updated action plan in December 2016, and the cases were closed in March 2017.

■ **GRC / Vallianatos and Others**

Application No. 29381/09, judgment final on 07/11/2013, CM/ResDH(2016)275

” **Discrimination based on sexual orientation:** exclusion of same-sex couples from the scope of law no 3719/2008 establishing civil union, notwithstanding the law’s title and Parliament’s intentions of granting legal recognition to partnerships other than marriage (Article 14 in conjunction with Article 8)

Final resolution: The explanatory report to the 2015 Law on Civil Union, Exercise of Rights, Penal and other Provisions underlines the need to modernise the legislation on civil union by expanding it to same-sex couples. Article 1 stipulates that “a contract between two adults, irrespective of sex, governing their life as a couple (“civil union”) can be concluded by means of a notarised instrument in the presence of the parties, extending equal treatment to all citizens irrespective of their sexual orientation”.

■ **HUN / Horváth and Kiss**

Application No. 11146/11, judgment final on 29/04/2013, enhanced supervision

” **Discrimination against Roma children:** unjustified assignment of Roma children during their primary education to special schools for children with mental disabilities; lack of adequate legislative safeguards against systemic misdiagnosis of mental disability among Roma children, leading to their misplacement in special schools (Article 2 of Protocol No. 1 read in conjunction with Article 14)

Developments: Since the last CM decision in December 2015, information on the impact of an inclusive education policy and the means to guarantee an objective assessment of Roma children remains awaited from the Hungarian authorities.

ROM / Moldovan and Others Nos. 1 & 2 and 1 other case

Application No. 41138/98+, judgment final on 05/07/2005, CM/ResDH(2016)39

” **Violence against Roma people:** racially-motivated violence, between 1990 and 1993, against villagers of Roma origin and, in particular improper living conditions as a result of the destruction of their homes; incapacity of the authorities to put an end to the violations of their rights (Articles 3, 6, 8, 13, and 14 in conjunction with Articles 6 and 8)

Final resolution: General measures already taken and issues outstanding in June 2011 were presented in document CM/Inf/DH(2011)37. Remaining issues concerned the reconstruction/renovation of certain houses destroyed in the conflict, the construction of a community medical dispensary and of an industrial building, the acquisition of equipment, the completion of the local cultural centre, school and kindergarten as identified by the inter-institutional working group co-ordinated by the Private Office of the Deputy Prime Minister. As difficulties in clarifying the legal status of the land on which the houses were to be rebuilt persisted, the working group, joined by the relevant local and departmental authorities, submitted its proposals in November 2013. On 28 April 2014, the Prime Minister approved the new strategy. A legal framework for financing the construction of a local medical centre and a factory for the manufacture of concrete products for construction works was approved by Parliament in June 2015.

S. Limitation on use of restrictions on rights

AZE / Ilgar Mammadov (group)

Application No. 15172/13, judgment final on 13/10/2014, enhanced supervision CM/ResDH(2016)144, CM/ResDH(2015)156, CM/ResDH(2015)43

” **Imprisonment of a political opponent for reasons other than those permitted by Article 5, namely to punish him for having criticised the government** (Article 18 combined with Article 5, Article 5 §§ 1c and 4, Article 6 § 2)

CM decisions / Interim Resolution: Since the beginning of its supervision of the execution of this case, the CM has continually called upon the Azerbaijani authorities to release without delay the applicant – imprisoned since 4 February 2013 and sentenced to seven years’ imprisonment (conviction final on 19 November 2016 following the Supreme Court’s refusal of the cassation appeal lodged) - and take all necessary actions with regard to his health.

In its first (CM/ResDH(2015)43) and second (CM/ResDH(2015)156) interim resolutions of 2015, as well as in its decisions, the CM repeatedly insisted upon the applicant’s release and regretted the postponement *sine die* of the examination by the Supreme Court of the his appeal against criminal conviction. In its decision of September 2015, the CM also expressed concern about Khalid Bagirov, the applicant’s former

representative whose licence was suspended in the course of 2015. Furthermore, in the absence of any information on the general measures, the CM repeated with increased concern its calls upon the Azerbaijani authorities to provide concrete and comprehensive information on the general measures taken and/or envisaged. In December 2015, the CM noted that the Supreme Court of Azerbaijan had finally decided the appeal but had ordered only a partial cassation, so that the applicant remained detained. In view of the situation, the CM also reiterated its call on the authorities of the member States and the Secretary General of the Council of Europe and its invitation to the observer States to the Council of Europe and international organisations to raise the applicant's situation with the highest authorities in Azerbaijan to get him released.

When examining this case in March 2016, the CM recalled its previous decisions and interim resolutions, noting with the greatest concern that the applicant had still not been released, no response had been given to the demand for guarantees as to his physical integrity in the meantime, no domestic court had so far addressed the violation of Article 18 combined with Article 5 found by the European Court and that the examination of the case before the Sheki Court of Appeal had been postponed *sine die*. Finally, the CM expressed its concern that there has still been no information about any relevant general measure to prevent violations of the rule of law through abuse of power of the kind established in the Court's judgment.

The CM further recalled Azerbaijan's undertaking to abide by the judgment by virtue of Article 46 § 1 of the Convention, exhorted the Azerbaijani authorities to ensure without further delay the applicant's release and to guarantee his physical integrity in the meantime, and reiterated with insistence its invitation to the authorities to provide, without delay, concrete and comprehensive information on the measures taken and/or envisaged to prevent other cases of circumvention of legislation by prosecutors and/or judges for purposes other than those prescribed, as well as to prevent new violations of the presumption of innocence.

In June 2016, the CM adopted a new interim resolution ([CM/ResDH\(2016\)144](#)) in which it deeply deplored that the applicant had still not been released, despite the Court's findings and notwithstanding the CM's repeated calls. Qualifying as intolerable the fact that, in a State subject to the rule of law, a person should continue to be deprived of his liberty on the basis of proceedings engaged in breach of the Convention with a view to punishing him for having criticised the government, the CM recalled once more that the obligation to abide by the judgments of the Court is unconditional and insisted that measures be taken to ensure without further delay Ilgar Mammadov's release. Declaring its resolve to ensure, with all the means available to the Organisation, Azerbaijan's compliance with its obligations under this judgment, the CM decided to examine the applicant's situation at each of its regular and Human Rights meetings until such time as he is released.

With no positive developments in relation to the applicant's situation, in September 2016 the CM deeply deplored the continuation of his imprisonment and expressed its grave concern about the continuing silence of the Azerbaijani authorities as regards the implementation of the individual measures required. It noted further that the applicant's appeal against conviction was still pending before the Supreme Court

and underlined the urgent need for the appeal to be examined rapidly and urged the Azerbaijani authorities to specify the relevant time-table. Finally, the CM expressed its deepest concern about the absence of any information from the authorities concerning the general measures taken or envisaged to prevent violations of the rule of law through abuse of power of the kind established in the Court's judgment.

At its September and December meetings, the CM reiterated its outmost concern about the continued detention of the applicant, more than two years after the final judgment of the European Court, notwithstanding the repeated calls on Azerbaijan by the CM and the Secretary General to release the applicant. In the same vein, the CM affirmed its determination to ensure the implementation of the judgment by actively considering using all the means at the disposal of the Organisation, including under Article 46, paragraph 4 of the Convention. While expressing once more its deep concern about the absence of any information from the authorities concerning the general measures taken or envisaged to prevent violations of the rule of law through abuse of power of the kind established in the European Court's judgment, the CM encouraged Azerbaijan to engage in meaningful dialogue with the CM.

