



Doc. 12455
20 December 2010

Implementation of judgments of the European Court of Human Rights

Report¹

Committee on Legal Affairs and Human Rights

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Summary

For several years the Parliamentary Assembly has tried to contribute to the effective implementation of the judgments of the European Court of Human Rights, by bringing parliamentary pressure to bear on governments where worrying delays in complying with judgments have arisen. In this 7th report, the Committee on Legal Affairs and Human Rights has given priority to the situation in nine states where major structural problems have led to many repeat violations.

The main problems continue to be excessive length of judicial proceedings (endemic notably in Italy), chronic non-enforcement of domestic judicial decisions (widespread, in particular, in Russia and Ukraine), deaths and ill-treatment by law enforcement officials and lack of effective investigations into them (particularly apparent in Russia and Moldova) and unlawful or over-long detention on remand (a problem notably in Moldova, Poland, Russia and Ukraine).

These problems are a matter for grave concern and seriously undermine the rule of law in the states concerned. The committee makes a series of recommendations to each state where it detects outstanding problems, as well as some general recommendations. In particular, it calls for national mechanisms, including oversight by national parliaments, to ensure the implementation of Court judgments. If these problems are not dealt with, the committee warns, the future of the Convention system – and even the Council of Europe itself – are in jeopardy.

¹ Reference to committee: Resolution 1268 (2002); Reference 3048 of 24 January 2005; Resolution 1516 (2006).

A. Draft resolution²

1. The Parliamentary Assembly considers itself duty-bound to contribute to the supervision of the effective implementation of the judgments of the European Court of Human Rights ("the Court"), on which the authority of the Court primarily depends.

2. Although, according to Article 46 of the European Convention on Human Rights ("the Convention"), it is the Committee of Ministers which supervises the execution of Court judgments, the Assembly and national parliaments must now play a much more proactive role in this respect; if this is not done, the key role of the Convention, its supervisory mechanism and the Council of Europe as a whole, in guaranteeing the effective protection of human rights in Europe is likely to be put in jeopardy.

3. The Assembly has therefore decided to give priority to the examination of major structural problems concerning cases in which extremely worrying delays in implementation have arisen, currently in nine states parties: Bulgaria, Greece, Italy, Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine. Special *in situ* visits have been carried out by the rapporteur and Chairperson of its Committee on Legal Affairs and Human Rights to most of these states in order to examine with national decision makers the reasons for dilatory execution and/or non-compliance and to stress the urgent need to find solutions to these problems.

4. In a number of other states, *inter alia*, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia, the issue of non-compliance and solutions to outstanding problems should also be made a priority.

5. The Assembly notes with grave concern the continuing existence of major systemic deficiencies which cause large numbers of repetitive findings of violations of the Convention and which seriously undermine the rule of law in the states concerned. These problems relate in particular to:

5.1. excessive length of judicial proceedings leading to ineffective protection of a wide range of substantial rights (endemic notably in Italy);

5.2. chronic non-enforcement of domestic judicial decisions (widespread, in particular, in the Russian Federation and Ukraine);

5.3. deaths and ill-treatment by law enforcement officials, and a lack of effective investigations thereof (particularly apparent in the Russian Federation and Moldova);

5.4. unlawful detention and excessive length of detention on remand (in Moldova, Poland, the Russian Federation, and Ukraine).

6. The Assembly deplores the above-mentioned implementation problems and intends to do its utmost, in co-operation with national parliaments, to assist States Parties to the Convention and the Committee of Ministers to eradicate the disgraceful situation of non-compliance with Court judgments.

7. The Assembly, in particular, urges the following states to give priority to specific problems:

7.1. Bulgaria must now adopt outstanding measures in order to avoid further deaths and ill-treatment under the responsibility of law enforcement officials. Progress is also needed to complete the reform aimed at ensuring that foreigners' deportation procedures fully comply with the Convention (*inter alia*, the Court's judgment *Al-Nashif and Others v. Bulgaria*). Moreover, Bulgaria must also pursue its efforts to solve the problem of excessive length of court proceedings;

7.2. The excessive length of judicial proceedings, especially before administrative courts, and abusive use of force by police officers remain key issues that Greece must tackle;

7.3. Italy must now take measures to address the excessive length of judicial proceedings. This has been a problem for decades, despite various interim resolutions adopted by the Committee of Ministers. A further issue of concern is the policy of non-respect of Court interim measures in a number of cases concerning foreigners;

² Draft resolution adopted unanimously by the committee on 17 November 2010.

7.4. Moldova must promptly take measures to ensure the enforcement of domestic final judgments, in particular in so-called social housing cases (the Court's pilot judgment *Olaru and Others v. Moldova*). Moreover, it should also strengthen its efforts in order to avoid further cases of ill-treatment in police custody and ensure effective investigations into such abuses. Additional measures should also be taken with a view to improving conditions in detention facilities and filling lacunae in procedures concerning arrest and detention on remand, revealed by the Court's judgments. Lastly, it is essential that an effective domestic remedy is introduced in response to the pilot judgment of *Olaru and Others*;

7.5. The excessive length of procedures before courts and administrative authorities, as well as that of detention on remand, are key issues that Poland must tackle;

7.6. The issue of restitution of – or compensation for – nationalised property has to remain a priority for Romania (see the Court's pilot judgment *Maria Atanasiu and Others v. Romania* of 12 October 2010). The problem of excessive length of judicial proceedings and non-enforcement of final court decisions must now also be tackled. As regards the case of *Rotaru v. Romania*, concerning abuses of information by the Romanian Intelligence Service, despite the Committee of Ministers' insistence, legislative reform is still outstanding, some 10 years after the Court's judgment;

7.7. The Russian Federation must tackle pressing issues, in particular:

7.7.1. relating to the functioning of the administration of justice and prison system: the authorities must ensure that the reform adopted in May 2010 to address the non-enforcement of domestic judicial court decisions (see pilot judgment *Burdov No. 2*) is finally implemented and is effective, seven years after the original *Burdov (No. 1)* case. Regarding the quashing of final judgments through the supervisory review procedure (the so-called *nadzor* system, see the case of *Ryabykh*), the third attempt at effective reform to limit the use of this procedure must now be ensured. Continuing efforts to solve the major issues of poor conditions and overcrowding in remand centres, ill-treatment in police custody, excessive length of detention on remand and several procedural deficiencies related to the latter, are insufficient and must be increased in order to bring Russian practice into line with Convention requirements;

7.7.2. related to the action of security forces in the Chechen Republic: the greatest concern relates to repetitive grave human rights violations in this region. Regrettably, the alleged recent structural improvements of domestic investigatory procedures have not as yet led to any tangible results. The actual elucidation of at least a significant part of these cases is indispensable in order to end the climate of impunity in this region;

7.8. The most prevalent problems in Turkey currently concern the failure to re-open proceedings after a Court judgment having declared the initial proceedings to be in violation of the Convention in the case of *Hulki Günes v. Turkey* (judgment of 19 June 2003), and the repeated imprisonment of Mr Osman Murat Ülke for conscientious objection to military service (judgment of 24 January 2006). Concerning the former, significant pressure from the Committee of Ministers – including three interim resolutions – has still not borne fruit;

7.9. As a matter of urgency, Ukraine must adopt a comprehensive strategy to tackle the situation in which a considerable number of domestic final judgments remain unenforced, despite significant pressure from the Committee of Ministers, and to implement an effective domestic remedy in response to the pilot judgment *Yuriy Nikolayevich Ivanov v. Ukraine*. Ukraine must also accelerate domestic judicial proceedings, reform criminal procedure and ensure the full independence and impartiality of judges. In addition, measures are needed to combat the abuse of force by police officers and ensure effective investigation into allegations of such ill-treatment. The continued impunity of the instigators and organisers of the murder of the journalist Gongadze (*Gongadze v. Ukraine* judgment of 8 February 2006) is still a matter of great concern (see the Assembly's Resolution 1466 (2005), Resolution 1645 (2009) and Recommendation 1856 (2009));

7.10. The United Kingdom must put to an end the practice of delaying full implementation of Court judgments with respect to politically sensitive issues, such as prisoners' voting rights.

8. The Interlaken Declaration and Action Plan of February 2010 specified that priority should be given to full and expeditious compliance with the Court's judgments. In line with the aims of the Interlaken process, the Assembly considers that it too should remain seized of this matter in order, in parallel, to ensure regular and rigorous parliamentary oversight of implementation issues – both at the European and national levels. The role of national parliaments can be crucial in this respect, as has been illustrated by parliamentary scrutiny mechanisms set up in the Netherlands and in the United Kingdom.

9. A major reason for deficient compliance with the Court judgments is the lack of effective domestic mechanisms and procedures to ensure swift implementation of requisite measures, often requiring co-ordinated action by national authorities.

10. In view of the foregoing, the Assembly:

10.1. strongly urges national parliaments which have not yet done so to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments;

10.2. calls upon the member states to set up, either by legislation or otherwise, effective domestic mechanisms as recommended in the Committee of Ministers' Recommendation CM/Rec(2008)2 for the rapid implementation of the Court's judgments, and ensure that a decision-making body at the highest political level takes full responsibility for the co-ordination of all aspects of the domestic implementation process;

10.3. urges the authorities of the states referred to in this resolution to take all necessary measures to resolve the outstanding implementation problems identified in the Assembly report;

10.4. calls upon the chairpersons of national parliamentary delegations – together, if need be, with the competent ministers – of states in which *in situ* visits were undertaken (or envisaged, in the case of Turkey) to present the results achieved in solving substantial problems highlighted in this resolution;

10.5. reserves the right to take appropriate action should the state concerned continuously fail to take appropriate measures required by a judgment of the Court, or should the national parliament fail to exert appropriate pressure on the government to implement judgments of the Court;

10.6. in view of the imperative need for States Parties to the Convention to accelerate execution of, and fully comply with judgments of the Court, and in the light of major problems encountered in this respect in several states, resolves to remain seized of this matter and to continue to give it priority.

B. Draft recommendation³

1. The Parliamentary Assembly, referring to its Resolution ... on the implementation of judgments of the European Court of Human Rights, urges the Committee of Ministers to increase, by all available means, its effectiveness as the statutory guarantor of the implementation of the Court's judgments, and to that effect recommends that it:

1.1. ensure special priority treatment for the most important problems in the implementation of the Court's judgments, notably the systemic problems identified in Resolution ..., and regularly inform the Assembly of the results achieved towards resolving these problems;

1.2. induce States Parties to the European Convention on Human Rights with structural problems to provide comprehensive strategies which outline a clear and detailed approach to execute Court judgments, and ensure effective assessment of the adequacy of measures taken through such action plans;

1.3. strongly encourage governments to improve and, where necessary, to set up domestic mechanisms and procedures to secure timely and effective implementation of the Court's judgments through action of all national actors concerned, co-ordinated at the highest political level;

1.4. increase pressure and take firmer measures in cases of dilatory and continuous non-compliance with the Court's judgments by states parties, and to work more closely on this subject with the Assembly.

³ Draft recommendation adopted unanimously by the committee on 17 November 2010.

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1. Introduction*1.1. Background*

1. The specific characteristics and success of the European Convention on Human Rights (“the Convention”) system, as set up by the Council of Europe, are undoubtedly the binding nature of the judgments of the European Court of Human Rights (“the Court”) and the Committee of Ministers’ role in supervising the full execution of those judgments by states. Such a mechanism ensuring the implementation, by states parties, of human rights cannot be found anywhere else in the world. That being said, the implementation process may be legally and, at times, politically complex. There can be several domestic institutions involved with varying legal competences, and political pressures or other interests often present obstacles that need to be overcome in order to speedily and effectively implement Court judgments. It is for this reason that – with their unique political perspectives – national parliaments and the Parliamentary Assembly should complement the work of the Committee of Ministers to ensure swift and complete compliance with the Court’s rulings.

2. Experience indicates that the Assembly has been effective in performing this role through reports, recommendations, resolutions, and the holding of debates. This report marks the seventh report which will lead to the seventh resolution and the sixth recommendation adopted by the Assembly since 2000; ten years that have seen a number of complex and difficult issues resolved with the assistance of the Assembly, the respective national parliaments and their delegations.⁴

3. During the drafting of this seventh report, the important Interlaken Conference took place in February 2010.⁵ Framed in the context of reducing the backlog of cases before the Court, the Interlaken Declaration called for, *inter alia*, further action by member states to improve the implementation of Court judgments at the national level and, more importantly, full and expeditious compliance with the Court's judgments.⁶ The Interlaken Conference has thus officially prioritised the national level implementation of Court judgments, adding timely impetus to the urgent message I am sending in this seventh report.

1.2. *The rapporteur's mandate*

4. My mandate as rapporteur is to address particularly problematic instances of delayed and/or non-execution of the Court's judgments.⁷ In doing this, I have considered three main concerns: firstly, for the European Court of Human Rights to continue its extraordinary contribution to the protection of human rights in Europe, particularly in dealing with major violations of the most fundamental rights, it is essential that the backlog and flux of repetitive cases it faces is eradicated through the full and effective execution of its judgments. It is absolutely crucial that member states with systemic problems giving rise to repetitive applications resolve the root causes of the violation. Secondly, emphasis must be placed on the fact that significantly grave violations of human rights have become repetitive in a number of member states; this situation is unacceptable. Lastly, in order to facilitate the expedient execution of judgments, I have continued to stress the importance of effective national parliamentary "follow-up structures" in order to promote the establishment of an effective procedure for parliamentary supervision of the implementation of the Court judgments at the national level.

5. Bearing in mind the introductory memorandum⁸ and progress report⁹ which I presented to the Committee on Legal Affairs and Human Rights in June 2008 and September 2009 respectively, the method of identifying judgments to be addressed in this seventh report has been somewhat refined since the excellent work of my illustrious predecessor, Mr Erik Jurgens. I have maintained the successful practice of country visits, but it is now in the above three areas, I believe, that my mandate can be of significant added value to the existing system of supervision, where the Committee of Ministers has primary responsibility. As a result of this new emphasis, the member states considered in this report are principally those which are classified under one or both of the following rubrics:

- judgments which raise important implementation issues as identified, in particular, by an interim resolution of the Committee of Ministers; and
- judgments concerning violations of such a serious nature that I am compelled to address the issue of their implementation.¹⁰

⁴ See Resolution 1226 (2000) and Recommendation 1477 (2000) of 14 January 2000; Resolution 1268 (2002) and Recommendation 1546 (2002) of 22 January 2002; Resolution 1297 (2002) and Recommendation 1576 (2002) of 23 September 2002; Resolution 1381 (2004) of 22 June 2004; Resolution 1411 (2004) and Recommendation 1685 (2004) of 23 November 2004; Resolution 1516 (2006) and Recommendation 1764 (2006) of 2 October 2006.

⁵ High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration, 19 February 2010. www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf.

⁶ *Ibid.*, paragraphs 4-5.

⁷ Resolution 1226 (2000) on the execution of judgments of the European Court of Human Rights, adopted by the Assembly on 28 September 2000, paragraphs 5 and 11.C.iv.

⁸ Implementation of judgments of the European Court of Human Rights: introductory memorandum, document AS/Jur (2008) 24 of 26 May 2008.

⁹ Implementation of judgments of the European Court of Human Rights: Progress Report, documents AS/Jur (2009) 36 and AS/Jur (2009) 36 addendum, declassified on 11 September 2009.

¹⁰ As identified in "The state of human rights in Europe: the need to eradicate impunity", Herta Däubler-Gmelin, Doc. 11934 of 3 June 2009; Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity, 24 June 2009, paragraph 5.1.

2. Overview of states with substantial implementation problems

2.1. Introductory remarks

6. Portugal and the United Kingdom were identified in my progress report as states having substantial difficulties in implementing Court judgments. However, given the progress made in Portugal, as well as the need to somehow distinguish specific concerns I have noted with respect to the United Kingdom, in comparison with states with more substantial problems, I have decided to deal with both these countries separately in the present report.

2.1.1. Portugal

7. In response to judgments of the Court finding violations of Article 6 § 1 of the Convention, due to excessive length of judicial proceedings,¹¹ the Portuguese authorities adopted a number of legislative and administrative measures aimed at reducing the length of proceedings.¹² Indeed, in its latest interim resolution on the subject (CM/ResDH(2010)34), the Committee of Ministers noted some significant developments; statistics provided by the Portuguese authorities reveal a general decrease in the average length of judicial proceedings before higher courts¹³ and measures have been adopted with a view to improving the efficiency of the judiciary as a whole. That said, harmonisation of domestic courts' case law concerning an effective remedy for excessive length of proceedings is still needed.

8. Although certain issues still remain a subject of concern,¹⁴ overall, the efforts made by the Portuguese authorities are strongly welcomed and should be viewed as an example of best practice in this area.

2.1.2. United Kingdom

9. As significant implementation problems obviously still persist in the United Kingdom (UK), it would have been inappropriate to have dropped this country from this section. I have nevertheless set the United Kingdom aside from the other nine states listed below, as this country is not on the list of states in which the most difficult human rights problems are enumerated (see Appendix 1). That said, in the United Kingdom, areas where concerns currently exist include:

- Prisoner voting rights (*Hirst (No. 2) v. the United Kingdom* – Grand Chamber);
- Retention of DNA and biometric data (*S. and Marper v. the United Kingdom* – Grand Chamber).

2.1.2.1. Prisoner voting rights

10. The issue of prisoner voting rights is dealt with in *Hirst (No. 2) v. the United Kingdom*¹⁵ case and the failure to execute this judgment in time for the recent UK General Election on 6 May 2010 has, in effect, resulted in the violation of the rights of thousands of prisoners, meaning that there is now a risk of an influx of applications to the Court.

11. In *Hirst (No. 2)*, the Court deemed the automatic and indiscriminate restriction on the right to vote for convicted prisoners to be in violation of Article 3 of Protocol No. 1. The ban, imposed by the Representation of the People Act 1983, did not consider the length of the sentence, the nature of the offence or the individual circumstances of the prisoner.

12. The action plan submitted by the UK authorities in 2006 laid out a two-stage consultation process, the first of which proposed partial enfranchisement based on sentence length. The latter, published in April 2009, concluded that this was indeed the answer and proposals would enfranchise between 11 and 45% of the

¹¹ *Oliveira Modesto and Others v. Portugal*, Application No. 34422/97, judgment of 8 September 2000; for a full list of cases in the Oliveira Modesto group see "State of execution" in 25 cases against Portugal, available at: www.coe.int/t/dghl/monitoring/execution/reports/default_en.asp?dv=1&statecode=prt

¹² See Appendix I to Interim Resolution CM/ResDH(2010)34 concerning the judgments of the European Court of Human Rights in 25 cases against Portugal relating to the excessive length of judicial proceedings.

¹³ This progress is welcomed. However, in many courts, first instance proceedings remain a subject of concern. The Portuguese authorities are therefore encouraged to continue their positive efforts in this area, particularly with respect to first instance proceedings.

¹⁴ Continued criminalisation of defamation in Portugal will undoubtedly have a chilling effect on press freedom and should be addressed as a matter of urgency. See, for example, *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, Application No. 11182/03, judgment of 26 July 2007.

¹⁵ *Hirst (No. 2) v. the United Kingdom*, Application No. 74025/01, judgment of 6 October 2005.

prison population. Linking entitlement to vote with sentence length establishes an association between the nature of the crime and the right to vote; however, concerns have been voiced by the UK Parliamentary Joint Committee on Human Rights (JCHR) that this is not an appropriate response as it would lead to further litigation.¹⁶ Information on progress was to be provided in September 2010.¹⁷

13. The fact remains that this judgment is still to be executed and as a result thousands of prisoners continue to be denied their right to vote, despite pressure from the Committee of Ministers, which had foreseen the risk of repetitive applications before the Court in this case (Interim Resolution CM/ResDH(2009)160). Inevitably, further applications have been communicated to the UK government on the issue.¹⁸ However, the new United Kingdom government has recently confirmed that it will implement the judgment in *Hirst No. 2* and has commenced ministerial deliberations on the matter.¹⁹ Progress in this regard is imperative considering that the Committee of Ministers, at its meeting in September 2010, again regretted the lack of tangible and concrete information on any progress and has called upon the UK authorities to prioritise implementation of this judgment without further delay.²⁰

2.1.2.2. Retention of DNA and biometric data

14. This is a significant issue in the United Kingdom and is the subject of the Grand Chamber ruling *S. and Marper v. the United Kingdom*.²¹ The indefinite retention of DNA and fingerprint evidence taken from persons suspected of a crime but ultimately acquitted or never tried, was considered to be in violation of Article 8 of the Convention. In addition, the legislative framework did not provide for any independent review of the retention.

15. The United Kingdom initially proposed a plan of legislative reform which prompted close scrutiny from the Committee of Ministers.

16. Since then, encouraging progress has come in the manifesto²² of the new UK government, which contained a promise of a new approach to implement the Scottish legislative framework identified as Convention compliant in the judgment²³ in the rest of the United Kingdom; although the United Kingdom has yet to present the details of how and when the Scottish scheme will be adopted in England, Wales and Northern Ireland. In the meantime, the original scheme deemed unacceptable by the Court in its judgment continues to operate, having a large-scale impact on all individuals in England, Wales and Northern Ireland who come into contact with the police and justice system.

2.1.2.3. Additional Comments

2.1.2.3.1. Intra-governmental co-ordination

17. In response to the JCHR recommendations,²⁴ the Minister of Justice now co-ordinates the relevant Government departments responsible for implementation of judgments and transmits the information to the Foreign and Commonwealth Office which represents the United Kingdom before the Committee of Ministers.²⁵ Each Government department implementing a judgment must now fill in a form provided by the Minister of Justice which "ensures that all the information needed for effective oversight of the implementation process is provided to both the Ministry of Justice and Foreign and Commonwealth Office".²⁶

¹⁶ JCHR, "Enhancing Parliament's Role in Relation to Human Rights Judgments", 15th Report of Session 2009-2010, paragraph 107.

¹⁷ See www.theyworkforyou.com/lords/?id=2010-06-09a.641.3&s=speaker%3A13000#g641.6

¹⁸ Greens (60041/08), communicated 27 August 2009; Toner (8195/08), communicated on 27 August 2009; M.T. (60054/08).

¹⁹ www.parliament.uk/business/news/2010/11/urgent-question-on-prisoners-right-to-vote/

²⁰ Ministers' Deputies decision of 15 September 2010, adopted at their 1092nd meeting (DH).

²¹ Application No. 30562/04, judgment of 4 December 2008.

²² See "The coalition: our programme for government", p. 11.

²³ See footnote 16, paragraphs 36 and 109.

²⁴ See footnote 16, paragraphs 160-163.

²⁵ Ministry of Justice, Responding to human rights judgments: Government Response to the Joint Committee on Human Rights' 15th Report of Session 2009-2010, July 2010, p. 32.

²⁶ Lastly, the Ministry of Justice monitors all judgments of the Court and produces a "Whitehall Human Rights Information Bulletin" which highlights cases "that have a clear read-across to existing UK cases and issues". All government departments consult this bulletin and address the judgments relevant to their particular expertise. *Ibid.*, pp. 33 and 35.

2.1.2.3.2. Emerging issue – minimal compliance

18. In recent years, there have been a number of major landmark cases in the Court's case law where the United Kingdom is the defendant state: for example, *Al-Saadoon v. the United Kingdom*²⁷ (Article 3), *Gillan and Quinton v. the United Kingdom*²⁸ (Article 8), *S and Marper v the United Kingdom* (Article 8) and *A and Others v. the United Kingdom*²⁹ (Article 5). Most of these judgments are also Grand Chamber judgments. The execution process for some of these judgments (where it has begun) has become somewhat politicised at the national level and consequently the JCHR has identified what it perceives as an emerging practice of "minimal compliance"; where some action has been taken by the United Kingdom but far from enough. This has been highlighted by the JCHR³⁰ as a problem in that it increases the possibility of repetitive cases by failing to put an end to a root problem, thus creating further litigation.³¹

2.2. Overview

2.2.1. Bulgaria

19. In Bulgaria, problems with respect to implementation of Court judgments arise most prominently in three areas:

- Deaths and ill-treatment taking place under the responsibility of law enforcement officials and lack of effective investigation;
- Violations of the right to respect for family life due to deportation/order to leave the territory;
- Excessive length of judicial proceedings and lack of an effective remedy.

20. During my visit to Bulgaria in May 2009, I stressed the need for the Bulgarian Justice Ministry's "Concept Paper" on overcoming significant problems concerning implementation of Court judgments to be given practical effect and was assured by several ministries that this would be done.³² Regrettably, the Bulgarian authorities have yet to provide information on any progress achieved in putting the "Concept Paper" into practice.

2.2.1.1. Deaths and ill-treatment taking place under the responsibility of law enforcement officials and lack of effective investigation

21. The case of *Velikova v. Bulgaria*³³ and several similar cases³⁴ principally concern deaths or ill-treatment taking place under the responsibility of law enforcement officials. All of these cases also concern the lack of effective investigation into the deaths or into the applicants' claims to have suffered ill-treatment at the hands of law-enforcement forces.

