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**Committee of Ministers**

# **Supervision of the execution of judgments**

of the European Court of Human Rights

3rd annual report

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COMMITTEE OF MINISTERS

**Supervision of the execution of judgments  
of the European Court of Human Rights**

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## I. Foreword by the 2009 Chairs of the Human Rights meetings

2009 was an important year in the history of the European Convention on Human Rights (ECHR). It was the 60th anniversary of the founding of the Council of Europe and thus also of the beginning of the efforts to elaborate a collective European guarantee of human rights and fundamental freedoms in 1949 to ensure that the famous words “never again”, already declared after the first world war, would this time become a reality.

2009 also celebrated 50 years of the European Court of Human Rights (ECtHR) and a number of events have commemorated this anniversary. A lesser known fact is that 2009 was also the 50th anniversary of the Committee of Ministers’ first decision under the ECHR.

Much has been said over the years about the contribution of the ECtHR and the case-law it has developed for the respect of human rights in Europe. The Committee of Ministers’ contribution through its supervision of the execution of the ECtHR’s judgments was for a long period more discrete, notably as a result of the confidentiality which surrounded the exercise. However, when Protocol No. 11 abolished the Committee of Ministers’ responsibility to decide the merits of complaints, the protocol also put the Committee of Ministers’ responsibility as supervisor of the execution process in the forefront. The developments of supervision practices which have followed, notably the regular publication of information provided and of evaluations made, have allowed for important improvements of the execution of judgments process. These include the annual report and the efforts made in numerous states to ensure a good national distribution of the report are encouraging. Poland’s initiative to translate the 2008 report is worthy of particular praise and ought to inspire also other states.

The importance of good information about the execution of judgments process and awareness raising, training, counselling and other co-opera-

tion activities linked herewith were underlined by the 2007 Chairs in their introduction to the first, 2007 report. In view of the continuing increase in the number of cases and warning signals sent from the ECtHR, in 2008 the Chairs placed additional emphasis on the principle of subsidiarity and the need to ensure that domestic remedies become truly effective, and that the domestic capacity to execute the ECtHR’s judgments is improved (Recommendation (2008)2).

As Chairs of the Human Rights meetings in 2009, we have seen the pursuit of various efforts underway to improve the efficiency of the supervision process, including the further developments of transparency, action plans/reports, co-operation activities, execution practice (notably with respect to the effectiveness of domestic remedies), interaction with the ECtHR, and synergy with other bodies within the Council of Europe.

Notwithstanding the efforts undertaken, which are addressed in more detail in the remarks by the Director General of Human Rights and Legal Affairs, it is, clear that important concerns remain. The constant increase in the number of new cases brought before the Committee of Ministers continues, and the same holds true for the number of cases pending. In addition, no major improvement of the time required for execution of judgments is yet evident, and the number of new complex execution questions is increasing. The entry into force of Protocol No. 14 (and its partial provisional application through Protocol No. 14 bis and the Madrid Agreement of May 2009) will certainly bring with it a number of important improvements of the Convention system, notably as regards the Court’s production capacity and the execution supervision of friendly settlements. Its consequences for the Committee of Ministers’ workload remain, however, to be assessed in greater detail.

The situation was addressed at the recent High Level Conference organised by the Swiss Chairmanship of the Council of Europe in Interlaken on the future of the European Court of Human Rights. The Conference stressed in particular the importance of further strengthening subsidiarity by developing the national protection of the ECHR rights and synergy with other bodies. It concluded that additional efforts are required to safeguard the efficiency of execution and of the supervision process. The action plan proposed by the Conference for the identification and implementation of necessary additional measures is presently being followed up by the Committee of Ministers and other actors.

Already at this stage it is clear that further efforts must be made by the states to improve the national implementation of the ECHR along the lines outlined in the Committee of Ministers' recommendations on the subject. Among the different avenues of improvement, the strengthening of domestic remedies continues to appear to be one of the most important. Experience still suggests that many cases come to Strasbourg as a result of insufficient knowledge and/or application of the ECtHR's case-law by domestic authorities. Numerous cases even demonstrate the absence of remedies. The situation stresses the need for in-depth consideration of the effectiveness of remedies after each violation found by the ECtHR. It is hoped that the recent adoption, on 24 February 2010, of a new recommendation on the issue in case of excessively lengthy proceeding will provide useful assistance in improving the situation. This emphasis on effective domestic remedies is also

reflected in Protocol No. 14's new admissibility criteria.

Another part of the efforts have to be made at the Council of Europe level. Besides the ongoing work related to the Committee of Ministers' streamlining of the supervision process and improving its efficiency and transparency, special interest appears to lie in the possibilities of increased interaction between the ECtHR and the Committee of Ministers, notably to ensure more rapid identification of systemic problems, and the further development of synergies with other relevant Council of Europe actors – carrying out monitoring activities, providing advice or conducting co-operation activities – on matters connected with the execution of the ECtHR's judgments.

Even if 2009 has highlighted the important problems faced by the ECHR system today because of the sheer number of cases, it has also brought with it important new hopes and perspectives. These have received concretisation during the first months of 2010 and the political will to overcome the problems has been strongly manifested at Interlaken. The reflection on the details of the additional reform work is already in progress and Protocol No. 14 will enter into force on 1 June 2010. Other important developments are also underway, including the reform of the Council of Europe Secretariat.

We trust that the opportunities offered by these developments will be used to make execution supervision more transparent and effective, so as to allow the Committee of Ministers to continue to guarantee the full execution of all judgments of the ECtHR.

The Chairs of the Committee of Ministers' Human Rights meetings in 2009

Slovenia	Switzerland	"The former Yugoslav Republic of Macedonia"
Ms Meta Bole	Mr Paul Widmer	Mr Vladimir Ristovski

## II. Remarks by the Director General of Human Rights and Legal Affairs

### Introduction

1. The paramount importance of the swift and efficient execution of the judgments of the European Court of Human Rights (“the ECtHR”) has been rightly underscored once more by the high-level conference on the future of the ECtHR organised by the Swiss Chairmanship of the Committee of Ministers, held in Interlaken on 18-19 February.

2. The annual report is one of the tools adopted by the Committee of Ministers to improve overall understanding of the execution process and, hence, improve the process itself. It performs this function effectively notably by providing national governments with concrete examples of what is expected from them to comply fully with the requirements of a judgment of the ECtHR. The report also seems to have facilitated exchanges of information between governments and parliaments on the situation regarding the execution of judgments (encouraged

in particular by Committee of Ministers Recommendation (2008)2 – the outstanding examples to date being the United Kingdom and the Netherlands<sup>1</sup>).

In this connection, I would like to take this opportunity to congratulate the Polish authorities for their initiative in having the annual reports translated into Polish. Indeed, the Committee of Ministers has repeatedly stressed the importance of having Strasbourg reference texts translated into national languages, in order to give full weight to the basic principle of subsidiarity underlying the Convention supervision system, a point which was also greatly emphasised in Interlaken. The Polish initiative is fully in keeping with this principle and the Committee of Ministers also encouraged other countries to take inspiration from it.

### 2009 stocktaking: constant increase in the number of cases

4. As the statistics show, the workload of the Committee of Ministers has been multiplied by three in these last ten years based on the number of new cases, and by four based on the number of pending cases, which also implies an increase in the length of execution.

5. If we merely compare 2008 and 2009, the number of new cases transmitted by the ECtHR increased by 9%<sup>2</sup>, and the number of pending cases by 19% (not including cases in principle closed and awaiting a final resolution). The trend towards increased length of execution seemed less pronounced in 2009, with the proportion of cases

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1. The good example set by these countries was recently highlighted by the Parliamentary Assembly at a hearing held in Strasbourg – see document AS/Jur/Inf (2010) 07. The organisation of such exchanges of information is part of the means advocated by Committee of Ministers’ Recommendation (2008)2. According to the latest information available, 12 states have told the Parliamentary Assembly that they have such information exchange procedures. These are, in addition to the Netherlands and the United Kingdom: Austria, Bosnia and Herzegovina, Croatia, Cyprus, Germany, Hungary, Italy, Norway, Sweden and Switzerland – see document AS/Jur/Inf (2009) 02.

2. If the old statistic methodology had been used, which was based on the situation at the last Committee of Ministers Human Rights meeting of the year, the percentage would have been 37%. There were, however, problems in comparing years on this basis (due to the dates of the meetings) and a major effort has been made to provide statistics on a calendar year basis for the annual reports.

pending for two to five years falling from 35% to 22%. However, it is too early to speak of a trend reversal because the proportion of cases pending for over five years continued to increase, from 11% to 15%, testifying, among other things, to the difficulty, in certain cases, of initiating and rapidly completing the expected reforms (see also below).

6. In absolute figures, the Department for the Execution of Judgments was called upon to examine no fewer than 1 515 new cases for 2009 only with the states concerned, including 204 leading cases revealing systemic problems, and assisted the Committee of Ministers in monitoring the progress of execution measures in 7 887 cases, including 822 leading cases.

7. However, the workload problem is not just a question of figures. The last few years have seen a significant increase in the number of cases relating to complex and sensitive issues, which need much more time to resolve such as those touching upon relations between state entities and federal authorities, freedom of religion or of association (particularly in the political sphere), or revealing situations of serious discrimination or raising the need of large-scale reforms (e.g. excessive length of proceedings or non-execution of judicial decisions). The difficulties inherent in such situations are evident at the stage of supervising execution and the assistance capabilities available can play a significant role in the search for satisfactory execution measures.

8. The Committee of Ministers has repeatedly stressed the importance of full execution of all judgments of the ECtHR without exception, as well as the dangers inherent in a minimalist approach or the politicisation of cases. Execution is a legal activity involving parliaments, governments and courts. Direct effect of the Convention and the ECtHR's jurisprudence in domestic law plays a major role. In many situations, significant results

can only be rapidly achieved if such direct effect is acknowledged.

