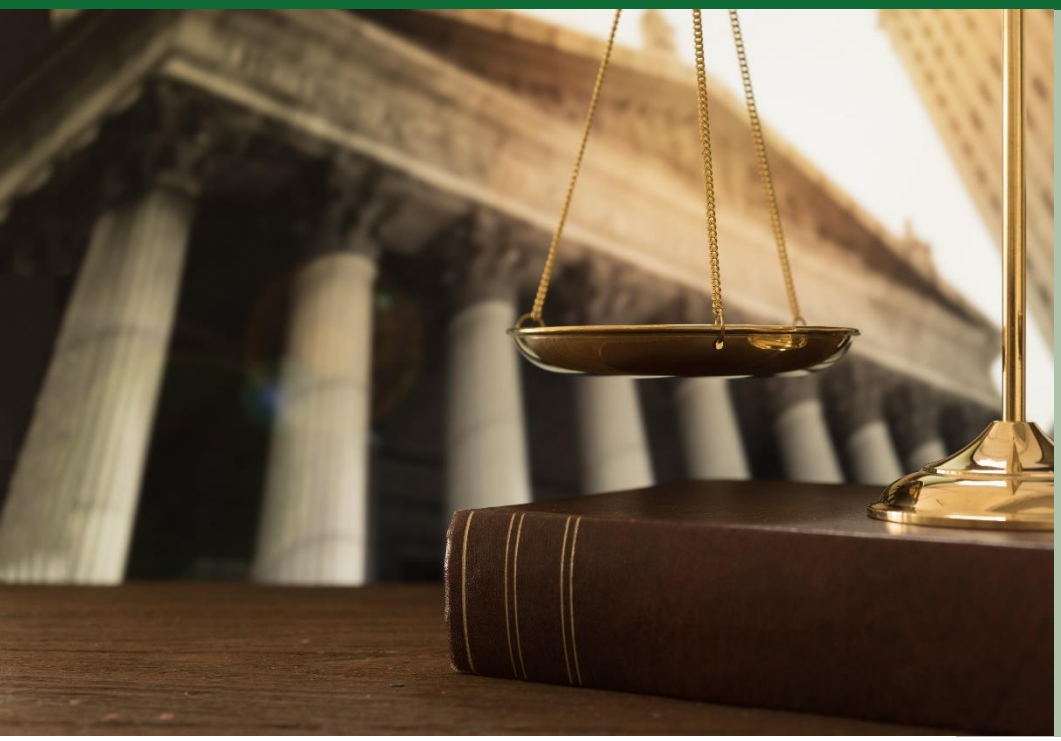
CONSTITUTIONAL MATTERS



DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

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CONSTITUTIONAL MATTERS

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

The full and speedy implementation of the judgments of the European Court by the States Parties to the Convention makes a major contribution to the achievement of the common understanding and observance of the human rights which it is the aim of the Convention to guarantee.

One of the fastest and most effective ways to ensure the execution of the Court's judgments has, since the start of the Convention system, been for the judicial and executive authorities to give them direct effect (that is, implementing them without the need for legislative changes). In this way, many constitutional courts have interpreted domestic law, including the constitution, in a Convention-compliant manner in the context of the execution of the Court's judgments.

In some cases, it may not be possible for the judicial and executive authorities to give direct effect to the Court's judgments. The most common solution in this situation is to take legislative action including, where necessary, amendments to the constitution itself.

The present fact sheet sets out a number of examples of legislative action and constitutional interpretation reported as part of the execution of judgments of the European Court.

1. REFORMS IN CONSTITUTIONAL MATTERS

1.1. Protection against deportation / expulsion

Ensuring a speedy and effective remedy against unlawful deportation and detention orders : Taking into account the violations of Article 5 and 13 and the constitutional right to liberty and security including in asylum/deportation matters, an Administrative Court was established by constitutional amendments in 2015 (relieving the Supreme Court of this responsibility) empowered notably to examine challenges to the different types of detention orders concerned; amendments to the Refugee Laws were adopted to force domestic courts to examine such challenges within a short fixed time-limit. To remedy the lack of suspensive effect of administrative appeals, a Bill to amend the Law on the Administrative Court was prepared in 2017 providing that whenever an individual challenged a deportation order under the Constitution, its enforcement would automatically be suspended pending the Administrative Court's decision. Until the adoption of the Bill, suspension of a deportation order will be granted in practice if, in judicial review proceedings under the Constitution, an individual alleges that its enforcement would violate Articles 2 or 3 of the Convention.	***CYP / M.A.(41872/10)*** Judgment final on 23/10/2013 *Action plan*
Enhancing legal protection in extradition proceedings: In response to the violations of Articles 3, 5 and 13 found by the ECtHR and in line with the constitutional guarantee that everyone, including foreigners and stateless persons, have the right to challenge decisions, actions or omissions of the State authorities, a legal framework governing extradition and detention pending extradition was introduced by amendments to the Code of Criminal Procedure in both 2010 and 2012, including a number of safeguards such as judicial review as well as the right to compensation for unlawful detention. The new remedies have suspensive effect if the person claims a risk of ill-treatment upon extradition to a third country. Similarly, suspensive effect in proceedings relating to refugee status was introduced by a law adopted in 2011. Persons having applied for refugee status or subsidiary or temporary protection cannot be expelled pending proceedings.	***UKR / Soldatenko (2440/07)*** *Judgment final on 23/01/2009* Action report Final Resolution CM/ResDH(2018)316

1.2. Protection of rights in detention

Limiting the maximum duration of detention on remand: In order to remedy the lack of clarity and foreseeability of legislation on length of detention on remand criticised by the ECtHR (Article 3 and Article 5 §1) and to implement corresponding constitutional guarantees, the Constitutional Court declared unconstitutional certain provisions of the Criminal Procedural Code and, as a result, in 2016 the Parliament adopted the necessary amendments, providing that detention on remand cannot exceed 12 months for both pre-trial and trial stages of criminal proceedings until the first instance judgment on the case, including in case of an examination de novo. The previous provision allowing the extension on remand in exceptional cases beyond the 12-months period was abolished.	***MDA / Savca (17963/08)*** *Judgment final on 15/06/2016* Action report Final Resolution CM/ResDH(2017)124

Implementing the right to judicial review of detention and the right to compensation for unlawful detention: To remedy the violations of Articles 3 and 5 §§3, 4 and 5, the right to be brought before a judge within 48 hours as well as the right to compensation for unlawful detention were granted constitutional protection in 2006. Moreover, the right to judicial review was also enshrined in the Criminal Procedure Code of 2011. Subsequently the Constitutional Court developed convention-compliant case-law on pre-trial detention issues, including alternative measures to detention.	***SER / Vrencev (2361/05)*** ***Judgment final on 23/12/2008*** **Action report** **Final Resolution CM/ResDH(2018)52**
Ensuring the review of lawfulness of detention by a judge: To remedy the lack of judicial review of the lawfulness of detention found by the ECtHR (Article 5 §4) and to enshrine the right to such judicial review in the Constitution, the provisions of the Federal Constitution concerning the organisation of the judiciary, court procedures and the administration of justice were reformed to unify the rules of criminal procedures within the Confederation and ensure that legislation clearly provides for all detainees, including those transferred from one canton to another, to have access to judicial review.	***SUI / R.M.D. (19800/92)*** ***Judgment final on 26/09/1997*** **Interim Resolution DH(99)678**
Limiting police custody duration: In response to the violations of Articles 5 §§3, 4 and 5 found by the ECtHR, the Constitution was amended in 2001, limiting to 4 days the maximum length of police custody before presenting the detainee before a judge except in case of derogation in a state of emergency. These provisions became directly applicable as confirmed by domestic courts' case-law. The provisions of the Code of Criminal Procedure relating to police custody were subsequently put in conformity with the new constitutional provision. Violations would lead to compensation. Furthermore, the right to bring habeas corpus proceedings was granted to all persons irrespective of the offence they were charged with.	***TUR / Sakik and Others No.1 (23878/94)*** ***Judgment final on 26/11/1997*** **Final Resolution ResDH(2002)110)**
Prohibiting automatic extension of detention on remand: In order to ensure the application of ECHR requirements with regard to Article 5§1, and to implement effectively the constitutional guarantee that no one shall be arrested or held in custody other than pursuant to a substantiated court decision and in accordance with the procedures established by law, the Constitutional Court declared unconstitutional in 2017, parts of the Criminal Procedure Code of 2012 allowing automatic extension of detention on remand without a court order between the end of the investigation and the beginning of the trial. The defective legislative provision is thus no longer applied and a draft law is pending before Parliament aiming at eliminating remaining legal uncertainty.	***UKR / Ignatov (40583/15)*** **Judgment final on 15/03/2017** **Action plan**