Following the visit to Baku on 11 January 2017 of a special mission set up by the Secretary General under Article 52 of the Convention, an action plan was received on 14 February 2017 indicating the authorities willingness to examine all avenues suggested by the mission to further execute the judgment and presenting a new executive order by the President covering a number of questions related to the questions raised by the Court's judgment.

■ **MDA / Cebotari and 2 other cases**

Application No. 35615/06+, judgment final on 13/02/2008, CM/ResDH(2016)147

” **Imprisonment for reasons other than those authorised by Article 5, namely to hinder the lodging of an application to the Court:** arrest and criminal proceedings only to put pressure on another applicant in order to hinder it from pursuing an application before the Court; interference with the applicant's right to individual petition before the Court due to the impossibility to discuss with his lawyers; insufficient amount of compensation as non-pecuniary damage for unlawful detention (Articles 5 § 1, 18 in conjunction with 5 § 1 and 34)

Final resolution: Regarding individual measures, the CM noted that all the applicants had already been released at the time of the Court's judgments, that the applicant in the *Cebotari* case had been acquitted of criminal charges brought against him in abuse of power and that the attempt to hinder the exercise of his right of individual petition had been unsuccessful (violation of Article 18 combined with Article 5). To prevent further violations a substantial reform of the prosecution service had been undertaken, resulting in improved independence vis-à-vis the legislature and the executive and strengthened criminal and disciplinary accountability of prosecutors (see also the *Colibaba* case above). Prosecution of a person known by the investigator or prosecutor to be innocent was made into an offence punishable by up to 7 years of imprisonment.

According to a Constitutional Court decision of 23 September 2013, State authorities are henceforth prohibited from interfering in the conduct of specific criminal cases.

In February 2016, a new Law on the Prosecution Service was adopted, following an overall positive assessment by Council of Europe experts.

As regards the amount of compensation to be awarded for violations of the Convention, a Supreme Court ruling of 24 December 2012 provides guidance to domestic courts on the amounts to be awarded, in conformity with the European Court's case-law. The examination of other outstanding questions is examined in the framework of the joined *Muşuc, Guğu* and *Brega* groups.

■ **UKR / Lutsenko - UKR / Tymoshenko**

Application Nos. 6492/11 and 49872/11, judgments final on 19/11/2012 and 30/07/2013, enhanced supervision

” **Use of detention for reasons other than those permissible under Article 5, namely for having claimed one's innocence and for having shown disrespect for the court**, in the context of criminal proceedings engaged against the applicants in a political context (2011); inadequate scope and nature of judicial review of the lawfulness of detention; lack of effective opportunity to receive compensation (Article 5 §§ 1, 4 and 5, and Article 18 in conjunction with Article 5)

Developments: The applicants were released from prison (in the first case through a pardon on 7 April 2013 by President Yanoukovitch, and in the second following a decision adopted by Parliament on 22 February 2014 to give effect to the Court's judgment) and their convictions were subsequently quashed. As regards general measures to prevent abuses of power of the kind here at issue, an action plan/report detailing the on-going reforms of the General Prosecutor's Office, the setting-up of the State Bureau of Investigation and the National Anticorruption Bureau is still awaited.

T. Cooperation with the European Court and right to individual petition

■ **BEL / Trabelsi**

Application No. 140/10, judgment final on 16/02/2015, enhanced supervision

” **Expulsion of a Tunisian national in violation of an interim measure indicated by the European Court:** expulsion of the applicant to the United States where he faces risk of irreducible life sentence, intervened in spite of an interim measure indicated by the European Court (Article 3 and 34).

CM decisions: Since the beginning of its supervision of the execution of this judgment, in December 2015, the CM noted, in respect of individual measures, the request from the Belgian authorities for new diplomatic assurances from the United States as to the situation of the applicant convicted to life sentence.

In March 2016, the CM took note of the new information submitted in February 2016 on discussions held by the Belgian authorities with the Ministry of Justice of the United States about the new diplomatic assurances requested following the judgment of the European Court.

In June 2016, the CM noted the on-going bilateral discussions regarding legal mechanisms which could be used to prevent or reduce the risk of the applicant's being sentenced to an irreducible life sentence. It furthermore noted that the proceedings in the United States were at a sufficient early stage to allow the consideration of legal solution such as a requalification of the charges, a renunciation by the prosecutor of a request for life sentence of a court settlement ("plea agreement").

When examining the case in September 2016, the CM recalled the Court's considerations regarding the applicant's extradition to the United States, and his exposure to the risk of being sentenced to an irreducible life sentence, amounting to treatment contrary to Article 3 of the Convention. Having further noted that the possibility of obtaining the necessary guarantees against such a sentence was stronger given the early stage of the criminal proceedings, the CM expressed its satisfaction concerning the positive progress of the discussions with the United States' authorities to that effect and invited the Belgian authorities to follow closely the on-going criminal proceedings and keep it regularly informed of developments. As regards the payment of just satisfaction, the CM noted that additional payments to repay the sums of just satisfaction unduly seized were underway.

As to the general measures, the CM took note of the renewed commitment of the Belgian authorities to respect interim measures indicated by the Court.

RUS / Garabayev (group)

Application No. 38411/02, judgment final on 30/01/2008, enhanced supervision

” **Various forms of removal and disappearances of applicants and failure to comply with interim measures:** extradition or expulsion without assessment of the risk of ill-treatment, unclear legal provisions for ordering and extending detention with a view to extradition, defective judicial review of the lawfulness of detention (Articles 3, 5 and 13); kidnapping and forcible transfers of applicants to Tajikistan or Uzbekistan, in some instances with involvement of Russian State agents and in violation of the Court's indications under Rule 39 (Article 34)

CM decision: The first responses by the Russian authorities to the violations found in these cases addressed the risks of extradition or expulsion in violation of the Convention and issues of detention. These responses included changes in the practice of prosecutors, administrators and courts, including guidance from the Constitutional Court and the Supreme Court and amendments to the Code of Criminal Procedure.

Following a number of judgments and incidents involving the disappearance of applicants (notably the *Iskandarov* judgment), the CM focused its attention on this particular issue, especially since a number of applicants were subsequently found in prison in the State seeking extradition, and the Court found in a number of cases that the illegal transfers of the applicants could not have taken place without the knowledge and passive or active involvement of the Russian authorities. The CM thus called upon the Russian authorities to adopt protective measures for persons at risk and ensure an effective investigation of all incidents, notably to establish the fate of the disappeared. The necessity of diplomatic efforts was also highlighted by the CM and the Court, to ensure that those who ended up in prison in Tajikistan and Uzbekistan were not subjected to treatment contrary to Article 3 (*Savridin Dzhurayev* judgment).

Resuming examination of this group in March 2016 the CM welcomed, as regards protection against extradition/expulsion and release from detention, the measures taken by the authorities to release the applicants entitled to be released and to grant temporary asylum to all those who requested it, and invited the authorities to ensure that the administrative “stop-lists” function as an effective tool to prevent expulsion of those applicants who appeared to remain as irregular residents.

As regards the protection of applicants removed to Tajikistan and Uzbekistan in violation of the Convention, the CM reiterated that the information received from the detaining authorities could not be considered sufficient proof that the conditions of detention remained adequate and did not involve treatment in breach of Article 3 and insisted again that the Russian authorities use all available means to obtain regular access, for monitoring purposes, to the detained applicants in Tajikistan and Uzbekistan either by Russian diplomatic personnel or by representatives of reputable and independent national and international organisations, and encouraged exploration of the possibility to extend the new monitoring mechanism to the other applicants currently detained abroad.