22. The Bulgarian authorities have adopted a number of measures in this area.³⁵ In relation to deaths and ill-treatment, measures improving vocational training for members of the police have been introduced. Compulsory training in human rights is now part of police training and, in 2000, a specialised Human Rights Committee was set up at the National Police Directorate. Furthermore, in 2002, a new declaration form was introduced, to be signed by all detained persons, containing information on their basic rights. Finally, taking into account the Committee of Ministers' Recommendation R(2001)10 and drawn up in co-operation with the Council of Europe, a Code of Police Ethics was introduced in 2003.

²⁷ Application No. 61498/08, judgment of 2 March 2010.

²⁸ Application No. 4158/05, judgment of 12 January 2010.

²⁹ Application No. 3455/05, judgment of 19 February 2009.

³⁰ See footnote 16, paragraph 168.

³¹ In particular, the JCHR drew attention to *A and Others*, where it stressed that "the impact of the decision on improving fairness in practice may have been limited by the Government's passive and minimalist approach to compliance". Further, the importance of fully implementing these landmark decisions of the Court is self-evident. The JCHR has called on the UK government to cease "minimal compliance" and instead fully implement the Court judgments delivered against it. See footnote 16, paragraph 170 and JCHR, "Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2010", 16th Report of Session 2009-2010, paragraph 53.

³² Press Release, "Bulgaria promises better implementation of European Human Rights Court judgments", 25 May 2009, available at: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4679.

³³ *Velikova v. Bulgaria*, Application No. 41488/98, judgment of 4 October 2000.

³⁴ 15 cases against Bulgaria concerning deaths or ill-treatment taking place under the responsibility of state forces. For a full list of cases in the Velikova group, see "State of Execution" in cases against Bulgaria, available at: www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=BGR

³⁵ See Appendix II to Interim Resolution CM/ResDH(2007)107 concerning the judgments of the European Court of Human Rights in the case of *Velikova* and 7 other cases against Bulgaria relating in particular to the ill-treatment inflicted by police forces, including three deaths, and the lack of an effective investigation in this respect.

23. With regard to the lack of effective investigation in these cases, legislative amendments adopted in 2001 provide for judicial review of public prosecutors' decisions to close criminal proceedings and enable the courts to return files back to prosecutors with instructions to carry out specific investigation measures.³⁶ In the last few years (2005-2009), disciplinary sanctions have been imposed on officers by the Minister of the Interior.³⁷ However, despite these sanctions and the above-mentioned awareness raising, human rights abuses by police continue.³⁸

24. In its Interim Resolution CM/ResDH(2007)107, the Committee of Ministers noted that certain general measures remain to be taken, in particular those aimed at improving the training of police officers, particularly regarding the inclusion of human rights issues in the training, improving procedural guarantees during detention on remand, and guaranteeing the independence of investigations dealing with allegations of ill-treatment at the hands of the police. The Committee of Ministers called upon the Bulgarian government to rapidly adopt all outstanding measures and to regularly inform the Committee of Ministers about the impact of the new measures. Information on the above issues is still awaited.

2.2.1.2. *Violations of the right to respect for family life due to deportation/orders to leave the territory*

25. The case of *Al-Nashif and Others v. Bulgaria*³⁹ and four similar cases⁴⁰ concern violations of the applicants' right to respect for their family life as the applicants were deported or ordered to leave the territory pursuant to a legal regime that did not provide sufficient safeguards against arbitrary application (violations of Article 8). The *Al-Nashif and Others* and *Bashir and Others* cases also concern the fact that the applicable law afforded the applicants no opportunity to challenge the lawfulness of their detention while awaiting deportation or expulsion (violations of Article 5 § 4).

26. Some progress has been made regarding violations of the applicants' right to respect for their family life. At the time of the *Al-Nashif and Others* case Bulgarian law did not provide for judicial review of the lawfulness of aliens' detention in case of their expulsion on the grounds of national security, nor of the decision on expulsion itself.⁴¹ Since the *Al-Nashif and Others* judgment, the well-established practice of the Bulgarian Supreme Administrative Court indicates to the competent courts that they are required to apply the Convention as interpreted by the European Court of Human Rights and therefore must examine complaints against expulsion on the grounds of national security.⁴²

27. Furthermore, progress has been made through legislative reform. In 2007, a draft law amending the Aliens Act was adopted; the new law introduces judicial review by the Supreme Administrative Court of expulsions, revocations of residence permits and bans on entry into the territory ordered on national security grounds. Although this signifies progress, it should be noted that the new law excludes the suspensive effect of an appeal against such measures when based on national security grounds. Information on the practical effectiveness of judicial review is awaited.

28. Finally, the Bulgarian authorities have indicated that the lawfulness of detention pending deportation may be reviewed by the competent administrative organs and courts in accordance with the provisions of the Code of Administrative Procedure. With this in mind, additional information is requested on the current practice concerning the judicial supervision of detention pending deportation.

2.2.1.3. *Excessive length of judicial proceedings and lack of an effective remedy*

29. The cases of *Kitov v. Bulgaria*,⁴³ *Djangozov v. Bulgaria*⁴⁴ and several similar cases⁴⁵ concern excessive length of proceedings before criminal and civil courts. Many of these cases also concern the lack of an effective domestic remedy.

³⁶ Code of Criminal Procedure, Article 237.

³⁷ Report by Mr Serhiy Holovaty on post-monitoring dialogue with Bulgaria, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Doc. 12187, paragraphs 94-95.

³⁸ *Ibid.*, paragraph 88.

³⁹ *Al-Nashif and Others v. Bulgaria*, Application No. 50963/99, judgment of 20 September 2002.

⁴⁰ *Bashir and Others v. Bulgaria*, Application No. 65028/01, judgment of 14 September 2007; *C.G and Others v. Bulgaria*, Application No. 1365/07, judgment of 24 July 2008; *Hasan v. Bulgaria*, Application No. 54323/00, judgment of 14 September 2007; *Musa and Others v. Bulgaria*, Application No. 61259/00, judgment of 9 July 2007.

⁴¹ Aliens Act, Article 47, in force at the material time.

⁴² See, for example, decisions Nos. 706 of 29 January 2004, 4883 of 28 May 2004 and 8910 of 1 November 2004.

⁴³ *Kitov v. Bulgaria*, Application No. 37104/97, judgment of 3 July 2003. For a full list of cases in the Kitov group, see "State of execution" in cases against Bulgaria, available at:

30. The Bulgarian authorities have adopted a number of reforms aimed at accelerating judicial proceedings. A new Code of Criminal Procedure entered into force in April 2006 as part of a global reform of criminal justice in Bulgaria. Most notably, the Code introduces the obligation for courts and investigating authorities to examine criminal cases within a reasonable time. Furthermore, seminars and other training activities on the Convention and the case law of the Court are regularly organised by the National Institute of Justice. The Bulgarian authorities have stated that the statistics provided concerning the average length of criminal proceedings point to the stable functioning of the criminal justice system in this respect, however, it should be noted that these statistics relate only to proceedings before first-instance courts and not to criminal proceedings in their entirety. Additional information on other measures taken to reduce the length of criminal proceedings together with comprehensive statistical data has yet to be provided to the Committee of Ministers.

31. Regarding civil proceedings, the new Code of Civil Procedure of 2007 allows a party to lodge a complaint against the length of the proceedings with the court superior to the court dealing with the merits. If the superior court to which a case is referred finds that there was an unjustified delay in proceedings, it may indicate to the lower court a time-limit for carrying out the necessary acts. With respect of criminal proceedings, until the amendment to the Code of Criminal Procedure in May 2010, a defendant was allowed to request the transfer of his or her case to a competent court once a period of one or two years had elapsed since the beginning of the preliminary investigation, depending on the gravity of the charges brought. The competent court could then order the prosecutor to end the preliminary investigation within two months or, alternatively, put an end to the proceedings.⁴⁶ But the relevant provisions providing for such a remedy were abolished (in May 2010) and since then information is awaited from the authorities on the introduction of an effective remedy concerning criminal proceedings. The Bulgarian authorities also envisage the introduction of a similar remedy relating to criminal proceedings pending at the trial stage; information on such progress is also awaited.

2.2.2. Greece

32. In Greece, with respect to implementation of judgments of the European Court of Human Rights, two prominent areas have been highlighted in recent years.

- Excessive length of proceedings and lack of an effective remedy;
- Use of lethal force and ill-treatment by members of law enforcement officials and lack of effective investigation into such abuses.

33. During my visit to Greece on 18-19 January 2010, I invited Greek parliamentarians to monitor the implementation of Court judgments within parliament and was assured they would do so.⁴⁷ Unfortunately, information on any progress in this area has yet to be provided by the Greek authorities.

2.2.2.1. Excessive length of proceedings and lack of an effective remedy

34. In *Manios v. Greece*⁴⁸ and several similar cases,⁴⁹ the Court found violations of Article 6 § 1 due to the excessive length of proceedings before administrative, civil and criminal courts. Many of these cases also concern the lack of an effective domestic remedy as required by Article 13 of the European Convention on Human Rights.

35. It is in relation to administrative courts, in particular the Council of State, where the most significant concerns regarding excessive length of judicial proceedings exist. The Greek authorities have responded positively in introducing Law No. 3659/2008 entitled "Improvement and acceleration of proceedings before

www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=BGR

⁴⁴ *Djangozov v. Bulgaria*, Application No. 45950/99, judgment of 8 October 2004. For a full list of cases in the *Djangozov* group, see "State of execution" in cases against Bulgaria, available at:

www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=BGR

⁴⁵ 35 judgments concerning the excessive length of criminal proceedings, 15 cases concerning the excessive length of civil proceedings.

⁴⁶ Code of Criminal Procedure, Articles 368 and 369.

⁴⁷ Press release, "Greece must co-ordinate its execution of European Court judgments more effectively, says PACE rapporteur", 20 January 2010, available at:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5189.

⁴⁸ *Manios v. Greece*, Application No. 70626/01, 11 March 2004.

⁴⁹ For a full list of cases in the *Manios* group see Appendix to Interim Resolution CM/ResDH(2007)74 on excessively lengthy proceedings in Greek administrative courts and the lack of an effective domestic remedy.

administrative courts and other provisions", which is now in force. This most importantly ensures that cases raising important legal questions and repetitive cases are heard as a matter of priority within a strict time frame. Moreover, Law No. 3772/2009 concerning acceleration of proceedings before the Council of State has recently entered into force.

36. The Greek authorities expect that these reforms will reduce the duration of proceedings before administrative courts by at least a year. As the measures introduced are recent developments, it would be impossible to come to an assessment of their effectiveness at this early stage. With this in mind, further information on how these reforms have been implemented as well as the state of play regarding the proceedings before civil and criminal courts should be provided by the Greek authorities.

37. The above-mentioned shortcomings are aggravated by the lack of an effective domestic remedy, either compensatory or preventive.

38. A draft law entitled "Compensation of litigants due to excessively lengthy judicial proceedings", providing for a compensatory domestic remedy in cases of excessive length of proceedings was expected to be tabled before Parliament during the 2008 summer session. Regrettably, there appears to have been no recent progress in the adoption of this law. This issue should be addressed as a matter of urgency by the Greek authorities. The current financial crisis should not prevent them from finding the long-term solutions that are required.

2.2.2.2. Use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation into such abuses

39. The case of *Makaratzis v. Greece*⁵⁰ and other similar cases⁵¹ concern violations of the Convention arising from actions of law enforcement officials (substantial and procedural violations of Article 2 and 3). In particular, these cases have highlighted considerable shortcomings in the legislative and administrative framework governing the use of firearms and in investigations regarding allegations of ill-treatment and deaths at the hands of the police.⁵²

2.2.2.2.1. Absence of an appropriate legislative and administrative framework relating to the use of firearms and ill-treatment under the responsibility of the police

40. Significant steps have been taken by the Greek authorities to establish an effective legal framework governing the use of force and firearms by the police. In 2003, a new law concerning the use of firearms by police entered into force. The law contains precise and strict conditions for the use of firearms by police officers, stating that firearms should only be used as a last resort. Furthermore, the 2004 Policemen's Code of Conduct contains guidance on police officers' proper behaviour towards all citizens in accordance with international human rights law. However, events that occurred in November 2006 in Thessaloniki and in December 2009 in Athens, seem to show that there is insufficient implementation of those measures. Thus, the Greek authorities should further consider the full implementation of the above-mentioned texts.

2.2.2.2.2. Absence of an effective investigation

41. The adoption of a new disciplinary code in September 2008 signifies considerable progress in ensuring the initiation of an effective investigation into allegations of abuse of force by police. Most importantly, the new code widens the scope of acts considered as disciplinary offences, imposes heavier sanctions in cases of torture and provides for the compulsory examination of complaints relating to disciplinary offences concerning civilians. In addition, circulars were issued to all police stations in line with the findings of the Court in the judgment in the case of *Bekos and Koutropoulos*: the investigating officers are obliged to examine whether racist motives played any role in cases of disproportionate use of arms and ill-treatment.

42. Importantly, since 2005, more extensive training on human rights issues has been provided to both new and serving police officers. A particularly positive aspect of these developments is the creation of a committee whose task is to prepare proposals on the organisation and content of human rights training for

⁵⁰ *Makaratzis v. Greece*, Application No. 50385/99, 20 December 2004.

⁵¹ *Alsayed Allaham v. Greece*, Application No. 25771/03, 23 May 2007; *Bekos and Koutropoulos*, Application No. 15250/02, 13 March 2006; *Celniku v. Greece*, Application No. 21449/04, 5 October 2007; *Karagiannopoulos v. Greece*, Application No. 27850/03, 21 September 2007; *Petropoulou-Tsakiris v. Greece*, Application No. 44803/04, 6 March 2008; *Zelilof v. Greece*, Application No. 17060/03, 24 August 2008; *Galotskin v. Greece*, Application No. 2945/07, 14 April 2010.

⁵² For a detailed presentation of the issues raised and the measures taken see [CM/Inf /DH\(2009\)16rev](#).

police; it is envisaged that the committee's proposals will assist police officers in incorporating human rights principles into the manner in which they approach the arrest and questioning of suspects.

43. The Greek authorities had undertaken to set up as soon as possible a committee of three independent members competent to evaluate the advisability of opening new administrative investigations following a judgment of the Court. This committee has not been established yet. This issue should be addressed as a matter of priority.

2.2.2.3. *Additional comments*

2.2.2.3.1. *Intra-governmental co-ordination*

44. As I stressed during my visit to Greece,⁵³ the Greek authorities should make further efforts in order to co-ordinate more effectively the different state bodies which are responsible for the execution of the Court's judgments, in line with the requirements of the Committee of Ministers' Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the Court.

2.2.2.3.2. *Emerging issues*

45. New judgments have revealed other important and/or structural problems in Greece regarding, for instance, conditions of detention of foreigners, asylum procedures⁵⁴ and freedom of association.⁵⁵ The implementation of those judgments may require further attention in the future. The statement of the Greek Prime Minister before the Assembly on 26 January 2010 that "we should implement all the decisions that the Council of Europe and the Court decide upon" is promising.⁵⁶

2.2.3. *Italy*

46. In Italy, long-standing issues concerning excessive length of judicial proceedings and lack of an effective remedy remain by far the most pressing issues relating to the implementation of Court judgments. That said, recent developments, such as expulsions of foreign nationals in breach of interim measures ordered by the Court (violation of Articles 3 and 34) merit close attention.

47. During my visit to Italy in November 2009, I called upon members of the Chamber of Deputies and the Senate to act together to adopt all the necessary measures to speed up civil and criminal proceedings.⁵⁷ Information is awaited on the latest measures taken to tackle this serious problem. If such information is not communicated, I would invite the Chairperson of the Italian parliamentary delegation to come before the Committee on Legal Affairs and Human Rights to explain such inactivity and future measures envisaged. In addition, bearing in mind Italy's dilatoriness in complying with Court judgments, we may need to envisage, in due course, inviting the Ministers of Justice and of Economic Affairs to come before it and explain why Italy, a mature democracy and founding member of the Council of Europe, has now over many years not been able (willing?) to put its house in order, thereby jeopardising the existence of our unique human rights control system.

2.2.3.1. *Excessive length of judicial proceedings and lack of an effective remedy*

2.2.3.1.1. *Excessive length of judicial proceedings*

48. The case of *Ceteroni v. Italy*⁵⁸ and several similar cases⁵⁹ reveal a serious systemic or structural problem concerning excessive length of judicial proceedings in Italy. This issue has long since been one of

⁵³ [See press release of 20 January 2010.](#)

⁵⁴ For example, *S.D.* (No. 53541/07) of 11 June 2009 and *Tabesh* (No. 8256/07) of 26 November 2009.

⁵⁵ *Bekir-Ousta and Others v. Greece*, Application No. 35151/05, judgment of 11 October 2007, *Emin and Others v. Greece*, Application No. 34144/05, judgment of 27 March 2008, *Tourkiki Enosi Xanthis and Others v. Greece*, Application No. 26698/05), judgment of 27 March 2008.

⁵⁶ See Decision of Committee of Ministers, 1086th Meeting, 2 June 2010, at: [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1086/6&Language=I](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1086/6&Language=I) and Assembly sitting of 26 January 2010 at: <http://assembly.coe.int/Mainf.asp?link=/Documents/Records/2010/F/1001261000F.htm>.

⁵⁷ Press release, "PACE rapporteur in Rome: Italy needs to speed up its court system", 25 November 2009 available at: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5069.

⁵⁸ *Ceteroni v. Italy*, Application No. 22461/93, judgment of 15 November 1996.

⁵⁹ 2 183 cases against Italy concerning excessive length of judicial proceedings, for a full list of cases in the Ceteroni group see Appendix I to Interim Resolution CM/ResDh(2009) 42, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2009\)1051&Language=lanEnglish&Ver=prel0007&Site=](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2009)1051&Language=lanEnglish&Ver=prel0007&Site=).

the most problematic issues facing the Court and has been the subject of several Committee of Ministers' final and interim resolutions.⁶⁰ In its Interim Resolution CM/ResDH(2007)2, the Committee of Ministers, while welcoming the progress made in this area, invited the Italian authorities to "undertake interdisciplinary action" with a view to drawing up a new, effective strategy to deal with the considerable delays experienced in the Italian justice system.

49. In its latest Interim Resolution (CM/ResDH(2009)42), the Committee of Ministers recognised some progress in this area. Notably, a number of legislative reforms have been adopted in order to accelerate both civil and criminal proceedings. In particular, a Bill pending before parliament aims to accelerate the processing of civil cases through the broad reform of civil procedure; the Bill aims to reduce the number of trials, expedite ongoing trials and develop the use of alternative dispute regulation. Despite these developments, excessive length of criminal and civil proceedings still presents a significant problem. With this in mind, Interim Resolution CM/ResDH(2009)42 called upon the Italian authorities to continue in their efforts to accelerate civil proceedings and adopt ad hoc measures to reduce the civil and criminal backlog by prioritising the oldest cases and those requiring "particular diligence".

50. With respect to administrative proceedings, legislative measures introduced by the Italian authorities have had a measured effect on the length of such proceedings. While such progress is welcomed, it should be borne in mind that the principal issue in relation to administrative proceedings concerns the backlog of the administrative courts. The Italian authorities have adopted measures aimed at reducing the backlog⁶¹ and should intensify efforts in this area.

51. Regarding bankruptcy proceedings,⁶² the Italian authorities have introduced important legislative reforms aimed at expediting proceedings and simplifying various procedural steps.⁶³ Statistics provided by the Italian authorities suggest that, following the introduction of the reforms, bankruptcy petitions filed, as well as bankruptcy declarations, decreased by approximately 40%. Of course, this development is to be welcomed; however the latest statistics provided⁶⁴ reveal that the length of bankruptcy proceedings remained stable in 2007 lasting approximately nine years; furthermore, proceedings pending before the entry into force of the reform, to which the reform does not apply, are still excessively lengthy.

52. More generally, the Italian authorities have adopted measures aimed at improving the structural organisation of the judiciary.⁶⁵ Certain courts have significantly reduced backlogs and have accelerated proceedings through organisation and work management improvements.⁶⁶ The Italian authorities were invited by the Committee of Ministers, on 19 March 2009, to ensure the sharing of best practices among courts and adopt any additional measures to enhance the efficiency of the judiciary.

2.2.3.1.2. Lack of effective remedy

53. The case of *Mostacciolo Giuseppe v. Italy*⁶⁷ and several similar cases⁶⁸ relate to the inadequacy of the domestic remedy for cases of excessive length of judicial proceedings.⁶⁹ In all of these cases, the Court found that the domestic remedy was ineffective due to a number of factors: the amount of compensation awarded by the domestic court was significantly less than the Court awarded in just satisfaction in similar cases; certain obligatory fees reduced the amount of compensation; and payment of compensation was subject to an unacceptable delay, often necessitating enforcement proceedings.

54. The Italian authorities have made some progress in ensuring adequate compensation. The United Section of the Court of Cassation has stressed the need for courts of appeal to comply with the case law of

⁶⁰ See Resolutions DH(1992)26, (1995)82 and (1994)26; Interim Resolutions ResDH(2000)135, ResDH(2005)114, ResDH(2007)2 and CM/ResDH(2009)42

⁶¹ Act. No. 133 of 6 August 2008 decreases the time limit for the lapsing of an administrative complaint from ten to five years, unless the parties apply to the court for a hearing date.

⁶² See *Luordo v. Italy*, Application No. 32190/96, judgment of 17 October 2003.

⁶³ See Appendix I of Interim Resolution CM/ResDH(2007)27 on bankruptcy proceedings in Italy: Progress achieved and problems remaining in the execution of the judgments of the European Court of Human Rights.

⁶⁴ These statistics relate to the year 2007.

⁶⁵ Law Decree No. 143 of 16 September 2008 provides for the increase in the number of ordinary judges and disciplinary procedures against judges.

⁶⁶ See Interim Resolution CM/ResDH(2009) 42.

⁶⁷ *Mostacciolo Giuseppe v. Italy*, Application No. 64705/01, judgment of 29 March 2006.

⁶⁸ 83 cases against Italy concerning the effectiveness of the compensatory remedy (Pinto Act), for a full list of cases in the "Mostacciolo" group, see:

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2009\)1072&Language=lanEnglish&Ver=prel0005&Site=.](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2009)1072&Language=lanEnglish&Ver=prel0005&Site=)

⁶⁹ Law No. 89/2001, referred to as the Pinto Act.

the Court when applying the Pinto Act;⁷⁰ case law subsequent to these decisions reveals that the Court of Cassation has considered the case law of the Court concerning the amount of compensation to be awarded in cases brought under the Pinto Act.⁷¹ Furthermore, the Italian authorities have abolished all procedural fees related to proceedings under the Pinto Law.⁷² These developments are welcomed. However, the current situation needs to be assessed on the basis of information, to be provided by the Italian authorities, on the recent practice of the courts of appeal and up-to-date statistics on case law concerning the Pinto Act.

55. Furthermore, delay in payment of compensation is a pressing problem which must be urgently addressed by the Italian authorities. Since 2007, more than 500 applications concerning solely the delay in payment of compensation under the Pinto Act have been communicated to the Italian government. In its Interim Resolution CM/ResDH(2009)42, the Committee of Ministers urged the Italian authorities to amend the Pinto Act "with a view to setting up a financial system resolving the problems of delay in the payment of compensation awarded, to simplify the procedure and to extend the scope of the remedy to include injunctions to expedite proceedings'. The Pinto Act has subsequently been amended by a draft law submitted to the Italian Parliament in March 2009 with the aim of expediting such proceedings. Information on the effect of this amendment is still awaited.

2.2.3.2. Specific issue of concern: the expulsion of foreign nationals

56. Attention should be paid to recent Court judgments against Italy concerning possible and actual violations of Article 3 – as well as to actual violations of Article 34 – on account of the expulsion of foreign nationals where there is a real risk of the applicant being subjected to ill-treatment in the receiving country. The case of *Saadi v. Italy*⁷³ and nine similar cases⁷⁴ concern the risk that the applicants may be subjected to torture or inhuman or degrading treatment in Tunisia if expulsion orders against them were to be enforced. The Court found that, if expelled to Tunisia, there was a real risk the applicants would be subjected to treatment contrary to Article 3.

57. The case of *Ben Khemais v. Italy*⁷⁵ concerns the finding of a violation of Articles 3 and 34 following the applicant's expulsion to Tunisia. In this case, the Italian authorities carried out the expulsion despite an interim measure of the Court under Rule 39 of the Rules of Court indicating that the expulsion should be postponed until the case had been examined by the Court. Regrettably, following this judgment, the Italian authorities have, on three occasions, continued to expel applicants in breach of interim measures ordered by the Court.⁷⁶

58. In its Interim Resolution CM/ResDH(2010)83,⁷⁷ the Committee of Ministers recalled that Article 34 of the Convention entails an obligation to comply with interim measures indicated pursuant to Rule 39 of the Rules of Court and stressed the "fundamental importance" of compliance with such measures. Failure to comply with interim measures in this context presents a serious impediment to the applicant's right of individual petition and gravely undermines the effectiveness of the protection system established by the Convention. Recent domestic case-law on the matter in which reference was made to *Saadi* judgment, the absolute nature of Article 3, and the binding nature of interim measures, coupled with a circular sent round the judiciary by the Ministry of Justice on 27 May 2010, represent a positive step in the full compliance of the *Ben Khemais* judgment. Nonetheless, it is essential that the Italian authorities continue to take urgent measures to ensure that interim measures indicated by the Court are complied with in order to prevent future violations of this kind.