1.3. Access to and functioning of justice

Reform of the judiciary and acceleration of proceedings: In order to address the breach of Articles 6 §1 and 13 found by the ECtHR, several constitutional amendments were adopted in 2016 notably the creation of the High Judicial Council as the main institution for the judicial system's administration and management, the tasks of which were defined in detail in the Law "On the governance of the justice system" of 2016. Furthermore, to ensure particular diligence and impartiality in disciplinary proceedings against judges, the new Law "On the status of Judges and Prosecutors" of 2016 created the function of High Justice Inspector responsible for the oversight of careers and performance of the members of the judiciary. In addition, acceleratory and compensatory remedies were introduced in 2017 by amendments to the Code of Civil Procedure.	***ALB / Mishgjoni (18381/05)*** **Judgment final on 07/03/2011** **Action report** **Final Resolution CM/ResDH(2018)73**

Granting reopening of criminal proceedings following a judgment of the ECtHR: Considering breaches of Articles 6 §§1 and 3 found by the ECtHR and in order to facilitate the execution of ECtHR judgments with regard to the fairness of criminal proceedings, the Constitutional Court recognized, in 2011, in its interpretation of Criminal Procedure Code provisions, the Supreme Court's jurisdiction to review criminal proceedings impugned in ECtHR judgments. Subsequently, the Supreme Court consolidated its respective case-law and finally the possibility of requesting reopening was introduced in the Criminal Procedure Code in 2017.	***ALB / Caka group (44023/02+)*** Judgment final on 08/03/2010 Action report Final Resolution CM/ResDH(2017)417 ***ALB / Xheraj (37959/02)*** Judgment final on 01/12/2008 Action report Final Resolution CM/ResDH(2016)96
Enhanced access to the Constitutional Court: In order to respond the violation of Article 6 §1 found by the ECtHR, the access to the Constitutional Court was ensured through wide-ranging awareness-raising measures on the calculation of time-limits to lodge an appeal. In order to ensure a final judgment of the Constitutional Court and to end the existing practice of rejection of an application in case of a tied vote, the law on the organisation and functioning of the Constitutional Court was amended in 2016.	***ALB / Laska and Lika (12315/04)*** Judgment final on 20/07/2010 Action report Final Resolution CM/Res(2016)272 ***ALB / Marini (3738/02+)*** *Judgment final on 07/07/2008* Action report Final Resolution CM/ResDH(2016)357
Enhanced access to the Constitutional Court: In order to remedy the breach of Article 6 §1 found by the ECtHR, and in order to enhance judicial protection in case of the violation of a person's constitutional rights, the Law modifying the Constitutional Tribunal Rule of 1999 provided that such a person can lodge an *amparo* remedy directly with the Constitutional Tribunal.	***AND / Millan I Tornes (35052/97)*** *Judgment final on 06/10/1999* Final Resolution DH(1999/721)
Right to question witnesses: To remedy violations of Articles 6 §§1 and 3 and to regulate the right to a fair trial in more detail, the Constitution was amended in 2015 and the new draft Code of Criminal Procedure will ensure adversarial hearings both in pre-trial and judicial stages.	***ARM / Avetisyan (13479/11)*** Judgment final on 10/02/2017 Action plan Final Resolution CM/ResDH(2018)405

Improving efficiency of justice and enhancing access to the Constitutional Court: In order to remedy the refusal of domestic courts to examine claims against Presidential Decrees terminating the term of office of judges and to improve the efficiency of the administrative justice, constitutional amendments of 2005 introduced a three-tier judicial system. Later in 2008, a specialised Administrative Court of first instance was set up in 2008 and a specialised Administrative Court of Appeal was created in 2010. The Code of Administrative Procedure 2014 contained foreseeable and accessible regulations to challenge the lawfulness of public bodies' and officials' acts. Constitutional amendments of 2005 and 2015 also enshrine the right to appeal to the Constitutional Court to challenge the constitutionality of a legal act.	***ARM / Saghatelyan (7984/06)*** ***Judgment final on 20/01/2016*** **Action report** **Final Resolution CM/ResDH(2016)211**
Enhanced judicial protection before national and international authorities: In order to remedy the lack of judicial review of administrative actions and omissions found, constitutional amendments were adopted in 2005, to enshrine the right to effective legal remedies before judicial and other public bodies and the right to apply to international institutions for human rights protection.	***ARM /Melikyan (*9737/06) **Judgment final on 19/05/2013** **Action report** **Final Resolution CM/ResDH(2014)44**
Introducing effective remedies against excessive delays in administrative proceedings: To remedy the violation of Article 6§1 found and to improve the implementation of the administrative authorities' and courts' respective constitutional obligation to decide without undue delay, the administrative court system was reformed in 2014, setting up nine regional and two federal administrative courts. Furthermore, two new remedies were introduced: an application against the administration's failure to decide can be lodged with the administrative courts of first instance, which may result the authority being ordered to decide within three months as well as a request for acceleration of proceedings by setting time limits for decision-making, which can be lodged with the Supreme Administrative Court. The reform also aimed at reducing the Constitutional Court's workload.	***AUT / Rambauske (45369/07)*** ***Judgment final on 28/04/2010*** **Action report** **Final Resolution CM/ResDH(2015)222**
Enhancing access to and effective functioning of the Constitutional Court: In order to remedy the denial of access to the Constitutional Court found by the ECtHR, the Constitutional Court Rules of 2014 provide that if judges cannot reach a majority, the vote of the President or his/her substitute shall carry a weight of two votes and thus prevail. They also grant the possibility of reopening proceedings before it, should the ECtHR have found a denial of access to it.	***BIH / Avdic and Others (28357/11+)*** ***Judgment final on 19/02/2014*** **Action report** **Final Resolution CM/ResDH(2015)170**
Constitutional remedy to accelerate judicial proceedings: In order to improve remedies against excessively lengthy proceedings, the Act on the Constitutional Court was amended in 2002 allowing a constitutional complaint in such cases: The Constitutional Court will determine a time-limit for the decision on the merits and fix appropriate compensation in respect of the violation of constitutional rights found to be paid from the State budget. In the 2005 Courts Act, the competence of the Constitutional Court was restricted to cases pending before the Supreme Court. In general, ordinary higher courts could decide on time-limits for termination of proceedings and on compensation. The new 2013 Courts Act introduced two remedies, one acceleratory and one compensatory. The Constitutional Court remained competent as a last resort. The Judicial Inspection of the Ministry of Justice supervises	***CRO / Horvat group (51585/99+)*** ***Judgment final on 26/10/2001*** **Final Resolution CM/ResDH(2005)60** ***CRO / Jakupovic (12419/04)*** ***Judgment final on 31/10/2007***

the lawfulness, efficiency and diligence of court administration concerning protection of the right to trial within reasonable time.	Action report Final Resolution CM/ResDH(2018)409
Ensuring adversarial hearing before the Constitutional Court: In order to implement effectively the ECHR requirements concerning the right to a fair trial, the Constitutional Court adopted new Internal Rules in 2012 ensuring the respect for the principle of adversarial hearing clarifying the provisions of the Constitutional Court Law and making the servicing of a constitutional complaint to all participants in the proceedings mandatory.	***CRO / Juricic*** **(58222/09)** Judgment final on 26/10/2011 Action report Final ResolutionCM/ ResDH(2017)384
Reopening of proceedings before the Constitutional Court in civil matters: In order to facilitate the execution of ECtHR judgments finding a violation of the right to a fair trial in civil proceedings in specific cases, the Constitutional Court Act of 2013 introduces the right to file requests for reopening of constitutional proceedings in civil matters.	***CZE / Zakova*** **(2000/09)** Judgment final on 20/01/2014 Action report Final Resolution CM/ResDH(2018)202
Guaranteeing the fairness of criminal proceedings: To remedy the breach of Article 6§1 held by the ECtHR and to improve the respective constitutional guarantees, the organic law relating to the judicial power was adopted in 1985. This law introduced the possibility of cassation on the grounds that a constitutional right has been infringed as well as the possibility to request the annulment of judicial acts which violate the principle of a fair hearing, the right to be assisted by counsel or the rights of the defence. This enactment also contains new rules regarding the substitution of judges. Two other organic laws of 1988 reformed the Criminal Code and the Code of Criminal Procedure by abrogating provisions regarding actions of armed groups and terrorist elements. Judges may only extend the time of arrest up to 48 hours, instead of 7 days as was previously authorised. Total isolation of the person detained may not prejudice the rights of defence. The habeas corpus procedure was regulated by an organic law in 1984 so as to require that any person who claims to have been illegally detained has immediate access to a judge. The reform of the Code of Criminal Procedure of 1988 also separated the judicial function of investigation from that of judgment. Moreover, the new law increased the role of the prosecution during the investigation phase and established a second jurisdiction competent to deal with cases involving crimes carrying a maximum sentence of six years imprisonment.	***ESP / Barbera, Messegue and Jabardo*** **(10588/83)** Judgment final on 06/12/1988 Final Resolution DH(94)84
Improving the efficiency of the judiciary: In order to remedy the problems found as regards the fairness and length of proceedings and to improve the efficiency of judicial protection, amendments to the Constitutional Law on the Judiciary, the Civil Procedure Code and the Criminal Procedure Code were adopted in 2015 to make judicial organisation more flexible and user-friendly.	***ESP / Moreno Carmona*** **(26178/04)** Judgment final on 09/09/2009 Action report Final Resolution CM/ResDH(2018)35