As regards the investigations into incidents of disappearance/abductions, the CM welcomed the authorities’ efforts to remedy the investigative shortcomings identified by the Court in the *Mukhitdinov* case and their successful attempt to establish the applicant’s location. At the same time, it expressed grave concern that several other applicants remained missing and urged the authorities to do everything in their power to establish their whereabouts. The CM expressed further concern that, in none of the cases where the applicants reappeared in the requesting States, the investigation had either established a convincing account of the events consonant with the Court’s findings or identified those responsible for their irregular transfer and urged the authorities to pursue their efforts to conduct effective investigations capable of answering these questions in a convincing manner.

As regards the payment of just satisfaction, the CM invited the authorities to explore, in co-operation with the Secretariat, the available ways to make the payments required in the cases of *Iskandarov* and *Muminov* where the applicants remain in prison in, respectively, Tajikistan and Uzbekistan.

As regards the measures to prevent extradition/expulsion in violation of the Convention, the CM welcomed the suspension of extradition/expulsion decisions and the regularisation of the applicants’ situation in the Russian Federation as long as the relevant risks persist and invited the authorities to confirm that the monitoring mechanism envisaged by the Prosecutor General’s Office will be applied only in those cases where the requesting State’s assurances against the risk of ill-treatment meet the standards developed in the Court’s case law.

As regards special protection against abduction and illegal transfer out of the Russian Federation, the CM invited the authorities to continue the practice of apprising individuals of their right to apply for State protection in case of a perceived risk of irregular removal, and to inform the CM of any relevant complaints lodged and the authorities’ response to them and, in respect of the *Nizamov and Others* case, to clarify whether the procedure included the applicants’ acknowledgement of their apprising in writing.

As regards the other outstanding issues, the CM invited the authorities to provide an updated action plan or action report concerning the measures planned or taken.

U. Inter-state and related case(s)

RUS / Georgia

Application No. 13255/07, Judgment final on 03/07/2014, Enhanced supervision

” **Arrest, detention and expulsion from the Russian Federation of large numbers of Georgian nationals between the end of September 2006 and the end of January 2007:** the Court found that, from October 2006, a coordinated policy of arresting, detaining and expelling Georgian nationals, amounting to an administrative practice, had been implemented in the Russian Federation (Articles 3, 5 § 1 and 4 alone and in conjunction with Article 13, Article 38, Article 4 of Protocol No. 4)

CM decision: The first examination took place in March 2016. It noted with interest the extensive and detailed information submitted by the Russian authorities regarding, in particular, the developments in the Federal Migration Service, the supervision carried out by prosecutors and the practice of the domestic courts since 2007. The CM invited the authorities to submit further information on the implementation of their action plan and to supplement it with an analysis as to how the measures referred to would prevent a similar administrative practice in the future.

The CM finally invited the authorities to provide information on the measures taken or proposed to ensure their compliance in the future with their obligation under Article 38 to furnish all necessary facilities to the European Court. The CM recalled that the question of the application of Article 41 of the Convention remained pending before the European Court.

TUR / Cyprus

Application No. 25781/94, judgment final on 10/05/2001, enhanced supervision

” **Fourteen violations linked to the situation in the northern part of Cyprus** concerning the Greek Cypriots missing persons and their families, the homes and properties of displaced persons, the living conditions of Greek Cypriots in the Karpas region of the northern part of Cyprus, and the rights of Turkish Cypriots living in the northern part of Cyprus (Articles 8 and 13, Article 1 of Protocol No. 1, Articles 3, 8, 9, 10 and 13, Articles 1 and 2 of Protocol No. 1, Articles 2, 3, 5 and 6)

and

TUR / Varnava

Application No. 16064/90, judgment final on 18/09/2009, enhanced supervision

” **Missing Greek Cypriots:** lack of effective investigations into the fate of nine Greek Cypriots who disappeared during the Turkish military operations in Cyprus in 1974

CM decisions: In the light of the measures adopted by the respondent State with a view to abiding by the inter-state judgment, the CM was able to close the examination of a number of questions relating to the living conditions of Greek Cypriots in northern Cyprus, as regards secondary schools, censorship of textbooks and freedom of religion, and to the rights of Turkish Cypriots living there (jurisdiction of military courts).

In accordance with the calendar for the examination defined in December 2014, the CM resumed in June 2015 its examination of outstanding questions with respect to the parts of the cases concerning persons missing following the Turkish military intervention in 1974, and property rights of enclaved Greek Cypriots and their heirs.

As regards the first issue, in June 2015, the CM welcomed the progress made by the Committee on Missing Persons in Cyprus (CMP) in the search and identification of missing persons and recalled the necessity for the Turkish authorities to provide the CMP with all the assistance it needs, including access to military zones and information from military archives. It also noted with interest the progress achieved in the investigations conducted into the deaths of identified persons and invited the authorities to keep it informed of progress in all investigations.

As regards the second issue, in September 2015, the CM expressed its appreciation of the measures taken. It indicated, however, that it wished to examine the possible consequences for these questions of the separate judgment of 12 May 2014 in the present case on the issue of just satisfaction. Consequently it decided to come back to this question in June 2016 following the debate foreseen in December 2015 on the impact of this judgment in the context of the discussion on the property rights of displaced persons.

In December 2015, the CM agreed to postpone consideration of the case and agreed to a modified time-table for the examination of this case in 2016.

In accordance with the new timetable, the CM examined in March and December 2016 the issue of missing persons. In the last mentioned decision it noted with interest the measures taken to accelerate the CMP's access to military zones and the setting up on the Turkish side of an archive committee to assist the CMP. It also noted updated information on the progress made in the investigations conducted by the Missing Persons Unit and reiterated the importance of ensuring the effectiveness of all investigations and their rapid conclusion. In June 2016, the CM examined the issue of the homes and immovable property of displaced Greek Cypriots and in September 2016 that of the property rights of enclaved Greek Cypriots and their heirs

It decided to resume consideration of the issue of the displaced Greek Cypriots and of that of the enclaved Greek Cypriots at their DH meetings in March and June 2017, respectively.

The CM consistently insisted on the unconditional obligation to pay just satisfaction awarded by the European Court and repeatedly called upon the Turkish authorities to pay without delay the sums awarded in the judgment of 12 May 2014.

TUR / Xenides-Arestis (group)

Application No. 46347/99, judgments final on 22/03/2006 and 23/05/2007, enhanced supervision

» **Violation of property rights of displaced Greek Cypriots:** continuous denial of access to property in the northern part of Cyprus and consequent loss of control thereof and, in some cases, also violation of the applicants' right to respect for their homes (Article 1 of Protocol No. 1 and Article 8)

and

TUR / Varnava

Application No. 16064/90, judgment final on 18/09/2009, enhanced supervision

” **Missing Greek Cypriots:** lack of effective investigations into the fate of nine Greek Cypriots who disappeared during the Turkish military operations in Cyprus in 1974

CM decisions: The continuing non-payment of the just satisfaction awarded by the Court has been a major source of concern and has led to the adoption of interim resolutions in 2010, 2013 and 2014.

In the last interim resolution of September 2014, the CM insisted on the fact that the refusal by Turkey to pay the just satisfaction awarded by the Court was in flagrant conflict with its international obligations and exhorted Turkey to review its position in this respect.

When examining the situation in March, June and September 2016, the CM deplored the absence of progress, notwithstanding a letter from the Secretary General to the Minister of Foreign Affairs of Turkey raising the issue of payment, and reiterated its calls on Turkey to abide by its obligations to pay the just satisfaction awarded.