9. It is encouraging to see that these principles are not radically questioned in more "complex" or "large-scale" cases. The thematic overview in this report contains many examples of this. However, a number of questions remain in abeyance, as underscored by the contribution of the Secretary General of the Council of Europe at the Interlaken Conference<sup>3</sup>.

10. One practical consequence of this qualitative element related to the complexity of cases is that the real workload of the Committee of Ministers has increased more than is indicated simply by the increase in the number of cases. The idea of an approach based on leading cases to measure the impact of the judgments of the ECtHR and the workload of the Committee of Ministers shows its limits here, at least as it is currently conceived.

11. The overall effect of these developments at present is an excessive workload for the Secretariat, particularly the Department for the Execution of Judgments, which is responsible for contacts *inter alia* with the national authorities and applicants, and for preparing cases for examination by the Committee of Ministers.

12. This excessive workload is evident in different ways. One sign is the fall in the number of final resolutions adopted. At first sight this fall might seem surprising given that the number of cases closed during HR meetings is increasing. The problem is due to the fact that a considerable amount of drafting work may still have to be done, which takes place after the decision to close the examination of the case and before the final resolutions are adopted, testifying how seriously the executive body of the Organisation takes its supervisory function before making public the results of its work, to parliaments, courts, the European Union, and other organisations<sup>4</sup>.

### Current responses and new challenges

13. The current situation entails numerous challenges. The forthcoming entry into force of Protocol No. 14 adds further challenges, as regards both the new responsibilities assigned to the Committee of Ministers in the field of supervision

of execution and the foreseeable, purely quantitative developments.

14. In this latter connection, it may be noted that if Protocol No. 14 had already come into force in 2009, the Committee of Ministers would have received some 450-460 additional cases for supervi-

3. SG/Inf(2009)20.

4. A large-scale effort is underway to improve the presentation of the information already available in the notes so as to facilitate the preparation of the final draft. However, this work also depends on the quality of the presentation of information by governments, and the results are closely dependent on progress in practices relating to action plans and action reports – see below.

sion of execution under its new mandate requiring it to supervise also the execution of certain decisions given by the ECtHR<sup>5</sup>. The number of new cases for the Committee of Ministers resulting from the new provision empowering three-judge committees to decide cases on the basis of well-established case-law is harder to evaluate. However, it is not unreasonable to assume that the number of such cases will be high.

15. These new types of case will certainly require supervision of execution, particularly as regards payment of the sums awarded and, where necessary, the adoption of individual measures. General measures cannot be ruled out, as experience shows that many violations are found in areas already extensively mapped out in the case-law of the ECtHR – but in the context of cases against other countries. The possible consequence is that cases dealt with by three-judge committees might also require general measures (see also my comments on the publication of judgments, below.)

### a. Action plans/reports and planning of supervision

18. Since the introduction of new working methods in 2004, the importance attached to the rapid submission of action plans, regularly supplemented by action reports, led to very important positive developments in 2009 (in particular, several discussions on this subject were held at human rights meetings of the Committee of Ministers).

19. A considerable effort has been made in the Secretariat to better use these action plans and improve planning of supervision intervals. For example, a case with a good action plan providing

16. Governments are well aware of the current challenges and made this abundantly clear at the Interlaken Conference. The Conference was thus the occasion to express repeatedly the belief that, above and beyond improvements to the current execution process, additional measures were urgently needed to ensure full and speedy execution of the judgments of the ECtHR and efficient supervision of execution by the Committee of Ministers.

17. Several lines of investigation for the future were mentioned during the preparation of the Interlaken Conference, particularly by the Secretary General of the Council of Europe<sup>6</sup>. Rather than further explore these ideas here, I wish to take stock of some of the improvements already underway which marked the year 2009. I would like to stress that the lines of investigation mentioned are not exhaustive and that there are other aspects of supervision of execution which warrant our attention, such as developments in the working methods of the Committee of Ministers or fuller incorporation of the observations of civil society.

for an implementation timetable over a 12-month period probably does not require further supervision until that period has expired. This type of planning, conducted in close co-operation with the national authorities, has enabled both the Committee of Ministers and the Secretariat to maximise the supervision effort. Improved practices with regard to action plans and action reports should make it possible to optimise still further the planning and efficiency of supervision.

### b. Increased co-operation

20. Another significant development concerns the increased importance of co-operation activities. The aim is to catalyse the execution process in such a way as to reduce the number of problems calling for in-depth attention on the part of the Committee of Ministers. Furthermore, should there be problems, the improved preparation of cases resulting from these activities facilitates discussion in the Committee of Ministers and the adoption of appropriate responses.

21. This new approach has been strongly supported by the Committee of Ministers, which, since 2007, has authorised the financing of special programmes from the Council of Europe budget: the sum allocated increased from just over 52 000 euros in 2007 to nearly 66 000 euros in 2008 and to around 90 000 euros in 2009. This increase naturally goes hand in hand with an increase in the number of activities in progress, which rose by 20% between 2008 and 2009. The budgetary limit seems to have

5. These are in principle the 450 *decisions* of the ECtHR confirming friendly settlements, which are currently outside the jurisdiction of the Committee of Ministers, which is confined to the *judgments* confirming such settlements. To these decisions might be added a number of decisions confirming unilateral declarations: in 2009, some ten such decisions (out of 167) were deferred to the Committee of Ministers for supervision of their execution. These include in particular cases unfrozen in the context of a pilot procedure.

6. SG-Inf(2009)20

been reached, however, and 86 000 euros are allocated in the 2010 budget. The 2009 activities include high-level discussions with the competent authorities, expert appraisals of legislation and training programmes, both in Strasbourg and the countries concerned, and the organisation of a major seminar on the problems revealed by the judgments of the ECtHR with regard to pre-trial detention. This seminar, funded by a voluntary contribution from Germany, was held in Warsaw at the invitation of the Polish authorities.

22. An overview of co-operation activities should also include the development of the activities of the Human Rights Trust Fund, which also play a part in ensuring full execution of the ECtHR's judgments within a reasonable time.

23. 2009 saw the implementation of the first projects approved in 2008. These were projects related to the non-execution of domestic judicial decisions in six countries and responses to violations of the Convention by the security forces. These projects will be further developed in 2010 and, subject to approval by the contributors, in 2011 too. Even if the number of participating states is small, the projects address issues of relevance to a large number of countries. The underlying aim is to find ways of incorporating the experiences of all the interested states and widely disseminating the

results of activities undertaken. Heads of programme have been appointed in the countries concerned to carry out these projects, the management of which has been entrusted to the Department for the Execution of Judgments, in close co-operation with the other Council of Europe bodies involved in the relevant fields.

24. Targeted co-operation programmes seem to be very important for execution and have also received a very favourable response. This response came not only from the states involved, but also from others, given that the experience gained is often of general interest and can also inspire action in other countries. One practical problem encountered in many targeted co-operation programmes stems from the abundance of the ECtHR's case-law, which is constantly growing, a corollary of which is the constant need to update existing materials and devise others, adapted to the needs of legal practitioners. 2009 saw a certain number of initiatives of this type from different sectors, such as the good practice guide prepared by the Steering Committee for Human Rights (CDDH) on effective remedies in the event of excessively long proceedings and a practical guide to the requirements of Article 10, prepared by the Media Division. Such initiatives are to be encouraged.

### c. Preventing delays

25. The Committee of Ministers and the CDDH have for a long time stressed the importance of proper information on the requirements of execution in general and on the state of execution in different cases in order to prevent delays in execution.

26. The Committee of Ministers is therefore devoting more and more resources to constructive dialogue with the national authorities, whether this be via interim resolutions, reasoned decisions adopted after debate, or by calling upon the services of the Secretariat. These efforts were continued in 2009 and were well received by governments.

27. We should also mention the efforts by the Secretariat to ensure rapid publication of the information available on cases, particularly on the web to ensure ease of access to this information for the authorities and other interested parties (e.g. lawyers or representatives of NGOs or national human rights institutions). The voluntary contributions made in 2009 by the United Kingdom, Spain and

Germany to help the Secretariat to improve this dissemination were very useful and the results are expected to be seen in 2010. Much remains to be done, however, to ensure easier and more efficient access to information, e.g. by more synoptic presentations coupled with the possibility of conducting thematic searches – this development also seems important for facilitating the development of new synergies (see below).

28. The importance of national publication of information on execution has also been repeatedly stressed, Recommendation (2008)2 being a recent case in point. Developments at national level are difficult to evaluate. They are, however, crucial in numerous countries for linguistic reasons alone. National authorities can only take due account of texts setting out the positions of the Committee of Ministers or other relevant documents if they are quickly translated and disseminated at national level.

#### d. Incorporation of the question of effective remedies in the examination of general measures

29. The significant efforts undertaken in recent years to strengthen national remedies have also continued to influence supervision of execution. 2009 saw the inclusion, on an increasingly regular basis, of the question of the effectiveness of remedies in the examination of general measures. This development is in line with Recommendation (2004)6 and the relevant case-law of the ECtHR. In this connection, it may be noted that the CDDH presented in late 2009 a draft special recommendation, supplementing the 2004 recommendation, dealing in particular with effective remedies in the event of excessive length of proceedings. This recommendation was adopted on 28 February 2010.

30. The ECtHR has also continued to insist on the requirement, pursuant to Article 46 of the Convention, for the rapid provision of remedies in the event of systemic violations. The pilot judgments spell out the requirements in detail: see judgments in *Burdov v. the Russian Federation* (No. 2) of 15 January 2009; *Olaru v. Moldova* of 28 July 2009; and *Yuriy Nikolayevich Ivanov v. Ukraine* of 15 October 2009 (which became final on 15 January 2010). I will come back to this point below when discussing interaction with the ECtHR.