Introducing the possibility of revision of final criminal judgments: The Constitutional Court issued a leading judgment in 1991, which opened the possibility for convicted persons to seek revision of a final criminal judgment, when the ECtHR had found of violation of Article 6. In a decision of 2014, the Supreme Tribunal established that any ECtHR judgment should be considered as valid grounds to seek revision of any criminal final judgment. These principles were enshrined in the Organic Law on the Judiciary of 2015. **Restriction of the appeal courts' discretion in deciding on the necessity of an oral hearing:** The Constitutional Court introduced a change of domestic case-law in 2002. Accordingly, the Supreme Tribunal rejects the quashing of acquittals on first instance when no public hearing took place on second instance.	***ESP / Igual Coll (37496/04)*** ***Judgment final on 10/06/2009*** **Action report** **Final Resolution CM/ResDH(2017)69**
Ensuring the independence and impartiality of investigative bodies into allegations of ill-treatment during arrest or in custody: In order to improve the effectiveness of investigations into allegations of violations of Articles 2 and 3, in particular by security forces, and to include guarantees related to the independence of the judiciary in the Constitution, the following achievements were reached in 2017/2018 through constitutional amendments : The Prosecutor's Office became an independent constitutional body; the judiciary was freed from political influence; torture is no longer a systemic issue; victims were provided enhanced rights in on-going investigations.	***GEO / Gharibashvili*** **(11830/03+)** **Judgment final on 29/10/2008** **Action report** **Final Resolution CM/ResDH(2017)287**
Implementation of final domestic judgments: The constitutional guarantee that the public administration was under an obligation to comply with judgments of the Supreme Administrative Court proved to be insufficient in practice. Thus, in 2001, a constitutional amendment was adopted to reinforce the administration's obligation to comply with all judicial decisions. Compulsory execution of judgments against the state, local authorities and legal entities of public law is possible.	***GRC / Hornsby group*** **(18357/91)** **Judgment final on 19/03/1997** **Final Resolution CM/ResDH(2004)81**
Reasoning of judicial decisions: In order to remedy the violation of Article 6 §1 found, a constitutional amendment was adopted in 2001 requiring that judicial decisions should be supported by adequate and detailed reasoning. It also authorises the law to provide for sanctions in case of non-compliance with this rule.	***GRC / Karakasis*** **(38194/97)** **Judgment final on 17/01/2001** **Final Resolution CM/ResDH(2003)6**
Acceleration of administrative proceedings: In order to remedy the excessive length of proceedings before administrative courts and to guarantee efficiently the right to a hearing before a tribunal within a reasonable time at a constitutional level, the constitutional reform of 2001 got rid of excessively formalistic procedural requirements thereby speeding up proceedings before administrative courts, especially the Council of State. The reform also consisted in a redistribution of competence between the latter and the lower courts.	***GRC / Pafitis and Others*** **(20323/92+)** **Judgment final on 26/02/1998** **Final Resolution CM/ResDH(2005)65**
Constitutional rank to requirements for fair proceedings: In response to the violations of Articles 6 §§1 and 3 and in order to give constitutional rank to the right to a fair trial - especially to the principle of adversarial hearings in criminal proceedings with regard to the examination of evidence - a constitutional amendment was adopted in 1999. On this basis, the Code of Criminal Procedure was amended in 2001, establishing that pre-trial statements made by a person who subsequently avails himself of his right to remain silent in the debate, may be read and used by the judge only if all the interested parties consent to it (unless the judge establishes that the refusal to be cross-questioned in the proceedings is the result of bribery or threats).	***ITA / Craxi No.2*** **(34896/97)** **Judgment final on 17/10/2003** **Final Resolution CM/ResDH(2005)28**

Introducing the constitutional complaint as effective remedy: To challenge ECHR violations - inter alia also a deficient composition of a court, the possibility of a constitutional complaint was introduced as an effective domestic remedy in 2007.	**SER / Momcilovic (23103/07)** Judgment final on 02/07/2013 Action report Final Resolution CM/ResDH(2015)64
Access to Constitutional Court in case of inconsistency of lower courts' adjudications: In order to challenge inter alia denials of a fair trial, the possibility of a constitutional appeal before the Constitutional Court was introduced in 2007, on which basis impugned civil judgments could be quashed and reopening of proceedings ordered. Amendments to the 2009 Court Rules enabled domestic courts to harmonise domestic case-law. **Ensuring equality of arms in constitutional complaint proceedings:** In order to ensure the complete application of the principle of the right to a fair trial, the Constitutional Court Act was amended in 2007 to require communication of the constitutional appeal to all persons affected by the decision that was being challenged.	***SER / Vincic (44698/06)*** Judgment final on 02/03/2010 Action report Final Resolution CM/ResDH(2017)107 ***SVN/ Gaspari (21055/03)*** Judgment final on 10/12/2009 Action report Final Resolution CM/ResDH(2018)401
Acceleration of proceedings: In order to prevent excessive length of proceedings, a structural and organisational reform of the judiciary (2005-2012) was implemented, including legislative and capacity-building measures. Amendments to the Constitutional Court Act permitted expedient and fast-track decision-making without extensive reasoning, modification of the threshold to grant leave for constitutional complaint and the Act on the Protection of the Right to a Trial without undue Delay in 2006 provided an acceleratory and a compensatory remedy in civil and criminal proceedings.	***SVN / Lukenda (23032/02)*** *Judgment final on 06/01/2006* Action report Final Resolution CM/ResDH(2016)354
Reopening of proceedings before the constitutional court: To address inter alia denials of a fair hearing by an impartial tribunal, a constitutional amendment introduced in 2014 the possibility to appeal against a decision of the Constitutional Court following the decision of an international body on the application of a binding international treaty (i.e. a ECtHR judgment).	***SVK / Harabin (*58688/11*)*** Judgment final on 20/02/2013 Action report
Acceleration of judicial proceedings: In order to implement an effective constitutional protection of the right to a hearing within a reasonable time, the Constitution was amended in 2002 to allow constitutional complaints on excessive length of proceedings; furthermore, the Constitutional Court may order the competent authority to proceed without delay and grant compensation for excessive length.	***SVK / Jori (34753/97)*** Judgment final on 09/02/2001 Final Resolution ResDH(2005)67)
Ensuring equality of arms in constitutional complaint proceedings and effective procedural protection of a parent in return proceedings under the Hague Convention after the child's abduction: In order to enhance procedural rights in return proceedings, the Constitutional Court Act was amended in 2014 to provide that if the Constitutional Court decides, at the	***SVK / Lopez Guio (10280/12)*** Judgment final on 13/10/2014

preliminary hearing, to proceed with a complaint it shall notify all interested parties who shall have the right to submit observations in the time-limit given.	Action report Final Resolution CM/ResDH(2016)235
Ensuring the independence and impartiality of State Security Courts: In order to enhance the right to a fair trial, the Constitution was first changed in 1999 as regards the composition of State Security Courts in trials of civilians, when the military judge was replaced by a civil one. These courts were abolished altogether by a constitutional reform in 2004. The State Security Courts' jurisdiction was then transferred to assize courts.	*TUR / Ciraklar (9601/92)* Judgment final on 28/10/1998 Final Resolution DH(99)555 *TUR / Incal (22678/93)* Judgment final on 09/06/1998 Action report Final Resolution CM/ResDH(2018)356 *TUR /Kalem (70145/01)* Judgment final on 05/03/2007 Final Resolution CM/ResDH(2009)103 *TUR / Kizilyaprak (9844/02)* Judgment final on 04/06/2008 Final Resolution CM/ResDH(2009)108 *TUR / Sadak and Others (22990/96)* Judgment final on 17/07/2001 Final Resolution CM/ResDH(2004)86 *TUR / Sertkaya (77113/01)* *Judgment final on 22/09/2006* Final Resolution CM/ResDH(2008)83
Acceleration of judicial proceedings: To address the issue of excessive length of judicial proceedings, the Constitution was amended within the framework of a judicial reform strategy in 2010. In administrative proceedings, the Council of State's jurisdiction was limited to acts with nation-wide applicability; procedures before tax and administrative courts have been streamlined. As regards civil, labour and social security proceedings, rules have been simplified. In criminal proceedings, a number of offences were reclassified as administrative offences. The Court of Cassation was reorganised. Modern information technologies were introduced. New alternative dispute settlement mechanisms deal with compensation claims for damages caused by terrorism or the fight against terrorism. In criminal matters a reconciliation procedure has been introduced. Statistics demonstrate the positive impact of the reforms. A new	*TUR / Ormanci and others (43647/98)* *Judgment final on 21/03/2005* Action report Final Resolution CM/ResDH(2014)298