⁷⁰ See United Sections of the Court of Cassation decisions Nos. 1338, 1339, 1340 and 1341 of 27 November 2003.

⁷¹ See decisions Nos. 21857 of 11 November 2005, 19288 of 3 October 2005, 19029 of 29 September 2005, 18686 of 23 September 2005, 19205 of 30 September 2005, 8034 of 6 April 2006, 2247 of 2 February 2007 and 16086 of 8 July 2009.

⁷² Decree of the President of the Republic No. 115 of 30 May 2002, published in the *Official Journal* No. 139 of 15 June 2002. In addition, following decision No. 522 of the Constitutional Court of 6 December 2002, no fee is payable for obtaining the original or a copy of a decision needed to continue with the execution.

⁷³ *Saadi v. Italy*, Application No. 37201/06, judgment of 28 February 2008.

⁷⁴ For a list of cases in the Saadi group see "State of execution" in cases against Italy, available at: www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=ITA.

⁷⁵ *Ben Khemais v. Italy*, Application No. 246/07, judgment of 6 July 2009.

⁷⁶ On 1 May 2010, the Italian authorities expelled Mr Mannai in breach of an interim measure indicated on 19 February 2010. Moreover, the applicants in the cases of *Ali Toumi v. Italy*, Application No. 25719.09 and *Trabelsi v. Italy*, Application No. 50163/08 were expelled despite the existence of interim measures requiring the Italian authorities not to do so.

⁷⁷ Interim Resolution CM/ResDH(2010)83 on the execution of the judgments of the European Court of Human Rights, *Ben Khemais v. Italy*.

2.2.3.3. Additional comments

59. In Italy, problems also occur in relation to the practice known as "indirect expropriation".⁷⁸ In the case of *Belvedere Alberghiera SRL v. Italy*⁷⁹ and several similar cases⁸⁰, the Court found violations of Article 1 of Protocol No.1 on account of the resort to this practice. The Italian authorities have introduced legislative measures in an effort to deal with the problem⁸¹ and the competent courts have interpreted the new legislation in accordance with the Convention.⁸² While this progress was welcomed in its Interim Resolution CM/ResDH(2007)3, the Committee of Ministers is now awaiting information as to whether there is any reduction or suppression of the practice of indirect expropriation, as well as on the dissuasive effect of Law No. 296/2006, which makes it possible to debit the cost of compensation for illegal occupation of land from the budget of the responsible administration. With this in mind, the Committee of Ministers urged the Italian authorities to continue in their efforts to give direct effect to the Court's judgments ensuring implementation across the Italian judiciary and encouraged the Italian authorities to take all necessary measures to bring the practice of "indirect expropriation" to an end.

2.2.4. Moldova

60. The main issues related to Moldova may be summarised as follows:

- Non-enforcement of domestic judgments
- Unlawful pre-trial detention
- Ill-treatment by police
- Poor conditions of detention on remand and in prison

61. My visit to Moldova on 3 and 4 May 2010 involved discussions with several high-ranking officials.⁸³ The visit revealed that there is political will to solve the main issues of concern but there is still a long way to go; the parliament must take a greater role in ensuring that solutions are found. I invite the Minister of Justice, together with the Chairperson of the Moldovan parliamentary delegation, to come before the Committee on Legal Affairs and Human Rights and explain what has been done to increase parliamentary involvement in the execution process and what is foreseen for the future.

2.2.4.1. Non-enforcement of domestic judgments

62. The problem of non-enforcement of final judgments has been the principal problem in terms of numbers of applications pending before the Court. The group of the so-called social housing non-enforcement cases accounts for approximately 50% of all non-enforcement cases and concerns the failure of local governments to comply with final judgments awarding applicants housing rights or money in lieu of housing. In response to this situation, the Court delivered, on 6 April 2010, a pilot judgment in *Olaru and Others v. Moldova*.⁸⁴

63. It would appear that this particular problem will no longer persist since the social housing privileges were abolished immediately after the pilot judgment. It is expected that outstanding issues will also be solved through the introduction of a domestic remedy in case of non-enforcement of domestic judicial decisions. Although the Moldovan authorities appear to be committed to executing the pilot judgment⁸⁵ and the draft laws were under preparation, political difficulties in the country have recently resulted in the dissolution of Parliament. The adoption of laws process has consequently been ceased until the next parliament is elected on 28 November 2010, meaning the rapid adoption of this reform is delayed. Although these are

⁷⁸ "Indirect expropriation" is characterised by the following: the emergency occupation of land by local administrative authorities without any formal expropriation procedure; the lack of predictable rules covering the transfer of property and compensation; and the absence of adequate mechanisms to afford redress.

⁷⁹ *Belvedere v. Italy*, Application No. 31524/96, judgment of 30 August 2000.

⁸⁰ 84 cases against Italy concerning expropriation, for a full list of cases in the Belvedere group, see Appendix II to Interim Resolution CM/ResDH(2007)3.

⁸¹ A "Consolidated Text" on expropriation (Presidential Decree No. 327 of 8 June 2001) was adopted. Article 43 of the text authorises the public authority, where land is transformed without a deed of expropriation, to adopt a decree of acquisition requiring the authority to recognise a right to full compensation.

⁸² Council of State, Plenary Assembly, decision No. 2 of 2005.

⁸³ See the [Press Release](#) of 5 May 2010:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5531.

⁸⁴ Application No. 476/07, judgment of 6 April 2010.

⁸⁵ See the decision adopted by the Committee of Ministers at the 1086th meeting (June 2010):

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1086/15&Language=lan](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1086/15&Language=lan).

unforeseeable circumstances, it should still be noted that the first deadline set by the Court for this remedy has passed and the second is close.

2.2.4.2. *Unlawful pre-trial detention*

64. Another important group of cases concerns various violations of Article 5 of the Convention in relation to arrest and detention on remand. A number of legislative changes were made to the Code of Criminal procedure in order to fill in the gaps revealed by the judgments of the Court. The legislative amendments were supplemented by different measures taken by the Supreme Court of Justice and the General Prosecutor's Office. However, it would appear that the problem continues to lay with the mentalities of judges and prosecutors.

65. These issues were addressed at the Round Table organised by the Council of Europe's Department for the Execution of judgments of the European Court of Human Rights on 9 and 10 December 2009 in Warsaw.⁸⁶ The participant states were invited to submit to the Committee of Ministers an action plan on the implementation of the relevant judgments of the Court. Such an action plan is still awaited from the Moldovan authorities.

2.2.4.3. *Ill-treatment by police*

66. In a number of judgments, the Court found violations of Article 3 of the Convention on account of ill-treatment inflicted on applicants in police custody and lack of an effective investigation in this respect.⁸⁷

67. Since the events described in the judgments, the Moldovan authorities have adopted a number of measures, notably in response to the concerns raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Amendments were introduced to the Criminal Code and in 2006 the Code of Police Ethics were approved by the Government. However, it seems that most of the recommendations made by the CPT have not been implemented.⁸⁸ No clear strategy has been elaborated by the authorities for the implementation of these cases; this matter needs urgent attention.

68. Moreover, the effectiveness of measures adopted with a view to strengthening police officers' responsibility for ill-treatment remains problematic: there still appears to exist impunity for ill-treatment by the law-enforcement agencies.⁸⁹ An action plan is awaited for the implementation of this judgment.

2.2.4.4. *Poor conditions of detention*

69. Another group of cases concerns poor conditions of the applicants' pre-trial detention due in particular to the absence of outdoor exercise, the inadequacy of food, presence of parasitic insects, lack of access to daylight or electricity, the exposure to cigarette smoke, etc.⁹⁰ and lack of an effective remedy in this respect.⁹¹ A number of cases also raise an important issue of access of detained persons to adequate medical care.⁹²

70. Most of the legal framework governing the prison system, including conditions of detention, has been changed by the new Enforcement Code, which entered into force on 1 July 2005, and other new laws. However, much remains to be done. The CPT notably encouraged the Moldovan authorities to pursue their efforts in this direction⁹³.

71. As regards the existence of 'effective remedies', a Complaints Committee has been set up as an independent body with the mandate to deal with prisoners' complaints. In addition, the Supreme Court of Justice decision of 19 June 2000 has specified that where domestic law does not provide a right to an

⁸⁶ See [Conclusions](#) of the Round Table on "Detention on remand: General Measures to comply with the European Court's judgments" held in Warsaw on 9-10 December 2009. Document prepared by the Department for the execution of judgments of the Court (Directorate General of Human Rights and Legal Affairs).

⁸⁷ *Corsacov v. Moldova*, Application No. 18944/02, judgment of 4 July 2007.

⁸⁸ See Report to the Moldovan Government on the visit to Moldova carried out by the CPT from 27 to 31 July 2009, CPT/Inf (2009) 37. www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf.

⁸⁹ *Paduret v. Moldova*, Application No. 33134/03, judgment of 5 January 2010, paragraph 77.

⁹⁰ *Ciorap v. Moldova*, Application No. 12066/02, judgment of 19 June 2007.

⁹¹ See for example *Ostrovar v. Moldova*, Application No. 35207/03, judgment of 13 September 2005.

⁹² See *Holomiov v. Moldova*, Application No. 30649/05, judgment of 7 November 2006, and *Istratii and Others v. Moldova*, Application No. 8721/05, judgment of 27 March 2007.

⁹³ See Report to the Moldovan Government on the visit to Moldova carried out by the CPT from 14 to 24 September 2007, CPT/Inf (2008) 39. www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf (Available in French only).

effective remedy against any right safeguarded in the Convention, the competent court shall directly apply the provisions of the Convention, whether in civil or criminal proceedings. However, no concrete examples of domestic case law or of the functioning of the Complaints Committee have been brought to the attention of the rapporteur.

2.2.4.5. *Special areas of concern*

72. The *Cebotari* case gives rise to specific concerns. In this case, the Court found a violation of Article 18 together with Article 5 on account of the use of criminal proceedings with a view to dissuading the applicant from continuing proceedings before the Court. The Court also found that the applicant was prevented by the Moldovan authorities from signing the application file to be sent to the Court.

73. This case has to be considered together with the case *Oferta Plus v. Moldova*.⁹⁴ In this latter case, the Court found violations of the applicant company's right to a fair hearing and to the peaceful enjoyment of its possessions due to the three-year failure to enforce a final judgment given in its favour in 1999, followed by the unjustified extension of the time limit for lodging an appeal by the opposite party and the wrongful quashing of the final judgment in violation of the principle of legal certainty. It also found a violation of the applicant company's right to individual petition. Moreover, while the just satisfaction issue was pending before the European Court of Human Rights, the Supreme Court of Justice, whilst revoking the annulment of 1999 judgment, ordered – in 2007 – that this judgment was never to be enforced. In its Article 41 (just satisfaction) judgment of 12 February 2008, the European Court of Human Rights expressed serious concern that despite its abundant case law and regardless of its findings in its principal judgment, the Supreme Court of Justice had adopted a solution which once again failed to respect the finality of the judgment of 1999.

74. In another case, the Court found a violation of the applicant's right of individual petition on account of the Prosecutor's General threats against his lawyer for complaining to international organisations.⁹⁵ This situation is clearly unacceptable and requires a strong reaction from the authorities. Information in this respect is awaited.

2.2.5. *Poland*

75. In Poland, difficulties with respect to implementation of Court judgments arise most prominently in two areas:

- Excessive length of proceedings and lack of an effective remedy;
- Excessive length of detention on remand.

2.2.5.1. *Excessive length of proceedings and lack of an effective remedy*

76. In *Podbielski v. Poland*,⁹⁶ *Kudla v. Poland*,⁹⁷ *Fuchs v. Poland*⁹⁸ and several similar cases,⁹⁹ the Court found violations of Article 6 § 1, due to the excessive length of proceedings before civil, criminal and/or administrative courts. Many of these cases also concern the lack of an effective domestic remedy as required by Article 13 of the Convention. The cases in the *Fuchs* group also concern excessive length of procedures before administrative bodies.

⁹⁴ *Oferta Plus S.R.L.* (Application No. 14385/04), judgments of 19 December 2006, and of 12 February 2008.

⁹⁵ *Colibaba v. Moldova*, Application No. 29089/06, judgment of 23 October 2007; see also *Boicenco v. Moldova*, Application No. 41088/05, judgments of 11 July 2006 and of 10 June 2008.

⁹⁶ *Podbielski v. Poland*, Application No. 27916/95, judgment of 30 October 1995. For a full list of cases in the Podbielski group see "Appendix for the list of cases in the Podbielski group", available at:

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2009\)1072&Language=lanEnglish&Ver=prel0007&Site=.](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2009)1072&Language=lanEnglish&Ver=prel0007&Site=.)

⁹⁷ *Kudla v. Poland*, Application No. 30210/96, judgment of 26 October 2000. For a full list of cases in the Kudla group see "State on execution" in cases against Poland, available at:

www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=POL.

⁹⁸ *Fuchs v. Poland*, Application No. 33870/96, judgment of 11 May 2003. See:

www.coe.int/t/dghl/monitoring/execution/reports/default_EN.asp?dv=1&StateCode=POL.

⁹⁹ 207 judgments concerning excessive length of proceedings before civil courts, 45 judgments concerning excessive length of proceedings before criminal courts and 52 cases concerning excessive length of proceedings before administrative authorities and courts.

77. In order to tackle the significant problems in this area, the Polish authorities have adopted a number of reforms aimed at reducing the length of judicial proceedings in civil, criminal and administrative courts.¹⁰⁰ Most importantly, these reforms include legislative amendments, the introduction of administrative and structural measures to increase the capacity and efficiency of the judiciary, an increase in the budgetary allocation for expenditure of the common courts, improvements in court premises and the provision of computerised support to courts.¹⁰¹

78. The most up-to-date statistics on excessive length of proceedings provided by the Polish authorities suggest that considerable problems still exist. Statistics provided relating to the whole year 2008 point to an increase in new civil cases lodged and in the courts' backlog. Similarly, statistics relating to criminal cases reveal that the average length of criminal proceedings increased in 2008. Given that the latest statistics relate to 2008, it is imperative that the Polish authorities provide up-to-date statistics on this issue. Moreover, further reflection and measures are needed with respect to the reform aimed at accelerating procedures before administrative bodies.

79. Following the judgment in *Kudla v. Poland*, in 2004 the Polish Parliament adopted a law on complaints against excessive length of judicial proceedings allowing litigants to seek acceleration of proceedings and claim compensation for damages caused by their excessive length. In 2005, the Court declared two Polish cases¹⁰² inadmissible due to the fact the applicants had not used the 2004 law which would have provided them with an effective remedy. That said, later judgments of the Court uncovered considerable difficulties in the application of the 2004 law.¹⁰³ Amendments to the 2004 law entered into force in May 2009 and aim at introducing an effective remedy against excessive length of investigation and provide for the obligatory adjudication by courts of a fixed amount of compensation if the complaint was justified.

80. These developments signal progress in this area and are to be welcomed. In order to come to an assessment of their effectiveness, the Polish authorities ought to provide up-to-date statistics on the implementation of these measures.

2.2.5.2. Excessive length of detention on remand

81. The case of *Trzaska v. Poland*¹⁰⁴ and several similar cases¹⁰⁵ concern the excessive length of the applicants' detention on remand as the reasons given by the domestic courts to support the detention could not be said to be "relevant and sufficient" as required by the case law of the Court.

82. Legislative measures restricting the conditions in which detention on remand may be ordered were introduced with the entry into force of the new Code of Criminal Procedure in September 1998. Following judgments of the Polish Constitutional Court in July 2006, subsequent amendments have been introduced which further limit the grounds on which prolonged detention on remand can be ordered.¹⁰⁶

83. Furthermore, the Polish authorities have taken steps to improve the awareness amongst the judiciary of the Court's judgments in this area. The Ministry of Justice has contacted all presidents of courts of appeal providing an analysis of the Court's case law concerning the requirements for the reasons behind placing an individual in detention on remand.

84. Statistics provided by the Polish authorities are encouraging in that the data for 2008 reveal a downward trend with respect to long detentions. Despite this, the number of judgments of the Court finding violations of Article 5 § 3 has increased. Indeed, in the judgment of *Kauczor v. Poland*¹⁰⁷ in February 2009, the Court stated that, although efforts made by the Polish authorities were to be welcomed, "numerous cases" have demonstrated that excessive length of detention on remand uncovers a continuing structural

¹⁰⁰ With respect to administrative proceedings see *Fuchs v. Poland*. The Act on the Organisation of Administrative Court and the Act on Proceedings before Administrative Courts entered into force on 1 January 2004. These laws serve to accelerate procedures before administrative courts.

¹⁰¹ See Appendix I to Interim Resolution ResDH(2007)28.

¹⁰² *Charzynski v. Poland*, Application No. 15212/03, decision of 1 March 2005; *Michalak v. Poland*, Application No. 24549/03, decision of 1 March 2005.

¹⁰³ See *Czajka v. Poland*, Application No. 15067/02, judgment of 13 February 2007.

¹⁰⁴ *Trzaska v. Poland*, Application No. 25792/94, judgment of 11 July 2000.

¹⁰⁵ 126 cases. See "Appendix for the list of cases in the Trzaska and Kauczor group", available at: [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2008\)1028&Sector=secCM&Language=lanEnglish&Ver=prel0004&](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2008)1028&Sector=secCM&Language=lanEnglish&Ver=prel0004&).

¹⁰⁶ See Interim Resolution CM/ResDH(2007)75.

¹⁰⁷ *Kauczor v. Poland*, Application No. 45219/06, judgment of 3 February 2009.

problem in Poland.¹⁰⁸ Moreover, further reflection and measures are needed with respect to the reform aimed at accelerating procedures before administrative bodies.

85. Although progress has been made, some issues still need to be tackled. With this in mind, the Polish authorities should continue their efforts in introducing further long-term measures to deal with this issue.

2.2.5.3. Outstanding issues/emerging issues

86. The groups of cases *Kaprykowski and Orchowski/Norbert Sikorski* concern improper conditions of detention, particularly due to overcrowding, and lack of adequate medical treatment of detainees requiring special care in view of their state of health. The Court underlined the structural nature of the problem: approximately 160 cases concerning similar facts were pending before it at the time of the judgments *Orchowski* and *Norbert Sikorski* (22 October 2009). The Court called upon the Polish authorities to take the necessary legislative and administrative measures to secure appropriate conditions of detention. It acknowledged that solving the problem of overcrowding could call for the mobilisation of significant financial resources and concluded that if the state is unable to ensure that prison conditions comply with the requirements of Article 3, it must abandon its strict penal policy or put in place a system of alternative means of punishment. The Court also encouraged Poland to develop an efficient system of complaints to the authorities supervising detention facilities.

87. The authorities have undertaken legislative reforms. In particular, an amendment to the Code of Execution of Criminal Sentences is under legislative process, the purpose of which is to implement the judgment of the Constitutional Court which had found unconstitutional the provision which made it possible to place detainees in conditions in which the living space *per capita* is less than 3 m². In parallel, the Central Prison Board is working on the rationalisation of the health-care system for persons deprived of their liberty. Nevertheless, tangible results of the reforms are still to be submitted to the Committee of Ministers which has closely followed this issue and has strongly encouraged the authorities to continue their efforts to remedy the structural problem revealed by these judgments.

88. In the case *Bączkowski and Others*,¹⁰⁹ the Court found a violation of the right to freedom of assembly due to refusals “not prescribed by law” to authorise demonstrations against discrimination of minorities. In 2005, in an interview in a national newspaper, the Mayor of Warsaw had expressed strong personal opinions about freedom of assembly and “propaganda about homosexuality” and had stated that he would refuse permission to hold the demonstrations. The Court also noted the lack of effective remedy against these refusals and discriminatory treatment.

89. This sensitive judgment is still to be executed. In particular, no effective remedy against local authorities’ refusal to authorise demonstrations has been introduced so far.

90. The group of cases *Matyjek*¹¹⁰ concerns the unfairness of “lustration” proceedings: the applicants – members of parliament, advocates and judges – had been found guilty of having been collaborators of the communist secret services and, consequently, having lied in their lustration statements. The Court criticised in particular restricted access to the case-files classified confidential and found that the applicants did not have an effective remedy to challenge the legal framework setting out the features of lustration proceedings.

91. To date, the Polish authorities have not taken any action to address these violations. In particular, no information on whether restrictions on access to the case-file still apply to persons in the applicants’ situation has been provided so far. With similar cases currently pending before the Court, these cases become ever more urgent.

2.2.6. Romania

92. In Romania, problems with respect to implementation of Court judgments occur in four main areas :

- Failure to restore or compensate for nationalised property;
- Excessive length of judicial proceedings and lack of effective remedy;

¹⁰⁸ *Ibid.*, paragraph 60.

¹⁰⁹ *Bączkowski and Others*, Application No. 1543/06, judgment of 3 May 2007.

¹¹⁰ *Matyjek v. Poland*, Application No. 38184/03, judgment of 24 April 2007; *Bobek v. Poland*, Application No. 68761/0, judgment of 17 July 2007, *Jałowiecki v. Poland*, Application No. 34030/07 judgment of 17 February 2009; *Luboch v. Poland*, Application No. 37469/05, judgment of 15 January 2008, *Rasmussen v. Poland*, Application No. 38886/05, judgment of 28 April 2009; *Wrona v. Poland*, Application No. 23119/05, judgment of 5 January 2010; *Górny v. Poland*, Application No. 50399/07 judgment of 8 June 2010.

- Non-enforcement of domestic judicial decisions;
- Poor conditions of detention.

93. During my visit to Romania in May 2010, I urged Parliament to continue its efforts to improve the monitoring of the implementation of Court judgments and was assured this would be done.¹¹¹ In this regard, it should be noted that, in 2007, the Romanian Chamber of Deputies set up a sub-committee of its Legal Affairs Committee specifically mandated to monitor the implementation of Court judgments. The creation of the sub-committee signifies real progress in this area, making Romania one of only a handful of states parties to have created such a body. I look forward to receiving information on the work of the new sub-committee, especially as it is chaired by a member of our Assembly's Committee on Legal Affairs and Human Rights.

2.2.6.1. Failure to restore or compensate for nationalised property

94. The cases of *Străin and Others v. Romania*,¹¹² *Viasu v. Romania*¹¹³ and several similar cases¹¹⁴ concern the failure to restore or compensate for nationalised property (violations of Article 1 of Protocol No. 1). The questions raised in these cases reveal a systemic problem in Romania; indeed, given the volume of applications in this area, the Court has applied the pilot judgment procedure to two cases raising the same issues.¹¹⁵

95. In *Viasu v. Romania*, the Court observed that this structural problem stems from deficient legislation and administrative practice in Romania. Furthermore, the Court stressed that the Romanian authorities must assure, by appropriate legal and administrative measures, the effective and rapid implementation of the right to restitution or compensation according to the principles provided for by Article 1 of Protocol No. 1 and the case law of the Court.

96. The Romanian authorities have adopted some positive measures in this area, particularly with regard to improvement of the compensation mechanism. Government Ordinance No. 81/2007 aims at improving and accelerating the processing of restitution remedies in such cases and provides that claimants shall benefit from compensation titles either by converting them into shares issued by the Property Fund or as monetary compensation. The Romanian authorities are now taking steps to evaluate the Property Fund and list it on the stock exchange.

97. In February 2010, at the request of the Committee of Ministers, the Romanian authorities submitted an action plan to the Committee of Ministers on measures taken or envisaged to further improve the current restitution mechanism. Although this is to be welcomed, the Romanian authorities should submit a comprehensive action report on the measures taken to date, and in particular statistical data on current progress of the compensation process, in order to fully assess the situation and the relevance of the measures proposed. I put specific emphasis on this point during my visit to Romania, especially with respect to the need to assess the specific value of property claims.

2.2.6.2. Excessive length of judicial proceedings and lack of an effective remedy

98. The cases of *Nicolau v. Romania*,¹¹⁶ *Stoianova and Nedelcu v. Romania*¹¹⁷ and several similar cases¹¹⁸ concern the excessive length of judicial proceedings before civil and criminal courts; some of these cases also concern the lack of an effective domestic remedy.

99. With regard to criminal proceedings, according to the statistics collected by the Superior Council of Magistracy, in 2007 the vast majority of criminal proceedings were concluded in less than six months; only

¹¹¹ See press release of 7 May 2010, "Romania should do more to bring its laws and practices into line with the European Convention on Human Rights":

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5533.

¹¹² *Străin and Others v. Romania*, Application No. 57001/00, judgment of 30 November 2005.

¹¹³ *Viasu v. Romania*, Application No. 75951/01, judgment of 9 March 2009.

¹¹⁴ 121 cases against Romania concerning the failure to restore or compensate for nationalised property sold by the state to third parties. For a full list of cases, see "Appendix for the list of cases in the Străin group", available at: www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=ROM.