Appendix 6 – Actions and developments relevant for execution

A. Conclusions of seminars, workshops, round tables, white papers...

Livre blanc sur le surpeuplement carcéral

Prepared by the Drafting Committee on Prison Overcrowding
Approved by the Committee of Minister at its 1266th meeting
28 September 2016, CM(2016)121-add3

Conclusions

156. Prison overcrowding is a recurring problem in many countries and each country needs to deal with it in the best suited way. Some countries have seen the number of inmates decrease in the recent years using longterm strategies and specific actions. Such countries need to maintain this trend as this can often be a real challenge. In the past there have been remarkable decreases of prison population in some European countries which have not lasted more than a decade.
157. The Council of Europe member states should follow the standards and criteria set by the European Court of Human Rights and the CPT when adopting specifications of what space each prisoner is entitled to in order to provide an objective picture of the situation and take appropriate decisions in case of overcrowding.
158. The major challenges today are ensuring human rights protection and efficient management of penal institutions. As already mentioned, there is a risk of violating Article 3 of the ECHR because of overcrowded and insanitary conditions which facilitate or lead to inhuman or degrading treatment. That is why the European Court of Human Rights recommends replacing old and worn out prison buildings with new modern prisons offering human conditions of detention. As a minority of inmates need high security prisons, the new penal institutions should be mostly low security prisons which cost less and are more adapted to the needs of the inmates for resocialisation.
159. Member states may also face overcrowding as a result of new types of serious criminality which lead to an increase in the severity of criminal law responses. Prison sentences become longer and resocialisation becomes difficult. Good prison management and adequate staff selection and training are indispensable prerequisites for ensuring safety and good order even in prisons which may work at their full capacity. In this respect, attention should be given to the comparable cost-effectiveness of prison sentences and possible alternatives.

160. Eliminating overcrowding, improving prison conditions and the treatment of prisoners will improve interstate trust and will facilitate judicial cooperation, including transfers of detained persons to their home countries thus improving their family relations and social reintegration. Overcrowded and dilapidated prisons in the receiving country can be a reason to refuse transfers because of human rights concerns.
161. There should be constant dialogue and common understanding and action involving policy makers, legislators, judges, prosecutors and prison and probation managers in each member state in order to deal with execution of penal sanctions and measures in a humane, just and efficient manner and to avoid among others prison overcrowding and net widening of the criminal justice system. Recommendation No. R(99)22 of the Committee of Ministers to member states concerning prison overcrowding and prison population inflation remains a very valid text and the authorities should take all possible measures to better implement the standards and principles provided by it.
162. The media should be regularly informed about the functioning and the intended reform of the penal policy and wide public support should be sought in this respect. This requires communication, transparency and opening up of the criminal justice world to the public so that the latter can see all its different aspects.
163. It cannot be overstated that investing in good preparation for release and social reintegration of prisoners, as well as in good systems of community sanctions and measures is an effective way of reducing recidivism and of ensuring public safety. This will also have an effect on reducing the rates of imprisonment and prison overcrowding.
164. Overcrowding is a recurrent problem in many Council of Europe member states and therefore there is a need to ensure that a followup is given to the White Paper by the national authorities. It is also advisable to update at some point in the future the White Paper and its findings and conclusions based on information regarding the measures taken for the implementation of Recommendation No. R(99)22 and the rates of imprisonment and prison capacity in the different European countries.

B. Special actions of member states to improve the implementation of the Convention

Andorra: introduction of a new judicial remedy for reopening of civil, criminal and administrative cases in order to obtain "*restitutio in integrum*"

After a case before the European Court on a violation of Article 6 of the Convention, where *restitutio in integrum* could only be attained with the reopening of the case before domestic courts, the Andorran authorities decided to amend the Transitional Law on Judicial Proceedings with the aim, among others, to introduce a new remedy in order to tackle similar cases in the future and fully execute Court's judgments. The modification of the law was adopted in June 2014 and, according to article 30 bis

-now into force-, the “appeal for review” gives each person, whose rights foreseen in the Convention and its Protocols to which Andorra is a party have been violated, the right to request the reopening of the case before the competent national court, once the judgment of the Court has become final and within three months from that date. Furthermore, in 2016, the Andorran authorities introduced a new transitional provision to the amended law providing that the “appeal for review” could also be used for cases that are still pending of execution. Such provision allowed for the closure of a case under the supervision of the Committee of Ministers. The 2016 amendment completed the entire proceeding by recognising as well the legal capacity of the Government to request the reopening of a case when the protection of the general interest requires it and whenever the Government is a party to the initial case that leads to the judgment of the European Court.

Belgium: publication of the first annual report on the Belgian disputes before the European Court of Human Rights 2015-2016

In 2016, the Ministry of Justice published the first annual report on the Belgian disputes before the European Court on Human Rights 2015-2016, drawn up by the Office of the Belgian Government Agent, thus hoping to make it a useful tool for the implementation of the Convention.

This report is a concrete outcome of the Brussels Declaration of 2015, in which all member states of the Council of Europe committed themselves to work in order to ensure a quick and efficient implementation of the European judgments on human rights.

The report is divided in two main parts: (1) the case-law of the Court regarding Belgium and (2) cases pending before the Committee of Ministers. The report also includes information on the work process before the European Court on Human Rights and on the execution of judgments. Finally, besides annexing numerous public documents, notably action plans and reports issued over the past year, the report gives in appendix 9 a summary table giving an overview of the execution of judgments at 31 July 2016.

Furthermore, in 2016, the Office of the Government Agent began to communicate to the Belgian platform of independent institutions for the promotion and protection of human rights in Belgium, action plans and reports submitted to the Committee of Ministers related to the execution of judgments and decisions regarding Belgium and published since 1 July 2016, as well as judgments and decisions of the Court which became final as from that date.

France: introduction of the possibility for reopening of proceedings in “civil” matters

The Code of Judicial Organisation was amended on 18 November 2016 and provides now for a procedure for the review of final civil decisions concerning the status of persons following a judgment by the European Court finding a violation of the Convention. This procedure aims at granting the applicant, as in criminal matters,

the possibility to correct the harmful consequences of the decision rendered in breach of the Convention in cases where, having regard to the nature and gravity of the violation, the just satisfaction awarded under Article 41 of the Convention could not rectify those consequences.

The procedure is applicable to decisions concerning the legal status of a person at individual level (including date and place of birth, surname, first name, sex, capacity), family level (filiation, marriage, divorce, legal separation, kinship and affinity) and political level (French or foreign national).

The review may be requested by the parties to the proceedings before the Court as well as by their legal representative or, in the event of death, by the heirs of the interested party.

The review must be requested within one year from the Court's judgment. The transitional provisions allow persons affected by a judgment of the Court rendered before the entry into force of the new law to submit a request for review within one year from the date of its entry into force.

The request is examined, as in criminal cases, by the reviewing court, which decides on its admissibility before deciding on the merits, as the case may be. If the court considers the request to be well founded, it shall quash the final civil decision and refer the applicant to a court of the same branch of law and the same degree of jurisdiction. However, if the review is of such nature as to remedy the violation found by the Court, the reviewing court shall refer the applicant to the Plenary Assembly of the Court of Cassation. The date of entry into force of the new provisions will be fixed by virtue of a decree of the Council of State, no later than six months after the promulgation of the law, *i.e.* on 19 May 2017.

France: New procedure on the consultation with the national institution for the defence of human rights

As part of the follow-up to the Brussels Declaration, the Ministry of Foreign Affairs, which coordinates the execution of the Court's judgments, has since last year set up a new consultation procedure, which allows for the cooperation -with a view to executing the Court's judgments- of the national institution for the defence of human rights (National Consultative Commission for Human Rights (CNCDH)) and other human rights bodies (the Human Rights Defender (DDD) and the Controller-General for Places of Deprivation of Liberty (CGLPL) as regards all litigious issues falling within this body's field of competence). The Ministry of Foreign Affairs thus transmits to these bodies the judgments finding a violation of the Convention in order to obtain their observations on the general measures to be taken for the execution of the judgments concerned in view of the preparation of action plans and action reports. In addition, once these documents have been drawn up and sent to the Department for the Execution of Judgments of the Court, the Ministry of Foreign Affairs transmits them to Parliament for information.