compensatory remedy was set up in 2013 in the form of a complaint to the Commission for the Compensation of Excessively Lengthy Proceedings. Its decisions are appealable to the Regional Administrative Court. The general remedy before the Constitutional Court had already been introduced in 2012.	
Abolition of Military State Courts: To remedy the denial of a fair trial on account of the lack of impartiality and independence of the Supreme Military Administrative Court, and military Courts in general, these courts were abolished by constitutional amendments in 2017. The cases pending before it were transferred to either the Court of Cassation or the Council of State (Supreme Administrative Court).	***TUR / Tanisma (32219/05)*** ***Judgment final on 02/05/2016*** Action report Final Resolution CM/ResDH(2018)422
Constitutional complaint as effective remedy: The Constitution was amended in 2004 to grant international conventions on fundamental rights and freedoms priority over national legislation. Subsequently, to provide for an effective remedy in case of infringement of convention rights, a right to complain to the Constitutional Court was introduced by constitutional amendment in 2010. A procedure for individual applications for State liability in case of ECHR and/or constitutional rights' violations before the Constitutional Court became operative in 2012.	***TUR / United Communist Party and 7 other cases (19392/92)*** ***Judgment final on 30/01/1998*** Final Resolution CM/ResDH(2007)100 ***TUR / Özbek, (25327/04)*** ***Judgment final on 27/08/2010*** Action report Final Resolution CM/ResDH(2013)254
Judicial discipline and separation of the State powers: In response to the breaches of the right to a fair trial in matters of judicial discipline, reforms in the period of 2014-2017 led to institutional and legislative changes. In 2016, the adoption of Constitutional amendments permitted notably the creation of the Higher Council of Justice. The reforms, undertaken with the assistance of the Council of Europe, introduced a structural simplification of the courts' system (three-tier judicial system) with a reformed Supreme Court as the highest level of jurisdiction. It provided also for strengthening of the powers and the institutional capacity of the Higher Council of Justice to deal with issues of judicial discipline and careers of judges.	***UKR / Oleksandr Volkov group (21722/11+)*** Action plan Judgment final on 27/05/2013

1.4. Protection of private life

Equal right to parental leave within army: In response to the finding of discriminatory treatment based on gender by the ECtHR and following a declaration of unconstitutionality by the Constitutional Court of the applied national provision, a legislative reform of 2006 amended the Law on Status of military cadres, which now provides that women and men active within the army are equally entitled to parental leaves.	***ROM / Hulea (33411/05)*** ***Judgment final on 02/01/2013*** Action report Final Resolution CM/ResDH(2013)194
Regulation of the residence status of former citizens of the Socialist Federal Republic of Yugoslavia: To remedy discriminatory treatment of former citizens of the SFRY with regard to their residence status, the Legal Status Act was amended in 2010 and brought in line with the	***SVN / Kuric (26828/06)*** ***Judgment final on 26/06/2012***

Constitution. Legislative and developments in the practice of domestic authorities thus regularized the residence status of the formally "erased" persons and granted them compensation.	Action report Final Resolution CM/ResDH(2016)112

1.5. Freedom of religion and conscience/discrimination

Protection against discrimination on religious grounds: In order to prevent discriminatory treatment on account of religious beliefs, in particular in the labour market, the general guarantee in the Constitution of 1991 was extended in the Religious Denominations Act of 2002 and the Protection Against Discrimination Act of 2003 which expressly forbids any dismissal based on religious convictions. The Act alleviates the burden of proof for plaintiffs.	***BGR / Ivanova (52435/99)*** *Judgment final on 12/07/2007* Action report Final Resolution CM/ResDH(2012)155
Protection of conscientious objectors: In order to address the violation of Article 9 consisting in sanctioning conscientious objectors having refused to perform - between the entry into force of the Constitution in 1991 and adoption of the Law on the Replacement of Military Obligations by an Alternative Service in 1998 - their military service in the exercise of the constitutional freedom of conscience, Parliament decided an amnesty in 2002.	***BGR / Stefanov (32438/96)*** *Judgment final on 03/08/2001* Final Resolution ResDH(2004)32
Protection against discrimination of conscientious objectors: In order to remedy discrimination with regard to freedom of religion (Article 9 in conjunction with 14), the right to perform civilian instead of military or unarmed service in the army was granted by law to conscientious objectors in 1997. Subsequently, the right to an alternative service was enshrined in the Constitution in 2001. Furthermore, an amnesty law of 2001 provided for the removal from criminal records of all sentences imposed before the law of 1997.	***GRC / Thlimmenos (34369/97)*** *Judgment final on 06/04/2000* Final Resolution ResDH(2005)89

1.6. Freedom of expression and access to information

Constitutional amendment to remedy the restrictions on the applicant companies from providing information to pregnant women as to the location or identity of, or method of communication with, abortion clinics in the United Kingdom: Approved by referendum on 25 November 1992, the 14th Amendment to the Irish Constitution amended subsection 3 of Article 40 of the Constitution as follows: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate that right. This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state." The Irish Parliament subsequently enacted the "Regulation of Information (Services outside the State for Termination of Pregnancies) Act, 1995", according to which it is henceforth lawful, subject to certain conditions, to give information which "is likely to be required by a woman for the purpose of availing herself of services provided outside the State for the termination of pregnancies and relates to such services or to persons who provide them" (section 2).	***IRL / Open Door and Dublin Well Woman* (14234/88 and 14235/88)** Judgment final on 29/10/1992 Final Resolution DH(96)368
Clarification of the scope of the Prince's immunity in a dispute over the refusal to appoint to public office as a consequence for having expressed a legal opinion: Taking into account the breach of Articles 10 and 13 found, the State Court Act was modified in 2003 in order to clarify the competence of the State Court to hear cases of alleged violations of the Convention by any	***LIE / Wille (28396/95)*** *Judgment final on 28/10/1999*

public authority, including individual acts of the Prince as that the Prince's constitutional immunity only applies to the Prince as Head of State, but not to his individual acts.	Final Resolution DH(2004)84
Restricting the scope of the offence of defamation: In order to remedy the breach of freedom of expression (Article 10) and to provide for its effective protection the following amendment to the Constitution was introduced in 2004, that no one may be held liable in law for a statement which is untrue if it was expressed in non-negligent good faith.	***NOR / Bladet Tromso AS and Pal Stensas (21980/93)*** *Judgment final on 20/05/1999* Final Resolution DH(2002)70

1.7. Freedom of association / assembly

Organisation of peaceful marches without timely notification of an authorisation: In response to the breach of Articles 11 and 13 found, the Constitution, as amended in 2015, provides for additional guarantees for freedom of assembly and enshrines the right to spontaneous assemblies not requiring prior notification. In 2011, the Law on Assemblies gave a broad definition of an assembly which includes all types of gatherings, meetings, marches and demonstrations and regulates the notification process, in particular the registration of the notification, respective hearings, the decision-making process and participation of organisers in it. The Regulatory body has a maximum of 48 hours to take a decision on the notification for organising an assembly. In case of delay, the notification is deemed to be granted. The Code of Administrative Procedure provides for appeals against the Regulatory body's decisions and actions to courts.	***ARM / Helsinki Committee of Armenia (59109/08)*** *Judgment final on 30/06/2015* Action report Final Resolution CM/ResDH(2017)297
Introduction of a remedy against refusals to hold assemblies: To remedy the breach of Articles 11 and 13, the impugned provisions of the Road Traffic Act regulations cited by the authorities as grounds to refuse permission of the planned march were declared unconstitutional in 2006. A new Assemblies Act of 2015 obliges municipal authorities to issue a decision at least 96 hours before the planned date of the assembly. Appeals against bans can be lodged to the Regional Court, which shall decide within 24 hours; its decision can be challenged within 24 hours before the Court of Appeal.	***POL / Baczkowski and others (1543/06)*** *Judgment final on 24/09/2007* Action report Final Resolution CM/ResDH(2015)234

1.8. Protection of property

Compensation for property nationalised under the communist regime: In order to remedy the interference with property rights found, a new compensation mechanism was established in 2015, positively evaluated by the Venice Commission and accepted by the Constitutional Court. Subsequently, there were significant results in the process of evaluation of claims and in the number of final decisions issued and enforced. Resources from the State budget were allocated to cover payment of all compensation claims.	***ALB / Manushaqe Puto and Others (604/07)*** *Judgment final on 23/03/2015* Action report Final Resolution CM/ResDH(2018)349
Protection against termination of ownership and/or the right of use for the purpose of implementing State construction projects: In order to implement the constitutional guarantee of protection of property rights, the law on "Expropriation for the Needs of Society and the State" of 2006 regulated the judicial expropriation procedure, including the right to compensation. Its scope also covers interference with the use of accommodation. The	***ARM / Minasyan and Semerjyan (27651/05+)*** *Judgment final on 23/09/2009* Action report