31. Experience indicates that the possibility for national authorities to give direct effect to the relevant judgments of the ECtHR is of prime importance to the effectiveness of remedies. Nonetheless, such an effect requires not only an appropriate legal context (including suitable incorporation of the Convention), but also extensive knowledge of the judgments and the Committee therefore places considerable emphasis on publication and dissemination in its supervision of execution. Training is also a central point in many cases and makes up a major part of co-operation programmes currently underway.

32. The entry into force of Protocol No. 14 highlights the importance of the direct effect insofar as

the new admissibility criterion regarding “*de minimis*” cases applies only if the case has been “duly considered by a domestic tribunal”.

33. This obligation to comply with the judgments of the ECtHR concerns not only the ECtHR’s judgment in the particular case even though that is central to the obligation, account must also be taken of its more general case-law in the field in question. This aspect has always been part of the relevant considerations in assessing the effectiveness of execution<sup>7</sup> and was also highlighted by the ECtHR whenever it itself had occasion to interpret the requirements of Article 46<sup>8</sup>. It is only by proceeding in this way that the authorities may ensure that the measures taken or the reforms adopted provide appropriate reparation for the violations in question and effectively prevent other similar violations.

34. In many countries national dissemination of the ECtHR’s case-law seems to be geared excessively towards cases involving the country itself, which may make it more difficult for the country in question to adopt a proactive approach, placing it in a position to deal in good time with problems already addressed by the ECtHR. The experience acquired before the Committee of Ministers shows that many cases reveal systemic problems on questions for which there has long been clear and precise case law (for example the obligation to provide sound reasons for decisions on pre-trial detention, the obligation to accept *exceptio veritatis* in cases of defamation or to enforce court decisions), without the respondent state having taken measures before proceedings were brought before the ECtHR.

35. Strengthening the implementation of the principle of subsidiarity, as called for by the participants at the Interlaken Conference, would appear to depend to a large extent on this improvement in effective remedies and the matter still remains a priority for supervision of execution.

#### e. Heightened interaction with the ECtHR

36. A further major trend in recent years is heightened interaction between execution and the ECtHR. This trend continued in 2009.

37. For the ECtHR, this involves primarily more frequent references made in the text of the judgments themselves to the need to take execution

7. This aspect was already reflected in the case-law of the ECtHR, see for example the *Ireland v. United Kingdom* judgment of 18 January 1978, § 154

8. See, for example, the *Broniowski v. Poland* (22 June 2004, § 194), *Scordino (1) v. Italy* (29 March 2006, §§ 240 and 247) and *Ramadhi v. Albania* (13 November 2007, § 97) judgments.

measures. These references are, where appropriate, accompanied by recommendations on appropriate execution measures. This practice is not limited to pilot judgments – such as the *Olaru v. Moldova* judgment – it is also pursued in other judgments. This contribution by the ECtHR to execution makes it possible to avoid the need to engage in reflection on the need for measures at the supervision of execution stage before the Committee of Ministers and thus enables the Committee of Ministers and national authorities to address without delay questions relating to the nature and extent of the execution measures to be taken and the action plans required for their implementation.

38. The ECtHR also seems to have greater interest in progress in the implementation of major reforms with a view to supporting execution, where this would be helpful, particularly with regard to pilot proceedings. Two pilot judgments delivered in 2009 – *Burdov v. the Russian Federation* (No. 2) and *Yuriy Nikolayevich Ivanov v. Ukraine* (the latter not becoming final until 2010) – concern, for example, major systemic problems which the Committee of Ministers is already monitoring – the *Timofeyev v. the Russian Federation* and *Zhovner v. Ukraine* groups – and provide significant support for the approach followed by the Committee of Ministers as reflected *inter alia* in the interim resolutions already adopted.

39. The Committee of Ministers – in accordance with the rules (see Rule No. 4) – gives priority to the supervision of the execution of pilot judgments

### f. Reinforcing synergies

42. A further notable development in recent years, confirmed in 2009, is the opening of the Convention mechanism to other Council of Europe bodies. For some years, the ECtHR has had increasingly frequent recourse to such sources in order, in particular, to spell out what is necessary in a democratic society or what is included in the positive obligations of the state.

43. Like the ECtHR, the Committee of Ministers refers to the findings of these other bodies to gain insight into more complex execution matters, for example whether detention conditions criticised by the ECtHR have been sufficiently improved to enable the Committee of Ministers to close its supervision. The conclusions of reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) may be particularly helpful in this connection. In other situations, the conclusions of

and other judgments revealing significant systemic problems. The procedure initiated – particularly with regard to pilot judgments – follows the approach established during the execution of the first pilot judgment, *Broniowski v. Poland*. Under this approach, the Committee of Ministers quickly adopts texts showing the priority given to the cases in question, containing, where necessary, supplementary information to ensure that the judgment is executed effectively and rapidly. The Committee of Ministers subsequently closely monitors the adoption of the measures advocated, encouraging contacts between the Execution Department and the national authorities in order to find solutions to any problems which may occur. Publication of the steps taken is, where necessary, reinforced via press releases. The closure of the procedure depends more on the circumstances of each case, and especially on the conclusions to be drawn in the light of the results of execution.

40. The interaction may also cover other aspects, including the processing by the ECtHR of applications alleging in particular a lack of execution.

41. All instances of interaction nonetheless highlight how important it is that the Committee of Ministers provide the ECtHR with up-to-date information on the results of supervision of execution (identification of systemic problems, progress with reform, problems encountered, action taken, etc.). There is a clear link with the measures taken to prevent delays, referred to above.

the Venice Commission may be of particular relevance. On occasion, the Committee of Ministers has also found it helpful to draw the attention of states to best European practice in the area concerned, for example as described in its own recommendations.

44. In order to ensure consistency in the approach of the different Council of Europe bodies to matters addressed by supervision of execution, it is important for these other bodies to be kept informed of the requirements identified during the supervision of execution so that they can be incorporated in their own activities. In this spirit, the Directorate General continued its efforts in 2009 to improve information exchanges, in particular with the relevant consultative bodies of the Council of Europe, such as the Venice Commission and the European Commission for the Efficiency of Justice (CEPEJ). Nevertheless, the possibilities for capitalising on



this co-operation depend, in part, on the accessibility of information on execution, which highlights once more the importance of further developing the dedicated execution website and the available search possibilities, in particular thematic searches.

### **g. Follow-up to Recommendation (2008)2**

46. Over and above the intensification of traditional co-operation activities, one of the most significant recent contributions given to the execution process was without a doubt the adoption of Recommendation (2008)2 to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights. The full text of this recommendation is reproduced in Appendix 9 to this report.

### **Concluding remarks**

48. 2009 was the last year under the Convention in the form established by Protocol No. 11. The achievements of this protocol with the obligatory character of individual applications and the compulsory jurisdiction of the ECtHR, combined with the efficiency of the new “single” and permanent ECtHR have been crucial. The fears expressed already at the time that these measures would not be sufficient in view of the increase in the number of contracting states and the growth of individual applications were borne out. Accordingly, the entry into force on 1 June 2010 of Protocol No. 14 is awaited with much interest and hope.

49. Protocol No. 14 does not however solve the problems relating to the workload of the Committee of Ministers in the context of execution, which increased significantly once again 2009. These problems have, for a long time, been the subject of separate work, described in broad terms in this annual report (see also Chapter IV). As I have stated, the efforts undertaken cover a multitude of fields and 2009 offered a first encouraging sign of the effect of these efforts in that the first

45. This interdependence between the Convention control mechanism and other Council of Europe activities in the field of human rights, the rule of law and democracy was given particular prominence in the final Interlaken declaration.

47. Follow up to this recommendation at national level is of particular importance and I welcome the fruitful dialogue initiated in 2009 with the national authorities during the supervision of execution in the bilateral contacts with the department for the execution of judgments. Ultimately, the results obtained would warrant further public, detailed discussion.

signs of a trend towards accelerated execution began to be perceived.

50. Nonetheless, it is likely that the – in all probability – very large increase in the number of new cases in 2010, as a result of the entry into force of Protocols 14 bis and 14, will raise major challenges for execution and supervision thereof.

51. To address these challenges, numerous avenues to explore were envisaged in the preparations for the Interlaken Conference. The conference suggested the introduction of a specific process, detailed in an action plan, to ensure the adoption of the necessary additional measures. The Committee of Ministers has now begun the work on the implementation of the action plan and 2010 will undoubtedly be a year full of ideas. The context seems particularly propitious insofar as this work is being carried out in parallel with the ongoing reform of the Council of Europe Secretariat. It seems clear to me that the annual report of the Committee of Ministers will, with its statistics and other detailed information, provide a valuable contribution to the debate.



### III. The Committee of Ministers' supervision of the execution of judgments

#### A. The implementation machinery of the ECHR

1. The machinery for the implementation of the ECHR has considerably developed over the years. The basic system set up in 1950 was based on inter-state complaints before the CM, whose task was to decide under former Article 32 of the ECHR whether or not the provisions of the ECHR had been violated. If a violation was established, the CM supervised the follow up given by the respondent state and, in this context it could also decide what effect should be given to its decision. In performing these tasks, the CM was assisted by the European Commission of Human Rights.

2. This basic system could, however, be improved by states by accepting the right of individual petition and the compulsory jurisdiction of the ECtHR. The importance of these additional obligations gained general recognition over the years and more and more states accepted them. Under the ECHR it fell to the CM already from the beginning to supervise the execution of all ECtHR judgments establishing violations or accepting friendly settlements.

3. In line with this development, the Council of Europe also required that new member states accept

not only the basic ECHR guarantees but also the additional obligations. By 1990 all member states had recognised the ECHR, with the compulsory jurisdiction of the ECtHR and the right of individual petition.