Georgia: Right of the prosecuting authority to also request reopening

Georgian law provides for the reopening of civil proceedings (since 2010) and criminal proceedings (since 2012) on the basis of a judgment/decision (friendly settlement/unilateral declaration) of the European Court. In criminal matters, the prosecutor can also request the reopening. In 2016, the Georgian authorities amended the domestic provisions on the reopening of criminal proceedings in order to also allow the prosecutor to request reopening with a view to ensuring compliance with the requirements of the Convention. The prosecutor can notably, after studying the case file and even before the European Court issued its judgment/decision, request *ex officio* the reopening if the prosecutor considers that there is new circumstances which confirm, alone or in conjunction with any other circumstances established, the convicted person's innocence or the commission of an less serious offence than the one for which he/she was convicted (in a pending case, the prosecutor requested the reopening on this basis – *Gamsakhurdia* (59835/12), friendly settlement with undertakings – information is awaited).

Appendix 7 – Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements

(adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies)

General provisions

Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.
2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the Committee of Ministers and of the Ministers' Deputies shall apply when exercising these powers.

Rule 2

1. The Committee of Ministers' supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special human rights meetings, the agenda of which is public.
2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

Rule 3

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

Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem.
2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

■ Rule 5

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

I. Supervision of the execution of judgments

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

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.
2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:
 - a. whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and
 - b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:
 - i. individual measures²³ have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;
 - ii. general measures²⁴ have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

■ Rule 7 – Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible

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

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

individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

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

This rule was clarified by the Ministers' Deputies at 1100th meeting of the Committee of Ministers, as follows:

“decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process”

Rule 8 – Access to information

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

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

- a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;
- b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

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

- a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;
- b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;
- c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the

Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

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

This rule was clarified by the Ministers' Deputies at 1100th meeting of the Committee of Ministers, as follows:

“decided that action plans and action reports, together with relevant information provided by applicants, non-governmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9§ 3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information”

■ Rule 9 – Communications to the Committee of Ministers

This rule was amended by the Ministers' Deputies at 1275th meeting of the Committee of Ministers.

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from nongovernmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.
3. The Committee of Ministers shall also be entitled to consider any communication from an international intergovernmental organisation or its bodies or agencies whose aims and activities include the protection or the promotion of human rights, as defined in the Universal Declaration of Human Rights, with regard to the issues relating to the execution of judgments under Article 46, paragraph 2, of the Convention which fall within their competence.
4. The Committee of Ministers shall likewise be entitled to consider any communication from an institution or body allowed, whether as a matter of right or upon special invitation from the Court, to intervene in the procedure before the Court, with regard to the execution under Article 46, paragraph 2, of the Convention of the judgment either in all cases (in respect of the Council of Europe Commissioner for Human Rights) or in all those concerned by the Court's authorisation (in respect of any other institution or body).
5. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers.

6. The Secretariat shall bring any communication received under paragraphs 2, 3 or 4 of this Rule to the attention of the State concerned. When the State responds within five working days, both the communication and the response shall be brought to the attention of the Committee of Ministers and made public. If there has been no response within this time limit, the communication shall be transmitted to the Committee of Ministers but shall not be made public. It shall be published ten working days after notification, together with any response received within this time limit. A State response received after these ten working days shall be circulated and published separately upon receipt.

■ Rule 10 – Referral to the Court for interpretation of a judgment

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

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

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

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

■ Rule 11 – Infringement proceedings

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

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

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

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

II. Supervision of the execution of the terms of friendly settlements

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

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

■ Rule 13 – Control intervals

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,²⁵ on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

■ Rule 14 – Access to information

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
 - a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;
 - b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.

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

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

Rule 15 – Communications to the Committee of Ministers

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.
2. The Committee of Ministers shall be entitled to consider any communication from nongovernmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of the terms of friendly settlements.
3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

III. Resolutions

Rule 16 – Interim resolutions

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

■ Rule 17 – Final resolution

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

Decision adopted by the Committee of Ministers on 2 December 2010 at the 1100th meeting of the Ministers' Deputies

Decision adopted at the 1100th meeting of the Committee of Ministers – 2 December 2010

The Deputies,

1. decided to implement the new, twin-track supervision system with effect from 1 January 2011 taking into account the transitional provisions set out below;
2. decided that, as from that date, all cases will be placed on the agenda of each DH meeting of the Deputies until the supervision of their execution is closed, unless the Committee were to decide otherwise in the light of the development of the execution process;
3. decided that action plans and action reports, together with relevant information provided by applicants, nongovernmental organisations and national human rights institutions under rules 9 and 15 of the Rules for the supervision of execution judgments and of the terms of friendly settlements will be promptly made public (taking into account Rule 9§ 3 of the Rules of supervision) and put on line except where a motivated request for confidentiality is made at the time of submitting the information;
4. decided that all new cases transmitted for supervision after 1 January 2011 will be examined under the new system;

Following the last ratification required for the entry into force of Protocol No. 14 to the European Convention on Human Rights in February 2010, Rules 10 and 11 have taken effect on 1st June 2010.

Appendix 8 – Remarks on the supervision of the execution by the Committee of Ministers: new working methods

Introduction

1. The efficiency of the execution of judgments and of the Committee of Ministers' supervision thereof (generally, carried out at the level of the Minister's Deputies) have been at the heart of the efforts over the last decade to guarantee the long term efficiency of the Convention system (see also Chapter III). The Committee of Ministers thus reaffirmed at its 120th session in May 2010, in the pursuit of the Interlaken process started at the Interlaken High Level Conference in February 2010 *"that prompt and effective execution of the judgments and decisions delivered by the Court is essential for the credibility and effectiveness of the Convention system and a determining factor in reducing the pressure on the Court."* The Committee added that *"this requires the joint efforts of member States and the Committee of Ministers"*.
2. As a consequence, the Committee of Ministers instructed its Deputies to step up their efforts to make execution supervision more effective and transparent. In line herewith the Deputies adopted new modalities for the supervision process as of 1 January 2011 (see section B below). As noted in the Annual Report 2011, these new modalities proved their value and the Deputies confirmed them in December 2011. The necessity of further developments of the Committee of Ministers' supervision procedure was discussed at the High Level Conferences in Brighton in April 2012, and in Brussels in March 2015 called "Implementation of the European Convention on Human Rights, our shared responsibility" – see also Chapter III above).
3. The above efforts and developments have not changed the main elements of the obligation to abide by the Court's judgments. These have thus largely remained the same: redress must be provided to the individual applicant and further similar violations prevented. Certain developments have, nevertheless taken place. For instance, the continuing problem of repetitive cases has drawn the attention on the importance of prevention of new violations, including by rapidly setting up effective remedies.
4. The statistics for 2016 (see appendix 1) continue to confirm the Committee of Ministers positive assessments of the results of the new working methods, and notably that the priority system for the examination of cases, inherent to the new twin-track supervision procedure, enables the Committee of Ministers to focus its supervision efforts efficiently on the most important cases.