¹¹⁵ *Solon v. Romania*, Application No. 33800/06; *Atanasiu and Poenaru v. Romania*, Application No. 30767/05.

¹¹⁶ *Nicolau v. Romania*, Application No. 1295/02, judgment of 3 July 2006.

¹¹⁷ *Stoianova and Nedelcu v. Romania*, Application No. 77571/01, judgment of 4 November 2005.

¹¹⁸ 34 cases concerning the length of civil proceedings, 10 cases concerning the length of criminal proceedings. For a full list of cases in Nicolau and Stoianova groups, see "State of execution" in cases against Romania, available at: www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=ROM

3% were concluded in more than one year. Furthermore, since 2005, the inspectors of the Superior Council of Magistracy have monitored courts' compliance with the recommended time limits for criminal trials and, where necessary, disciplinary sanctions have been applied. Finally, the Ministry of Justice has adopted a new Code of Criminal Procedure containing a series of measures which should contribute to the acceleration of proceedings. This is expected to enter into force in 2011.

100. With respect to civil proceedings, information provided by the Romanian authorities suggests that, under proposed legislative amendments, it will no longer be possible to adjourn hearings because of failure to carry out the formal requirement of notifying the parties, if it is clear that the parties were already fully aware of the dates in question due to their presence at earlier hearings. Information on the impact of measures already taken in addition to information on the progress concerning proposed measures to tackle excessive length of proceedings is awaited.

101. Information provided by the Romanian authorities in December 2008 suggests that, in the framework of the new draft Code of Civil Procedure, a procedure enabling parties to proceedings to complain of excessive length will be created. Furthermore, in April 2006, in co-operation with the European Commission for Democracy through Law (Venice Commission), the Romanian authorities organised a conference on possible remedies in respect of excessive length of proceedings. Taking into account the conclusions of a study published by the Venice Commission, the Romanian authorities intend to examine the adoption of possible solutions to the problem. Information on progress in this area is still awaited.

2.2.6.3. *Non-enforcement of domestic judicial decisions*

102. The non-enforcement of final court decisions imposing obligations on public authorities¹¹⁹ remains an area of concern. At present, there are more than 100 cases under the supervision of the Committee of Ministers concerning this issue.

103. Although the Romanian authorities have provided information on the existence of legislation aimed at pushing public authorities to comply with domestic judicial decisions,¹²⁰ the authorities have yet to provide information on the practical effects of such measures. Furthermore, information is still awaited on the assessment of the Romanian authorities as to whether the violations found by the Court in these cases reveal a structural problem and on any current or future measures envisaged aimed at ensuring the timely enforcement of final domestic judicial decisions.

2.2.6.4. *Poor conditions of detention*

104. The cases of *Bragadireanu v. Romania*¹²¹ and *Petrea v. Romania*¹²² concern the inhuman and degrading treatment under which the applicants were detained; this finding was due, in particular, to prison overcrowding and a lack of facilities necessary to manage the medical condition of one of the applicants (violations of Article 3). In the *Bragadireanu* case, the Court referred to the conclusions of the CPT stating that a combination of overcrowding, a poor activity regime and inadequate access to washing facilities "can prove extremely detrimental to prisoners".¹²³ With this in mind, the Romanian authorities are asked to provide information on measures taken or envisaged to avoid future violations resulting from poor conditions of detention.

2.2.6.5. *Area of specific concern: Rotaru v. Romania*

105. The case of *Rotaru v. Romania*¹²⁴ concerns a breach of the applicant's right to respect for his private life due to the lack of sufficient legal safeguards against abuse of the way in which the Romanian Intelligence Service collects, keeps and uses information. The case also concerns a violation of the applicant's right to an effective remedy.

¹¹⁹ See *Sacaleanu v. Romania*, Application No. 73970/01, judgment of 6 December 2005; *Strungariu v. Romania*, Application No. 23878/02, judgment of 29 December 2005; *Popescu Sabin v. Romania*, Application No. 48102/99, judgment of 2 June 2004. For a full list of cases in these groups, see "State of execution" in cases against Romania, available at: www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=ROM.

¹²⁰ See, for example, Article 84 of Law No. 168/1999 on work-related disputes which provides that failure to execute a final decision ordering the reinstatement of an employee constitutes an offence punishable by imprisonment or a fine.

¹²¹ *Bragadireanu v. Romania*, Application No. 22088/04, judgment of 6 March 2008.

¹²² *Petrea v. Romania*, Application No. 4792/03, judgment of 1 December 2008.

¹²³ *Bragadireanu v. Romania*, paragraph 74.

¹²⁴ *Rotaru v. Romania*, Application No. 28341/95, judgment of 4 May 2000.

106. In its Interim Resolution ResDH(2005)57, the Committee of Ministers did note some progress in this area, but stated that several shortcomings identified by the Court remained to be remedied, in particular concerning the procedure to be followed in order to have access to the Romanian Intelligence Service archives, the absence of regulations concerning the length of time information could be stored and the inability to contest the holding of information. The Romanian authorities were asked to rapidly adopt the legislative reforms necessary to remedy the shortcomings identified by the Court.

107. Although the information provided on legislative reform is to be welcomed, some 10 years have now passed since the judgment of the Court. With this in mind, it is essential that the Romanian authorities put this legislative reform into effect without further ado.

2.2.7. Russian Federation

108. Of the 126 200 pending cases before the Court, 35 400 relate to the Russian Federation (28.1%).¹²⁵ Of the 737 cases concerning the Russian Federation pending before the Committee of Ministers, 92% are clone cases. Most of these cases relate to the following systemic problems:

- Non-enforcement of domestic judicial decisions;
- Violation of the principle of legal certainty on account of the quashing of final judicial decisions through the "supervisory review procedure";
- Unacceptable conditions of detention on remand, in particular in pre-trial detention centres;
- Excessive length of and lack of relevant and sufficient reasons for detention on remand;
- Torture and ill-treatment in police custody and lack of an effective domestic investigation in this respect.

109. The actions of the security forces in the Chechen Republic also remains one of the Council of Europe's main problems, as has been explained by our colleague, Mr Dick Marty, in his report on legal remedies for human rights violations in the North Caucasus.¹²⁶ In its Recommendation of 22 June 2010, the Assembly requested the Committee of Ministers, amongst others, to pay utmost attention to the development of the human rights situation in the North Caucasus.¹²⁷

110. Most of the problems in the Russian Federation (with the important exception of abuses by the security forces in the Chechen Republic – see below) relate principally to Court findings in 2002 and 2003.¹²⁸ This unsatisfactory situation is illustrated by the non-enforcement of domestic judicial decisions. In its first judgment delivered in *Burdov v. Russia*¹²⁹ in 2002, the Court found a violation of the Convention on account of non-enforcement of a domestic judicial decision granting social benefits to a Chernobyl victim. In January 2009, the Court, faced with a constantly increasing flow of similar applications, had to react to this situation by delivering a pilot judgment in the case of the same Mr Burdov, seven years after the first judgment.

111. That said, it must be recognised that a great number of reforms have been adopted or are under way; but, in reality, they do not yet appear to have had the desired effect, as is demonstrated by the number of applications pending before the Court.

2.2.7.1. Non-enforcement of domestic judicial decisions

112. Non-enforcement or belated enforcement of domestic judicial decisions delivered against the state and public entities had been one of the most important systemic problems identified in Strasbourg (over 40% of the admissible applications). The Russian authorities have acknowledged this problem and are taking steps

¹²⁵ As at 31 May 2010 – see [European Court of Human Rights – Reports](#).

¹²⁶ Doc. 12276, paragraph 49. The rapporteur recalled that already in 2005 the Assembly, in its Resolution 1479 (2006), had regretted a standstill in the Committee of Ministers' monitoring of the human rights situation in the Chechen Republic; *ibid.*, paragraph 48. See also Assembly Resolution 1738 (2010) on this issue, in particular paragraph 4.

¹²⁷ Recommendation 1922 (2010), paragraph 2.1.

¹²⁸ The first judgments of the Court concerning the Russian Federation were: *Burdov v. Russia*, Application No. 59498/00, judgment of 7 May 2002 related to the non-enforcement of domestic judicial decisions; *Kalashnikov v. Russia*, Application No. 47095/99, judgment of 15 July 2002 related to poor conditions of pre-trial detention and its excessive length; *Ryabykh v. Russia*, Application No. 52854/99, judgment of 24 July 2003 related to the violation of the principle of legal certainty on account of the quashing of final judicial decisions through the supervisory-review procedure.

¹²⁹ *Burdov v. Russia*, Application No. 59498/00, judgment of 7 May 2002.

to find appropriate solutions.¹³⁰ However, as acknowledged in the Committee of Ministers' interim resolution,¹³¹ the problem is far from resolved.

113. In response to this situation, and as explained above, the Court adopted a pilot judgment in the case *Burdov v. Russia (No. 2)*.¹³² The Russian authorities were given six months to introduce a domestic remedy in case of non-enforcement of domestic judicial decisions and a year in which to settle all similar applications already pending before the Court.

114. The remedy was introduced on 4 May 2010. Although this reform was adopted outside of the deadline set by the Court,¹³³ it constitutes a positive step.¹³⁴ In these circumstances, one may only hope that other problems underlying non-enforcement of domestic judicial decisions will at long last be solved by the Russian authorities with the same success.¹³⁵

2.2.7.2. *Violation of the principle of legal certainty on account of the quashing of final judgments through supervisory review procedure*

115. The Supervisory Review Procedure (*nadzor*) under the Code of Civil Procedure is an endemic structural problem that has been declared a violation of Article 6 § 1 by the Court in *Ryabykh v. Russia*¹³⁶ and has given rise to huge numbers of clone cases. The *Ryabykh* case was decided in 2003 and, seven years later, has still not been executed.¹³⁷

116. Reform of this procedure is absolutely essential for two reasons: to ensure the legitimacy and credibility of the entire Russian judicial system; and to reduce the flow of applications to the Court by providing a remedy that has to be exhausted by Russian citizens, before a complaint can be lodged at the Court (currently Russian citizens may lodge an application after the second level of jurisdiction). In this context, it can be noted that the supervisory review as provided by the Commercial Code of Procedure was recognised by the Court as Convention compliant.¹³⁸ This possibly explains an extremely small number of applications in respect of commercial courts.

117. As for the quashing of final judgments through the *nadzor* procedure, the Russian authorities seem to be aware of the importance of this problem. Since the *Ryabykh* judgment they have already implemented two reforms with a view to bringing this procedure into line with the Convention requirements. These reforms were judged by the Court as insufficient to solve the problem in *Martynets v. Russia*. A third reform – which aims to introduce appeal courts in the system of Russian courts of ordinary jurisdiction and thus to limit recourse to supervisory review – is currently pending before parliament. Though results of this reform will not be seen in the short-term – 2012 is the expected date – given what is at stake both for Russian citizens and the Convention mechanism, I must call upon the Russian authorities to make this a top political priority and take the appropriate, comprehensive measures so as ensure that this reform will eventually bring this procedure into line with the Convention requirements.

2.2.7.3. *Poor conditions of pre-trial detention and its excessive length*

118. *Kalashnikov v. Russia*¹³⁹ revealed a systemic problem in remand centres relating to a severe lack of space and a combination of other features (including lack of private toilet facilities, ventilation problems, lack of access to natural light and basic sanitation). Again, eight years have passed since this damning judgment and there has been no meaningful progress.¹⁴⁰

¹³⁰ See the Memorandum prepared by the Department for the Execution of the European Court's Judgments, 'Non-enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court's judgments', CM/Inf/DH(2006)19 rev 3, 4 June 2007.

¹³¹ Interim Resolution CM/ResDH(2009)43, adopted by the Committee of Ministers on 19 March 2009 at the 1051st meeting of the Ministers' Deputies.

¹³² Application No. 33509/04, judgment of 15 January 2009.

¹³³ The remedy was supposed to be introduced by 4 November 2009.

¹³⁴ See Statement made by the Secretary General on 7 May 2010 and the Ministers' Deputies' decision adopted in the *Burdov (No. 2)* case at 1086th Human Rights meeting. However, at the time of adoption of the present report no decision had yet been taken by the Court as to the effectiveness of this remedy.

¹³⁵ For instance, see the problematic areas identified in the aforementioned Committee of Ministers' Interim Resolution.

¹³⁶ Application No. 52854/99, judgment of 24 July 2003.

¹³⁷ *Martynets v. Russia*, Application No. 29612/09, decision of 5 November 2009.

¹³⁸ See admissibility decisions *Kovalena v. Russia* (Application No. 6025/09) of 25 June 2009 and *OOO Link Oil SPB* (Application No. 42600/05) of 25 June 2009.

¹³⁹ Application No. 47095/99, judgment of 15 July 2002.

¹⁴⁰ Details of progress can be found in Interim Resolution CM/ResDH(2010)35 and appendices on *Kalashnikov v. Russia*, adopted 1078th Meeting (DH), 2-4 March 2010.

119. The statistics provided by the Russian authorities on the material conditions of detention resulting from renovation and building new centres are misleading. The average space per detainee rose to 4.85 m², but this statistic, by definition, admits that there are massive amounts of detainees living in conditions that are deemed unacceptable by the CPT.¹⁴¹ By 2008, the number of detainees on remand living in "adequate" conditions was only 54% (10% lower than the Russian authorities' prediction) and budget cuts in 2009 to the implementation of the Federal Programme for reforming the penitentiary systems has stagnated progress.

120. In any event, merely building more remand centres does not solve the root problem: the problem lies in the unnecessary sentencing of detention on remand which results in overcrowding. This systemic issue is caused by, *inter alia*, non-compliance with time limits set by domestic law, failure to address specific circumstances of cases, failure to use alternative preventative measures and the failure to respect judicial review to challenge the lawfulness of detention on remand. In spite of progress claimed by the Russian authorities, there was a minimal decrease in detainees between January 2007 (144 550) and January 2010 (124 611) and, in 2009, 187 793 applications for detention on remand were granted out of 208 416. Conditions cannot improve with such overcrowding and there appears to be no end in sight to this situation.

121. The Supreme Court has identified several key problem areas and has proposed solutions. For example, disciplinary proceedings against judges.¹⁴² However, the responsibility for high rates of sentencing of detention on remand is not solely the responsibility of judges. It is their duty to make decisions based on the evidence before them and it is apparent that very often the formal approach of an investigation is inappropriate, in that alternative preventative measures are not taken into account.¹⁴³

2.2.7.4. *Ill-treatment in police custody and lack of an effective investigation in this respect*

122. The *Mikheyev* case, decided by the Court in January 2006, illustrates the problem. Mr Mikheyev was falsely accused of murder (his alleged victim later turned out to be alive and well) and tortured in police custody in order to extract a confession to the alleged crime. The abuse included administering electric shocks to Mikheyev's earlobes. After surviving the torture, Mikheyev jumped out of a second-floor window to escape his tormentors; the fall resulted in a spinal cord injury that rendered him a paraplegic. Since then, the Court has delivered 16 other judgments in which it found violations of Article 3 of the Convention on account of ill-treatment inflicted on applicants in police custody and lack of an effective investigation in this respect.

123. The Russian authorities are currently engaged in a comprehensive reform of the Ministry of the Internal Affairs, in part – I assume – as a consequence of the Court judgments. In this context, a new draft law "On Police" has been prepared.¹⁴⁴ Discussions are currently under way with a view to introducing a single register of persons detained by the police.

124. But it remains unclear to what extent this reform will constitute a response to the findings of the Court. It would appear at first sight that the reform does not seem to address important issues, such as safeguards in police custody (notification of custody to a third party, right to a lawyer, right to a medical doctor). Also, the CPT reports, which might provide useful guidance for the Russian authorities on all these issues, remain confidential.

125. As regards individual measures, with the exception of the *Mikheyev* case, in which two police officers who tortured the applicant were convicted to four years' imprisonment, no information is available on whether in other similar cases, the persons responsible were brought to justice. The *Mikheyev* case also demonstrates the lack, in Russian criminal legislation, of appropriate tools to combat impunity. For instance, no such criminal offence as torture seems to exist. Also, four years' imprisonment seems to be quite a lenient sentence for a crime which resulted in a person's permanent invalidity. Finally, it would appear that the only conclusion drawn so far by the Russian authorities from the *Mikheyev* case is that, on 15 December 2008, the prosecutor of the Nijni Novgorod Region lodged a cross claim against the police officers claiming from them the sum of money the Russian Federation paid to Mr Mikheyev, subsequent to a finding of a violation by the Court! This claim was granted by the domestic courts.¹⁴⁵

¹⁴¹ *Ibid.*

¹⁴² For proposals, see CM/Inf/DH(2007)4, 12 February 2007.

¹⁴³ 27 September 2007 and 29 October 2009.

¹⁴⁴ The text of the draft law was submitted for public discussions on <http://zakonoproekt2010.ru/>.

¹⁴⁵ <http://genproc.gov.ru/news/news-8964/>.

2.2.7.5. *Actions of the security forces in the Chechen Republic*

126. Since 2007, the Court has found violations of Articles 2, 3, 5, 6 and 8 and Article 1 of Protocol No. 1 in the context of actions of the Russian security forces in the Chechen Republic between 1999 and 2003.¹⁴⁶ The report by the Committee of Legal Affairs and Human Rights rapporteur, Mr Dick Marty, stated that the Chechen situation – which involves enforced disappearances (almost 60%), torture, unacknowledged detention, unlawful killings and ill-treatment, and destruction of property – “constitutes today the most serious and most delicate situation from a standpoint of safeguarding human rights and upholding rule of law, in the entire geographical area covered by the Council of Europe”.¹⁴⁷ These judgments have had little impact on the Russian Federation as complaints continue to flood in. Almost a 100 were lodged in 2009 concerning the North Caucasus (mainly the Chechen Republic). This situation is simply abhorrent!

127. There have been developments, so I was told when I was in Moscow in February 2010: there exists a regulatory framework for domestic investigations, including a Special Investigative Unit set up in April 2009 to investigate particularly serious crimes that have given rise to applications in Strasbourg.¹⁴⁸ The Prosecutor has also taken on a greater “supervisory role” by putting emphasis on the integration of Convention law standards in Russian domestic law¹⁴⁹, and the process appears to be more victim-oriented in terms of access to the procedure.¹⁵⁰ However, the impact of these measures on the pending investigations remains unclear to me; only one case has been so far elucidated. It pains me greatly that the Russian authorities have not dealt with to quote again from Mr Marty’s report: “... more than 150 judgments finding extremely serious violations of the fundamental rights in the same region, without any genuine action being taken on the root causes of this situation”.¹⁵¹

2.2.8. *Turkey*

128. Turkey has around 1 232 cases pending before the Committee of Ministers, representing 15% of the Committee’s case load.¹⁵² These cases comprise many issues,¹⁵³ the most long-standing ones being:

- The failure to re-open proceedings;
- Repeated imprisonment for conscientious objection;
- Freedom of expression;
- Excessive length of detention on remand;
- Actions of security forces;
- Issues concerning Cyprus.

129. I have still not been able to visit Turkey. Despite the Legal Committee’s decision of 29 January 2009 authorising me to carry out a visit to this country, I have not received an invitation from the Turkish parliamentary delegation, despite repeated requests since September 2009. To the best of my knowledge, this is the first time that this has occurred. My predecessor, Mr Erik Jurgens, was never confronted with such a refusal to co-operate (see, in this connection, his 6th report¹⁵⁴), and I feel duty-bound to bring this unacceptable behaviour to the attention of the Assembly.

2.2.8.1. *Failure to re-open proceedings*

130. The *Hulki Günes v. Turkey*¹⁵⁵ group of cases concerns unfairness of criminal proceedings where the applicants were convicted on the basis of statements taken under duress and in the absence of a lawyer, in violation of Articles 3 and 6 §§ 1 and 3.c. The re-opening of proceedings was requested by the Court but legislation that was passed amending the provisions in the Code of Criminal Procedure only provided for re-opening of judgments delivered before 4 February 2003 and in those applications lodged to the Court after that date; thus the cases pending at the time do not fall under the amendment.

¹⁴⁶ Over 150, with 235 pending before the Court.

¹⁴⁷ See Resolution 1738 (2010) and Doc. 12276.

¹⁴⁸ CM/Inf/DH(2010)26, 27 May 2010.

¹⁴⁹ *Ibid.*, paragraph 34.

¹⁵⁰ *Ibid.*, paragraph 50.

¹⁵¹ Doc. 12276, paragraph 48.

¹⁵² See [Committee of Ministers statistics](#) as at 31 December 2009.

¹⁵³ Some of these reveal structural problems including compensation for loss of coastal property, loss of property rights in public forest areas, excessive length of proceedings, expropriation of property and other issues related to freedom of expression.

¹⁵⁴ Doc. 11020 of 18 September 2006.

¹⁵⁵ Application No. 28490/95, judgment of 19 September 2003.

131. Significant pressure has been brought to bear on the Turkish authorities over the last seven years, especially by the Committee of Ministers: two letters from the Chairperson of the Committee of Ministers,¹⁵⁶ three interim resolutions,¹⁵⁷ and a decision in September 2008¹⁵⁸ to examine the case at every regular meeting of the Committee until the Turkish authorities provided information on the measures they envisaged to resolve the issue. This eventually resulted in information on a draft law allowing the re-opening of proceedings in the present cases, which was submitted to Parliament for adoption, but no further information on its progress has been received.¹⁵⁹ I urge the Chairperson of the Turkish parliamentary delegation, together with the (Turkish) President of the Assembly, to ensure that this piece of legislation receives priority.

2.2.8.2. *Repeated imprisonment for conscientious objection to military service*

132. Repeated imprisonment for conscientious objection, which is in violation of Article 3, stems from the possibility – provided for in legislation – of repeated prosecution for the rest of the applicant's life. There are a few cases on the issue before the Court, but this does not detract from the fact that it is a grave violation of the Convention. In the case of *Ülke v. Turkey*,¹⁶⁰ the applicant was convicted repeatedly over a number of years for refusing to wear his uniform on conscientious grounds, serving a total of 701 days in prison. He is currently in hiding for fear of further prosecution; he has no official address and has been forced to break off all contact with the administrative authorities. As the Court stated, such a life amounts "almost to civil death".¹⁶¹

133. The individual measures and general measures in this case are intrinsically linked. Despite interim resolutions having been adopted in October 2007¹⁶² and March 2009¹⁶³, no information has been forthcoming in response to the judgment of the Court regarding the individual measures. In March 2010, the Turkish authorities indicated to the Committee of Ministers that they would provide concrete information on legislative amendments.

2.2.8.3. *Freedom of expression*

134. The *Inçal v. Turkey*¹⁶⁴ group of cases concerns unjustified interferences with Article 10 of the Convention in relation to the applicants' convictions for publishing articles and books. This has been an issue since 1998 and, twelve years on, it remains so. In terms of individual measures, the Turkish authorities indicated they would take measures to erase the convictions of several applicants who were convicted under Article 8 of the Anti-terrorism Law No. 3713 following its abrogation.¹⁶⁵

135. There have been general measures taken to solve the problem, such as: a number of constitutional amendments on freedom of expression, a package of laws to revoke and amend offending provisions of the Anti-Terrorism Law, and training and awareness-raising initiatives for judges and prosecutors in order to encourage the application of Convention standards, with examples of such practice from domestic courts.¹⁶⁶

136. These legislative amendments, however, do not eradicate the root of the problem and are merely a different expression of the same Convention-violating substance. In addition, the examples of court practice provided by the Turkish authorities do not represent conclusive evidence that the Convention standards are being upheld, especially with respect to the 2004 Constitutional amendment of Article 90 of the Constitution, which specifies the direct application of the Convention in domestic law. It is vital that the Convention and the Court's case law are reflected in the Turkish domestic legislation and its application. On this aspect, it is understood the Committee of Ministers has been awaiting information since September 2008.

2.2.8.4. *Excessive length of detention on remand*

137. The leading group of cases identifying excessive length of detention of remand as a major problem is *Halise Demirel v. Turkey*,¹⁶⁷ with the Court rendering a quasi-pilot judgment in *Cahit Demirel v. Turkey*, which

¹⁵⁶ The first on 21 February 2005, the second on 12 April 2006.

¹⁵⁷ CM/ResDH(2005)113, CM/ResDH(2007)26, and CM/ResDH(2007)150.

¹⁵⁸ 1035th Meeting, 17-18 September 2008.

¹⁵⁹ 1067th Meeting, 7 October 2009.

¹⁶⁰ Application No. 39437/98, judgment of 24 April 2006.

¹⁶¹ *Ibid.*, paragraph 62.

¹⁶² CM/ResDH(2007)109.

¹⁶³ CM/ResDH(2009)45.

¹⁶⁴ Application No. 22678/93, judgment of 9 June 1998.

¹⁶⁵ Interim Resolution CM/ResDH(2004)38.

¹⁶⁶ See Memorandum CM/Inf(2008)26.

¹⁶⁷ Application No. 39324/98, judgment of 28 January 2003.

exposed the “widespread and systemic problems arising out of the Turkish criminal justice system and the state of the Turkish legislation”.¹⁶⁸ There is an absence of relevant and sufficient reasons given by domestic courts in decisions to extend detention, violating Article 5 § 3 of the Convention, as courts tend to use stereotypical wording that does not take into account the circumstances of the individual. In addition, an effective remedy to challenge the lawfulness of detention on remand does not exist and compensation cannot be obtained, resulting in a violation of Articles 5 § 4 and 5 § 5, respectively.