4. Following the major European developments after 1989 which highlighted the importance of the ECHR system, the Council of Europe's first summit in 1994 set in motion a revision of the system, which led to the adoption of Protocol No. 11 (entered into force in November 1998). Procedures were simplified. Two institutions currently operate:

- the ECtHR which delivers binding judgments on applications from individuals and states alleging violations of the ECHR, and
- the CM which supervises the execution of the ECtHR's judgments<sup>9</sup>.

5. The developments of the implementation machinery have not, however, changed the basic obligations for respondent states in case of violations of the ECHR or the CM's supervision of the respect of these obligations.

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9. It is noteworthy that the CM still has on its lists a certain number of "old" Article 32 cases (1365 at the end of 2009) in which the CM itself decided the issue of violation and of just satisfaction. The last CM decision on the question of violation of the ECHR under Article 32 was taken in February 2001 (*Taleni v. Italy*). Since the execution obligations are the same for these cases as for cases decided upon by the ECtHR, both types of cases are traditionally dealt with in the same manner in the context of the CM's execution supervision. Indeed, already in the first cases before the CM under old Article 32 of the ECHR, the *Pataki and Dunsbirn* cases, the remedial action taken by the Austrian authorities covered both individual and general measures. The general shortcomings of Austrian criminal procedure identified by the Commission were rectified and all applicants with cases pending before the Commission were granted the right to retrial under new provisions in conformity with the ECHR, cf. Resolution DH(63)2.

## B. The basic provision governing the execution process: Article 46 of the ECHR

6. The basic provision governing the CM's supervision of the execution of the judgments of the ECtHR is Article 46<sup>10</sup> of the ECHR which provides that:

"The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

7. The content of this provision, the wording of which has remained the same since 1950, has become clearer over the years in particular through the general principles of international law, the practice of states in execution matters and the indications given by the CM and the ECtHR.

## C. The obligation to abide by the judgments

8. The content of contracting states' undertaking "to abide by the final judgment of the Court in any case to which they are parties" is summarised in the CM's Rules of Procedure<sup>11</sup> – see Rule 6.2. The measures to be taken are of two types.

9. The first type of measures - individual measures - concern the applicants. They relate to the obligation to erase the consequences suffered by them because of the violations established so as to achieve, as far as possible, "*restitutio in integrum*".

10. The second type of measures - general measures - relate to the obligation to prevent similar violations similar to that or those found or putting an end to continuing violations. In certain circumstances they may also concern the setting up of remedies to deal with violations already committed.

11. The obligation to take individual measures and provide redress to the applicant has two aspects. The first is to pay any just satisfaction (normally a sum of money) which the ECtHR may have awarded the applicant under Article 41 of the ECHR.

12. The consequences of the violation for the applicants are, however, not always adequately remedied by the ECtHR's award of a sum of money or finding of a violation. It is here that a further aspect of individual measures intervenes. Depending on the circumstances, the basic obligation of achieving, as far as possible, *restitutio in integrum* may thus require further actions involving for example the re-opening of unfair criminal proceedings, the destruction of information gathered in

breach of the right to privacy, the enforcement of an unenforced domestic judgment or the revocation of a deportation order issued despite a real risk of torture or other forms of ill-treatment in the country of destination. The CM issued a specific recommendation to member states in 2000 inviting them "*to ensure that there exist at national level adequate possibilities to achieve, as far as possible, restitutio in integrum*" and, in particular, "*adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention*" (Recommendation No. R(2000)2)<sup>12</sup>.

13. The obligation to take general measures may, depending on the circumstances, imply a review of legislation, regulations and/or judicial practice to prevent similar violations. Some cases may even involve constitutional changes. In addition, other kinds of measures may be required such as the refurbishing of a prison, increase in the number of judges or prison personnel or improvements of administrative arrangements or procedures.

14. The CM also expects competent authorities to take interim measures to the extent possible both to limit the consequences of violations as regards individual applicants and, more generally, to prevent similar violations, pending adoption of more comprehensive or definitive measures. The CM also today pays particular attention to the efficiency of domestic remedies, in particular where the judgment reveals<sup>13</sup> important systemic or structural problems (see Recommendation (2004)6 on the

10. Formerly Article 32 of the Convention (insofar as findings of violations by the CM were concerned) and Article 53 (as far as findings of violations by the Court were concerned).

11. Currently called, in their 2006 version, "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements".

12. Cf. Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and Explanatory memorandum.

13. Whether as a result of the ECtHR's findings in the judgment itself or of other information brought forward during the CM's examination of the case, *inter alia* by the respondent state itself.

improvement of domestic remedies). The issue of effective remedies is today frequently addressed as part of general measures.

15. The direct effect more and more frequently accorded the judgments of the ECtHR by domestic courts and authorities largely facilitates both

providing adequate individual redress and the necessary development of domestic law and practices to prevent similar violations. Where execution through such direct effect is not possible, other avenues will have to be pursued, most frequently legislative or regulatory.

#### D. The scope of the execution measures required

16. The scope of the execution measures required is defined in each case on the basis of the conclusions of the ECtHR in its judgment, considered in the light of the ECtHR's case-law and CM practice, and relevant information about the domestic situation. In certain situations, it may be necessary to await further decisions by the ECtHR clarifying outstanding issues (e.g. decisions declaring new, similar complaints inadmissible as general reforms adopted are found to be effective or decisions concluding that the applicant continues to suffer the violation established or its consequences).

17. As regards the payment of just satisfaction, the execution conditions are usually laid down with considerable detail in the ECtHR's judgments (deadline, recipient, currency, default interest, etc.). Payment may nevertheless raise complex issues, e.g. as regards the validity of powers of attorney, the acceptability of the exchange rate used, the incidence of important devaluations of the currency of payment, the acceptability of seizure and taxation of the sums awarded etc. Existing CM practice on these and other frequent issues is detailed in a Secretariat memorandum (document CM/Inf/DH(2008)7final).

18. As regards the nature and scope of other execution measures, whether individual or general, the judgments usually remain silent. These measures have thus in principle, as has been stressed also by the ECtHR on numerous occasions, to be identified by the state itself under the supervision of the CM. Besides the different considerations enumerated in the preceding paragraph, national authorities may find additional guidance *inter alia* in the rich practice of other states as developed over the years, and in relevant CM recommendations (e.g. Recommendation (2000)2 on the re-examination

or reopening or (2004)6 on the improvement of domestic remedies).

19. This situation is explained by the principle of subsidiarity, by virtue of which respondent states have freedom of choice as regards the means to be employed in order to meet their obligations under the ECHR. However this freedom goes hand-in-hand with the CM's control so that in the course of its supervision of execution the CM may also, where appropriate, adopt decisions or interim resolutions to express concern, encourage and/or make suggestions with respect to the execution.

20. In certain circumstances, however, the ECtHR will provide itself guidance as to relevant execution measures in its judgment. The ECtHR today provides such recommendations in respect of individual measures in numerous cases. It may also, in certain circumstances, directly order the taking of the relevant measure. In two cases decided by the ECtHR in 2004-2005 it thus ordered the release of applicants who were being arbitrarily detained<sup>14</sup>. Moreover, in the context of the new "pilot" judgment procedure the ECtHR examines more in detail the causes of certain systemic problems and provides certain recommendations also as to general measures, most importantly as regards the necessity of setting up efficient domestic remedies. The ECtHR has in certain "pilot" judgments<sup>15</sup> also ordered that such remedies be set up and has "frozen" its examination of all pending applications while waiting that the remedies start to function.

21. When evaluating the need for specific execution measures and their scope, as well as the adequacy of execution measures adopted, the CM and the respondent state are assisted by the Directorate General of Human Rights and Legal Affairs, represented by the Department for the Execution of Judgments of the ECtHR.<sup>16</sup>

14. See *Assanidze v. Georgia*, judgment of 8/04/2004 and *Ilascu v. Moldova and the Russian Federation*, judgment of 13/5/2005. The Court had previously developed some practice in this direction in certain property cases by indicating in the operative provisions that states could choose between restitution and compensation – see e.g. the *Papamichalopoulos and others v. Greece* judgment of 31/10/1995 (Article 50).

15. See for instance *Broniowski v. Poland* (application no. 31443/96; Grand Chamber judgment of 22/06/2004 – pilot judgment procedure brought to an end on 6/10/2008); *Hutten-Czapka v. Poland* (application no. 35014/97, Grand Chamber judgment of 19/06/2006 and Grand Chamber friendly settlement of 28/04/2008).

## E. The present arrangements for the CM's supervision of execution of judgments

### i) The general framework

22. The practical arrangements for execution supervision are governed by the Rules adopted by the CM for the purpose<sup>17</sup> (reproduced in Appendix 8). Guidance is also given in the context of the development of the CM's working methods (see in particular CM/Inf(2004)008final, available on the CM's website).

23. Accordingly, new judgments establishing violations or accepting friendly settlements are inscribed on the CM's agenda without delay once they become final. The examination takes place in principle at the CM's special HR meetings (Rules 2 and 3).

24. The examination is based primarily on the information submitted by the respondent government (Rule 6). The CM may also take into account communications made by the applicant as regards

the question of individual measures and by non-governmental organisations and national institutions for the promotion and protection of human rights with respect to both individual and general measures (see Rule 9). Such communications as well as the respondent state's reply, if any, should be addressed to the CM through the Department for the Execution of Judgments of the ECtHR<sup>18</sup>.

25. Information made available is circulated to the CM member states and is made public (*inter alia* on the CM's web site) in accordance with the relevant Rules (see Rules 2 and 8).

26. For the purposes of examination cases are presented under different sections in the annotated agenda presented to the CM. These are described in the Appendices – Initial explanations.