Constitutional Court, in a decision of 2009, confirmed the constitutionality of the provisions and set application guidelines for domestic courts. Subsequently, the Constitution was amended in December 2015 to enshrine the principle of protection of property and allows restrictions only by law in the public interest.	Final Resolution CM/ResDH(2015)191 ***ARM / Safaryan (576/06)*** *Judgment final on 21/04/2016* Action report Final Resolution CM/ResDH(2017)133

1.9. Electoral rights

Protection of voting rights of Turkish Cypriots: In order to remedy the impossibility for Turkish Cypriots to vote (Articles 3 Protocol No.1 and 13) and in line with the constitutional guarantee of voting rights for all citizens, the law of 2006 on "the exercise of the right to vote and to be elected by members of the Turkish community with habitual residence in free territory of the Republic" gives effect to the right to vote and to be elected in parliamentary, municipal and community elections of Cypriot nationals of Turkish origin habitually residing in the Republic of Cyprus. They were also conferred the right to vote in presidential elections.	***CYP / Aziz (69949/01)*** *Judgment final on 22/09/2004* Final Resolution CM/ResDH(2007)77
Protection of voting rights of prisoners: In order to abolish the constitutional blanket ban on the voting right of prisoners, the Constitution was amended in 2011 to allow prisoners convicted of "crimes of little gravity" to vote. The Electoral Code was adapted accordingly. A new constitutional amendment in 2017 excludes voting rights solely of those persons who are in prison on a conviction for particularly serious criminal offence.	***GEO / Ramishvili*** **(48099/08)** *Judgment final on 31/05/2018* Action report Final Resolution CM/ResDH(2019)49
Protection against forfeiture of one's parliamentary seat: In order to remedy the disqualification of members of Parliament engaging in any professional activity due to the application of a constitutional provision of 2001, the Constitution was amended in 2008 providing that a special law could define certain professional activities, the exercise of which could be prohibited.	***GRC/ Lykourezos*** **(33554/03)** *Judgment final on 15/09/2006* Final Resolution CM/ResDH(2010)171
Protection of voting rights of incapacitated persons: To abolish the constitutional deprivation of voting rights of incapacitated persons, the Constitution was amended in 2012 (and respective specification introduced in the Civil Code and the Electoral Procedure in 2013), to stipulate that courts are obliged to decide in each individual case whether the personal circumstances of each incapacitated person justifies or not maintaining guardianship and restriction of their voting rights.	***HUN / Alajos Kiss group*** **(38832/06)** *Judgment final on 20/08/2010* Action report
Introduction of effective remedies in electoral matters: In order to address the issue of post-election disputes over parliamentary representation of national minorities and the lack of judicial review as regards the interpretation of the electoral legislation in question, a legislative reform of 2015 established the Permanent Electoral Authority and the Central Electoral Bureau as two autonomous bodies. According to the Constitutional Court's case-law, decisions of	***ROM / Grosaru (78039/01)*** *Judgment final on 02/06/2010* Action report Final Resolution

Central Electoral Bureau are jurisdictional administrative acts and can be contested in court by the interested parties before the ordinary administrative courts.	CM/ResDH(2016)322
Protection of parliamentary mandates against early termination: In order to address the impugned practice of party-controlled mandates due to the requirement to submit blank resignation letters and thus the possible early termination of parliamentary mandates in case of differences, the 2006 Constitution changed the rules and provided for the MPs' freedom to put their mandates at the disposal of the political party on the proposal of which they were elected and introduced the remedy of a constitutional appeal. Following two Resolutions of the CoE Parliamentary Assembly in 2008 and 2010, the Act on Altering and Amending the Act on Election of Members of Parliament was adopted in 2011 abolishing "party-administered mandates" and blank resignations, taking into account a Joint Opinion of the Venice Commission and OSCE/ODIHR. According to the Constitutional Court Law 2007, the Constitutional Court has exclusive competence to examine electoral disputes and may quash non-ECHR-compliant decisions and thus provide a legal basis for compensation requests.	***SER / Paunovic and Milivojevic (41683/06)*** ***Judgment final on 24/08/2016*** **Action report** **Final Resolution CM/ResDH(2017)193**
Protection against permanent and irreversible ineligibility following impeachment proceedings: In September 2012, in the context of the review of a first legislative attempt to lift the applicant's permanent ban on standing in parliamentary elections, the Lithuanian Constitutional Court found that constitutional amendments were necessary to bring domestic law in line with Article 3 of Protocol No. 1. After several unsuccessful attempts to adopt the necessary constitutional amendments, the required constitutional amendment was adopted on 21 April 2022 and entered into force on 22 May 2022. According to this amendment, any person removed from office or whose mandate as a member of the Lithuanian Parliament (Seimas) has been revoked by the Seimas through impeachment proceedings will not be subjected to a "permanent and irreversible" ban from standing for parliamentary elections but will be able to stand for elections to the Seimas after a period of "at least ten years". Consequently, the applicant now has the right to apply for registration and to stand as a candidate in future parliamentary elections.	***LIT / Paksas (34932/04)*** ***Judgment final on 06/01/2011*** ***Final Resolution CM/ResDH(2022)253***

1.10. Right to education

Protection against discrimination in access to schools: In order notably to eliminate discrimination suffered by children with French as their mother tongue, living in certain Dutch-speaking districts, who were unable to follow classes in French, legislative, including constitutional, and institutional reforms were carried out and completed in 1970. These reforms included the recognition and organisation of the Dutch, French and German communities and the Flemish, Walloon and Brussels regions. The six outlying districts / communes covered by the judgment became an integral part of the Flemish region. In order to promote the cultural homogeneity of the linguistic communities, it became legitimate for French-language education provided in these districts to be restricted to French-speaking children living there with their parents. Thus, discrimination on purely residential grounds noted by the European Court was reported to have has disappeared as a result of the above-mentioned reforms.	***BEL / Belgian linguistic case (1474/62)*** ***Judgment final on 23/07/1968*** **Final Resolution 12/04/1972** **Memorandum of the Belgian Government (1972)**

2. CHANGES IN CONSTITUTIONAL COURTS' CASE-LAW

2.1. Protection against expulsion / deportation

Improved protection against ill-treatment in case of expulsion: In order to grant effective protection against expulsion following the violation of Article 3 found by the ECtHR's judgment, the Constitutional Court speedily changed its practice. Thus, the protection was extended to cases were the risk to life or health emanated from non-state actors and not only, as was previously the case, from state authorities. The ensuing change of practice was codified in 2002 through amendments to the Aliens Act of 1992.	***AUT / Ahmed (25964/94)*** ***Judgment final on 17/12/1996*** Final Resolution ResDH(2002)99
Providing protection against ill-treatment in case of automatic dismissal of asylum applications: In order to remedy the lack of judicial review of asylum applications found by the ECtHR leading to the violation of Articles 13 and 3, the Constitutional Court repealed, in 2008, the provision of the Act on the stay of foreigners on the territory, which prevented an action against the decision on administrative expulsion. The action against the decision on administrative expulsion has an automatic suspensive effect.	***CZE / Diallo (20493/07)*** ***Judgment final on 28/11/2011*** Action report Final Resolution CM/ResDH(2013)141

2.2. Protection of rights in detention

Review of the lawfulness of detention: In order to provide a remedy for the lawfulness of the extension of detention following the violation of Articles 5 and 6, in 2017 the Constitutional Court changed its practice of declaring constitutional complaints inadmissible on the grounds that a fresh decision extending detention had been adopted or because the defendant had been released before the Constitutional Court gave its ruling. Additionally, the Constitutional Court changed its case-law finding that a reference to other pending criminal proceedings could not justify extension of detention and constituted a breach of the presumption of innocence.	***CRO / Krnjak (11228/10)*** ***Judgment final on 28/11/2011*** Action report Final Resolution CM/ResDH(2018)200
Ensuring presumption of innocence and compensation for preventive detention: To address the impugned domestic courts' practice regarding the principle of presumption of innocence in the context of the request for compensation for pre-trial detention following an acquittal due to lack of evidence, the Constitutional Court, in a ruling in 2017, took account of the ECtHR's recent relevant jurisprudence and stated in particular, that requiring a person to provide proof of his/her innocence in the framework of compensation proceedings is unreasonable and constitutes an attack against the presumption of innocence.	***ESP/ Tendam (25720/05)*** ***Judgment final on 13/10/2010*** Action report Final Resolution CM/ResDH(2018)344
Restricting possibilities of prosecution to extend detention on remand: To remedy the unlawful extension of detention found by the ECtHR (violation of Article 5), the Constitutional Court specified in 2017 the duration of the time-limit to request an extension of the detention on remand. It stated that the deadline of five days before expiry of the on-going period was a peremptory term and reiterated that the non-observance of this deadline causes the loss of the right to request an extension of the detention on remand. Prior to this clarification, in 2016 the Code of Criminal Procedure was amended providing that the investigative judge shall reject by a reasoned decision the request for the extension of detention on remand, without holding a court hearing if the deadline has not been observed by the prosecutor.	***MDA / Ialamov (65324/09)*** ***Judgment final on 12/12/2017*** Action report Final Resolution CM/ResDH(2018)329