138. Positive steps have been taken by the Turkish authorities through legislative amendments, for instance the Code of Criminal Procedure (Law No. 5271) which came into force on 1 June 2005. This provides safeguards ensuring that reasons for detention are given, that continued detention on remand is reviewed every thirty days, that maximum detention on remand does not exceed two years for assize courts' crimes¹⁶⁹ and that there must be a right to compensation. The authorities also provided information on how this has been implemented in domestic courts.

139. The legislative steps taken can be seen as progress, but the information provided on how they are implemented is inconclusive and further evidence is necessary to ensure that relevant and sufficient reasons are being used to justify detention. Indeed, information concerning a December 2009 Court of Cassation decision on the criminal liability of judges who do not provide such reasons has been received and is being scrutinised by the Committee of Ministers. In any event, legislative amendment to execute a judgment should not present a risk of future violations. Additionally, it must be noted that no information is forthcoming from the Turkish authorities on the introduction of an effective remedy to challenge the lawfulness of detention on remand, which must now be considered a matter of urgency for the Chairperson of the Turkish parliamentary delegation.

2.2.8.5. Actions of security forces

140. The anti-terror actions of the security forces in the 1990s brought about an influx of cases to the Court, which found violations in relation to several articles, including Articles 2, 3, 5, 8 and 13 and Article 1 of Protocol No. 1.¹⁷⁰ The 2008 Committee of Ministers' interim resolution reiterated previously identified¹⁷¹ structural problems that caused these violations, in particular ineffectiveness of procedural safeguards in custody, attitudes and training of security forces, establishing criminal liability at domestic level and shortcomings in ensuring adequate reparations to victims.¹⁷²

141. In the light of the Committee of Ministers' interim resolution in 2005,¹⁷³ the Turkish authorities have made progress in resolving the structural problems: a legislative framework is now in place to provide procedural safeguards in police custody; human rights is in the curriculum for initial training of the security forces, legislative amendments have been made to give direct effect to the Convention in Turkish domestic law governing use of force by security personnel and a range of effective remedies have been introduced to complement the “Law on Compensation” of 27 July 2004, which provides the possibility for pecuniary compensation for damages in relation to terrorist activities and operations carried out between July 1987 and December 2006.

142. That said, a significant problem remains outstanding in the series of shortcomings still apparent in investigating abuses by security forces. The *Bati v. Turkey*¹⁷⁴ group of cases highlights the fact that, despite the passing of many years, impunity continues to reign in the absence of an effective investigation. The lack of independence of the investigating authorities, the impossibility for the applicants to access records or interview witnesses and accused officers, and the failure to suspend officials from duty despite proceedings against them, are just a number of the deficiencies that violate “procedural” Articles 2 and 3. In terms of individual measures, information on whether the investigations will be re-opened is awaited. In respect of general measures, Articles 94 and 95 of the new Criminal Code provide for longer sentences for the above-mentioned abuses, and the Ministry of Justice has taken steps to ensure safe prisoner transfers, but there has been no action taken to address the root of the problem and substantial improvement is needed.

143. It must also be noted that there exists a concern regarding the actions of the security forces in dispersing peaceful demonstrations. *Oya Ataman v. Turkey*¹⁷⁵ dealt with the use of excessive force in

¹⁶⁸ Application No. 18623/03, judgment of 7 July 2009, paragraph 46.

¹⁶⁹ Provision not in force until 31 December 2010.

¹⁷⁰ See the *Aksoy v. Turkey*, Application No. 21987/93, judgment of 18 December 1996, group of cases.

¹⁷¹ Interim resolutions CM/DH(99)434, CM/ResDH(2002)98, CM/ResDH(2005)43.

¹⁷² CM/ResDH(2008)69.

¹⁷³ CM/ResDH(2005)43.

¹⁷⁴ Applications Nos. 33097/96 and 57834/00, judgment of 3 June 2004.

¹⁷⁵ Application No. 74552/01, judgment of 5 March 2007.

violation of Article 11 of the Convention, the freedom of assembly, and the connected group of cases showed violations of Article 3 and 13. There have been a few amendments made to the legal framework surrounding police use of force in this area – the most notable being the gradual and proportionate use of firearms. However, the Committee of Ministers has been awaiting information on how these amendments will be applied in practice since April 2008.

2.2.8.6. *Specific issues of concern*

144. The interstate case *Cyprus v. Turkey*¹⁷⁶ relates to the situation that has existed in the northern part of Cyprus since the invasion, by Turkey, of the northern part of Cyprus in 1974 (euphemistically referred to as "conduct of military operations") and the continuing division of the Republic of Cyprus and the military occupation of 40% of the country's national territory. At present, the Committee of Ministers supervises closely the issues concerning missing persons and property rights of displaced Greek Cypriots.

145. As regards the issue of missing persons, additional measures are required to ensure effective investigations into the fate of missing persons. That said, no answer has been given so far by the Turkish authorities to the Committee of Ministers' request for information on the concrete measures envisaged in the continuity of the work of the Committee on Missing Persons in Cyprus with a view to the effective investigations required by the judgment.¹⁷⁷

146. As regards the property rights of displaced Greek Cypriots, the Committee of Ministers is currently examining the consequences of the Court's Grand Chamber decision on the admissibility of the application *Demopoulos v. Turkey*¹⁷⁸ and seven other cases delivered on 5 March 2010. The Court concluded in this decision that the Law 67/2005 of December 2005, according to which all natural and legal persons claiming rights to immovable or movable property could bring a claim before the Immovable Property Commission, "provides an accessible and effective framework of redress in respect of complaints about interference with property owned by Greek Cypriots".

147. As far as *Xenides-Arestis v. Turkey*¹⁷⁹ is concerned, the Committee of Ministers has already adopted two interim resolutions urging the Turkish authorities to pay the just satisfaction awarded in 2006 by the Court. The fact that this payment is still outstanding is an unacceptable state of affairs.

2.2.8.7. *Additional comments*

148. In the above areas of concern, the Committee of Ministers has been waiting for information from the Turkish authorities for a number of years. The need, therefore, for a structure in the Turkish Parliament that plays an extensive role in the supervision of the execution of Court judgments cannot be overstated.

2.2.9. *Ukraine*

149. Ukraine has a number of serious problems, some of them structural, that are reflected in the case law of the Court. Of the 126 200 pending cases before the Court, 10 200 concern Ukraine (8.1%).¹⁸⁰ The issues giving rise to the majority of these cases are as follows:

- Non-enforcement of domestic judicial decisions
- Length of civil and criminal proceedings
- Issues concerning detention on remand
- Unfair trial, *inter alia*, due to lack of impartiality and independence of judges.

150. Despite efforts taken to resolve these problems, a combination of different reasons – including a lack of political will, co-ordinated strategy amongst state organs and financial resources – have impeded the execution of Court judgments in these areas.

151. Giving priority to the above-mentioned problems is of utmost importance; promoting draft legislation aimed at resolving structural problems revealed by the Court, combined with ensuring verification of the compatibility of the draft legislation with Convention standards, would contribute to the rapid and effective implementation of the judgments of the Court.

¹⁷⁶ Application No. 25781/94, 10 May 2001.

¹⁷⁷ See also, *Varnava v. Turkey*, Application No. 16064/90, judgment (Grand Chamber) of 18 September 2009.

¹⁷⁸ Application No. 46113/99, decision of 5 March 2010.

¹⁷⁹ Application No. 46347/99, judgment of 22 December 2005.

¹⁸⁰ As at 31 May 2010 – see [European Court of Human Rights Statistics](#).

152. During my visit to Ukraine in June 2009¹⁸¹, a Memorandum of Understanding¹⁸² on regular supervision of implementation of the Court's judgments was signed. Information on how the provisions in the said Memorandum have been implemented is awaited. If such information is not communicated in the foreseeable future, I propose that I invite the Head of the Parliamentary Committee on the Judiciary of Ukraine, Mr Kivalov, to come before the Committee on Legal Affairs and Human Rights to give reasons for such inactivity.

2.2.9.1. *Non-enforcement of domestic judicial decisions*

153. The non-enforcement of domestic judicial decisions is the main structural problem in respect of Ukraine. It is a long-lasting problem with the first judgment of the Court dating back to 2004¹⁸³ and the number of similar applications continues to increase; more than 50% of all judgments with respect to Ukraine which are under the supervision of the Committee of Ministers concern the problem of non-enforcement of domestic judicial decisions and the Registry of the Court has indicated that about 1 400 applications pending before it concern the non-enforcement problem.

154. In October 2009, the Court issued a pilot judgment on the issue – *Yuriy Nikolayevich Ivanov v. Ukraine* –¹⁸⁴, in which it concluded that the Ukrainian authorities have shown an almost complete reluctance to resolve this structural problem.¹⁸⁵

155. The Court emphasised that legislative and regulatory reform must take place without delay, in order to bring the country's judicial system into line with the Convention and to satisfy its obligations under Article 46 of the Convention.¹⁸⁶

156. In addition, the Court held that there must be an effective remedy put in place by 15 January 2011 to secure adequate and sufficient redress for those who have suffered from non-enforcement or delayed enforcement of domestic judgments.¹⁸⁷ If this measure is not taken, persons suffering from the violations will continue to hold victim status and will be able to lodge applications to Strasbourg.

157. Despite a number of initiatives reported to the Committee of Ministers and the pilot judgment delivered by the Court, no concrete and visible results have been recorded since 2004 in the resolution of the problems underlying the repetitive violations of the Convention.

158. Indeed, it could be considered that this issue, to my consternation, does not appear to be a priority for the authorities, notwithstanding the clear wording of the Court's pilot judgment. This situation gives rise to particular concerns, which were recently also expressed by the Committee of Ministers, in that "no tangible and concrete information has been provided as to whether a comprehensive strategy has been developed with the aim of complying with this judgment and the deadlines set therein".¹⁸⁸ Again, perhaps, a reason for the Assembly, and its Committee on Legal Affairs and Human Rights to take a more "forceful" attitude to obtain explanations from the Ukrainian authorities, as well as from our parliamentary colleagues.

2.2.9.2. *Length of civil and criminal proceedings*

159. Excessive length of civil and criminal proceedings is a problem caused by: courts not taking measures to ensure plaintiffs, defendants and witnesses are present in court; too many remittals for experts and retrials are ordered; there also exists a general problem with long intervals and adjournments. The inactivity of investigators and shortcomings in pre-trial investigations in criminal cases, which subsequently result in courts' sending the cases for additional investigations, are likewise among the main reasons causing delays in domestic court proceedings in violation of Article 6 § 1. This is aggravated by the absence of an effective domestic remedy.¹⁸⁹

¹⁸¹ See press release of 9 July 2009, "Ukraine: call for better implementation of judgments of the Court": http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4827.

¹⁸² *Ibid.*

¹⁸³ *Zhovner v. Ukraine*, Application No. 56948/00, judgment of 29 September 2004.

¹⁸⁴ *Yuriy Nikolayevich Ivanov v. Ukraine*, Application No. 40450/04, judgment of 15 January 2010, paragraphs 83 and 86, and www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=UKR.

¹⁸⁵ *Ibid.*, paragraph 91.

¹⁸⁶ *Ibid.*, paragraph 92.

¹⁸⁷ *Ibid.*, paragraph 94.

¹⁸⁸ *Ministers' Deputies decision* of 14 September of 2010, adopted at their 1092nd meeting (DH). See also two interim resolutions ([CM/ResDH\(2008\)1](http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=UKR) and [CM/ResDH\(2009\)159](http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Default_EN.asp?dv=1&StateCode=UKR)).

¹⁸⁹ *Svetlana Naumenko v. Ukraine*, Application No. 41984/98, judgment of 9 September 2004, group of cases.

160. There was a draft law produced in 2005 to enable a complaint to the administrative court in the instance of excessively lengthy proceedings, but no information is forthcoming on its current status. This, it should be noted, casts doubts over the political will to instigate reform.

2.2.9.3 Issues concerning detention on remand

2.2.9.3.1. Conditions of detention on remand

161. Poor conditions of detention in remand centres as well as in penitentiary facilities across Ukraine are other structural problems indicated by the Court. It mainly consists of overcrowding, unsatisfactory hygiene and inadequate medical care.¹⁹⁰ There is also a lack of an effective remedy to complain and gain redress for such conditions in violation of Article 13.

162. Measures have been taken to increase living space in prisons. In particular, the Law “On Amendments to the Code of Execution of Sentences” entered into force on 16 February 2010 and provides for, *inter alia*, 4 m² of space per prisoner; but the relevant provision determining prisoner space will not come into force until January 2012.

163. In the meantime, a state programme was set up for the years 2006-2010 to overhaul existing detention centres and build new ones. However, this does not resolve the issue as legislation setting the norm of average living space at 2.5 m² (remand detention) has not been amended.¹⁹¹

164. Information on legislative and regulatory reform is not forthcoming regarding this issue and, again, an effective remedy has still not been instituted, despite being flagged up by the Court as essential to offer redress to victims.

2.2.9.3.2. Unlawful and lengthy detention

165. *The Doronin v. Ukraine*¹⁹² group of cases represent violations of Article 5 of the Convention for unlawful and lengthy detention on remand arising from: detention without judicial decision to that effect and/or the retro-active application of decisions on detention; failure to give reasons and set time limits for detention; the failure to consider alternative preventative measures to detention on remand; and the lack of judicial review of the lawfulness of detention.

166. Measures have been taken to amend the existing Code of Criminal Procedure, in particular to ensure that the time taken for the detainee to familiarise him or herself with the case-file is taken into account when calculating the detention period.

167. During the Round table on “Detention on remand: General Measures to comply with the European Court’s judgments”, organised by the Council of Europe’s Department for the Execution of judgments of the European Court on 9 and 10 December 2009 in Warsaw, the Ukrainian authorities announced their plans to carry out a comprehensive reform of criminal justice system. It was noted, in particular, that the new Code of Criminal Procedure to be drafted would address all outstanding problems listed above.¹⁹³ For the time being, no further information has been provided by the authorities on this reform, although the adoption of such a code remains one of the outstanding commitments of the Ukrainian authorities.¹⁹⁴

2.2.9.4. Ill-treatment by police and lack of procedural safeguards

168. A constantly increasing number of cases concern ill-treatment in police custody and lack of an effective investigation in this respect.¹⁹⁵ In January 2005, a number of amendments were made to the Law “On Militia”, reinforcing guarantees for persons detained by the police. A number of measures were taken to strengthen human rights training by including the study of the Convention’s requirements and the Court’s

¹⁹⁰ *Nevmerzhitsyi v. Ukraine*, Application No. 54825/00, judgment of 5 April 2005, group of cases.

¹⁹¹ See CPT Report – CPT/Inf(2007)22, 20 June 2007.

¹⁹² Application No. 16505/02, judgment of 19 February 2009.

¹⁹³ This issue was also examined by Ms Renate Wohlwend and Ms Mailis Reps, co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe in the report on the functioning of democratic institutions in Ukraine (Doc. 12357).

¹⁹⁴ *Ibid.*, paragraph 65. A draft code, positively assessed by the Venice Commission, was prepared by the previous government, but not tabled in the Verkhovna Rada. Its current status is unknown. However, another draft code, negatively assessed by the Venice Commission, is still on the agenda of the Ukrainian Parliament.

¹⁹⁵ *Afanasyev V Ukraine*, Application No. 38722/02, judgment of 5 April 2005, and group of cases.

case law on Article 3 in the curriculum of educational establishments under the Ministry of Internal Affairs and that of the National Academy of Prosecutors¹⁹⁶.

169. However, the constantly increasing number of similar applications pending before the Court and the CPT visits to Ukraine¹⁹⁷ demonstrate that, in spite of measures taken by the authorities, the deliberate physical ill-treatment of detainees by police officers remains widespread in Ukraine, in particular during initial questioning in district police stations with a view to securing confessions relating to unsolved crimes. Eradicating this practice requires comprehensive measures at all levels. The Committee of Ministers therefore invited the Ukrainian authorities to provide an action plan on comprehensive measures to combat abuses in police custody and to ensure effective investigation into allegations of ill-treatment. This action plan is still awaited.

2.2.9.5. *Lack of independence and impartiality of judges*

170. Fair trial (Article 6 of the Convention) is a concern in Ukraine, with many problems at its heart, the most complex one being the lack of independence and impartiality of judges.¹⁹⁸ Insufficient legislative and financial guarantees against outside pressure, lack of criteria and procedures on promotion, disciplinary liability and limits to judges' discretionary powers have, *inter alia*, been highlighted as problems.¹⁹⁹

171. A new Law on Judiciary and the Status of Judges of Ukraine was adopted by the Ukrainian Parliament on 7 July 2010.²⁰⁰ It remains to be seen what effect this will have.

2.2.9.6. *Specific areas of concern*

172. Mention must be made of the case of *Gongadze v. Ukraine*.²⁰¹ The Court found that although Mr Gongadze, a journalist, notified the Prosecutor General of the apparent threat to his life, the authorities failed to take any steps to protect him, violating Article 2 of the Convention. The investigation of his death also violated the procedural limb of Article 2 due to delays and deficiencies and the attitude shown by the investigators to the family, in violation of Article 3. In addition, the lack of effective investigation for more than four years and the impossibility of seeking compensation violated Article 13. This case is politically sensitive as several state officials, including the former President, are implicated.

173. Although the perpetrators of Mr Gongadze's murder were convicted in 2008, the investigation aimed at identifying the instigators and organisers of this crime was the object of inexplicable delays. This situation has been denounced by the Assembly.²⁰² The Committee of Ministers has already adopted two interim resolutions urging the Ukrainian authorities to enhance their efforts with a view to bringing to an end the ongoing investigation.²⁰³ It seems that since then several developments have taken place in the framework of the investigation.²⁰⁴ However, no concrete and visible results have been achieved. The Ukrainian authorities must now rapidly complete the investigation. This appears to be particularly important in view of the fact that another journalist disappeared in August 2010.

2.2.9.7. *Additional comments*

174. The problems revealed by the judgments of the Court are large-scale and complex in nature. Their resolution may sometimes go beyond the execution of a particular judgment. This can only be achieved through the setting up of a comprehensive strategy co-ordinated at the highest political level. Any delays in the setting up of such a strategy should be subject to close monitoring by parliament which should have appropriate means to compel the government to solve these issues as a matter of priority.

¹⁹⁶ For more details, see Annotated Agenda adopted at the 1078th meeting (March 2010).

¹⁹⁷ CPT Report, CPT/Inf(2007)22, paragraph 30.

¹⁹⁸ *Salov v. Ukraine*, Application No. 65518/01, judgment of 6 September 2005, group of cases.

¹⁹⁹ *Ibid.*, paragraph 83.

²⁰⁰ However, this law has been adopted and enacted without waiting for the opinion of the Venice Commission that had been requested by the Minister of Justice of Ukraine. In their above-mentioned report, Ms Renate Wohlwend and Ms Mailis Reps noted that this law has probably failed to address the main concerns expressed in the original opinion of the Venice Commission of March 2010 (Doc. 12357, paragraph 56).

²⁰¹ Application No. 34056/02, judgment of 8 February 2006.

²⁰² Resolution 1466 (2005), Resolution 1645 (2009) and Recommendation 1856 (2009).

²⁰³ See Interim Resolution CM/ResDH(2008)35, adopted at the 1028th meeting (June 2008); Interim Resolution CM/ResDH(2009)74, adopted at 1065th meeting (September 2009).

²⁰⁴ For more details, see the Annotated Agenda adopted at the 1092nd meeting (September 2010).

3. Implementation problems revealed in other states

3.1. Introductory remarks

175. Whilst in the light of the previous progress report it was necessary to assess the current situation in the above states, it cannot be ignored that several other states face implementation problems, in particular Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia. I may need to visit certain of these states when preparing the 8th report on this subject.

3.2. Implementation problems revealed

3.2.1. Albania

176. In recent years, the Court has delivered a number of judgments against Albania regarding the systemic problem of non-execution of final domestic court decisions, in particular concerning the right of the applicants to compensation (whether pecuniary or in kind) as a consequence of the nationalisation of property under the communist regime. In its reasoning, the Court considered that the respondent state should remove all obstacles to the award of compensation under the Property Act by ensuring that the appropriate statutory, administrative and budgetary measures are taken. Such measures should be taken as a matter of urgency.²⁰⁵ Other shortcomings identified by the Court were the inefficiency of the bailiffs and the lack of an effective remedy. The Albanian authorities have been asked by the Committee of Ministers²⁰⁶ to take the necessary measures of redress in order to avoid similar violations. For that purpose, a memorandum²⁰⁷ identifying outstanding problems and focusing on a number of avenues for a comprehensive resolution of the problem has been prepared to assist the Committee of Ministers in its supervision of the execution of judgments in respect of Albania. Moreover in view of the persisting problem, Albania has been selected as one of the beneficiary countries (together with Azerbaijan, Bosnia and Herzegovina, Moldova, Serbia and Ukraine) of the Human Rights Trust Fund project on removing the obstacles to the non-enforcement of domestic court judgments/ensuring the effective implementation of domestic court judgments.²⁰⁸

3.2.2. Armenia

177. Two important issues in Armenia concern conditions of detention in prisons²⁰⁹ and freedom of expression. Concerning the latter, there has been no real progress in the execution of the case *Meltex Ltd and Mesrop Movsesyan v. Armenia*.²¹⁰ The Assembly considers it particularly worrying that the Committee of Ministers, in its last decision on this case (1092nd Human Rights meeting, September 2010), had to recall that respondent states have the obligation to provide – in due time – information on developments regarding the execution of judgments of the Court. In light of this, the Armenian authorities have been invited to provide, to the Committee of Ministers, a comprehensive overview of the legislative and regulatory framework that substantiates the unambiguous obligation of the National Television Radio Commission to give reasons for its decisions to award or not, or to revoke broadcasting licences, in the framework of competitions or applications for broadcasting, as well as information on the concrete implementation of this framework in respect of the ongoing tender procedures.

3.2.3. Azerbaijan

178. Azerbaijan has problems regarding degrading treatment in detention, ill-treatment by police, freedom of expression, and the non-enforcement of domestic judicial decisions. In *Hummatov v. Azerbaijan*²¹¹ the Court held that inadequate medical treatment for tuberculosis was a violation of Article 3, and the lack of an effective remedy violated Article 13. The Ministry of Justice has ordered the demolition of the prison in question and set up a programme with the International Committee of the Red Cross (ICRC) to eradicate tuberculosis from detention centres. Ill-treatment by police and no subsequent effective investigation have also been identified as issues, and information on the institution of independent monitoring of police use of

²⁰⁵ See *Driza v. Albania*, Application No. 33771/02, judgment of 13 November 2007, paragraphs 122-126, and *Ramadhi v. Albania*, Application No. 38222/02, judgment of 13 November 2007, paragraph 94.

²⁰⁶ See the [decision](#) in the 1086th DH meeting – 3 June 2010, section 4.2.

²⁰⁷ [CM/Inf/DH\(2010\)20](#)

²⁰⁸ The Human Rights Trust Fund was set up in March 2008 by the Council of Europe, the Council of Europe Development Bank and Norway. Subsequently, Germany, the Netherlands and Finland joined. It currently finances activities that support member states efforts in implementing the European Convention on Human Rights and other human rights instruments of the Council of Europe.

²⁰⁹ *Kirakosyan v. Armenia*, Application No. 31237/03, judgment of 2 December 2008 and two other cases.

²¹⁰ Application No. 32283/04, judgment of 17 June 2008.

²¹¹ Application No. 9852/03, judgment of 29 February 2008.

force is awaited.²¹² Freedom of expression is a major topic as defamation is criminalised and there appears to be no political will to instigate change;²¹³ and in respect of the non-enforcement of domestic judgments, the cases *Mirzayev v. Azerbaijan*²¹⁴ – concerning internally displaced persons – and *Humbatov v. Azerbaijan*²¹⁵ have, regrettably, not been supplemented with any information on how the authorities intend to tackle the problem.

3.2.4. Bosnia and Herzegovina

179. Bosnia and Herzegovina has particular problems with the non-enforcement of domestic judgments and the violation of electoral rights. Concerning the first, a memorandum²¹⁶ of the Committee of Ministers was prepared outlining the progress made in light of the judgments of the Court in, *inter alia*, the *Karanović v. Bosnia and Herzegovina*²¹⁷ and *Jeličić v. Bosnia and Herzegovina*²¹⁸ groups of cases, the latter dealing with "old" savings deposited in the Socialist Federative Republic of Yugoslavia. It should also be noted Bosnia and Herzegovina is a beneficiary of the Human Rights Trust Fund project on "removing the obstacles to the non-enforcement of domestic court judgments/ensuring an effective implementation of domestic court judgments".