### ii) Examination of cases with or without debate

27. Cases in which execution progresses in a satisfactory manner are normally examined without debate on the basis of available information regarding the situation as presented in the annotated agenda and other relevant documents (memoranda, information documents etc.). Cases which appear to deserve a more thorough collective examination may, however, be proposed for debate. The main criteria governing the question of whether or not to hold a debate are set out in the 2004 guidelines proposed by the Chair<sup>19</sup>, namely:

- The applicant's situation because of the violation warrants special supervision;
- The case marks a new departure in case-law by the European Court;
- It discloses a potential systemic problem which is anticipated to give rise to similar cases in future;
- The case is between Contracting parties;

• There is a difference of appreciation between the Secretariat and the respondent state concerning the measures to be taken;

• There is a significant delay in execution with reference to the timetable set out in the Status Sheet;

• The case is requested for debate by a delegation or the Secretariat, subject to the provision that if the State Parties concerned and the Secretariat object there shall be no debate.

28. As regards cases debated at the meeting, decisions are usually adopted at the meeting itself, while for the other cases a written procedure normally applies, whereby the decisions are formally adopted some 15 days after the meeting. After adoption, decisions are made available on the CM and on the Execution department websites

16. In so doing the Directorate continues a tradition which has existed ever since the creation of the ECHR system. By providing advice based on its knowledge of execution practice over the years and of the ECHR requirements in general, the Directorate in particular contributes to the consistency and coherence of state practice in execution matters and of the CM supervision of execution.

17. The currently applicable Rules were adopted on 10 May 2006 (964<sup>th</sup> meeting of the Ministers' Deputies). On this occasion the Deputies also decided "bearing in mind their wish that these rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these rules shall take effect as from the date of their adoption, as necessary by applying them *mutatis mutandis* to the existing provisions of the Convention, with the exception of Rules 10 and 11". As a result of the recent Russian ratification of Protocol No. 14, the rules in their entirety will enter into force on 1 June 2010.

18. Council of Europe, 67075 Strasbourg Cedex, France; Fax No.: (+33) (0)3 88 41 27 93; e-mail: DGHL.execution@coe.int.

19. The present guidelines were adopted in 2004 and are set out in document CM/Inf(2004)8 final.

**iii) Other practical aspects of the examination of cases**

29. Before the first presentation of a case on the CM's agenda the authorities of the respondent state will usually have made an assessment of the execution measures required, in co-operation with the Department for the Execution of the Judgments of the ECtHR. Particular attention is here given the question of whether or not the case reveals any systemic problems. Governments are as a general rule expected to provide an action plan or, if action has already been taken, an action report, covering both individual and general measures. The aim is that the authorities should be able to present such a plan/report at the latest within six months from the date the judgment becomes final. Action plans are considered as information of intent to the CM and not as binding on relevant domestic authorities. Indeed, developments of legislation, of judicial practice or of other nature, frequently induce changes to action plans presented. The notions of action plans/reports are further developed in document CM/Inf(2009)29rev (available on the CM's and the Execution department's websites).

30. New cases will usually be placed on the CM's agenda some three to six months after the judgment has become final. The abovementioned criteria (§27) for deciding whether or not a debate is necessary apply. As a practical matter, possible debates during the first examination will often centre on urgent individual measures and possible more important systemic problems identified.

31. Execution supervision continues in the light of the requirements of each case and the information

available. The standard intervals, applicable unless the CM decides otherwise, are laid down in the CM's rules. However, certain cases should be given priority in accordance with Rule 4 – mainly cases where the violation has caused grave consequences for the injured party or which reveal systemic problems.

32. As long as the issues of payment and of individual measures remain unresolved, cases thus in principle come back before the CM at each HR meeting. Also, cases revealing systemic problems requiring an action plan will in principle be pursued at each meeting until such a plan has been presented.

33. The CM may intervene in the course of the execution supervision to express concern and/or to make suggestions with respect to the execution. Such interventions may, depending on the circumstances, take different forms, such as declarations by the Chair, press releases, high-level meetings, decisions adopted as a result of a debate or interim resolutions (see e.g. Rule 16). To be effective such texts may require translation into the language(s) of the state concerned and adequate and sufficiently wide distribution (see Recommendation CM/Rec(2008)2).

34. Once the CM has established that the state concerned has taken all the measures necessary to abide by the judgment, it closes its examination of the case by adopting a final resolution (see Rule 17). Cases proposed for closure are first presented in a special section of the agenda (section 6).

**F. Friendly settlements**

35. The supervision of the respect of undertakings made by states in friendly settlements accepted by the ECtHR in the form of a judgment follows in principle the same procedure as the one outlined

above. Protocol No. 14 will extend the CM's supervision to all friendly settlements, also those accepted by the ECtHR before admissibility in decisions.





## IV. Improving the execution procedure: a permanent reform work

### A. Main trends

1. The main ECHR developments leading to the present system, in place since the entry into force of Protocol No. 11 in 1998, have been briefly described in the preceding section.

2. The increasing pressure on the ECHR system has led to further efforts to ensure the long-term effectiveness of the system. The starting point for these new efforts was the Ministerial Conference in Rome in November 2000 which celebrated the 50<sup>th</sup> anniversary of the ECHR. The three main avenues followed since then have been to improve:

- the efficiency of the procedures before the ECtHR;
- the domestic implementation of the ECHR in general;
- the execution of the Court's judgments.

3. The importance of these three lines of action has been regularly emphasised at ministerial meetings and also at the Council of Europe's Third Summit in Warsaw in 2005 and in the ensuing plan of action. A big part of the implementing work was entrusted to the steering committee on Human Rights (CDDH). Since 2000 the CDDH has presented a number of different proposals. These in particular led the CM to adopt:

- seven recommendations to states on various measures to improve the national implementation of the ECHR<sup>20</sup>, including in the context of execution of judgments of the ECtHR<sup>21</sup>;
- Protocol No. 14<sup>22</sup>, both improving the procedures before the ECtHR and providing the CM with certain new powers for the supervision of

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20. Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

– Recommendation Rec(2002)13 on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;

– Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training;

– Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;

– Recommendation Rec(2004)6 on the improvement of domestic remedies.

The status of implementation of these five recommendations has been evaluated with the assistance of the CDDH. Civil society was invited to assist the governmental experts in this evaluation (see doc. CDDH(2006)008 Add.1). A certain follow-up also takes place in the context of the supervision of the execution of the Court's judgments. Subsequently the CM has adopted a special recommendation regarding the improvement of execution:

– Recommendation Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.

The CDDH has moreover submitted a draft recommendation to the CM early 2010 on effective remedies for excessive length of proceedings. This draft was adopted on 24 February 2010 as Recommendation Rec(2010)3.

In addition to these recommendations to member states, the Committee of Ministers has also adopted a number of resolutions addressed to the ECtHR:

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

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

– Resolution Res(2004)3 on judgments revealing an underlying systemic problem.

21. The implementation of the first five recommendations was subject to special follow up, including civil society. The results were published by CDDH in April 2006 in document CDDH(2006)008. An additional follow up, in response to the CM's 116th meeting in May 2006 (CM(2006)39), was published by the CDDH in 2008 in document CDDH(2008)008, Addendum 1.

execution (in particular the possibility to lodge with the ECtHR requests for the interpretation of judgments and to bring infringement proceedings in case of refusal to abide by a judgment) and;

- New rules for the supervision of the execution of judgments and of friendly settlements' clauses in 2000, with further important amendments in 2006 and, in parallel, the development of new working methods.

### B. Developments of the CM's rules and working methods

4. The rule changes in 2000 broke with the tradition of confidentiality which had earlier surrounded the supervision process and introduced a new rule providing for the publicity of all execution information submitted by the respondent state. The 2006 amendments also provided for a clear right for civil society to make submissions on different execution issues.

5. In parallel to the reforms of the CM's Rules, the CM drew up new working methods in 2004<sup>23</sup> in order to improve the efficiency of its activity. The new working methods among other things foresee that respondent states should submit, wherever needed, action plans (with timetables) with respect to outstanding execution measures at the latest within six months from the date a judgment becomes final (see more below). At the same time, the Chair of the CM presented a number of proposals to help the Deputies identify which cases deserve a debate in the CM.

6. The results of the new working methods are regularly reviewed in order to identify further possible improvements. This process has already led to a number of additional changes. For example, the number of HR meetings has been limited to four since 2008. The main aim of this was to allow more time to ensure the quality of the examination required notwithstanding the ever-increasing number of judgments submitted to the CM's supervision, more bilateral contacts between the authorities of the respondent state and the Execution Department and increased cooperation with states in order to accelerate the execution process.

7. Protocol No. 14 also made it necessary to include certain new provisions in the 2006 rules in order to

regulate the use of the new tools which allow the CM to request interpretations of judgments and lodge infringement proceedings before the ECtHR (new paragraphs 3-5 of Article 46). The new rules also integrate the fact that the protocol entrusts the CM with the new responsibility of supervising the respect of friendly settlements accepted by the ECtHR in simple decisions, and not as before only those accepted through judgments<sup>24</sup>. These provisions (contained already in the text adopted in 2006) will enter into force at the same time as Protocol No. 14 and will be applicable to all cases pending before the CM at that time.

8. Awaiting entry into force of Protocol No. 14, some of the reforms foreseen therein were introduced in a Protocol No. 14 bis. The aim was to allow the reforms chosen to enter into force independently of Protocol No. 14 itself. This protocol entered into force on 1 October 2009 and was in effect vis à vis six states as per 31 December 2009.

9. The reforms mentioned above will have repercussions for the execution process also because of the foreseeable increase of cases transmitted to the CM for execution control (violations found by committees of three judges on the basis of well-established case-law and the new group of friendly settlements accepted through decisions).

10. Following the last ratification of Protocol No. 14, this protocol will enter into force on 1 June 2010. As a result, the rules with respect to the use of the new competences conferred on the CM – the right to request interpretations and the right to bring infringement proceedings – will also become applicable on that date.