2.3. Access to and efficient functioning of justice

Reform of the judiciary and acceleration of proceedings: To ensure the application of the principle of no punishment without the law enshrined in Article 7, the legal framework in Albania has been improved since 2001. Furthermore in 2004, the Constitutional Court held that the exercise of judicial power is under judicial control of higher courts. The judges' professional skills are regularly evaluated by the High Council of Justice and it can also dismiss a judge in case of professional incompetence.	***ALB / Alimucaj (20134/05)*** ***Judgment final on 09/07/2012*** **Action report** **Final Resolution CM/ResDH(2016)102**
Effective access to appellate courts: In order to grant access to a court, the Constitutional Court changed its practice on the time-limits for additional submissions in appeal proceedings in 2012. It declared certain provisions, resulting in the expiry of appeal deadlines under circumstances beyond the control of the person, unconstitutional and stated that domestic courts should not be granted unlimited discretion when deciding on the admissibility of appeals. Time-limits for lodging appeals on point of law with the Court of Cassation were first extended in the amended Criminal Procedure Code of 2009 and in 2012 the Draft Criminal Procedure Code expanded the time-limit for appeal and provided clear rules on time-limits for additional submissions in appeal proceedings.	***ARM / Mamikonyan (25083/05)*** ***Judgment final on 04/10/2010*** **Action report** **Final Resolution CM/ResDH(2015)142**
Adequate reasoning of judicial decisions: In order to implement the requirements of a fair trial following the ECtHR's judgment, the Constitutional Court in its assessments underlined, in 2010, the constitutional necessity of a reasoning of domestic courts' judgments.	***ARM / Sholokhov (40358/05)*** ***Judgment final on 31/10/2012*** **Action report** **Final Resolution CM/ResDH(2015)116**
Protection of the principle of equality of arms: In order to guarantee the right to a fair trial in judicial proceedings, in 1985, the Constitutional Court declared unconstitutional the provisions of the Food Code relating to the inequality of treatment between the Federal Food Control Institute's expert and the defence's expert who had been heard only as a witness.	***AUT / Bonisch (8658/79)*** ***Judgment final on 06/05/1985*** **Final Resolution DH (87)1**
Access to a tribunal and acceleratory remedy against excessively lengthy proceedings: In order to provide effective access to a court required by Article 6 §1, the Constitutional Court ruled in 2004 that there had been a violation of the constitutional rights to a trial within a reasonable time and to access to a court. It ordered the court concerned to render a decision in the case within one year and awarded the plaintiff compensation. Thus, the development in the Constitutional Court's case-law created a new domestic remedy for alleged violations of the right to access to a court, in particular with regard to length of proceedings.	***CRO / Kutic group (48778/99)*** ***Judgment final on 01/06/2002*** **Final Resolution CM/ResDH(2006)3**

Improved rules on proper aadducing of evidence in trials: In order to provide an effective right to a fair trial, the Constitutional Court in 2013 changed its case-law in accordance with the ECtHR's findings. In particular, it highlighted the importance of an adequate explanation when assessing the evidence in criminal proceedings. Furthermore, in another decision of 2013, the Constitutional Court echoed once again the ECtHR's findings, holding that the right to a fair trial cannot be seen as effective unless the requests and observations of the parties were truly heard by the court.	***CRO / Ajdaric (20883/09)*** ***Judgment final on 04/06/2012*** **Action report** **Final Resolution CM/ResDH(2016)38**
Ensuring access to the Constitutional Court to review constitutional complaint: In order to protect the right of access to court, the Constitutional Court changed its practice in 2013 concerning rectification of its own errors when declaring a constitutional complaint inadmissible on procedural grounds and the individual asks for rectification of such error. Thus, the Constitutional Court first, takes into account the applicant's request for rectification as a proposal for reinstatement of the proceedings, and then, examines the constitutional complaint on its merits.	***CRO / Camovski (38280/10)*** ***Judgment final on 23/01/2013*** **Action report** **Final Resolution CM/ResDH(2015)61**
Access to the Constitutional Court: In order to widen the scope of its review, the Constitutional Court changed its case-law in 2014 admitting constitutional complaints in respect of Supreme Court decisions by which appeals on points of law had been declared inadmissible because they were not lodged by a qualified lawyer even though the party concerned had been an attorney.	***CRO / Omerovic (No. 2) (22980/09)*** ***Judgment final on 14/04/2014*** **Action report** **Final Resolution CM/ResDH(2016)57**
Protection against excessive formalism: In order to address the denial of access to a court due to an excessively formalistic interpretation of a procedural requirement for bringing a claim for compensation, the Constitutional Court started to modify its case-law in 2014. The Supreme Court also followed this assessment in 2017. In 2019, the Constitutional Court confirmed this case-law considering the dismissal of claims for damages due to the improper submission of the rectification requests as overly formalistic.	***CRO / Buvac (47685/13)*** ***Judgment final on 06/09/2018*** **Action report** **Final Resolution CM/ResDH(2019)72**
Acceleration of proceedings and effective remedy: In order to speed up administrative proceedings and to introduce a speedy remedy, as required by Articles 6 §1 and 13, the Constitutional Court changed its previous jurisprudence and aligned its case-law with the Convention standards. Before the ECtHR's judgment, the Constitutional Court excluded the period of proceedings before administrative authorities when assessing the overall length of proceedings. In 2007, it stated that it would take into account the aforementioned period during which the case had been pending.	***CRO / Pocuca (38550/02)*** ***Judgment final on 29/09/2006*** **Action report** **Final Resolution CM/ResDH(2018)429**
Admissibility of constitutional appeals: In order to remedy the breach of the right of access to a court, the Constitutional Court declared unconstitutional, in 2012, the provision of the Code of Civil Procedure according to which an appeal on points of law was admissible only if the decision of the court of appeals concerned a question of crucial legal importance. It also stated that the provision did not define clear criteria for those situations. Subsequently, a new law adopted in 2013 defined criteria and time-limits to be observed for a constitutional appeal following an appeal in cassation.	***CZE / Adamicek (35836/05)*** ***Judgment final on 12/01/2011*** **Action report** **Final Resolution CM/ResDH(2013)58**

To redress the excessive formalism of the admissibility rules of the Constitutional Court (violation of Article 6§1 found by the ECtHR), the Constitutional Court changed its practice in 2003 by allowing the simultaneous introduction of an extraordinary appeal and a constitutional appeal directed against the decision of a lower jurisdiction. Subsequently, Parliament amended the Constitutional Court law in 2004 providing that an extraordinary appeal, the admissibility of which depends entirely on the discretionary assessment of the competent authority, does not necessarily have to be exhausted before the case is referred to the Constitutional Court.	***CZE / Vodarenska Akciova Spolecnost, A.S. (73577/01)*** ***Judgment final on 07/07/2004*** Final Resolution CM/ResDH(2008)27
Access to administrative courts: To grant access to a court, the Constitutional Court in 2001 decided to repeal the administrative section of the Code of Civil Procedure, according to which courts were not competent to re-examine administrative procedural decisions. Following a reform of the aforementioned Code in 2003, applicants may request annulment of a decision concerning an act of administrative authority in case of a violation of their rights.	***CZE / Kilian (48309/99)*** ***Judgment final on 06/06/2005*** Final Resolution CM/ResDH(2006)70
No retroactive application of criminal law: In order to implement the principle of no punishment without law of Article 7, the Constitutional Court held in 2014 that the broad notion of genocide as provided for in the 2003 Criminal Code (which included social and political groups in the range of protected groups), was compatible with the Constitution but could not be applied retroactively. The prosecution authorities and domestic courts adapted their practice taking into account the Constitutional Court's indication and the ECtHR's judgment. Thus, the authorities now refrain from retroactive prosecution and conviction for genocide of political groups. Accordingly, in 2016, the Supreme Court upheld the acquittal of a person on genocide charges.	***LIT / Vasiliauskas (35343/05)*** ***Judgment final on 20/10/2015*** Action report Final Resolution CM/ResDH(2017)430
Providing the possibility of reopening of criminal proceedings: In order to remedy the unfairness of certain criminal proceedings found by the ECtHR, the Constitutional Court, in its *sentenza additiva* of 2011, held that the provision of the Code of Criminal Procedure concerned was not sufficient as did not grant the possibility of reviewing a decision following a judgment of the ECtHR and, subsequently, interpreted the provision of the aforementioned Code as allowing reopening of criminal proceedings on the basis of an ECtHR judgment.	***ITA / Bracci (36822/02)*** ***Judgment final on 15/02/2006*** Action Report Final Resolution CM/ResDH(2014)102
Fairness of criminal proceedings: In order to address the finding of lack of impartiality of a court, the Constitutional Court in 1996 declared unconstitutional the provision of the Code of Criminal Procedure which did not exclude a judge who had participated in prior proceedings to assess the guilt of the same accused.	***ITA / Rojas Morales (39676/98)*** ***Judgment final on 16/02/2001*** Final Resolution CM/ResDH(2008)51
Admissibility of constitutional complaints: In order to improve access to court, the Constitutional Court declared in 2010 that, in case of the concurrent lodging of an appeal on points of law and of a constitutional complaint, the constitutional complaint is admissible only after the Supreme Court's decision on the appeal. However, the statutory time-limit for lodging of the constitutional complaint is considered to be preserved.	***SVK/ Stavebna Spolocnost Tatry Poprad, S.R.O.*** **(7261/06)** ***Judgment final on 03/08/2011*** Action report Final Resolution CM/ResDH(2012)221