180. In respect of the second, the Court held in *Sejdic and Finci v. Bosnia and Herzegovina*²¹⁹ that the election procedure to the House of Peoples and the Presidency was discriminatory in that it prevented persons of Jewish and Roma origin from standing. It is of utmost importance that the Bosnia and Herzegovina Constitution, which only allows "constituent peoples" to stand, be amended to rectify this discrimination. In its Resolution 1725 (2010), the Assembly had already expressed concern about the lack of adequate constitutional amendment, noting that "there is a serious risk that the October 2010 general elections will be once again held in violation of the European Convention on Human Rights (ETS No. 5) and its protocols, as well as of the judgment of the Court".²²⁰ In its reply to Assembly Recommendation 1914 (2010), the Committee of Ministers regretted that the required reform was not, in fact, in place in time for the October elections and again reiterated that the Council of Europe, through the Venice Commission and the Department for the Execution of Judgments of the Court, "was ready to offer the assistance and support needed to carry through the constitutional reform".²²¹

3.2.5. Georgia

181. In Georgia, the main problems are the lack of new investigations into ill-treatment by police, and inadequate medical treatment in prisons. Concerning the former, the *Davtyan v. Georgia*²²² group of cases stresses that the mere commencement of an investigation does not mean that the investigation is effective; it must fulfil the criteria required by the Court.²²³ Examples of shortcomings in the investigations include the failure to seek independent medical expertise, the failure to interview all appropriate parties and a lack of promptness in opening the case. The Committee of Ministers has stressed that such a violation represents a continuing violation; therefore new, effective investigations must be initiated. Unfortunately, no information has been received by the Committee of Ministers on how the Georgian authorities intend in practice to carry out new investigations.

182. In respect of inadequate medical treatment in prisons, *Ghavitadze v. Georgia*²²⁴ concerned the violation of Article 3 as the authorities failed to treat the applicant's symptoms for hepatitis C and tuberculosis. The prison has since been demolished, but the problem of inadequate medical treatment in prisons is still under scrutiny until a permanent solution has been found.

²¹² *Muradov v. Azerbaijan*, Application No. 22684/05, judgment of 2 July 2009.

²¹³ *Mahmudov and Agazade*, Application No. 35877/04, judgment of 18 March 2009. The issue of freedom of expression is also related to that of political prisoners in Azerbaijan, examined several times by the Assembly since 2001. Currently this topic is followed by Mr Christoph Strässer, rapporteur of the Committee on Legal Affairs and Human Rights on the follow-up to the issue of political prisoners in Azerbaijan/The definition of political prisoners, see Doc. 19922.

²¹⁴ Application No. 50187/06, judgment of 13 January 2010.

²¹⁵ Application No. 13652/06, judgment of 3 January 2010.

²¹⁶ See [CM/Inf/DH\(2010\)22](#), 20 May 2010.

²¹⁷ Application No. 39462/03, judgment of 20 February 2008.

²¹⁸ Application No. 41183/02, judgment of 31 January 2007.

²¹⁹ Application No. 27996/06, judgment of 22 December 2009.

²²⁰ Resolution 1725 (2010) on the urgent need for a constitutional reform in Bosnia and Herzegovina, paragraph 2. See also Recommendation 1914 (2010).

²²¹ The urgent need for a constitutional reform in Bosnia and Herzegovina, Reply of the Committee of Ministers adopted at the 1091st meeting, 16 September 2010, Doc. 12368, paragraph 3.

²²² Application No. 73241/01, judgment of 27 October 2006.

²²³ See *Hugh Jordan v. the United Kingdom*, Application No. 24746/94, judgment of 4 May 2001, paragraphs 87-92.

²²⁴ Application No. 23204/07, judgment of 3 March 2009.

3.2.6. Serbia

183. Serbia faces issues in the non-enforcement of domestic decisions, lengthy proceedings, and the lack of an effective remedy for such complaints. In terms of non-enforcement,²²⁵ Serbia is a beneficiary of the Human Rights Trust Fund project on the issue and has acknowledged the magnitude of the problem revealed by the *EVT Company v. Serbia*²²⁶ cases. The concerns surrounding lengthy proceedings are revealed in the *Jevremovic v. Serbia*²²⁷ group of cases, but encouragement can be taken from the Court's judgment in *Vincic v. Serbia*,²²⁸ where the remedy introduced was considered to be effective.

4. Focus on prevalent implementation issues

4.1. Introductory remarks

184. In the light of the Interlaken Conference of February 2010, the reduction of the Court's backlog is a top priority of the Council of Europe in order to maintain its existence.²²⁹ It has been stressed that it is the responsibility of the member states to execute judgments of the Court and that full, effective and rapid execution of the final judgments of the Court is indispensable. The Interlaken Declaration also called for enhancing the efficiency of the system to supervise the execution of the Court's judgments, in particular by giving priority and visibility also to cases disclosing major structural problems and attaching particular importance to the need to establish effective domestic remedies. Consequently, the Committee of Ministers has already, so it would appear, taken steps to ensure more enhanced supervision of execution.²³⁰ It is essential, though, that the various organs of the Council of Europe co-ordinate their roles with respect to the Interlaken process, and I believe that the Parliamentary Assembly can serve a key function in utilising its mandate to encourage states to address human rights issues internally.

185. What is clear from this report is that the extensive backlog of cases before the Court, currently estimated at 138 200²³¹, can be substantially reduced if states parties address the root problems to a number of key concerns. In order for the Court to deal effectively with the most serious cases concerning non-derogable rights in the Convention, which it must prioritise, then those cases giving rise to systemic and repetitive violations have to be eradicated. There can be no doubt that the most prevalent problems in this regard are:

- i. excessive length of judicial proceedings, and
- ii. non-enforcement of domestic judicial decisions.

That said, I cannot ignore that fact that the following concerns – though not as numerous as the above issues – represent high numbers of repetitive, serious violations in specific member states:

- iii. deaths or ill-treatment under the responsibility of law enforcement officials and the lack of an effective remedy; and
- iv. unlawful and excessive length of detention on remand.

186. What follows is a brief thematic summary of the significance of these issues, in which major problems persist.

4.2. Excessive length of judicial proceedings

187. Since I made my critical observations last summer – in my progress report – on the excessive length of judicial proceedings, the situation has worsened.²³² This problem is endemic and simply must be addressed.

²²⁵ See [CM/Inf/DH\(2010\)25](#), 20 May 2010.

²²⁶ Application No. 3102/05, judgment of 21 September 2007.

²²⁷ Application No. 3150/05, judgment of 17 October 2007.

²²⁸ Application No. 44698/06, judgment of 2 March 2010.

²²⁹ High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration, 19 February 2010. [www.eda.admin.ch/etc/medialib/downloads/edazen/topics/euroca/euroc.Par.0133.File.tmp/final_en.pdf](#).

²³⁰ Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – elements for a roadmap, of 24 June 2010, CM/Inf(2010)28. See also, Supervision of the execution of the judgments and decisions of the European Court of Human Rights: implementation of the Interlaken Action Plan – elements for a roadmap, of 6 September 2010, CM/Inf(2010)37.

²³¹ See [European Court of Human Rights Statistics](#), as at 31 August 2010.

[www.echr.coe.int/NR/rdonlyres/99F89D38-902E-4725-9D3D-4A8BB74A7401/0/Pending_applications_chart.pdf](#).

²³² See document AS/Jur (2009) 36, paragraphs 56-57.

Current figures suggest that of the 8 689 cases pending before the Committee of Ministers, 4 422 of them concern the excessive length of judicial proceedings.²³³ As I have elaborated in the present report, Italy, Greece and Poland have serious systemic problems in this regard and alone accumulate over 30% (2 904) of the pending excessive length cases before the Committee of Ministers.²³⁴

188. Italy has been continually flagged up in this series of reports, beginning with my predecessor, Mr Erik Jurgens, in 2005.²³⁵ Currently, of the 2 493 cases pending before the Committee of Ministers "belonging" to Italy (some 28% of all cases),²³⁶ 2 289 concern excessive length of judicial proceedings.²³⁷ Taking further measures to execute the Court's judgments in this area would, therefore, allow the closure of around 90% of Italy's cases. It cannot be stressed enough how crucial this is to the post-Interlaken process with respect to repetitive applications.

4.3. *Non-enforcement of domestic judicial decisions*

189. In my progress report, I emphasised the importance for the integrity of Article 6 of the Convention of enforcing final domestic judgments,²³⁸ and this has been further reflected in the present report. The non-enforcement of domestic judicial decisions is a widespread systemic problem across many states, not just those identified in this report. Some 925 cases are pending on this issue before the Committee of Ministers (10% of all cases pending).²³⁹ However, the situation is endemic in the Russian Federation and Ukraine, which together amass over 70% (663) of cases pending before the Committee of Ministers.²⁴⁰ Indeed, this particular issue accounts for over 60% of Ukraine's cases before the Committee of Ministers.²⁴¹

190. The Court, in an attempt to counter this, has delivered pilot judgments regarding these states in *Burdov v. Russian Federation (No. 2)*²⁴² and *Yuri Nikolayevich v. Ukraine*.²⁴³ The remedy adopted in the light of *Burdov (No. 2)* has been welcomed by the Secretary General of the Council of Europe and is quoted as a "positive step" as a "result of intensive co-operation between the Russian authorities and the Committee Ministers".²⁴⁴ I urge my fellow parliamentarians in these countries to inform our Committee what initiatives they have taken to encourage action from the authorities of their respective countries. Indeed, I propose that the Committee now "oblige" fellow parliamentarians (chairpersons of parliamentary delegations and/or committee members) to provide specific information on this subject at regular intervals. Important and urgent action is needed.

4.4. *Deaths or ill-treatment under the responsibility of law enforcement officials and lack of an effective investigation thereof*

191. Articles 2 (the right to life) and 3 (the prohibition of torture, inhuman and degrading treatment) represent the most fundamental rights guaranteed by the Convention. A state's obligations under Articles 2 and 3, read with the general duty under Article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention" also requires an effective investigation into the circumstances in

²³³ Figures of 4 August 2010.

²³⁴ See *Ceteroni v. Italy*, Application No. 22461/93, judgment of 15 November 1996; *Manios v. Greece*, Application No. 70626/01, judgment of 11 March 2004; *Podbielski v. Poland*, Application No. 27916/95, judgment of 30 October 1995; *Kudla v. Poland*, Application No. 30210/96, judgment of 26 October 2000; and *Fuchs v. Poland*, Application No. 33870/96, judgment of 11 May 2003, cases in *State of Execution* on the website of the Execution of Judgments of the European Court of Human Rights. www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

²³⁵ Implementation of judgments of the European Court of Human Rights: Introductory memorandum, rapporteur: Mr Erik Jurgens, document AS/Jur (2005) 35 of 20 June 2005, paragraphs 10-13.

²³⁶ Figures of 4 August 2010. A slight rise from statistics taken from *Table II of Appendix 2: Types of cases pending before the Committee of Ministers at 31 December 2009 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6.2): Third Annual Report (2009)*, of April 2010.

²³⁷ See *Ceteroni* group of cases in *State of Execution: Italy* from the website of the Execution of Judgments of the European Court of Human Rights.

²³⁸ See document AS/Jur (2009) 36.

²³⁹ Figures of 4 August 2010.

²⁴⁰ See *Burdov v. Russian Federation (No. 2)*, Application No. 33509/04, judgment of 15 January 2009; *Zhovner v. Ukraine*, Application No. 56948/00, judgment of 29 September 2004, cases in *State of Execution* on the website of the Execution of Judgments of the European Court of Human Rights.

²⁴¹ Figures of 4 August 2010. The same trend as in statistics taken from *Table II of Appendix 2: Types of cases pending before the Committee of Ministers at 31 December 2009 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6.2): Third Annual Report (2009)*, of April 2010; and from the *Zhovner* case in *State of Execution: Ukraine* from the website of the [Execution of Judgments of the European Court of Human Rights](http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp).

²⁴² Application No. 33509/04, judgment of 15 January 2009.

²⁴³ Application No. 40450/04, judgment of 15 January 2010.

²⁴⁴ See statement by the Secretary General of 7 May 2010. <https://wcd.coe.int/ViewDoc.jsp?id=1619833&Site=DC>.

which a person died or was ill-treated.²⁴⁵ If an effective investigation is not carried out then a climate of impunity exists.

192. Whilst cases giving rise to violations of these rights are not as numerous as cases concerning excessive length of judicial proceedings or non-enforcement of domestic judicial decisions, the unacceptable fact remains that repetitive violations of these non-derogable rights still take place; for instance, security force operations – particularly in Turkey and the Russian Federation – have seen their chronic violation. Our colleague, Mr Dick Marty, has stated that the actions of Russian security forces in the North-Caucasus region between 1999 and 2003 “constitutes today the most serious and most delicate situation from a standpoint of safeguarding human rights and upholding rule of law, in the entire geographical area covered by the Council of Europe”.²⁴⁶ Mr Marty’s research revealed that, since 2007, a staggering number of 150 judgments have been delivered by the Court and 235 cases are pending. New applications have not slowed down, with 100 new ones being received by the Court in 2009 alone.²⁴⁷ This situation is simply intolerable.

193. Impunity for deaths or ill-treatment suffered at the hands of state security forces is also a problem in Greece, Moldova, and Bulgaria, though is it not limited to these states.²⁴⁸ The importance of eradicating impunity cannot be overstated and the proper execution of judgments of the Court has been identified by our former colleague, Mrs Däubler-Gmelin, as the key to success.²⁴⁹

4.5. Unlawful and excessively lengthy detention on remand

194. Unlawful and excessively lengthy detention on remand is another issue that presents numerous cases in specific states and must be tackled. It is most prevalent in Moldova, the Russian Federation, Turkey and Ukraine. The repetitive nature of this violation of Article 5 of the Convention reflects a problem of inappropriate and even bad practice by judges and prosecutors that is inherent in the judicial systems of these states. There is a lack of awareness and application of Convention standards when deciding on detention on remand as a preventative measure, and a use of “stereotypical reasoning”²⁵⁰ that violates Article 5 § 3 of the Convention. The prolonged detention as a consequence of these deficiencies is an unacceptable state of affairs. Again, we parliamentarians at the Assembly, in our domestic parliamentary capacity, must take the necessary measures to oblige state authorities to put matters right.

5. Need to reinforce parliamentary involvement

5.1. Preliminary remarks

195. Although the supervision of execution of Court judgments is primarily the responsibility of the Committee of Ministers under Article 46 § 2 of the Convention, the vital role of national parliaments in this area must not be overlooked. National parliamentarians, as democratically elected representatives, are uniquely placed to scrutinise the actions of government so as to ensure the swift and effective implementation of the Court judgments.

196. National parliamentary involvement has long been identified as a vital tool in the implementation of the Court judgments.²⁵¹ Indeed, both the Parliamentary Assembly and its President have urged member states to create or strengthen national parliamentary supervision mechanisms;²⁵² recently, the Assembly’s resolution on the Interlaken process reaffirmed the need for increased parliamentary involvement in the implementation of the Court judgments.²⁵³ Moreover, my predecessor, Mr Erik Jurgens, emphasised the need for national parliaments to introduce “specific mechanisms for regular parliamentary oversight of Court

²⁴⁵ *Assenov and Others v. Bulgaria*, Application No. 24760/94, judgment of 28 October 1998.

²⁴⁶ Paragraph 4 of the draft resolution [as confirmed by the Assembly on 22 June 2010 in Resolution 1738 (2010)].

²⁴⁷ *Ibid.*, paragraph 18.

²⁴⁸ *Ibid.*, paragraphs 21-24, 41-43 and 68.

²⁴⁹ The state of human rights in Europe: the need to eradicate impunity, rapporteur: Ms Herta Däubler-Gmelin, Doc.11934, paragraph 8.

²⁵⁰ *Cahit Demirel v. Turkey*, judgment of 7 July 2009.

²⁵¹ See, for example, working document by Ms Marie-Louise Bemelmans-Videc on the effectiveness of the European Convention on Human Rights at national level, document AS/Jur (2007) 35 rev 2.

²⁵² See, for example, Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights, paragraph 22; see also conclusions presented by Mr de Puig, former President of the Assembly, to the European Conference of Presidents of Parliament (Strasbourg, 22 and 23 May 2008), available at: <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=779>.

²⁵³ Resolution 1726 (2010) on the effective Implementation of the European Convention on Human Rights: the Interlaken Process, paragraphs 5-6.

judgments²⁵⁴ while in my progress report, I reiterated that national parliaments should exercise a "prominent role" in the implementation of Court judgments.²⁵⁵

197. A recent comparative report revealed that States Parties to the Convention with strong implementation records are frequently characterised by strong participation of parliamentary actors in the implementation process.²⁵⁶ Similarly, organs of the Council of Europe have recognised that the implementation of the Court judgments is substantially improved by stronger national parliamentary involvement.²⁵⁷ Despite these observations and repeated calls for increased parliamentary supervision in this area, at present very few states actively engage in the process.²⁵⁸

5.2. *The key role of national parliaments*

198. Overall, parliamentary oversight of implementation of the Court judgments should take two broad forms: parliament should first exercise oversight in ensuring that the competent authorities adopt measures to execute an adverse judgment of the Court and, secondly, parliament should scrutinise the actual content of the measures proposed.²⁵⁹ In particular, mechanisms in place in the United Kingdom and the Netherlands should be viewed as examples of best practice.

199. The United Kingdom provides an excellent example for parliamentary supervision of the implementation of the Court judgments. The United Kingdom is one of only a handful of states to possess a special parliamentary body with a specific mandate to verify and monitor the compatibility of the country's law and practice with the Convention. The United Kingdom's Joint Committee on Human Rights ("JCHR") produces an annual report monitoring the Government's response to adverse Court judgments; the report is not merely a summary of the measures taken by the government in response to a judgment but is the product of continual dialogue between the JCHR and national authorities on the matter. The monitoring report assesses the adequacy of measures adopted and, where the JCHR considers the measures insufficient, exerts pressure on the government to swiftly implement effective measures.

200. An essential aspect of parliamentary supervision of implementation of Court judgments is parliament's verification of the compliance of draft legislation with the Convention. Parliamentary verification of draft legislation introduced in response to an adverse finding of the Court is particularly important if similar violations are to be prevented in future. Despite the clear value of this process, an assessment conducted by the secretariat of the Assembly's Committee on Legal Affairs and Human Rights revealed that "very few parliamentary mechanisms exist with a specific mandate to verify compliance [of draft legislation] with ECHR requirements".²⁶⁰

201. Again, the United Kingdom provides a model mechanism for parliamentary verification of draft legislation. The minister responsible for a draft law is required to make one of two statements to Parliament prior to the second reading of the bill: either a statement to the effect that the provisions of the bill are, in his or her view, compatible with the Convention, or that a statement of compatibility cannot be made but the government intends to proceed with the bill nevertheless.²⁶¹ Where draft legislation raises human rights concerns, the JCHR undertakes pre-legislative scrutiny of compliance with international human rights

²⁵⁴ Implementation of judgments of the European Court of Human Rights, rapporteur: Mr Erik Jurgens, Doc. 11020, paragraph 97.

²⁵⁵ See document AS/Jur (2009) 36, paragraph 26.

²⁵⁶ JURISTRAS Project, Why do states implement differently the European Court of Human Rights judgments? The case law on civil liberties and the rights of minorities, April 2009, p. 23, available at: www.juristras.eliamep.gr/wp-content/uploads/2009/05/why-do-states-implement-differently-the-european-court-of-human.pdf.

²⁵⁷ See Doc. 11230, reply from the Committee of Ministers to Recommendation 1764 (2006) on the implementation of judgments of the European Court of Human Rights, adopted on 28 March 2007 at the 991st meeting of the Ministers' Deputies, paragraph 1; Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights, paragraph 2.

²⁵⁸ Drzemczewski, A., "The Parliamentary Assembly's Involvement in the Supervision of the Judgments of the Strasbourg Court", *Netherlands Quarterly of Human Rights*, Volume 28/2, (2010), pp. 164-178, 2010 at pp. 174-175.

²⁵⁹ See, for example, Drzemczewski, A. and Gaughan, J., "Implementing Strasbourg Court Judgments: the Parliamentary Dimension" in Benedek, W., Karl, W., Mihr, A. *et al.*, *European Yearbook on Human Rights*, European Academic Press, Vienna, 2010, pp. 233-244, at pp. 240-241. They add, at p. 243, that "experience also suggests that national parliaments must possess an efficient "legal service" with specific Convention competence. Without such expertise at their disposal, parliamentarians cannot carry out this important work properly".

²⁶⁰ Secretariat of the Committee on Legal Affairs and Human Rights, "The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview", 23 May 2008, in: Stockholm Colloquy: "Towards strong implementation of the European Convention on Human Rights at national level", 9-10 June 2008, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraph 11.

²⁶¹ Human Rights Act 1998, chapter 42, Section 19.

standards; the observations of the Committee, presented in the form of a report, then contribute to parliamentary debate during the legislative process.²⁶²

202. Aside from the direct effect which parliamentary supervision has on the implementation of the Court judgments, of great value is the impact which parliamentary involvement has on human rights discourse at a domestic level. Indeed, the JCHR has been successful in promoting a political culture of human rights in the United Kingdom; the JCHR's reports have increased parliamentary awareness of human rights standards and have created an expectation that the government must be held fully accountable for its actions, justifying any measures taken from a Convention perspective.

203. In addition to the United Kingdom, the system in place in the Netherlands constitutes an example of best practice. In the Netherlands, the Minister for Foreign Affairs, also on behalf of the Minister of Justice, presents an annual report to Parliament concerning the Court judgments delivered against the Netherlands. Following a request from the Senate in 2006, the report now includes information concerning measures adopted to implement adverse Court judgments. Moreover, the annual report contains judgments against other state parties which could have a direct or indirect effect on the Dutch legal system.²⁶³

204. Although the United Kingdom and the Netherlands possess two of the most advanced systems of parliamentary scrutiny, mechanisms in place in other member states are encouraging. Information provided by the Secretariat to the German Parliament indicates that, in addition to the obligation for the Government to issue an annual report on the implementation of the Court judgments which is reviewed by three parliamentary committees, this year, for the first time, there will be a report on judgments against other states that could have an impact on the German legal system.

205. Progress is also being made in Ukraine. During my visit to Ukraine, a memorandum of understanding on the State of Ukraine's Performance of the Final Judgments of the European Court of Human Rights was signed on 9 July 2009 between myself and Mr Kivalov, Chairman of the Committee on Justice of the Verkhovna Rada, stating that it is desirable that the Committee on Justice and any of its sub-committees conduct a monitoring of performance and enforcement of the Court judgments to which Ukraine is a party, as well as any other relevant case law of the Court. More specifically, Mr Kivalov indicated that the Committee's new sub-committee on the implementation of international standards will soon undertake a thorough overview of the state of non-implementation of Court judgments in Ukraine.

206. Furthermore, in Finland, the Constitutional Law Committee of the Finnish Parliament issues statements on the constitutionality of legislative proposals brought before its consideration, as well as on their relation to international human rights treaties, the Convention being the most central international document against which legislative acts are judged.

207. Finally, in 2007, the Romanian Chamber of Deputies set up a sub-committee of its Legal Affairs Committee specifically mandated to monitor the implementation of Court judgments. At a meeting of the Assembly's Committee on Legal Affairs and Human Rights held in November 2009, Mr Tudor Panțiru – elected Chair of the new Romanian sub-committee and a former judge on the European Court of Human Rights – indicated that, although the work of the sub-committee was yet to get under way, he intended to move things forward.²⁶⁴

208. As a final remark, during the course of my country visits in preparation of the present report, I urged my fellow parliamentarians to establish – within their domestic parliaments – specific procedures to regularly monitor the implementation of the Court judgments. Reactions to my requests were very positive; I was assured by parliamentarians that this subject would be dealt with as a matter of priority. I now eagerly await follow-up on assurances given to me in the Russian Federation, Italy and Greece. The issue will also have to be closely followed by the Committee on Legal Affairs and Human Rights in the context of combating structural deficiencies in states parties which are the “most persistent defaulters”.²⁶⁵

²⁶² The implementation of the Court's judgment in *A v. United Kingdom* of 23 September 1998, Report of Judgments and Decisions 1998-VI, illustrates the instrumental role of parliament in verifying the Convention compatibility of draft legislation introduced in response to an adverse Strasbourg Court judgment, see my progress report, paragraphs 46-47.

²⁶³ See my progress report, pp. 8-9.

²⁶⁴ Committee on Legal Affairs and Human Rights, extract from the minutes of the meeting in Paris on 16 November 2009, document AS/Jur (2010) 07, declassified, p. 3.

²⁶⁵ Motion for a resolution “Ensuring the viability of the Strasbourg Court: structural deficiencies in States Parties” (Doc. 12370), presented by Mr Holgar Haibach and others.

6. Conclusions

209. The Interlaken process is now underway. Urgent action must be taken to reduce the Court's current case backlog and, although Protocol No. 14 to the Convention will undoubtedly have a positive impact, primary responsibility in this respect rests with States Parties to the Convention. Long-standing systemic problems in certain states continue to give rise to numerous "clone" applications to the Court, threatening the effectiveness of the European human rights protection system. Indeed, this report has highlighted, in particular, that the problem of excessive length of judicial proceedings continues to worsen: current figures suggest that cases concerning this issue account for almost half of all cases pending before the Committee of Ministers; regrettably, close to a third of cases on excessive length of judicial proceedings concern Italy.