22. This Protocol, now ratified by all contracting parties to the ECHR, will enter into force on 1 June 2010.

23. See document CM/Inf(2004)8 final.

24. Before the Protocol 14 amendments, the ECHR only foresaw supervision of the execution of friendly settlements accepted by judgment, i.e. concluded after the decision on admissibility. Since the ECtHR has more and more joined the question of admissibility to the examination of the merits, numerous friendly settlements are today accepted before any decision on admissibility. Under the ECHR as presently worded, before the entry into force of Protocol No. 14, such settlements may be accepted only through a decision and decisions are subjected to execution supervision only in exceptional circumstances, for example in case of clear instructions from the ECtHR or specific acceptance by the state at issue.

### C. Specific issues

11. In the course of the work on the reform of the ECHR system the issue of slowness and negligence in execution has attracted special attention.<sup>25</sup> The CM has also developed its responses to such situations, in particular by developing its practices as regards interim resolutions and detailed decisions supporting the pursuit of reforms or setting out the CM's concerns. The CM has also, in line *inter alia* with a number of proposals from the CDDH<sup>26</sup>, taken a number of preventive measures to ensure, to the extent possible, that such situations do not occur.

12. Among such measures the rapid submission (at the latest six months after a certain judgment has become final) by the governments of action plans and/or action reports (covering both individual and general measures) has been considered an essential element. In view of this, the nature and scope of action plans and action reports have been discussed at several HR meetings in 2009 with a view to clarifying what is expected of states. Another example is the continuing improvements of the on-line accessibility of execution information in pending cases (in 2009 extended to encompass also most cases in principle closed). Also the drafting of a *vademecum* on practice and procedure in execution matters may be mentioned. The first elements of such a *vademecum*, concentrating on issues relating to the payment of just satisfaction, were prepared in 2008. Work is in progress to develop additional parts of the *vademecum*.

13. In addition, since 2006 the CM has encouraged the development of special targeted cooperation activities for the execution of judgments of the ECtHR (comprising for example legal expertise, round tables and training programmes) to assist respondent states in their efforts to adopt rapidly the measures required by the Court's judgments. On a more general level, national officials from different countries regularly come to Strasbourg for study visits, seminars or other events where the work of the CM on execution supervision is presented and special execution problems are discussed.

14. Mention in this context should also be made of the new Human Rights Trust Fund set up in 2008 on a Norwegian initiative by the Council of

Europe, the Council of Europe Development Bank and Norway, joined by Germany and the Netherlands. The fund shall in particular contribute to activities that *inter alia* aim to contribute to strengthening the sustainability of the ECtHR in the different areas covered by the CM's abovementioned recommendations to improve the national implementation of the ECHR and by ensuring the full and timely national execution of the judgments of the ECtHR. The first execution projects aimed at sharing experiences in certain areas of special interest have started in 2009 (non-execution of domestic court decisions and actions of security forces) and will be further developed in 2010.

15. The implementation of the CM's recent recommendation – Recommendation (2008)2 – to the Member States on efficient domestic capacity for rapid execution of the ECtHR's judgments (reproduced in appendix 9) has also continued in 2009. The importance of this recommendation has been highlighted by the Chairs of the CM and the follow-up to this recommendation has been an important element of the CM's execution supervision and in the bilateral activities organised between different national authorities and the Execution Department.

16. In accordance with the CM's request for further improvement of the domestic implementation of the ECHR, the CDDH has prepared a further draft recommendation in 2009 to states on effective remedies for excessive length of proceedings together with a guide of good practices<sup>27</sup>. This new recommendation opens up interesting perspectives also for the execution of the judgments, in particular as the question of remedies is today a crucial element of general measures. It was adopted by the CM on 24 February 2010 (Recommendation Rec(2010)3) and it is accompanied by a guide to good practices.

17. Reflections on further means to improve execution continue not least in the light of the developments of the "pilot judgment" procedure before the ECtHR, the Wise Persons report, recommendations from the Parliamentary Assembly, the results of the reflection in the CDDH and the experiences gained from the important new assistance programs which are being implemented, in particular within

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

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

27. See CCDH(2009)019, Addendum II.

#### **IV. Improving the execution procedure: a permanent reform work**

the framework of the new abovementioned Human Rights Trust Fund. The conclusions of the High Level Conference on the future of the ECtHR organised by the Swiss Chairmanship of the CM on 18-19 February 2010 at Interlaken has provided

decisive impetus for the ongoing process of improvement of the execution process and the CM has set in motion a number of follow-up activities in the light of the action plan adopted by the Conference.

## Appendix 1: Initial explanations and list of abbreviations

The appendices below contain a number of overviews and statistics relating to the CM's supervision of execution of judgments in 2009.

Some initial explanations may be useful in order to explain the information provided in the thematic overview (appendix 12) and the statistical part (appendix 2), in particular the references to the CM's meetings and to the sections on the agenda under which cases have been examined.

A statement in the thematic overview, "Last examination at the 1065-6.1 meeting", means that the

case was examined at the 1065th "Human Rights" meeting of the Deputies held on 15-16/09/2009 in section 6.1, i.e. the section where cases are placed with a view to a decision on the question whether or not it appears possible on the basis of available information to close the examination of the case and request the Secretariat to present a draft final resolution.

A full list of "Human Rights" meetings and agenda sections appears below.

### A. CM'S HR meetings in 2009

Meeting No.	Meeting Dates	Decision Dates
1051	17-19/03/2009	02/04/2009
1059	02-05/06/2009	19/06/2009
1065	15-16/09/2009	30/09/2009
1072	01-04/12/2009	18/12/2009

## B. Sections used for the examination of cases at the CM's HR meetings

At each HR meeting, cases are registered into different sections of the annotated agenda and order of business. These sections correspond to the different stages of examination of the execution of each case, in the following way:

**Section 1 – Final resolutions** i.e. cases where a Final resolution, putting an end to the examination of the case, is proposed for adoption.

Sub-section 1.1 – Leading cases or pilot cases, i.e. cases evidencing a more systemic problem requiring general measures

Sub-section 1.2 – Cases concerning general problems already solved

Sub-section 1.3 – Cases not involving general or individual measures

Sub-section 1.4 – Friendly settlements

**Section 2 – New cases** examined for the first time.

Sub-section 2.1 – Cases raising new problems

Sub-section 2.2 – Cases raising issues already examined by the Committee of Ministers (“repetitive cases”)

**Section 3 – Just satisfaction** i.e. cases where the CM has not received or verified yet the written confirmation of the full compliance with the payment obligations stemming from the judgment.

Sub-sections 3.A and 3.A.int – Supervision of the payment of the capital sum of the just satisfaction in cases where the deadline for payment expired less than six months ago, (3.A) as well as, where due, of default interest (3.A.int).

Sub-section 3.B – Supervision of the payment of the capital sum of the just satisfaction in cases where the deadline for payment expired more than six months ago.

**Section 4 – Cases raising special questions** i.e. cases where the CM is examining questions of individual

measures or questions relating to the scope, extent or efficiency of general measures.

Sub-section 4.1 – Supervision of individual measures only

Sub-section 4.2 – Individual measures and/or general problems

Sub-section 4.3 – Special problems

**Section 5 – Supervision of general measures already announced** i.e. cases not raising any outstanding issue as regards individual measures and where the adoption of well identified general measures is under way.

Sub-section 5.1 – Legislative and/or regulatory changes

Sub-section 5.2 – Changes of courts’ case-law or of administrative practice

Sub-section 5.3 – Publication / dissemination

5.3.a – Cases in which supervision of measures concerning publication and dissemination has been taking place for less than a year

5.3.b – Cases in which supervision of measures concerning publication and dissemination has been taking place for more than a year

Sub-section 5.4 – Other measures

**Section 6 – Cases presented with a view to the preparation of a draft final resolution** i.e. cases where information provided indicates that all required execution measures have been adopted and whose examination is therefore in principle ended, pending the preparation and adoption of a Final resolution.

Sub-section 6.1 – Cases in which the new information available since the last examination appears to allow the preparation of a draft final resolution

Sub-section 6.2 – Cases waiting for the presentation of a draft final resolution

**C. General abbreviations**

<b>AR 2007</b>	Annual Report 2007
<b>AR 2008</b>	Annual Report 2008
<b>AR 2009</b>	Annual Report 2009
<b>Art.</b>	Article
<b>CDDH</b>	Steering Committee for Human Rights
<b>CM</b>	Committee of Ministers
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>HRTF</b>	Human Rights Trust Fund
<b>GM</b>	General Measures
<b>HR</b>	“Human Rights” meeting of the Ministers’ Deputies
<b>IM</b>	Individual Measures
<b>Prot.</b>	Protocol
<b>Sec.</b>	Section
<b>Secretariat</b>	The Secretariat of the Department for the Execution of Judgments of the European Court of Human Rights
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

**D. Country codes<sup>28</sup>**

ALB	Albania	LIT	Lithuania
AND	Andorra	LUX	Luxembourg
ARM	Armenia	MLT	Malta
AUT	Austria	MDA	Moldova
AZE	Azerbaijan	MCO	Monaco
BEL	Belgium	MON	Montenegro
BIH	Bosnia and Herze- govina	NLD	Netherlands
BGR	Bulgaria	NOR	Norway
CRO	Croatia	POL	Poland
CYP	Cyprus	PRT	Portugal
CZE	Czech Republic	ROM	Romania
DNK	Denmark	RUS	Russian Federation
EST	Estonia	SMR	San Marino
FIN	Finland	SER	Serbia
FRA	France	SVK	Slovak Republic
GEO	Georgia	SVN	Slovenia
GER	Germany	ESP	Spain
GRC	Greece	SWE	Sweden
HUN	Hungary	SUI	Switzerland
ISL	Iceland	MKD	“The former Yugoslav Republic of Macedo- nia”
IRL	Ireland	TUR	Turkey
ITA	Italy	UKR	Ukraine
LVA	Latvia	UK	United Kingdom
LIE	Liechtenstein		

28. These codes result from the CMIS database, used by the Registry of the European Court of Human Rights, and reproduce the ISO 3166 codes, with a few exceptions (namely: Croatia = HRV; Germany = DEU; Lithuania = LTU; Montenegro = MNE; Romania = ROU; Switzerland = CHE; United Kingdom = GBR).