A. Scope of the supervision

5. The main features of the Contracting States' undertaking "*to abide by the final judgment of the Court in any case to which they are parties*" are defined in the Committee of Ministers' Rules of Procedure²⁶ (Rule 6.2). The measures to be taken are of two types.
6. The first type of measures – **individual measures** – concern the applicants. They relate to the obligation to erase the consequences suffered by them because of the violations established so as to achieve, as far as possible, *restitutio in integrum*.
7. The second type of measures – **general measures** – relate to the obligation to prevent violations similar to that or those found or putting an end to continuing violations. In certain circumstances they may also concern the setting up of remedies to deal with violations already committed (see also §36).

Individual measures

8. The obligation to take individual measures and provide redress to the applicant has two aspects. The first is, for the State, to provide any just satisfaction - normally a sum of money - which the Court may have awarded the applicant under Article 41 of the Convention.
9. The second aspect relates to the fact that the consequences of a violation for the applicants are not always adequately remedied by the mere award of a just satisfaction by the Court or the finding of a violation. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions, involving for example the reopening of unfair criminal proceedings, the destruction of information gathered in breach of the right to privacy, the enforcement of an unenforced domestic judgment or the revocation of a deportation order issued against an alien despite a real risk of torture or other forms of illtreatment in the country of destination. The Committee of Ministers issued a specific Recommendation to member States in 2000 inviting them "*to ensure that there exist at national level adequate possibilities to achieve, as far as possible, "restitutio in integrum" and, in particular, "adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention"* (Recommendation No. R(2000)2)²⁷.

General measures

10. The obligation to take general measures aims at preventing violations similar to the one(s) found and may, depending on the circumstances, imply a review of legislation, regulations and/or judicial practice. Some cases may even involve constitutional changes. In addition, other kinds of measures may be required such as

26. Called, since 2006, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements".

27. Cf. Recommendation No. R(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum.

the refurbishing of a prison, increase in the number of judges or prison personnel or improvements of administrative procedures.

11. When examining general measures today, the Committee of Ministers pays particular attention to the efficiency of domestic remedies, in particular where the judgment reveals²⁸ important structural problems (see also as regards the Court Section C below). The Committee also expects competent authorities to take different provisional measures, notably to find solutions to possible other cases pending before the Court²⁹ and, more generally, to prevent as far as possible new similar violations, pending the adoption of more comprehensive or definitive reforms.

12. These developments are intimately linked with the efforts to ensure that execution supervision contributes to limit the important problem of repetitive cases in line with Recommendations CM/Rec(2004)6 and CM/Rec(2010)3 on domestic remedies and the recent developments of the Court's case-law as regards the requirements of Article 46, notably in different "pilot judgments" adopted to support on-going execution processes (see Section C below). In CM/Rec(2004)6 the Committee thus invited member States to "*review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court*".

Identification of execution measures required

13. The scope of execution measures required is defined in each case on the basis of the action plans/reports submitted by the respondent Government considered in the light of the conclusions of the European Court in its judgment, its case-law and the Committee of Ministers practice³⁰, as well as of relevant information about the developments of the applicant's situation and the relevant domestic law and practices. In certain situations, it may be necessary to await further decisions by the Court clarifying outstanding issues.

14. As regards the *payment of just satisfaction*, the execution conditions are usually laid down with considerable detail in the Court's judgments (deadline, recipient, currency, default interest, etc.). Payment may nevertheless raise complex issues, e.g. as regards the validity of powers of attorney, the acceptability of the exchange rate used, the incidence of important devaluations of the currency of payment, the acceptability of seizure and taxation of the sums awarded etc. Existing Committee of Ministers practice on these and other frequent issues is detailed in a memorandum

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

29. Measures accepted by the Court include, besides the adoption of effective domestic remedies, also practices aiming at the conclusion of friendly settlements and/or adoption of unilateral declarations (see also the Committee of Ministers' Resolution Res(2002)59 concerning the practice in respect of friendly settlements).

30. See e.g. the judgments of the Court in the case of *Broniowski v. Poland*, judgment of 22/06/2004, § 194, in *Ramadhi v. Albania*, judgment of 13/11/2007, § 94, in *Scordino v. Italy*, judgment of 29/03/2006, § 237.

prepared by the Department for the execution of judgments of the Court (document CM/Inf/DH(2008)7final).

15. As regards the *nature and the scope of other execution measures*, whether individual or general, the judgments are generally silent. As stressed by the Court on numerous occasions, it belongs in principle to the respondent State to identify these measures under the Committee of Ministers' supervision. In this respect, national authorities may, in particular, find inspiration in the important practice developed over the years by other States, in relevant Committee of Ministers Recommendations and also in the opinions, recommendations and conclusions of different expert bodies (such as the CPT, CEPEJ, Venice Commission etc.). In certain cases, the Court's judgments will also seek to provide assistance – "pilot judgments" and so called "judgments with indication of interest for execution (under Article 46)". In certain situations, the Court will even indicate specific execution measures (see below section C.). In the course of the supervision process, the Committee will itself provide assistance in deserving cases, most frequently in the form of assessments and recommendations in decisions and interim resolutions (see also below § 31).

16. This situation reflects the principle of subsidiarity, according to which respondent States are, in principle, free to choose the means to be put in place in order to meet their obligations under the Convention. However this freedom goes hand-in-hand with the Committee of Ministers' control. As a consequence, in the course of its execution supervision, the Committee of Ministers, may adopt, if necessary, decisions or interim resolutions in view of taking stock of the execution progress, and, where appropriate, encourage or express its concerns, make Recommendations or give directions with respect to execution measures required.

17. The direct effect more and more frequently granted to the European Court's judgments by the domestic courts and national authorities, greatly facilitates the adoption of the necessary execution measures, both as regards adequate individual redress and rapid development of domestic law and practices to prevent similar violations, including by improving the efficiency of domestic remedies. Where execution through such direct effect is not possible, other avenues will have to be pursued, most frequently legislative or regulatory.

18. The Directorate General of Human Rights and Rule of Law, represented by the Department for the Execution of Judgments of the European Court, assists the Committee of Ministers with the supervision of the measures taken by the States for the execution of the Court's judgments³¹. The Department also provides assistance to the States which may request, in the context of their reflection on the needed execution measures, different forms of support from the Department (advice, legal expertise, round tables and other targeted cooperation activities).

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

B. New supervision modalities: a twin-track approach to improve prioritization and transparency

Generalities

19. The new modalities for the Committee of Ministers' supervision, developed in response to the Interlaken process, remain within the more general framework set by the Rules adopted by the Committee of Ministers in 2006³². As from their entry into force in 2011, they have brought important changes to the working methods applied since 2004 in order to improve efficiency and transparency of the supervision process³³.

20. The new 2011 modalities stress the subsidiary nature of the supervision and thus the leadership role that national authorities, i.e. governments, courts and parliaments must play in defining and securing rapid implementation of required execution measures.

Identification of priorities: twin track supervision

21. In order to meet the call for increased efficiency the new modalities provide for a new twin track supervision system allowing the Committee to concentrate on deserving cases under what is called "enhanced supervision". Other cases will be dealt with under "standard supervision". The new modalities thus also give more concrete effect to the existing priority requirement in the Rules (Rule 4).

22. The cases which from the outset are liable to come under "enhanced supervision" are identified on the basis of the following criteria:

- ▶ Cases requiring urgent individual measures;
- ▶ Pilot judgments;
- ▶ Judgments otherwise disclosing major structural and/or complex problems as identified by the Court and/or by the Committee of Ministers;
- ▶ Interstate cases;

The classification decision is taken at the first presentation of the case to the Committee of Ministers.