The practice for calculating the statutory time-limit for lodging a constitutional complaint has been amended.	***SVK / Franek (14090/10)*** ***Judgment final on 11/05/2014*** **Action report** **Final Resolution CM/ResDH(2015)12**
Ensuring the principle of legal certainty: In order to strengthen the protection against unjustified interference with final, binding and enforceable judgments required by Article 6§1, the practice of the Constitutional Court changed. Prior to the ECtHR judgment, the Constitutional Court had adopted, in 2015, a uniform opinion according to which an extraordinary remedy could be used to quash final judicial decisions in cases of disagreement on assessment of facts or legal conclusions made by the courts in the ordinary proceedings. Following the ECtHR judgment, the Constitutional Court applied a convention compliant case-law.	***SVK/ Draft - Ova A.S. (72493/10)*** **Action plan** **Final judgment on 09/09/2015**
Impartiality of the Constitutional Court's benches: In order to remedy the partiality of Constitutional Court in dismissal decisions (contrary to Articles 6§1 and 13), the Constitutional Court developed its case-law and set up an operative system concerning the exclusion of judges who had taken part in proceedings on the same case before the lower courts either as an expert witness (2007) or a judge (2017).	***SVN / Svarc and Kavnik (75617/01)*** ***Judgment final on 08/05/2007*** **Action report** **Final Resolution CM/ResDH(2018)213**
Improved rules on adduction of evidence in criminal proceedings: The Constitutional Court adopted a judgment in 2011 prohibiting the prosecution of a suspect based on illegally obtained evidence. It held in particular that charging someone for a crime cannot be based on evidence obtained as a result of illegal investigative or search measures. Furthermore, a number of practice recommendations were issued by the Higher Specialised Court, between 2014 and 2017, also concerning the ECtHR's case-law on the effectiveness of defence rights in criminal proceedings and when assessing the validity of waivers of the right to legal representation and other procedural rights. Judgments in proceedings conducted in the absence of a lawyer, where a lawyer's participation was mandatory, should be quashed.	***UKR / Borotyuk (33579/04)*** ***Judgment final on 16/03/2011*** **Action report** **Final Resolution CM/ResDH(2017)295**

2.4. Protection of private life

Constitutional remedy against noise pollution: In order to protect the right to respect for private and family life required by Article 8, guidance was given to all judicial authorities in a judgment of the Constitutional Court in 2011. This judgment stated, in accordance with the case law of the ECtHR, that passivity or inaction of an administration tolerating noise pollutions leading to an environmental degradation would be unlawful and contrary to the Constitution. Furthermore, omissions which caused an infringement of a fundamental right may be subject to an amparo appeal.	***ESP / Martinez Martinez (21532/08)*** ***Judgment final on 18/01/2012*** **Action report** **Final Resolution CM/ResDH(2017)223**

Protection of private life: In order to address the breach of Article 8, on account of domestic courts' refusal to prohibit the publication of sensationalist photographs concerning the Princess' private life, the Constitutional Court changed its case-law and took into account the reasoning of the ECtHR with regard to the States' obligation to protect the right to control the use of one's image.	***GER/ Von Hannover (59320/00)*** ***Judgment final on 24/09/2004*** **Final Resolution CM/ResDH(2007)124**
Equality of treatment in parental custody: In order to remedy discriminatory treatment of fathers with regard to the custody of a child born out-of-wedlock (Article 8 in conjunction with 14), the Federal Constitutional Court held in 2010 that the provision on parental custody of parents not married to each other was incompatible with the Constitution, as the father was in principle excluded from parental custody of his child, if the child's mother did not consent. Therefore, it ordered a transitional regulation, considering that upon a motion by a parent, the Family Court should order joint or partially joint custody, if it was in the child's best interests. Subsequently, the Act to Reform Parental Custody of Parents Not Married to Each Other of 2013 provides that, upon a motion by a parent, joint custody shall be granted as far as this is not contrary to the child's best interests. This interest is presumed, if the mother does not submit any reasons that could be contrary to such joint custody, and if no such reasons are otherwise apparent to the court.	***GER/ Zaunegger* (22028/04)** **Judgment final on 03/03/2010** **Action report** **Final Resolution CM/ResDH(2014)163**
Access to information on biological parents: In order to remedy the lack of access to information on one's origins found by the ECtHR with regard to Article 8, the Constitutional Court in 2013 declared unconstitutional the provision prohibiting access for adopted persons to information concerning their biological mothers without possibility for the court to verify the mothers' will. Pending the adoption of a new draft law, domestic judges can thus contact the biological mother in order to verify her current will. In 2017, the Court of Cassation confirmed this position.	***ITA / Godelli (33783/09)*** ***Judgment final on 18/03/2013*** **Action report** **Final Resolution CM/ResDH(2015)176**
Prohibition of discrimination on civil union of same-sex couples concluded abroad: In order to establish equal treatment regardless of sexual orientation (Article 14 in conjunction with 8) concerning residence rights, the Constitutional Court recognised in 2010 the right to obtain a residence permit for family reason to a same-sex foreign partner. The Court of Cassation confirmed in 2012 the legal possibility to invoke the same rights as granted to heterosexual couples. Furthermore, a Law on a civil union of committed and stable same-sex relationships was adopted in 2016 allowing for legal recognition and for a foreign partner to obtain a residence permit for family purpose.	***ITA / Taddeucci and McCall (51362/09)*** ***Judgment final on 30/09/2016*** **Action report** **Final Resolution CM/ResDH(2018)125**
Access to paternity actions for children born out-of-wedlock: In order to remedy the impossibility to establish paternal filiation on the grounds that the relevant limitation periods had expired (Article 8), the Constitutional Court changed its previous case-law and held, in 2016, that the institution of the limitation period of one year from the birth of the child is only applicable in the case of actions brought by the mother or the legal representative of the child and not to actions brought by the child himself/herself, regardless of the child's birth date. Earlier, the Constitutional Court had specified in 2008 that the imprescriptibly of paternity actions, provided for in Law No. 288/2007 and in the new Civil Code, was applicable only to children born after the entry into force of the new legislation.	***ROM/ Calin and others (25057/11)*** ***Judgment final on 19/10/2016*** **Action report** **Final Resolution CM/ResDH(2018)418**

Safeguards concerning access orders and custody rights: In order to remedy the failure to take adequate and effective steps to enforce an administrative access order concerning custody rights under Article 8, the Constitutional Court found, in 2003, several provisions of the Marriage and Family Relations Act applicable to custody and access arrangements to be unconstitutional. Subsequently, domestic courts were granted competence to adjudicate custody and access arrangements. Cases concerning the relationships between parents and children are examined as a matter of priority. Furthermore, after 2004 Social Welfare Centres were no longer allowed to issue administrative access orders.	***SVN / Eberhard and M. (8673/05)*** ***Judgment final on 01/03/2010*** **Action report** **Final Resolution CM/ResDH(2017)396**
Implementation of the right to gender re-assignment: To remedy the domestic courts' refusal to accept the applicant's gender reassignment claims in view of the lacking legal prerequisite of inability to procreate, the Constitutional Court annulled in 2017 the provision of the Civil Code which contained the reference to a permanent inability to procreate as a prior requirement for authorisation to undergo gender re-assignment. As a result, such requirement is no longer necessary.	***TUR / Y.Y. (14793/08)*** ***Judgment final on 10/06/2015*** **Action report** **Final Resolution CM/ResDH(2018)395**
Protection against the interception of cell phone conversations: In order to remedy the lack of judicial approval for the interception of cell phone conversations, the Constitutional Court held in 2012 that an ex post facto approval by the President of the Supreme Court, or a specially authorised judge, of the operational measures needs to be obtained notwithstanding that the measure in question was terminated in less than 72 hours. This interpretation became binding upon all State authorities and thus serves as a remedy for the violation.	***LVA / Meimanis (70597/11)*** ***Judgment final on 21/10/2015*** **Action report** **Final Resolution CM/ResDH(2017)211**