210. With this in mind, it is essential that states parties fulfil their obligation under Article 46 of the Convention to ensure the full and rapid implementation of judgments of the Court. National parliaments may, in this respect, have an essential role to play as they, sometimes more effectively than the Committee of Ministers, can exert pressure on governments to ensure the effective implementation of an adverse judgment. This report has highlighted mechanisms in place in the United Kingdom and the Netherlands as examples of "best practice" in the parliamentary supervision of implementation of Court judgments; recent positive developments have also been noted in other states such as Finland, Germany and Romania. But despite this, too few states thoroughly engage in this process, a situation that must be addressed by national parliamentarians as a matter of priority. Hence the importance, in this connection, of our Committee's decision, on 5 October 2010, to propose to the Assembly that the 2011 debate on the state of human rights in Europe should focus on "National parliaments – guarantors of human rights in Europe".

211. Alongside systemic problems leading to a large number of repetitive applications, close attention must be paid to worrying developments in certain states. I highlight one specific worrying example: the non-respect of interim measures under Rule 39 of the Rules of the Court (linked to states' requirement not to undermine the effectiveness of the right of individual application²⁶⁶). In this respect, the Italian attitude to expel applicants, in defiance of Rule 39 measures, to a country where there exists a real risk of ill-treatment, is simply unacceptable. Despite assurances given to the Committee of Ministers by the Italian authorities to put an end to this trend,²⁶⁷ they have since expelled another applicant, Mr Mannai, on 1 May 2010 in contravention of an interim measure issued by the Court.²⁶⁸ The Slovak Republic has recently taken similar action in extraditing Mustapha Labsi to Algeria, ignoring an interim measure ordered by the Court.²⁶⁹ The Assembly has stressed the importance of the full co-operation of all states parties with the Court "at all stages of procedure and even before a procedure is formally opened".²⁷⁰ Indeed, such blatant disregard for interim measures seriously threatens the right to individual petition and the effectiveness of the Convention system as a whole. Parliamentarians, both at the Assembly and domestic level, must prioritise efforts to stop such disgraceful behaviour.

212. During the preparation of this report, I visited seven states parties and have assessed the extent of implementation of Court judgments and parliamentary supervision in these and several other countries. What is clear is that the situation regarding implementation of Court judgments is, at present, far from satisfactory. As my colleague, Mr Holger Haibach, has rightly stressed in a recent motion for a resolution on "Ensuring the viability of the Strasbourg Court": "The Parliamentary Assembly should itself undertake and also insist on regular and stringent national parliamentary supervision of Strasbourg judgments to ensure that structural deficiencies are promptly and adequately dealt with".²⁷¹ In addition, it is simply unacceptable – for states belonging to a European Organisation which considers itself the "Conscience of Europe" – not to take immediate and strong measures following deaths or ill-treatment suffered at the hands of law enforcement officials; the importance of eradicating impunity cannot be overstated, not only in the North Caucasus region of the Russian Federation, although this problem is the most virulent there, as shown by Mr Dick Marty's report.²⁷² Failure to implement judgments of the Court in such instances gravely undermines the value of the protection system established by the Convention. I therefore very much count on my fellow parliamentarians to put right this unsatisfactory situation.

²⁶⁶ Article 34 of the Convention.

²⁶⁷ 1078th Meeting of the Committee of Ministers, 9 March 2010.

²⁶⁸ Interim Resolution CM/ResDH(2010)83.

²⁶⁹ See Joint declaration of 29 April 2010 of the chairpersons of the Assembly's Committees on Legal Affairs and Human Rights and on Migration, Refugees and Population:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5505.

²⁷⁰ Resolution 1571 (2007) on Council of Europe member states' duty to co-operate with the European Court of Human Rights, for which I had the privilege of being rapporteur for the Committee on Legal Affairs and Human Rights. For details, see Doc. 11183.

²⁷¹ See Doc. 12370.

²⁷² See Doc. 12276.

213. Two final, but important comments: We, the Assembly, as a statutory organ of the Council of Europe (and at the same time national parliamentarians), should not meekly accept the premise that the Committee of Ministers has "exclusive jurisdiction" on this subject. When the Court judgments are not fully and rapidly executed, we – parliamentarians – also have a duty to help supervise the execution of the Court's judgments. The credibility and viability of our European system of human rights cannot be left solely in the hands of the executive organ of the Council of Europe (in effect, diplomatic representatives of governments). Closely tied to this is the idea which I mooted back in August 2009, to the effect that the Assembly ought to consider – in the future – suspending the voting rights of national delegations when their parliaments do not seriously exercise parliamentary control over the executive in cases of non-implementation of judgments of the European Court of Human Rights.²⁷³

²⁷³ Recently cited by Mrs Bemelmans-Videc in her report on the Interlaken process, Doc. 12221, paragraph 21.

Appendix 1

Summary of the principal problems encountered in the execution of judgments of the European Court of Human Rights in respect of nine State Parties to the European Convention on Human Rights

State party	Leading case	Case description
1. Bulgaria	<i>Al-Nashif and Others v. Bulgaria</i> (Application No. 50963/99, judgment of 20/09/2002), and 4 other judgments	Violations of the right to respect for family life due to deportation/order to leave the territory.
	<i>Djanzozov v. Bulgaria</i> (Application No. 45950/99, judgment of 08/10/2004), and 14 other judgments.	Excessive length of civil proceedings and lack of an effective remedy.
	<i>Kitov v. Bulgaria</i> (Application No. 37104/97, judgment of 03/07/2003), and 34 other judgments.	Excessive length of criminal proceedings and lack of an effective remedy.
	<i>Velikova v. Bulgaria</i> (Application No. 41488/98, judgment of 18/05/2000, and 14 other judgments; Interim Resolution CM/Res/DH(2007)107	Cases principally concerning deaths or ill-treatment which took place under the responsibility of the forces of order.
2. Greece	<i>Makaratzis v. Greece</i> (Application No. 50385/99, judgment of 20/12/2004), and 10 other judgments.	Use of lethal force and ill-treatment by law enforcement officials and lack of effective investigation into such abuses.
	<i>Manios v. Greece</i> (Application No. 70626/01, judgment of 11/03/2004, and 182 other judgments; Interim Resolution CM/ResDH(2007)74.	Excessive length of judicial proceedings.
3. Italy	<i>Belvedere Alberghiera S.R.L. v. Italy</i> (Application No. 31524/96, judgments of 30/05/2000, and of 30/10/2003 and 84 other judgments; Interim Resolution CM/ResDH(2007)3	Unlawful deprivation of land by local authorities because of a judge-made rule, the "constructive-expropriation rule", which precludes restitution if works commenced in the public interest have been completed.
	<i>Ben Khemais v. Italy</i> (Application No. 246/07, judgment of 06/07/2009); Interim Resolution CM/ResDH(2010)83. <i>Saadi v. Italy</i> (Application No. 37201/06, judgment of 28/02/2008), and 9 other judgments.	Rule 39 of the Rules of the Court and expulsion of foreign nationals.
	<i>Ceteroni v. Italy</i> (Application No. 22461/93, judgment of 15/11/1996), and 2183 other judgments; Interim Resolution CM/ResDH(2009)42.	Excessive length of judicial proceedings and lack of an effective remedy.
	<i>Luordo v. Italy</i> (Application No. 32190/96, judgment of 17/07/03, and 13 other judgments; Interim Resolutions CM/ResDH(2007)27 and CM/ResDH(2009)42	Restriction of the applicants' individual rights following bankruptcy proceedings.
	<i>Mostacciolo Guiseppe v. Italy</i> (Application No. 64705/01, judgment of 29/03/2006), and 83 other judgments; Interim Resolution CM/ResDH(2009)42.	Excessive length of judicial proceedings and lack of an effective remedy.
	4. Moldova	<i>Ciorap v. Moldova</i> (Application No. 12066/02, judgment of 19/06/2007, and 4 other judgments.
<i>Corsacov v. Moldova</i> (Application No. 18944/02, judgment of 04/07/2007), and 3 other judgments.		Ill-treatment by police.
<i>Oferta Plus S.R.L. v. Moldova</i> (Application No. 14385/04, judgments of 19/12/2006, and 12/02/2008.		Right to a fair hearing and peaceful enjoyment of possessions.
<i>Olaru and Others v. Moldova</i> (Application No. 476/07, judgment of 06/04/2010).		Non-enforcement of domestic final judgments.
<i>Sarban v. Moldova</i> (Application No 3456/05, judgment of 04/10/2005) and 9 other judgments.		Various violations in relation to arrest and detention on remand.

5. Poland	<i>Bączkowski and Others v. Poland</i> (Application No. 1543/06, judgment of 03/05/2007).	Violation of the right to freedom of assembly and lack of effective remedy in this respect.
	<i>Fuchs v. Poland</i> (Application No. 33870/96, judgment of 11/05/2003), and 53 other judgments.	Excessive length of proceedings and right to an effective remedy.
	<i>Kaprykowski v. Poland</i> (Application No. 23052/05, judgment of 03/02/2009, and 2 other judgments.	Poor conditions of detention.
	<i>Kudła v. Poland</i> (Application No. 30210/96, judgment of 26/10/00 - Grand Chamber), and 53 other judgments; Interim Resolution CM/ResDH(2007)28	Excessive length of criminal proceedings and lack of an effective remedy in this respect.
	<i>Matyjek v. Poland</i> (Application No. 38104/03, judgment of 24/04/2007, and 4 other judgments.	Unfairness of "lustration" proceedings.
	<i>Podbielski v. Poland</i> (Application No. 27916/95, judgment of 30/10/98), and 190 other judgments; Interim Resolution CM/ResDH(2007)28	Excessive length of civil proceedings.
	<i>Trzaska v. Poland</i> (Application No. 25792/94, judgment of 11/07/00), and 150 other judgments; Interim Resolution CM/ResDH(2007)75	Excessive length of detention on remand.
6. Romania	<i>Bragadireanu v. Romania</i> (Application No. 22088/04, judgment of 06/03/2008), and 1 other judgment.	Poor conditions of detention.
	<i>Nicolau v. Romania</i> (Application No. 1295/02, judgment of 03/07/2006), and 34 other judgments.	Excessive length of civil proceedings and lack of an effective remedy.
	<i>Rotaru v. Romania</i> (Application No. 28341/95, judgment of 04/05/00 - Grand Chamber); Interim Resolution ResDH(2005)57	Violation of the right to respect for private life due to the lack of sufficient safeguards in national legislation against abuse as regards the way in which the Romanian Intelligence Service gathers, keeps and uses information.
	<i>Sacaleanu v. Romania</i> (Application No. 73970/01, judgment of 06/12/2005), and 6 other judgments.	Non-enforcement of domestic final judicial decisions.
	<i>Stoianova and Nedelcu v. Romania</i> (Application No. 77571/01, judgment of 04/11/2004), and 9 other cases.	Excessive length of criminal proceedings and lack of an effective remedy.
	<i>Străin and Others v. Romania</i> (Application No.57001/00, judgment of 30/11/2005), and 120 other judgments. <i>Viasu v. Romania</i> (Application No. 75951/00, judgment of 09/03/2009), and 5 other judgments.	Failure to restore or compensate for nationalised property.
7. Russian Federation	<i>Burdov. (No. 2) v. Russian Federation</i> (Application No. 33509/04, judgment of 15/01/2009), and 210 other judgments; Interim Resolution CM/ResDH(2009)43 and CM/ResDH(2009)158.	Non-enforcement of domestic final judgments.
	<i>Kalashnikov. v. Russian Federation</i> (Application No. 47095/99, judgment of 15/07/02, and 31 other judgments; Interim Resolution ResDH(2003)123.	Poor conditions of detention on remand and its excessive length.
	<i>Mikheyev. v. Russian Federation</i> (Application No. 77617/01, judgment of 26/01/2006, and 8 other judgments.	Ill-treatment in police custody and lack of an effective investigation in this respect.
	<i>Ryabykh v. Russian Federation</i> (Application No. 52854/99, judgment of 24/07/03, and 55 other judgments; Interim Resolution ResDH(2006)1.	Violation of the principle of legal certainty on account of the quashing of final domestic judgments through the supervisory review procedure.
	<i>Khashiyev. v. Russian Federation</i> (Application No. 57942/00, judgment of 24/02/2005) and 116 other judgments.	Various violations of the Convention resulting from and/or relating to the actions of the security forces in the Chechen Republic (mainly unjustified use of force by members of the security forces, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property).

8. Turkey	<i>Aksoy v. Turkey</i> (Application No. 21987/93, judgment of 18/12/96), and 201 other judgments; Interim Resolution ResDH(2005)43 and CM/ResDH(2008)69.	Various violations of the Convention resulting from actions of the security forces, in particular in the southeast of Turkey (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces, subsequent lack of effective investigations into the alleged abuses).
	<i>Bati v. Turkey</i> (Application No. 33097/96, and 57834/00, judgment of 03/06/2004), and 56 other judgments.	Lack of independence in investigating authorities dealing with actions of security forces.
	<i>Cyprus v. Turkey</i> (Application No. 25781/94, judgment of 10/05/01 - Grand Chamber); Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25	Various violations of the Convention relating to the situation in the northern part of Cyprus following Turkish military operation in 1974 (missing persons, living conditions of Greek Cypriots in the northern part of Cyprus, the rights of Turkish Cypriots living in the northern part of Cyprus, and homes and property of displaced persons).
	<i>Inçal v. Turkey</i> (Application No. 22678/93, judgment of 09/06/98), and 91 other judgments; Interim Resolutions ResDH(2001)106 and ResDH(2004)38	Unjustified interferences in the freedom of expression, in particular on account of their conviction by state security courts following the publication of articles and books or the preparation of messages addressed to a public audience.
	<i>Halise Demirel v. Turkey</i> (Application No. 39324/98, judgment of 28/01/2003) and <i>Cahit Demirel v. Turkey</i> (Application No. 18623/03, judgment of 07/07/2009), and 100 other judgments.	Excessive length of detention on remand.
	<i>Hulki Güneş v. Turkey</i> (Application No. 28490/95, judgment of 19/06/03, and 3 other judgments; Interim Resolutions ResDH(2005)113, CM/ResDH(2007)26 and CM/ResDH(2007)150	Lack of judicial independence and impartiality, unfairness of judicial proceedings, ill-treatment inflicted in police custody.
	<i>Oya Ataman v. Turkey</i> (Application No. 74552/01, judgment of 05/03/2007), and 10 other cases.	Abusive use of force by security force in dispersing peaceful demonstrations.
	<i>Ülke v. Turkey</i> (Application No. 39437/98, judgment of 24/01/06, Interim Resolutions CM/ResDH(2007)109, CM/ResDH(2009)45, and DD(2009)56.	Degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service.
	<i>Xenides-Arestis v. Turkey</i> (Application No. 46347/99, judgments of 22/12/05, and of 07/12/06, Interim Resolution CM/ResDH(2008)99, and DD(2009)540.	Violation of the right to respect for private life due to continuous denial of the applicant's access to her property in the northern part of Cyprus and consequent loss of control thereof.

9. Ukraine	<i>Afanasyev v. Ukraine</i> (Application No. 387722/02, judgment of 05/04/2005), and 6 other judgments.	Ill-treatment by police and lack of procedural safeguards.
	<i>Doronin v. Ukraine</i> (Application No. 16505/02, judgment of 19/02/2009), and 6 other judgments.	Unlawful and/or lengthy detention on remand.
	<i>Gongadze v. Ukraine</i> (Application No. 34056/02, judgment of 08/11/05, Interim Resolutions CM/ResDH(2008)35 and CM/ResDH(2009)74.	Failure to protect life, failure to carry out an effective investigation into a death, lack of an effective remedy in this respect, attitude of the investigation authorities towards the applicant and her family amounting to degrading treatment.
	<i>Nevmerzhitsyi v. Ukraine</i> (Application No. 54835/00, judgment of 09/09/2004), and 2 other judgments.	Poor conditions of detention on remand.
	<i>Salov v. Ukraine</i> (Application No. 65518/01, judgment of 06/11/2005), and 1 other judgment.	Lack of independence and impartiality of tribunals.
	<i>Svetlana Naumenko v. Ukraine</i> (Application No. 41984/98, judgment of 09/11/2004), and 81 other judgments.	Excessive length of civil and criminal proceedings.
	<i>Yuriy Nikolayevich Ivanov v. Ukraine</i> (Application No. 40450/04, judgment of 15/01/2010), and <i>Zhovner v. Ukraine</i> (Application No. 56848/00, judgment of 29/06/04, and 378 other judgments; Interim Resolution CM/ResDH(2008)1.	Non-enforcement of domestic final judgments.

Appendix 2

Background information concerning states visited by the rapporteur²⁷⁴

A. Bulgaria

1. Programme of the visit: Sofia

Wednesday 27 May 2009

20:00 Informal meeting with civil society representatives

Thursday 28 May 2009

10:00 Meeting with members of the Bulgarian delegation to the Parliamentary Assembly: Mrs E. Jivkova, Mr Y. Loutfi, Mrs I. Ivanova and Mr I. N. Ivanov

14:00 Meeting with Mr R. Andreev, Deputy Minister of the Interior and staff members

16:00 Meeting with Mrs M. Tacheva, Minister of Justice, and Mrs N. Nikolova, Government Agent before the European Court of Human Rights

Friday 29 May 2009

11:00 Meeting with Mr K. Mihov, Head of International Legal Co-operation Department, and Mrs M. Mihailova, Prosecutor at "Justice and Execution of Judgments" Department – Chief Prosecutor's Office

14:00 Meeting with Mr N. Metodiev, Deputy Chairman of the State Agency for National Security, and staff members

17:00 Meeting with Mr A. Tehov, Director Human Rights Directorate, Ministry for Foreign Affairs, and staff members

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4679.

B. Greece

1. Programme of the visit: Athens

Monday 18 January 2010

10:00 Meeting with Mr K. Psichas, Counsellor Minister's Office, Ministry of Environment

11:00 Meeting with Mr G. Dimitrainas, Secretary General, Ministry of Justice

12:00 Meeting with Mr S. Vougias, Deputy Minister, Ministry of Citizen's Protection

15:30 Meeting with Mr P. Dimitras, Representative of the NGO Greek Helsinki Monitor

16:30 Meeting with Mr A. Takis, Secretary General of Migration Policy, Ministry of Interior

18:30 Meeting with Mrs A. Yotopoulos, President of Marangopoulos Foundation for Human Rights and with Mr L.A. Sicilianos, Vice-President of the National Committee for Human Rights

Tuesday 19 January 2010

10:00 Meeting with Mr G. Kalamidas, President of the Court of Cassation

10:30 Meeting with Mr I. Tendes, General Prosecutor

12:00 Meeting with Mr P. Pikramenos, President of the Council of State

12:45 Meeting with Mr K. Skandalidis M.P., Chairperson of the Permanent Committee of Public Administration, Public Order and Justice of the Greek Parliament

13:30 Lunch hosted by the Greek delegation to the Parliamentary Assembly

2. Press release issued at the end of the visit

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5189.

²⁷⁴ The rapporteur was accompanied by Mr Andrew Drzemczewski, Head of the Legal Affairs and Human Rights Department on his visits to Bulgaria, the Russian Federation and Ukraine, and by Ms Agnieszka Szklanna, Secretary to the Committee on Legal Affairs and Human Rights, on his visits to Greece, Italy, Moldova and Romania. The rapporteur was also to visit Turkey, but such a visit was not made possible by the Turkish authorities.

C. Italy

1. Programme of the visit: Rome

Monday 23 November 2009

- 12:00 Meeting with Mr C. Zucchelli, Head of the Legal and Legislative Affairs Office of the Presidency of the Council of Ministers; Mr U. de Augustinis
- 15:00 Meeting with Mr S. Guglielmino, Public Security Department, Ministry of the Interior
- 18:00 Meeting with the Chief Prosecutor of the Supreme Court, Mr V. Esposito

Tuesday 24 November 2009

- 09:00 Meeting with Mr R. Zaccaria, MP, Vice Chairman of the Committee on Constitutional Affairs, and with Senator F. Berselli, Chairman of the Committee on Justice of the Senate
- 10:00 Meeting with Mr T. Gemelli, President of the Supreme Court
- 11:30 Meeting with Ms D. Ferranti, member of the Committee on Justice for the Democratic Party parliamentary group
- 13:30 Working luncheon with members of the Italian delegation to the Parliamentary Assembly
- 15:00 Meeting with Mr M. Gasparri, Senator, Chairman of the political group "Il Popolo della Libertà" in the Senate
- 15:30 Meeting with Mr S. Dambruoso, Head of the Office for the Co-ordination of International Affairs of the Ministry of Justice; Ms E. De Bellis and Ms E. D'Ortona, senior officials of the Litigation Office
- 17:30 Meeting with Mrs E. G. Spatafora, Government Agent at the European Court of Human Rights; Mr P. G. Spinelli, Minister Plenipotentiary, Head of the Unit for Diplomatic Litigation; Mr R. Cianfarani, Embassy Counsellor, Head of the Regional Co-operation Office within the Directorate General for European Countries

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5069

D. Moldova

1. Programme of the visit: Chisinau

Sunday 2 May 2010

- 20:00 Working dinner with civil society representatives

Monday 3 May 2010

- 09:00 Meeting with Mr M. Ghimpu, President of the Parliament of the Republic of Moldova, acting President
- 10:00 Meeting with the members of the delegation of Moldova to the Parliamentary Assembly
- 10:50 Meeting with members of the Parliamentary Committee for Human Rights and Interethnic Relations
- 11:45 Meeting with members of the Parliamentary Legal Committee, Nominations and Immunities
- 14:15 Meeting with Mr V. Grosu, Government Agent before the European Court of Human Rights
- 15:15 Meeting with Mr V. Cojocaru, Director General of the Department of Penal Institutions
- 16:15 Meeting with Mr D. Visternicean, Chairperson of the High Council of Magistracy
- 17:15 Meeting with Mrs R. Botezatu, Vice-President of the High Court of Justice
- 18:15 Meeting with Mr I. Serbinov, Deputy Public Prosecutor
- 20:00 Working dinner with Mr I. Pleșca, Chairperson of the Parliamentary Legal Committee, Nominations and Immunities and with Mr A. Băieșu, Vice-Chairperson of the Committee

Tuesday 4 May 2010

- 09:00 Meeting with Mr A. Popov, Vice-Minister of Foreign Affairs and European Integration
- 10:00 Meeting with Mr V. Catan, Minister of the Interior
- 11:00 Meeting with Mr V. Secaș, Head of the Legal Direction, Ministry of Finances

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5531

E. Romania**1. Programme of the visit: Bucharest**

Wednesday 5 May 2010

- 10:00 Meeting with Mr C. Preda, Chairperson of the Romanian Delegation to the Parliamentary Assembly
- 10:30 Meeting with Mr G. Frunda, Chairperson of the Committee for Human Rights, Cults and Minorities of the Romanian Senate
- 11:30 Meeting with Mr D. Buda, Chairperson of the Committee for Legal Affairs, Discipline and Immunities of Chamber of Deputies and Messrs B. Ciucă and F. Iordache, Vice-Presidents and Messrs Gabriel Andronache and T. Ioan, Secretaries
- 12:00 Meeting with Mr T. Pantîru, Chairperson of the Sub-Committee on the implementation of judgments of the European Court of Human Rights and with Messrs C. Ştirbet, E. Nicolicea, C. A. Iustin-Marinel and Mrs C. Axenie, members of the Sub-Committee
- 13:00 Lunch hosted by Mr D. Buda, Chairperson of the Committee for Legal Affairs, Discipline and Immunities of Chamber of Deputies
- 14:30 Meeting with Mrs A. M. Bica, Secretary of State, Ministry of Justice
- 15:30 Meeting with Mr M. Bulacea, Adviser to the General Prosecutor of Romania
- 16:30 Meeting with Mr R. Horatiu Radu, Government Agent before the European Court of Human Rights
- 17:30 Meeting with Mr I. Grosu, Deputy Director, Romanian Intelligence Service
- 18:30 Meeting with Ms L. Stefan, representative of the NGO Romanian Academic Society
- 19:30 Official dinner hosted by Mr C. Preda, Head of the Romanian Delegation to the Parliamentary Assembly

Thursday 6 May 2010

- 09:30 Meeting with senior officials of the High Court of Cassation and Justice:
 - Mrs R. A. Popa, Judge, Criminal Section
 - Mrs C. Tarcea, Judge, Civil Section
 - Mrs M. Olaru, Judge, Commercial Section
- 10:30 Meeting with Mr B. Florica, President of the Superior Council of Magistracy, Mr D. Lupaşcu, Judge, Chairperson of the Committee on Legal Affairs and the Superior Council of Magistracy, and with senior officials: Mrs R. Gâlea, Head of the Directorate for European Affairs and Mrs C. Bălan, Head of the Directorate for Human Resources
- 12:45 Meeting with Mr T. Greblă, Chairperson of the Committee on Legal Affairs, Appointments, Discipline, Immunities and Validation of the Senate of Romania
- 13:30 Lunch hosted by Mr T. Corlătean, Chairperson of the Committee on Foreign Policy of the Senate of Romania
- 15:00 Meeting with Mr M. Capră, Secretary of State, Ministry for the Administration and Home Affairs

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5533

F. Russian Federation**1. Programme of the visit: Moscow**

Monday 8 February 2010

- 10:00 Meeting with Mr M. B. Lebedev, Chairman of the Supreme Court of the Russian Federation
- 11:00 Meeting with Mrs N. Zakharova, Director of the Legal Department, Mrs M. Sosnina, Deputy Head of Legal Department and Mr S. Kovpan, Deputy Head of Section, Legal Department, Ministry of Finance
- 13:00 Working lunch with members of the Russian Delegation to the Parliamentary Assembly
- 14:30 Discussion with representatives of several Committees of the Federal Assembly, chaired by Mr V. Pligin, Chairman of the State Duma's Constitutional Law Committee
- 16:30 Meeting with Mr A. Nekrasov, Director, and staff members, Prosecutor General's Office
- 19:30 Dinner with lawyers and civil society representatives

Tuesday 9 February 2010

- 10:00 Meeting with Mr A. Nikiforov, Deputy Director, and Mr V. Timofeev, Senior Counsellor, Ministry for Foreign Affairs of the Russian Federation
- 11:30 Meeting at the Ministry of Justice, with representatives from the Office of the Government Agent before the European Court of Human Rights, Mrs N. Zyabkina, Deputy Head of Staff,

- Mrs N. Kortovenkova and Mr A. Smirnov
- 14:00 Meeting with Mr K.S. Nikishkin, Deputy Head of the Legal Department, Mr V.V. Balashov, First Deputy Head of the Internal Security Department, and other staff members, Ministry of the Interior
- 16:00 Meeting with Mr V. Yakovlev, Administration of the President of the Russian Federation

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5269

G. Ukraine

1. Programme of the visit: Kyiv

Wednesday 8 July 2009

- 09:00 Meeting with Mr S. Kivalov, Chairman of Committee on Justice of the Verkhovna Rada
- 10:00 Meeting with Mr S. Mischenko, Chairman of Committee on Judicial Policy of the Verkhovna Rada
- 11:45 Meeting with V. Filatov and Ms Z. Bortnovska, Judges of the Supreme Court of Ukraine, and staff members
- 13:00 Meeting with Mr O. Medvedko, Prosecutor General of Ukraine, Mr M. Golomsha, Deputy Prosecutor General of Ukraine, and staff members
- 15:00 Meeting with Mr Onischuk, Minister of Justice, and Ms V. Lutkovska, Deputy Minister of Justice, and staff members
- 19:00 Dinner with lawyers and civil society representatives

Thursday 9 July 2009

- 10:45 Meeting with Mr M. Poludenyi, Deputy Minister of Finance

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=4827



Doc. 12455 Addendum

25 January 2011

Implementation of judgments of the European Court of Human Rights

Addendum to the report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Christos POURGOURIDES, Cyprus, Group of European People's Party

1. Introduction

1. This addendum is an updated version of paragraphs 128-148 of my report on the implementation of judgments of the European Court of Human Rights,¹ which was adopted by the Committee on Legal Affairs and Human Rights on 17 November 2010.