23. The Committee of Ministers may also decide at any phase of the supervision procedure to examine any case under the enhanced procedure upon request of a member State or the Secretariat (see also paragraph 32 below). Similarly, a case

32. The currently applicable Rules were adopted on 10/05/2006 (964th meeting of the Ministers' Deputies). On this occasion the Deputies also decided "*bearing in mind their wish that these rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these rules shall take effect as from the date of their adoption, as necessary by applying them mutatis mutandis to the existing provisions of the Convention, with the exception of Rules 10 and 11*". As a result of the Russian ratification of Protocol No. 14, the rules in their entirety entered into force on 1 June 2010.

33. The documents which explain the reform more in depth are presented on the Committee of Ministers web site and on the web site of the Department for the Execution of Judgments and decisions of the European Court (see notably CM/Inf/DH(2010)37 and CM/Inf/DH(2010)45 final).

under enhanced supervision may subsequently be transferred to standard supervision when the developments of the national execution process no longer justify an enhanced supervision.

Continuous supervision based on action plans/reports

24. The new working methods of 2011 have introduced a *new, continuous supervision* of the execution process. Indeed, all cases are under the permanent supervision of the Committee of Ministers which should receive, in real time, relevant information concerning the execution progress. Insofar as, in addition, all cases are now considered as being inscribed on the agenda of all Human Rights meetings and may also be inscribed on the agenda of ordinary meetings, the Committee can respond rapidly to developments where necessary.

25. The new modalities also confirm the development that the Committee of Minister's supervision is to be based on action plans or action reports prepared by competent State authorities³⁴. The action plans/reports present and explain the measures planned or taken in response to the violation(s) established by the European Court and should be submitted as soon as possible and, in any event, no later than 6 months after a judgment or decision has become final. A vademecum intended for drafters is available on the web site of the Department for the Execution of Judgments of the Court.

Other relevant information

26. Under the Committee's Rules of procedure – Rule 9 – applicants (with respect to the question of payment of just satisfaction and individual measures), NGO's and National Human Rights Institutions (with respect to all execution issues) may submit communications to the Committee of Ministers to assist the execution process. An amendment to Rule 9 of January 2017 also codifies the right of international organisations and other international instances to submit communications.

Transparency

27. In response to the call for increased transparency, the Committee of Ministers has decided that such plans and reports, together with other relevant information provided *will be promptly, made public (...), except where a motivated request for confidentiality is made at the time of submitting the information*, in which case it may be necessary to await the next Human Rights meeting to allow the Committee to decide the matter (see Rule 8 and decision taken at the 1100th Human Rights meeting, item "e").

28. Action plans and reports and other information received are in principle published on the web (Rule 8). As regards communications from NGOs, NHRIs and international organisation, governments have a maximum of 10 working days to submit their replies if they wish these to be published together with the communication.

34. This system was partially put in place already in June 2009 as the Committee of Ministers formally invited States to henceforth provide, within six months of a judgment becoming final, an Action Plan or an Action Report as defined in document CM/Inf/DH(2009)29rev.

Replies received after this period will be published separately. This rule allows national parliaments, different State authorities, lawyers, representatives of civil society, national institutions for the promotion and protection of human rights, applicants and other interested persons to follow closely the development of the execution process in the different cases pending before the Committee. The applicants' submissions should in principle be limited to matters relating to the payment of just satisfaction and to possible individual measures (Rule 9).

29. As from 2013, the Committee of Ministers publishes also the indicative list of cases proposed to be inscribed for detailed examination at the next HR meeting. Since 2016 a provisional list is adopted at the end of each HR meeting and published shortly afterwards. Subsequent changes are also rapidly published.

Practical modalities

30. Under the framework of the "*standard supervision*" procedure, the Committee of Ministers' intervention is limited. Such intervention is provided for solely to confirm, when the case is first put on the agenda, that it is to be dealt with under this procedure, and, subsequently, to take formal note of action plans / reports. Developments are, however, closely followed by the Department for execution of judgments. Information received and evaluations made by the Department are circulated as rapidly as possible. The Secretariat or a member State may, in the light of evaluations made, propose the transfer of a case to the "*enhanced supervision*" procedure in order to allow the Committee of Ministers to intervene to define appropriate responses to new developments.

31. The classification under the "*enhanced supervision*" procedure, ensures that the progress of execution is closely followed by the Committee of Ministers and facilitates the support of domestic execution processes, e.g. in the form of adoption of specific decisions or interim Resolutions expressing satisfaction, encouragement or concern, and/or providing suggestions and Recommendations as to appropriate execution measures (Rule 17). The Committee of Ministers' interventions may, depending on the circumstances, take other forms, such as declarations by the Chair or high-level contacts or meetings. The necessity of translating relevant texts into the language(s) of the State concerned and ensuring their adequate dissemination is frequently underlined (see also Recommendation CM/Rec(2008)2). An overview of tools available was prepared in 2013 and presented in the annual report 2013.

32. At the request of the authorities or of the Committee, the Department may also be led to contribute through various targeted cooperation and assistance activities (legislative expertise, consultancy visits, bilateral meetings, working sessions with competent national authorities, round-tables, etc.). Such activities are of particular importance for the cases under enhanced supervision.

Simplified procedure for the supervision of payment of just satisfaction

33. As regards *the payment of just satisfaction*, supervision has been simplified under the new working methods of 2011 and greater importance has been laid on

applicants' responsibility to inform the Committee of Ministers in case of problems. This way, the Department for the execution of the Court's judgments limits itself in principle to register the payments of the capital sums awarded by the Court, and, in case of late payment, of the default interest due.

A two months period for applicants to submit complaints about payment

34. Once the payment information has been received from the Government and registered the cases concerned are presented under a special heading on the Department's website (www.coe.int/execution) indicating that the applicants now have two months to bring any complaints to the attention of the Department. Applicants have before had been informed through the letters accompanying the European Court's judgments that *it is henceforth their responsibility to rapidly react to any apparent shortcoming* in the payment, as registered and published. If such complaints are received, the payment will be subject to a special examination by the Department, and if necessary, the Committee of Ministers itself.

35. If no complaint has been received within the two months deadline, the issue of payment of just satisfaction is considered closed. It is recalled that the site devoted to payment questions is now available in different languages (Albanian, French, Greek, Romanian, Russian and English- further language versions are under way).

36. No similar time-limit exists for applicants' complaints or other observations with respect to individual measures.

Necessary measures adopted: end of supervision

37. When the respondent State considers that *all necessary execution measures have been taken*, it submits to the Committee a *final action report* proposing the closure of the supervision. To assist the Committee, the Secretariat makes, in principle within a maximum period of 6 months, a detailed evaluation of the action report. If its evaluation is consistent with the one submitted by the authorities of the respondent State, a draft final resolution will thereafter be presented to the Committee for examination and adoption. If a divergence remains, the case is submitted to the Committee for consideration of the issue(s) raised.

38. When the Committee considers that all the necessary execution measures have been taken, the supervision concludes with the adoption of a final resolution (Rule 17).

C. Increased interaction between the Court and the Committee of Ministers

39. The European Court's interaction with the Committee of Ministers, in implementing Article 46, is constantly evolving. For several years now, the Court contributes to the execution process regularly in various ways, e.g. by providing itself, in its judgments, recommendations as to relevant execution measures ("pilot" judgments and "judgments with indication of interest for execution (under Article 46)" in that the Court considers different questions linked with execution without resorting to a full-fledged pilot judgment procedure) or by providing relevant information, for

example as regards the situation in respect of repetitive applications, in letters to the Committee of Ministers.