2.5. Freedom of expression

Liberalisation of regional and local radio broadcasting and of cable and satellite broadcasting: In order to protect freedom to impart information or ideas, the Constitutional Court declared in 1995 the impugned provisions unconstitutional. Subsequently, the regional and local radio broadcasting and cable and satellite broadcasting were liberalised in 1997. However, national terrestrial television and radio remain monopolies entrusted to the Austrian Broadcasting Company. Judicial control of decisions taken under the Regional Radio Broadcasting Act and the Cable and Satellite Broadcasting Act is exercised by a Commission of seventeen members, nine of whom should be judges. The procedure follows the one laid down in the Administrative Procedure Act of 1991.	***AUT / Informationaverein Lentia (13914/88)*** ***Judgment final on 24/11/1993*** **Final Resolution DH(98)142**
***Exceptio veritatis* in defamation proceedings:** In order to address the interference with freedom of expression due to the conviction of a member of Parliament for insulting the Government (Article 10), the Constitutional Court concluded in 1993 that the ECtHR case-law shall constitute a criterion for the interpretation of the constitutional norms which protect the fundamental rights and that it was directly applicable in the Spanish legal order. As a consequence, the Supreme Court accepted the admissibility of the *exceptio veritatis* in defamation proceedings.	***ESP / Castells (11798/85)*** ***Judgment final on 23/04/1992*** **Final Resolution DH(95)93**

***Exceptio veritatis* in defamation proceedings:** In order to address the interference with freedom of expression due to the conviction of a politician for libel of a civil servant (Article 10) , the Constitutional Council in 2011 declared contrary to the Constitution the legal provision of the 1881 Act on the Freedom of Press, which makes it impossible for persons prosecuted for defamation to free themselves from liability by proving the truth of the defamatory facts when those facts date back more than ten years.	***FRA/ Mamere (12697/03)*** *Judgment final on 07/02/2007* Final Resolution CM/ResDH(2011)104
Restrictions to parliamentary immunity: In order to address the inability to bring criminal proceedings for defamation against members of Parliament enjoying parliamentary privilege in violation of Article 10, the Constitutional Court changed its case-law in 2014. It acknowledged that the parliamentary privilege based on a provision of the Constitution should not be extended to utterances without link to the exercise of the parliamentary function. If in judicial proceedings a legislative chamber states that the behaviour of one of its members falls within the scope of the immunity provided by the Constitution, the judge shall raise a conflict of State powers before the Constitutional Court.	***ITA / Patrono, Cascini and Stefanelli (10180/04)*** *Judgment final on 20/07/2006* Action report Final Resolution CM/ResDH(2016)119
Admissibility of constitutional complaints on freedom of speech: In order to address the conviction of journalists and newspaper companies in civil libel proceedings for protection of the personality in violation of Article 10, the Constitutional Court changed its case-law in 2015 assessing complaints relating to civil libel on their merits. It also takes into account the proportionality test as developed by the ECtHR.	***SVK / Soltesz (11867/09)*** *Judgment final on 22/01/2014* Action report Final Resolution CM/ResDH(2019)167

2.6. Freedom of assembly and association

Spontaneous assemblies: In order to remedy the disproportionate restriction of freedom of assembly contrary to Article 11, the Constitutional Court in 2008 found it unconstitutional to prohibit a peaceful assembly solely because no prior notice had been given in the particular circumstances of a case because it could be appropriate to organise a demonstration immediately in response to a political event. It thus repealed the impugned provision of the Act of 1989 on the right of assembly, which provided for such prohibition. Following this decision, prior notice before holding demonstrations is no longer required.	***HUN / Bukta (25691/04)*** *Judgment final on 17/10/2007* Final Resolution ResDH(2010)54

2.7. Discrimination

Non-discrimination on the ground of nationality with regard to the right to obtain emergency assistance: In order to provide the right to emergency assistance to all citizens without discrimination (Article 14), the Constitutional Court, in 1998, annulled with immediate effect the provisions reserving the right to emergency assistance to nationals. It deviated from its usual practice of postponing the full effects of its judgment to a future date. Subsequently, Parliament adopted a new law providing that the amendments to the Unemployment Insurance Act entered in 1998 and not in 2000.	***AUT / Gaygusuz (17371/90)*** *Judgment final on 16/09/1996* Final Resolution ResDH(1998)372

2.8. Protection of property

Protection against eviction: In order to address the issue of failing procedural safeguards in eviction proceedings (Article 8), the Constitutional Court changed its case-law in 2014. It held that there is an obligation upon competent civil courts to apply the proportionality and necessity test in eviction cases. Following the aforementioned decision of the Constitutional Court, the Supreme Court acknowledged that the domestic courts have an obligation to apply the proportionality test in eviction cases.	***CRO / Bjedov (42150/09)*** *Judgment final on 29/08/2012* Action report Final Resolution CM/ResDH(2018)237
Indexation of amounts awarded by domestic courts: The legislation providing for the living cost as index for calculation of allowances was declared unconstitutional by the Constitutional Court in 2002 due to lack of clarity and predictability. In 2004, the Parliament amended the legislation governing the social insurance of Chernobyl victims. The new law provides for a new system of indexation allowances, which is based on the inflation rate used for calculation of the federal budget for the next financial year.	***RUS / Burdov (59498/00)*** *Judgment final on 04/09/2002* Final Resolution ResDH(2004)85
Compensation for the loss of a property title: To remedy the disproportionate interference due to the land expropriation on grounds of public utility in breach of Article 1 of Protocol No.1, the Constitutional Court declared in 2003 that the provision of the Law on expropriation according to which claims for the restitution of property occupied for purposes of public use lapsed 20 years after occupation as unconstitutional. Thus, this provision is null and void.	***TUR/ I.R.S and others (26338/95)*** *Judgment final on 15/12/2004* Final Resolution CM/ResDH(2007)98

2.9. Electoral rights

Protection of electoral rights of convicted persons: In order to remedy the ban on convicted prisoners' voting rights in violation of Article 3 of Protocol No.1, the Constitutional Court in its decision of 2015 lifted the automatic loss of voting rights for intentional criminal offences for the entire duration of the sentence period, even when the convicted person was not detained on account of suspension of sentence or early release. Only those serving prison sentences for intentional offences are now excluded from voting during the execution of their sentence in prison.	***TUR / Soyler (29411/07)*** *Judgment final on 20/01/2014* Action report Final Resolution CM/ResDH(2019)147
Right to vote of prisoners: To end the automatic blanket ban, based on the Constitution, on voting rights of all convicted offenders in detention facilities, which was found to be in violation of Article 3 of Protocol No.1, the Constitutional Court, in its ruling of 2016, confirmed the imperative character of the respective constitutional provision and the particular complex procedure that would be required for its amendment. It noted however that the federal legislator may optimise the criminal punishment system, so that certain forms of deprivation of liberty would not entail a deprivation of the right to vote. In 2017, a provision of the Criminal Code came into force which was in line with the above Ruling introducing a new form of punishment: community work, which may be imposed for the commission of offences of light or medium gravity or in case a grave offence was committed for the first time. Community work involves the placement of convicted persons in "correctional centres", where detainees keep their right to vote.	***RUS / Anchugov and Gladkov (11157/04)*** *Judgment final on 09/12/2013* Action report Final Resolution CM/ResDH(2019)240

2.10. Ne bis in idem

Protection against convictions in both criminal and administrative criminal proceedings for the same facts: In order to remedy a conviction in respect of facts which had already been the subject of a previous judicial decision (Article 4 of the Protocol No.7), the Constitutional Court abrogated in 1996 the provisions of the Road Traffic Act which were at the origin of the violation. As a result, the district administrations have lost their competence in cases coming within the jurisdiction of criminal courts.	***AUT / Gradinger (15963/90)*** ***Judgment final on 23/10/1995*** **Final Resolution DH(97)501**
Protection against double convictions in criminal and minor offences proceedings for the same offence: The Constitutional Court changed its case law in 2012 to align it with the case law of the ECtHR, in order to ensure the application of the ne bis in idem principle. Guidance was also adopted for procedural actions in criminal and minor offence cases by some authorities (Indirect Taxation Authority, Tax Administration, and Prosecutor's Office).	***BIH / Muslija (32042/11)*** ***Judgment final on 14/04/2014*** **Action report** **Final Resolution CM/ResDH(2017)30**

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