2. Unfortunately, I had not been able to visit Turkey before the adoption of this report by the committee, despite the committee's decision, taken back on 29 January 2009, to authorise me to carry out fact-finding visits to eight countries, including Turkey. Repeated requests, since September 2009, to undertake this visit before the completion of the report had been unsuccessful. The invitation to visit was received at a very late stage, when I met Mr Ahmet Davutoğlu, Turkey's Minister of Foreign Affairs, during the Assembly's Standing Committee meeting in Antalya on 12 November 2010.

3. The visit to Ankara took place on 10 and 11 January 2011. A summary of the principal problems encountered in the execution of the judgments of the European Court of Human Rights with respect to Turkey can be found in Appendix 1. The programme of the visit is set out in Appendix 2.

2. Turkey

4. Turkey has around 1 600 cases pending before the Committee of Ministers, representing 16.5% of the Committee's case load.² These cases comprise many issues,³ the most long-standing ones being:

- the failure to re-open proceedings;
- repeated imprisonment for conscientious objection;
- freedom of expression;
- excessive length of detention on remand;
- actions of security forces;
- issues concerning Cyprus.

¹ Assembly Doc. 12455 of 20 December 2010.

² Statistics obtained in December 2010. Of these approximately 1 600 cases, just under 1 460 are "clone cases", which represent nearly 91% of the total. See the situation before the Strasbourg Court, where approximately 11% of cases before the Court concern Turkey.

³ Some of these reveal structural problems, including compensation for loss of coastal property, loss of property rights in public forest areas, excessive length of proceedings, expropriation of property and other issues related to freedom of expression.

2.1. Failure to re-open proceedings

5. The *Hulki Günes v. Turkey*⁴ group of cases concerns unfairness of criminal proceedings where the applicants were convicted on the basis of statements taken under duress and in the absence of a lawyer, in violation of Articles 3, 6, paragraph 1, and 6, paragraph 3(c), of the European Convention on Human Rights ("the Convention"). The re-opening of proceedings was requested by the Court, but legislation that was passed amending the provisions in the Code of Criminal Procedure only provided for re-opening of judgments delivered before 4 February 2003 and in those applications lodged with the Court after that date; thus the cases pending at the time do not fall under the amendment.

6. Significant pressure has been brought to bear on the Turkish authorities over the last seven years, especially by the Committee of Ministers: two letters from the Chairperson of the Committee of Ministers,⁵ three interim resolutions,⁶ and a decision in September 2008⁷ to examine the case at every regular meeting of the Committee until the Turkish authorities provided information on the measures they envisaged to resolve the issue. The Ministry of Justice eventually indicated that a provision in a draft law allowing for the re-opening of proceedings in the present cases had been submitted to parliament for adoption. This text – as I was informed during my visit – was withdrawn by the Justice Committee of the Turkish Parliament; I am not aware of whether the Committee of Ministers has been informed of this.⁸ In these circumstances, I urge the Head of the Turkish Parliamentary delegation to the Assembly, together with the (Turkish) President of the Assembly, to ensure that parliament re-considers this decision.

2.2. Repeated imprisonment for conscientious objection to military service

7. Repeated imprisonment for conscientious objection, which is in violation of Article 3, stems from the possibility – provided for in legislation – of repeated prosecution for the rest of the applicant's life. There are a few cases on the issue before the Court, but this does not detract from the fact that it is a grave violation of the Convention. In the case of *Ülke v. Turkey*,⁹ the applicant was convicted repeatedly over a number of years for refusing to wear his uniform on conscientious grounds, serving a total of 701 days in prison. He is currently in hiding for fear of further prosecution; he has no official address and has been forced to break off all contact with the administrative authorities. As the Court stated, such a life amounts "almost to civil death".¹⁰

8. The individual measures and general measures in this case are intrinsically linked. Despite interim resolutions having been adopted in October 2007¹¹ and in March 2009,¹² no information has been forthcoming in response to the judgment of the Strasbourg Court regarding the individual measures. In March 2010, the Turkish authorities indicated to the Committee of Ministers that they would provide concrete information on legislative amendments. During my visit, I also enquired about developments and hope to receive information on this subject in the near future.

2.3. Freedom of expression

9. The *Inçal v. Turkey*¹³ group of cases concerns unjustified interferences with Article 10 of the Convention in relation to the applicants' convictions for publishing articles and books. This has been an issue since 1998 and, thirteen years on, it remains so. In terms of individual measures, the Turkish authorities indicated they would take measures to erase the convictions of several applicants who were convicted under Article 8 of the Anti-terrorism Law No.3713 following its abrogation.¹⁴

10. There have been general measures taken to solve the problem, such as: a number of constitutional amendments on freedom of expression, a package of laws to revoke and amend offending provisions of the

⁴ Application No. 28490/95, judgment of 19 September 2003.

⁵ The first on 21 February 2005, the second on 12 April 2006.

⁶ CM/ResDH(2005)113, CM/ResDH(2007)26, and CM/ResDH(2007)150.

⁷ 1035th Meeting, 17-18 September 2008.

⁸ See 1067th Meeting, 7 October 2009. The reason for the withdrawal of this provision was triggered by concern, within the Justice Committee on 22 June 2010, that if this provision were not removed, this would put into jeopardy the adoption of the whole of the (draft) text amending the Anti-Terrorism Law and a number of other legislative provisions.

⁹ Application No. 39437/98, judgment of 24 April 2006.

¹⁰ *Ibid.*, paragraph 62.

¹¹ CM/ResDH(2007)109.

¹² CM/ResDH(2009)45.

¹³ Application No. 22678/93, judgment of 9 June 1998.

¹⁴ Interim Resolution CM/ResDH(2004)38.

Anti-Terrorism Law, and training and awareness-raising initiatives for judges and prosecutors in order to encourage the application of Convention standards, with examples of such practice from domestic courts.¹⁵

11. These legislative amendments, however, do not eradicate the root of the problem and are merely a different expression of the same Convention-violating substance. In addition, the examples of court practice provided by the Turkish authorities do not represent conclusive evidence that the Convention standards are being upheld, especially with respect to the 2004 Constitutional amendment of Article 90 of the Constitution, which specifies the direct application of the Convention in domestic law. It is vital that the Convention and the Court's case law are reflected in the Turkish domestic legislation and its application. On this aspect, it is understood the Committee of Ministers has been awaiting information since September 2008.

2.4. Excessive length of detention on remand

12. The leading group of cases identifying excessive length of detention of remand as a major problem is *Halise Demirel v. Turkey*,¹⁶ with the Court rendering a quasi-pilot judgment in *Cahit Demirel v. Turkey*, which exposed the "widespread and systemic problems arising out of the Turkish criminal justice system and the state of the Turkish legislation".¹⁷ There is an absence of relevant and sufficient reasons given by domestic courts in decisions to extend detention, violating Article 5, paragraph 3, of the Convention, as courts tend to use stereotypical wording that does not take into account individual circumstances. Further, an effective remedy to challenge the lawfulness of detention on remand does not exist and compensation cannot be obtained, resulting in a violation of Articles 5, paragraphs 4 and 5 respectively.

13. Positive steps have been taken by the Turkish authorities through legislative amendments, for instance the Code of Criminal Procedure (Law No. 5271) which came into force on 1 June 2005. This provides safeguards ensuring that reasons for detention are given; that continued detention on remand is reviewed every thirty days; that maximum detention on remand does not exceed two years for assize court crimes;¹⁸ and that there must be a right to compensation. The authorities have provided information on how certain of these measures have been implemented in domestic courts.

14. The legislative steps taken can be seen as progress, but the information provided on how they are implemented is inconclusive and further evidence is necessary to ensure that relevant and sufficient reasons are being used to justify detention. Indeed, information concerning a December 2009 Court of Cassation decision on the criminal liability of judges who do not provide such reasons has been received and is being scrutinised by the Committee of Ministers. In any event, legislative amendment to execute a judgment should not present a risk of future violations. Additionally, it must be noted that no information is forthcoming from the Turkish authorities on the introduction of an effective remedy to challenge the lawfulness of detention on remand, which must now be considered a matter of urgency for the Chairperson of the Turkish parliamentary delegation.

2.5. Actions of security forces

15. The anti-terror actions of the security forces in the 1990s brought about an influx of cases to the Court, which found violations in relation to several articles, including Articles 2, 3, 5, 8 and 13 and Article 1 of Protocol No. 1.¹⁹ The 2008 Committee of Ministers' interim resolution reiterated previously identified²⁰ structural problems that caused these violations, particularly ineffectiveness of procedural safeguards in custody, attitudes and training of security forces, establishing criminal liability at domestic level, and shortcomings in ensuring adequate reparations to victims.²¹

16. In the light of the Committee of Ministers interim resolution in 2005,²² the Turkish authorities have made progress in resolving the structural problems: a legislative framework is now in place to provide procedural safeguards in police custody; human rights is in the curriculum for initial training of the security forces; legislative amendments have been made to give direct effect to the Convention in Turkish domestic

¹⁵ See Memorandum CM/Inf(2008)26. See also paragraph 23 below.

¹⁶ Application No. 39324/98, judgment of 28 January 2003.

¹⁷ Application No. 18623/03, judgment of 7 July 2009, paragraph 46.

¹⁸ Brought into force on 1 January 2011. The implementation of one provision – Article 102 – has been the subject of intensive debate in Turkey, both within the legal community and in the media, especially with respect to the interpretation of this provision by the Court of Cassation. See, for example, commentaries published on this subject in *Hürriyet*, *Bianet News* and *AP/Turkey* (translations of which I obtained when in Ankara).

¹⁹ See the *Aksoy v. Turkey* (Application No. 21987/93, judgment of 18 December 1996) group of cases in Appendix 2.

²⁰ Interim resolutions CM/DH(99)434, CM/ResDH(2002)98 and CM/ResDH(2005)43.

²¹ CM/ResDH(2008)69.

²² CM/ResDH(2005)43.

law governing use of force by security personnel and a range of effective remedies have been introduced to complement the Law on Compensation of 27 July 2004, which provides the possibility for pecuniary compensation for damages in relation to terrorist activities and operations carried out between July 1987 and December 2006.

17. That said, a significant problem remains outstanding in the series of shortcomings still apparent in investigating abuses by security forces. The *Bati v. Turkey*²³ group of cases highlights the fact that, despite the passing of many years, impunity continues to reign in the absence of an effective investigation. The lack of independence of the investigating authorities, the impossibility for the applicants to access records or interview witnesses and accused officers, and the failure to suspend officials from duty despite proceedings against them, are just a number of the deficiencies that violate "procedural" Articles 2 and 3. In terms of individual measures, information on whether the investigations will be re-opened is awaited. In respect of general measures, Articles 94 and 95 of the new Criminal Code provide for longer sentences for the above-mentioned abuses, and the Ministry of Justice has taken steps to ensure safe prisoner transfers, but there has been no action taken to address the root of the problem and substantial improvement is needed.

18. It must also be noted that there exists a concern regarding the actions of the security forces in dispersing peaceful demonstrations. *Oya Ataman v. Turkey*²⁴ dealt with the use of excessive force in violation of Article 11 of the Convention, the freedom of assembly, and the connected group of cases showed violations of Articles 3 and 13. There have been a few amendments made to the legal framework surrounding police use of force in this area – the most notable being the gradual and proportionate use of firearms. However, the Committee of Ministers has been awaiting information on how these amendments will be applied in practice since April 2008.²⁵

2.6. Specific issues of concern

19. The interstate case *Cyprus v. Turkey*²⁶ relates to the situation that has existed in the northern part of Cyprus since the invasion, by Turkey, of the northern part of Cyprus in 1974 (euphemistically referred to as "conduct of military operations") and the continuing division of the Republic of Cyprus and the military occupation of 40% of the country's national territory. At present, the Committee of Ministers supervises closely the issues concerning missing persons and property rights of displaced Greek Cypriots.

20. As regards the issue of missing persons, additional measures are required to ensure effective investigations into their fate. That said, no answer has been given so far by the Turkish authorities to the Committee of Ministers' request for information on the concrete measures envisaged in the continuity of the work of the Committee on Missing Persons in Cyprus, with a view to the effective investigations required by the judgment.²⁷

21. As regards the property rights of displaced Greek Cypriots, the Committee of Ministers is currently examining the consequences of the Court's Grand Chamber decision on the admissibility of the application *Demopoulos v. Turkey*²⁸ and seven other cases delivered on 5 March 2010. The Court concluded in this decision that the Law 67/2005 of December 2005, according to which all natural and legal persons claiming rights to immovable or movable property could bring a claim before the Immovable Property Commission, "provides an accessible and effective framework of redress in respect of complaints about interference with property owned by Greek Cypriots".

22. As far as *Xenides-Arestis v. Turkey*²⁹ is concerned, the Committee of Ministers has already adopted two interim resolutions urging the Turkish authorities to pay the just satisfaction awarded in 2006 by the Court. The fact that this payment is still outstanding is an unacceptable state of affairs.

²³ Applications Nos. 33097/96 and 57834/00, judgment of 3 June 2004.

²⁴ Application No. 74552/01, judgment of 5 March 2007.

²⁵ During my visit, I asked to see copies of, for example, circulars addressed to law enforcement agencies, such as the circular of 2008 on the use of tear gas addressed to the police. Ministry of Interior officials promised to supply these to me.

²⁶ Application No. 25781/94, judgment of 10 May 2001.

²⁷ See also *Varnava v. Turkey*, Application No. 16064/90, judgment (Grand Chamber) of 18 September 2009.

²⁸ Application No. 46113/99, decision of 5 March 2010.

²⁹ Application No. 46347/99, 22 December 2005.

2.7. Additional comments

23. Despite undoubted, and indeed significant, progress made in the amelioration of the human rights situation in Turkey,³⁰ coined as "the silent legal revolution", it is nevertheless important for the Turkish authorities to maintain and intensify efforts to comply with Strasbourg Court judgments, a substantial number of which have been on the Committee of Ministers docket for many years. As indicated in the statement I made at the end of my visit (see Appendix 2): "[t]he Turkish authorities, presently chairing the Council of Europe Committee of Ministers, must lead by example and take urgent and decisive action to abide by Strasbourg Court judgments," and "I count on my fellow parliamentarians, in particular, to effectively monitor and rapidly enact legislation to counter a certain dilatoriness in this respect". There is an urgent need to overhaul the manner in which the heavily overburdened, understaffed and under-resourced judicial system functions.³¹ This problem was recognised as serious by most of my interlocutors in Ankara, as confirmed by the Turkish President himself.³² In this connection, note can be taken of an important European Union–Council of Europe project on enhancing the role of the supreme judicial authorities in respect of European standards with the objective of, *inter alia*, initiating further changes in the normative framework to ensure compliance with the European Union's *acquis* and the rights and freedoms guaranteed by the European Convention on Human Rights, as interpreted by the Strasbourg Court. The beneficiaries of this project include the Constitutional Court, the Court of Cassation, the Council of State and the High Council of Judges and Prosecutors.³³

24. Finally, in the areas of concern enumerated above, it has often taken the Turkish authorities a number of years to inform the Committee of Ministers of progress made. It therefore appears necessary to establish a parallel structure – within the Turkish Parliament itself – to permit the country's legislative organ to push forward and monitor developments in a more rigorous manner. Here, I fully endorse the initiative taken by certain members of the Grand National Assembly's Human Rights Inquiry Committee who have proposed the extension of the Committee's mandate to undertake legislative initiatives (which it presently cannot do). This text, which is presently pending before parliament, could include – as mooted in discussions I had with the Chairperson of the Human Rights Inquiry Committee – a provision providing for effective and regular parliamentary supervision of the implementation, by Turkey, of Strasbourg Court judgments.³⁴

³⁰ See, for example, the recent European Commission staff working document "Turkey 2010 Progress Report" accompanying the communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2010-2011, (SEC (2010) 1327, 9 November 2010; COM(2010)660), especially pp. 6-38, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf, and Venice Commission "Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors" (document CDL-AD(2010)42, of 20 December 2010), paragraphs 11-16. See also paragraphs 10, 13 and 16 above.

³¹ Mr Yurdakul, of the Court of Cassation, indicated to me that in 2005 the Court had 75 000 case files pending before it, with the figure being 1 850 000 in 2010!

³² The cover page of the English-language "*Today's Zaman*" of 11 January 2011 had a headline which read: "President Gül calls for radical judicial reform".

³³ I was also informed, when in Ankara, that the "Human Rights Joint Platform", an NGO network, is to launch a campaign in 2011 to encourage the Turkish authorities to execute Strasbourg Court judgments.

³⁴ The present situation appears to be the following: a sub-committee of the Constitution Committee of Parliament (the Committee) discussed a draft put forward by 22 MPs and made recommendations to the Committee. This "Draft Law on a Human Rights Committee" proposes a number of amendments to the Law on the Human Rights Inquiry Committee, in force since 1990.

The Committee observed that one of the proposed amendments would give the Human Rights Committee the powers to carry out its own examination. The sub-committee considered this to be incompatible with the principle of separation of powers because, in its opinion, it would place the Human Rights Committee above the judicial apparatus and the executive.

However, on 24 July 2008, the Committee adopted a number of the remaining amendments (with some modifications), and forwarded the text to Parliament. The draft law is currently pending before the parliament.

The proposed amendments, as accepted and modified by the Committee, include, notably, the following:

1. The name of the "Human Rights Inquiry Committee" to be changed to "Human Rights Committee".
2. The Human Rights Committee to have the power to review all draft laws submitted to parliament with a view to assessing their compatibility with human rights norms.
3. In its examination of alleged human rights violations, the Human Rights Committee would have the powers to request documents and information from any person and legal entity.
4. In cases of urgency, the chairperson of the Human Rights Committee could meet representatives of relevant organisations, provided that he subsequently informs the Human Rights Committee about the substance of those meetings.

Appendix I

Summary of principal problems encountered in the execution of Strasbourg Court judgments with respect of Turkey

Leading case	Case description
<i>Aksoy v. Turkey</i> (Application No. 21987/93, judgment of 18/12/96) and 205 other judgments; Interim Resolution ResDH(2005)43 and CM/ResDH(2008)69.	Various violations of the Convention resulting from actions of the security forces, in particular in the southeast of Turkey (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces, subsequent lack of effective investigations into the alleged abuses).
<i>Bati v. Turkey</i> (Application No. 33097/96, and 57834/00, judgment of 03/06/2004) and 60 other judgments.	Lack of independence in investigating authorities dealing with actions of security forces.
<i>Cyprus v. Turkey</i> (Application No. 25781/94, judgment of 10/05/01 – Grand Chamber); Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25	Various violations of the Convention relating to the situation in the northern part of Cyprus following Turkish military operation in 1974 (missing persons, living conditions of Greek Cypriots in the northern part of Cyprus, the rights of Turkish Cypriots living in the northern part of Cyprus, and homes and property of displaced persons).
<i>Inçal v. Turkey</i> (Application No. 22678/93, judgment of 09/06/98) and 93 other judgments; Interim Resolutions ResDH(2001)106 and ResDH(2004)38	Unjustified interferences in the freedom of expression, in particular on account of their conviction by state security courts following the publication of articles and books or the preparation of messages addressed to a public audience.
<i>Halise Demirel v. Turkey</i> (Application No. 39324/98, judgment of 28/01/2003) and Cahit Demirel v. Turkey (Application No. 18623/03, judgment of 07/07/2009) and 121 other judgments.	Excessive length of detention on remand.
<i>Hulki Güneş v. Turkey</i> (Application No. 28490/95, judgment of 19/06/03) and 3 other judgments; Interim Resolutions ResDH(2005)113, CM/ResDH(2007)26 and CM/ResDH(2007)150	Lack of judicial independence and impartiality, unfairness of judicial proceedings, ill-treatment inflicted in police custody.
<i>Oya Ataman v. Turkey</i> (Application No. 74552/01, judgment of 05/03/2007) and 19 other cases;	Abusive use of force by security forces in dispersing peaceful demonstrations.
<i>Ülke v. Turkey</i> (Application No. 39437/98, judgment of 24/01/06); Interim Resolutions CM/ResDH(2007)109, CM/ResDH(2009)45, and DD(2009)56.	Degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service.
<i>Xenides-Arestis v. Turkey</i> (Application No. 46347/99, judgments of 22/12/05 and of 07/12/06); Interim Resolution CM/ResDH(2008)99, and DD(2009)540	Violation of the right to respect for private life due to continuous denial of the applicant's access to her property in the northern part of Cyprus and consequent loss of control thereof.

Appendix II

Background information concerning the rapporteur's visit to Turkey³⁵

1. Programme of visit: Ankara

Monday 10 January 2011

- 9:20 Meeting with Mr L. Kurt, Judge, Head of Department, DG for International Law and Foreign Relations, Ministry of Justice
- 10:25 Meeting with Mr M. Çöğgün, Deputy Director General, Directorate of Europe and Foreign Affairs, Ministry of the Interior
- 14:00 Meeting with Mr O. Yurdakul, Judge, Deputy General Secretary of the Supreme Court of Cassation
- 15:30 Meeting with Mr A. Kuyucu and Mr S. Kütahya, Deputy Chief Prosecutors, and Ms I. Altuntaş, Supreme Court of Cassation
- 16:45 Meeting with Mr M. O. Paksüt, Vice-President, Constitutional Court

Tuesday 11 January 2011

- 9h00 Meeting with civil society representatives
- 10:00 Meeting with Mr Z. Üskül, Chairperson of the Human Rights Inquiry Committee of the Grand National Assembly
- 11:15 Meeting with Mr K. Esener, Deputy Director General, Ministry of Foreign Affairs
- 12h45 Meeting with members of the Turkish delegation to the Parliamentary Assembly
- 13h15 Luncheon hosted by Mr E. Cebeci, Chairperson of the Turkish delegation to the Parliamentary Assembly

2. Press release issued at the end of the visit:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=6221&L=2

³⁵ The rapporteur was accompanied by Mr Andrew Drzemczewski, Head of the Assembly's Legal Affairs and Human Rights Department.