## Appendix 2: Statistics

### A. Introduction

The data presented in this chapter are based on the internal database of the Department for the Execution of Judgments of the European Court of Human Rights.

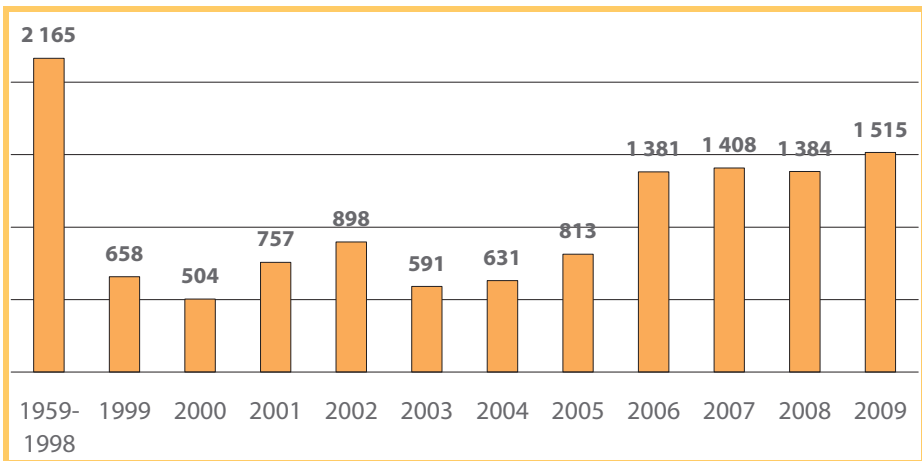
Some new features have been introduced, compared to the statistics presented in the 2008 issue of this report.

Thus the data presented are henceforth those of the calendar year, from 1 January to 31 December, rather than those based on the Committee of Ministers' HR meetings, since these were less easily

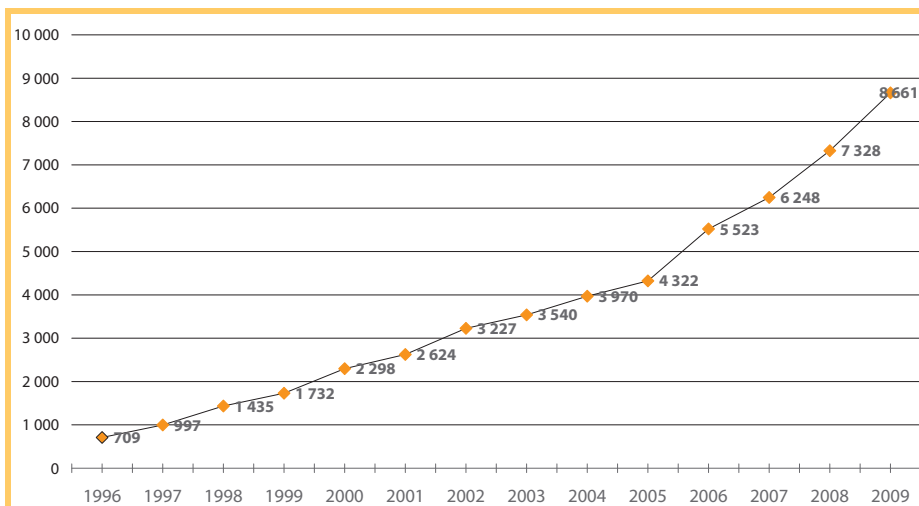
comparable due to the changes in the calendar of these meetings from one year to another.

In order to provide nevertheless a statistical overview of the Committee of Ministers' workload related to the meetings, a new section presents, within the general statistics, the development in the average number of cases examined at HR meetings (see Figure 8, page 36).

The tables below make it possible to see the most recent developments in the Committee of Ministers' workload in the context of the history of the system.



**Figure 1. Development in the number of new cases that became final during the year from 1959 until today**



**Figure 2. Development in the number of cases pending at the end of the year, from 1996 until today**

Another new feature of this edition is the more detailed presentation of the statistics concerning respect of payment deadlines expiring in 2009 (Figure 17, page 51, Figure 18, page 52, and Table IV, page 54). In fact, it appeared important to distinguish, among the cases under control of payment, those in which the lack of confirmation of full payment can be explained by the recent expiry of the payment deadlines, as opposed to those other cases, in which such confirmation has not been provided although the payment deadlines have expired more than six months previously. These latter cases are also presented separately on the Committee of Ministers' agenda (section 3.b) to draw attention to this fact.

Last but not least, the general statistics concerning pending cases (Figures 3 and 4) are also presented in a more detailed way: the proportion of "leading cases" over the total number of cases is henceforth indicated.

The presentation of the statistics in this chapter highlights in fact "leading cases". By this term, reference is made to cases which have been identified as revealing a new systemic/general problem in a respondent state and which thus require the adoption of new general measures (although these may already have been taken by the time the judgment is given), more or less important according to the case(s). Leading cases include *a fortiori* pilot judgments delivered by the European Court of Human Rights.

In particular, the identification of leading cases allows some qualitative insight into the impact of the Court's judgments on domestic law as well as into the workload related to the supervision of their execution. In fact, the number of leading cases reflects that of systemic problems dealt with by the Committee of Ministers, regardless of the number of single cases. Three elements should, however, be kept in mind:

- The distinction between leading and isolated cases can be difficult to establish when the case is examined for the first time, it can thus for example happen that a case initially qualified as "isolated" is subsequently re-qualified as "leading" in the light of new information attesting to the existence of a general problem;
- Leading cases have different levels of importance. While some of them imply complex reforms, others might refer to problems already solved or to specific sub-aspects of a problem already under consideration;
- Leading cases refer to the general measures and do not, in principle, take into account individual measures issues.

"Other cases" include:

- "Clone" or "repetitive" cases, i.e. those relating to a systemic or general problem already raised before the Committee of Ministers in one or several leading cases; these cases are usually grouped together (with the leading case as long

as this is pending) for the purposes of the Committee's examination.

- "Isolated" cases, i.e. cases which do not fall within any of the above categories. In particular, the violations found in these cases appear linked only to the specific circumstances of each case.

Friendly settlements are included in one of the above-mentioned groups of cases depending on the nature of the undertakings agreed and on the specific character of the situation at issue.

Reference to the sections used for the presentation of cases to the Committee of Ministers is made in several places. The sections are explained in Appendix 1, page 27.

## B. General statistics

In 2009 the number of cases pending before the Committee of Ministers (see below, Figures 3 and 4) has continued to increase almost steadily, as compared to the last two years.

On the one hand, the total number of new cases, after a slight temporary decrease in 2008, has resumed in 2009 its progression (see Figure 5, page 34).

On the other hand, although the number of cases in principle closed has also increased in 2009 (see Figure 7, page 35), the number of cases that led to the adoption of a final resolution has decreased (see Figure 6, page 35).

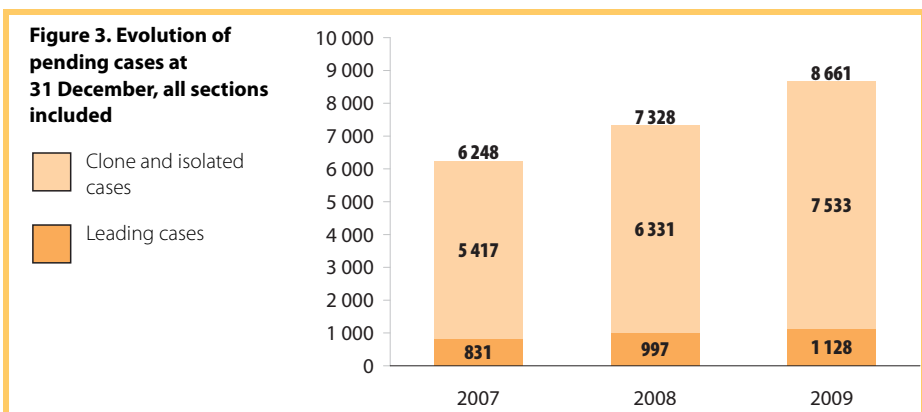
It should be noted that this increase does not simply concern the "quantity" of cases dealt by the Committee of Ministers, but also their "quality": in fact, the leading cases, which require the adoption of general measures, continue to increase every year (see Figure 4, page 34).

Thus, in 2009, the number of new leading cases (204) has been three times more important than the number of leading cases closed by a final resolution (68) and more than double the leading cases in principle closed (83).

### B.1. Pending cases

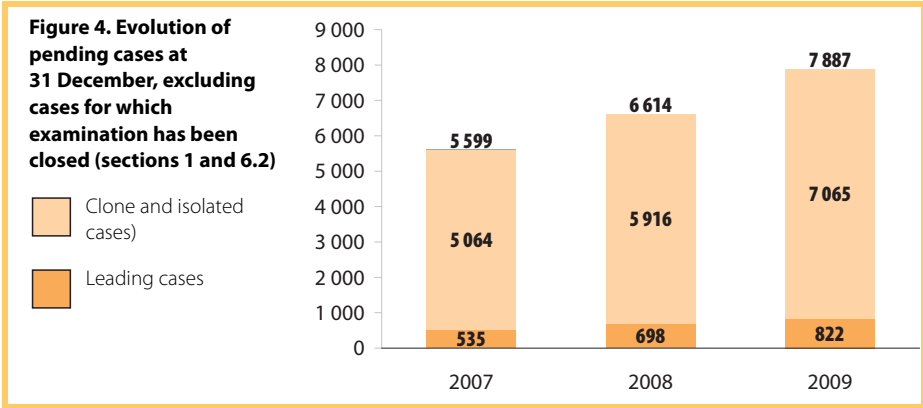
The trend of an increasing number of pending cases is confirmed: the cases pending at 31 December have increased by 18% from 2008 to 2009, from 7 328 to 8 661, while they had increased by 17% from 2007 to 2008, from 6 248 to 7 328 (see Figure 3 below).