40. Today, the European Court thus assists the execution process by providing such recommendations both in respect of individual and general measures. Many of these interventions support ongoing execution processes and thus add to those already made under Article 46 by the Committee of Ministers. In some cases, the Court's interventions may also decide the effect that should be given to the violation finding, e.g. by ordering directly the adoption of relevant measures and/or fixing the time-limit within which action should be undertaken. For example, in case of arbitrary detention, *restitutio in integrum* will necessarily require, among other things, release from detention. Thus, in several cases, the Court has ordered immediate release of the applicant³⁵. In many others it has provided recommendations as to appropriate individual measures.

41. Moreover nowadays, as regards general measures, the Court makes a detailed examination, notably in the context of the "pilot" judgment procedure, of the causes behind the structural problems³⁶, with a view to making, where appropriate, recommendations or more detailed indications, and even require the adoption of certain measures within specific deadlines (see Rule 61 of the Rules of Court). In this context, to support more complex execution processes, the Court has used the "pilot" judgment procedure across a range of contexts³⁷, generating, or risking to generate, an important number of repetitive cases, notably in order to insist on the rapid setting up of effective domestic remedies and to find solutions for already pending cases³⁸. (*For further information on "pilot" judgments and other judgments with indications of interest for execution, under Article 46, brought before the Committee of Ministers in 2016, see the E. table below.*)

42. The Committee of Ministers improved prioritisation in the framework of the new working methods of 2011, its insistence on the effectiveness of domestic remedies and the development of the Court's practices, in particular as regards "pilot" judgment procedures, appear to make it possible to limit significantly the number of repetitive cases linked to important structural problems (especially where "pilot" judgment procedures are combined with the "freezing" of the examination of all similar pending applications).

35. See *Assanidze v. Georgia*, No. 71503/01, judgment of 08/04/2004, *Ilascu v. Republic of Moldova and Russian Federation*, No. 48787/99, judgment of 08/07/2004 and *Fatullayev v. Azerbaijan*, No. 40984/07, judgment of 22/04/2010.

36. A response to the invitation formulated by the Committee of Ministers in Resolution (2004)3 on judgments revealing an underlying systemic problem.

37. See for instance *Broniowski v. Poland* (application No. 31443/96; Grand Chamber judgment of 22/06/2004 – pilot judgment procedure brought to an end on 06/10/2008); *Hutten-Czapska v. Poland* (application No. 35014/97, Grand Chamber judgment of 19/06/2006 and Grand Chamber friendly settlement of 28/04/2008). Since 2013, pilot judgments and judgments with indications of relevance for execution are presented in the Committee of Ministers Annual Reports.

38. See e.g. *Bourdov No. 2 v. Russian Federation*, No. 33509/04, judgment of 15/01/2009; *Olaru v. Republic of Moldova*, No. 476/07, judgment of 28/07/2009 and *Yuriy Nikolayevich Ivanov v. Ukraine*, No. 40450/04, judgment of 15/10/2009.

D. Friendly settlements

43. The Committee of Ministers' supervision, under Article 39 of the Convention, of the respect of undertakings made by States in friendly settlements accepted by the European Court follows in principle the same procedure as the one outlined above.

E. Unilateral declarations

44. The Committee of Ministers does not supervise the respect of undertakings made by governments in unilateral declarations (Article 37, § 1b. The Court itself may, however, "decide to restore an application to its list of cases if it considers that the circumstances justify such a course" (Article 37, § 2, of the Convention).

Appendix 9 – Where to find further information on the execution?

HUDOC Exec

<http://hudoc.exec.coe.int>

A new search engine to follow the execution of judgments of the European Court of Human Rights

Following intense cooperation with the European Court of Human Rights, the Department for the Execution of Judgments launched, in 2017, its HUDOC-EXEC database, a search engine which aims at improving visibility and transparency of the process of execution of judgments of the European Court.

HUDOC-EXEC provides easy access through a single interface to documents relating to the execution process (for example description of pending cases and problems revealed, the status of execution, memoranda, action plans, action reports, other communications, Committee of Ministers' decisions, final resolutions). It offers multi-criteria search (State, supervision track, violations, themes etc.).

State	
Membership to the Council of Europe	01 01 2002
Entry into force of the European Convention on Human Rights	01 01 2003
First case under supervision of execution	Case 2017/20172
Transmission of cases transmitted for supervision since the entry into force of the Convention	01
Total number of cases closed by final resolution	01

MAIN ISSUES BEFORE THE COMMITTEE OF MINISTERS - ONGOING SUPERVISION

Validation theme	Description of the violation	Case number(s)	Number of violations

MAIN REFORMS ADOPTED - SUPERVISION CLOSED

Validation theme	Description of the measures and reforms adopted	Case number(s)	Final Resolution

Country factsheets

A State-by-State overview of the execution of judgments of the Court

The Department for the Execution of judgments published early 2017 Country factsheets which present an overview of the main issues raised by judgments and decisions of the Court in cases transmitted for supervision of their execution by the Committee of Ministers.

These factsheets outline the main issues under supervision, the main reforms adopted and basic statistics. These sheets are updated after each HR meeting of the Committee of Ministers (four times a year).

<https://go.coe.int/QQN1N>

Website of the Department for the Execution of Judgments

<http://www.coe.int/en/web/execution>

The website of the Department is mainly case-oriented and presents, in addition to HUDOC-EXEC and fact sheets, also important reference documents and information on support activities. It presents notably compilations of decisions and interim and final resolutions, the annual reports, news on seminars, roundtables, workshops, meetings and other support activities. It is also the place where applicants can follow the payment of just satisfaction and react in case of problems.

Website of the Committee of Ministers

<http://www.coe.int/en/web/cm>

The Committee of Ministers' website provides all relevant information on the results of the Committee of Ministers supervision and on communications submitted, basically organized by meeting. It also provides access to different reference document. In addition, the Committee of Ministers' search tool has recently been developed to be more user-friendly and allow easy access to documents.

Appendix 10 – References

A. CMDH meetings in 2015 and 2016

Meeting No.	Meeting dates
1273	6-8 December 2016
1265	20-21 September 2016
1259	7-8 June 2016
1250	8-10 March 2016
1243	8-9 December 2015
1236	22-24 September 2015
1230	9-11 June 2015
1222	11-12 March 2015

B. General abbreviations

AR 2007-16	Annual Report 2007-2016
Art.	Article
CDDH	Steering Committee on Human Rights
CEPEJ	European Commission for the Efficiency of Justice
CM	Committee of Ministers
CMDH	Human Rights meeting of the Committee of Ministers (quarterly)
CMP	Committee on Missing Persons in Cyprus
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
European Court	European Court of Human Rights
HRTF	Human Rights Trust Fund
GM	General Measures
HR	"Human Rights" meeting of the Ministers' Deputies
IM	Individual Measures
IR	Interim resolution
NGO	Non-governmental organisation
NHRI	National Human Rights Institutions
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
Prot.	Protocol
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

C. Country codes

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

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The Committee of Ministers' annual report presents the status of execution of the main judgments of the European Court of Human Rights by the member States of the Council of Europe. It provides statistics and information relating to new cases, pending cases and cases closed during the year.

2016 was a year of interim stocktaking for the "Interlaken-Izmir-Brighton-Brussels" process which aims at ensuring the long-term effectiveness of the Convention system. This stocktaking is highly positive and demonstrates that many achievements were made, proving the reality of commitment made by the member States.

However, the full, effective and prompt execution of the Court's judgments remains central to many important challenges for the system which need to be addressed.

PREMS 02/11/17

ENG

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. The Committee of Ministers is the Council of Europe's decision-making body, composed by the foreign ministers of all 47 member states. It is a forum where national approaches to European problems and challenges are discussed, in order to find collective responses. The Committee of Ministers participates in the implementation of the European Convention on Human Rights through the supervision of the execution of judgments of the European Court of Human Rights.

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