Within the pending cases, all sections included, the number of leading cases continues also to increase: these cases have increased by 13% (from 997 to 1 128) between 2008 and 2009, against almost 20% (from 831 to 997) between 2007 and 2008 (see Figure 3 below).



If the cases waiting for a final resolution under sections 1 and 6 are excluded, the increase between 2008 to 2009 is 19%, from 6 614 to 7 887, and 18%, i.e. from 5 599 to 6 614, from 2007 to 2008 (see Figure 4 below).

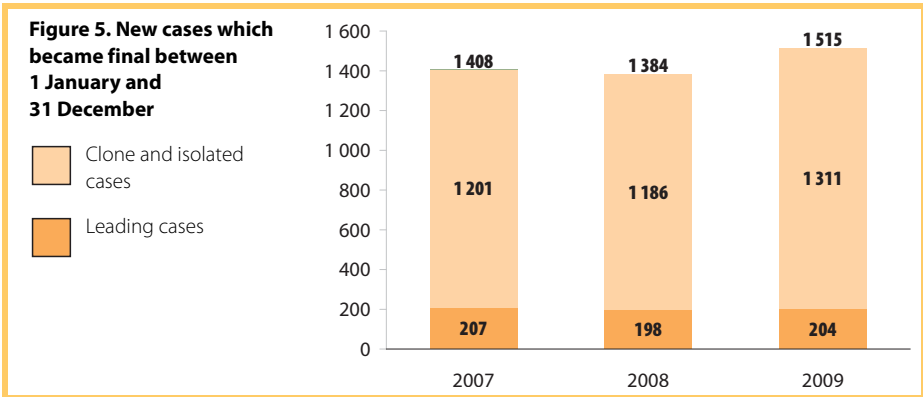
As regards leading cases, the progression was by almost 18% from 2008 to 2009, against around 30% from 2007 to 2008 (see Figure 4 below).



**B.2. New cases**

The input of new cases in which judgments became final during the calendar year (from 1 January to 31 December) increased by more than 9% from 2008 to 2009, after a small temporary decrease by almost 2% from 2007 to 2008, i.e. from 1 408 to 1 384 (see Figure 5).

The proportion of leading cases, on the basis of the new cases, remains stable (see Figure 5). Thus, these cases represent throughout the last three years between 13% and 15% of the global number of new cases.



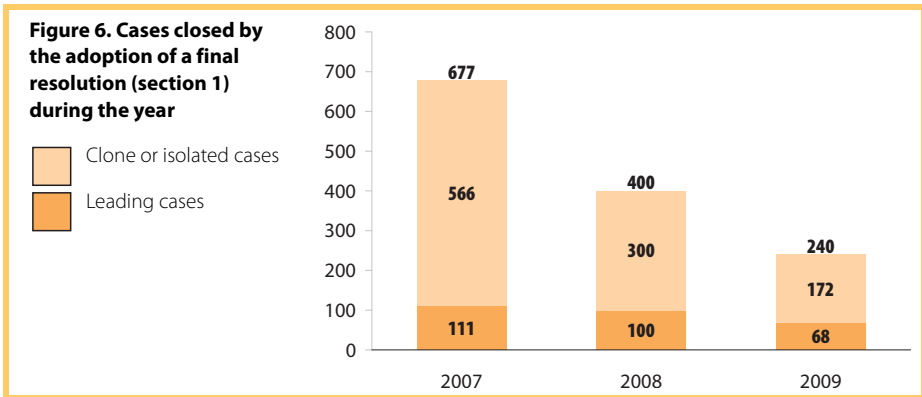
The changes that can occur in this respect are due to purely technical reasons, linked to the date at which new cases are registered in view of their examination by the Committee of Ministers: the cases which became final at the end of the year, but which

were scheduled for examination at the first HR meeting of the following year are indeed registered by default as “isolated cases”, as long as the identification process aimed at finding which of them qualify as leading cases is not completed.

### B.3. Cases closed

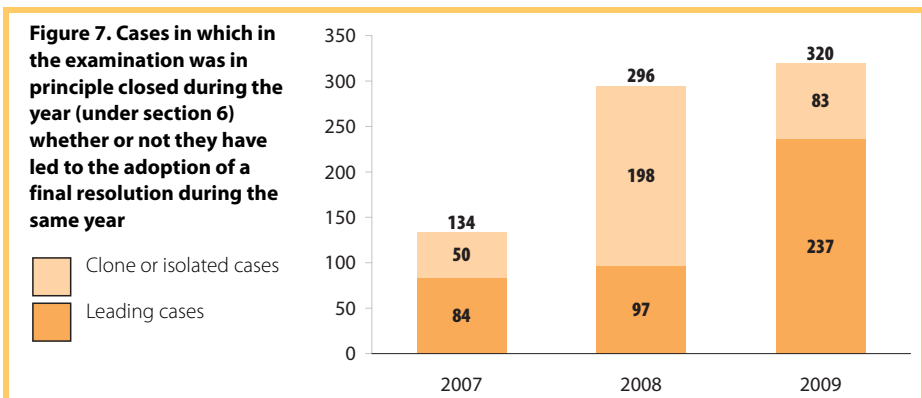
The number of cases closed by a final resolution decreased by 40% in 2009 as compared to 2008 (see Figure 6). This decrease concerns both the leading cases (-32% in 2009 as compared to 2008) and the other cases (-43% in 2009, as compared to 2008).

The substantial number of cases closed in 2007 (see Figure 6) is to a large extent explained by the high number of clone cases which were closed as a result of the adoption of the general measures required in the leading cases.



The number of cases in which the Committee of Ministers has taken a decision in principle to close its examination (and in which only the preparation of a final resolution is awaited) had more than doubled from 2007 to 2008, increasing by 120%, and it continued to increase in 2009, by more than 8% (see Figure 7).

It should be observed, however, that the data for 2007 do not include cases whose examination was closed during the year without requiring a detailed review under section 6.1 (usually for repetitive cases or friendly settlements) because such data were not available before 2008.



### B.4. Cases examined at the HR meetings of the Committee of Ministers

The data concerning the number of new cases, pending cases and cases closed provide a global overview of the trends in the Committee of Ministers' supervision of execution. This work continues

for all cases all over the year, regardless of the HR meeting cycle.

Some cases nevertheless require, depending on the urgency and seriousness of the issues they raise, to be examined at more regular and frequent intervals.

It goes without saying that the frequency at which cases are examined has also an impact on the Committee of Ministers' workload, since all cases on the agenda of an HR meeting<sup>29</sup> imply both an administrative treatment and a special treatment on the merits in view of their collective examination (preparation of documents, checking of payments, bilateral discussions with the states concerned, etc.).

The data relating to HR meetings also show that the number of cases examined continues to in-

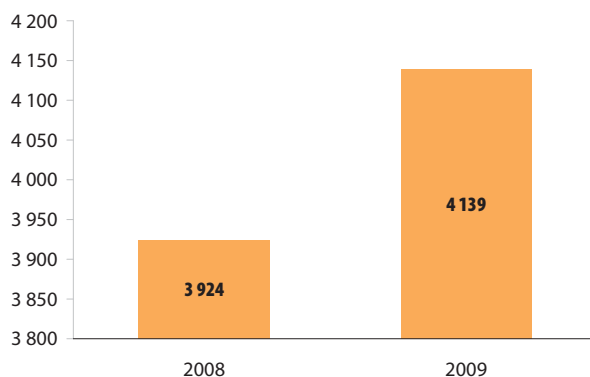
29. In certain cases, particularly urgent or serious, the examination can also continue, beyond the meetings specially dedicated to the supervision of execution of judgments, at the "regular" weekly meetings of the CM.

crease.<sup>30</sup> Indeed, although from one meeting to the next the number of cases examined can be very different, and while this number reflects the presence on the agenda of certain groups of cases, on average the number of cases examined each meeting increased from 3 924 in 2008 to 4 139 in 2009, i.e. an increase of some 5%.

The data for 2007 are not presented because they are not comparable, due to the change in the frequency of meetings as from 2008.

30. It should be noted that cases registered for control of payment of the just satisfaction, under section 3, can be registered at the same time under another section, in view of their being examined on the merits.

**Figure 8. Average number of cases examined by meeting, on the basis of the HR meetings of the year, excluding cases whose examination has in principle been closed (under sections 1 and 6.2)**



## C. Detailed statistics for 2009 (period 1 January to 31 December 2009)

The data below present an overview of a number of execution issues related to the year 2009:

- Cases closed between 1 January and 31 December 2009 or awaiting a final resolution at 31 December 2009, page 36
- Cases pending before the Committee of Ministers at 31 December 2009, page 40
- Cases pending before the Committee of Ministers at 31 December 2009, page 40
- New cases which became final between 1 January and 31 December 2009, page 45
- Respect of payment deadlines expiring in 2009, page 50
- Just satisfaction awarded in cases which became final between 1 January and 31 December 2009, page 55
- Length of execution of leading cases pending before the Committee of Ministers at 31 December 2009, page 61

### C.1. Cases closed between 1 January and 31 December 2009 or awaiting a final resolution at 31 December 2009

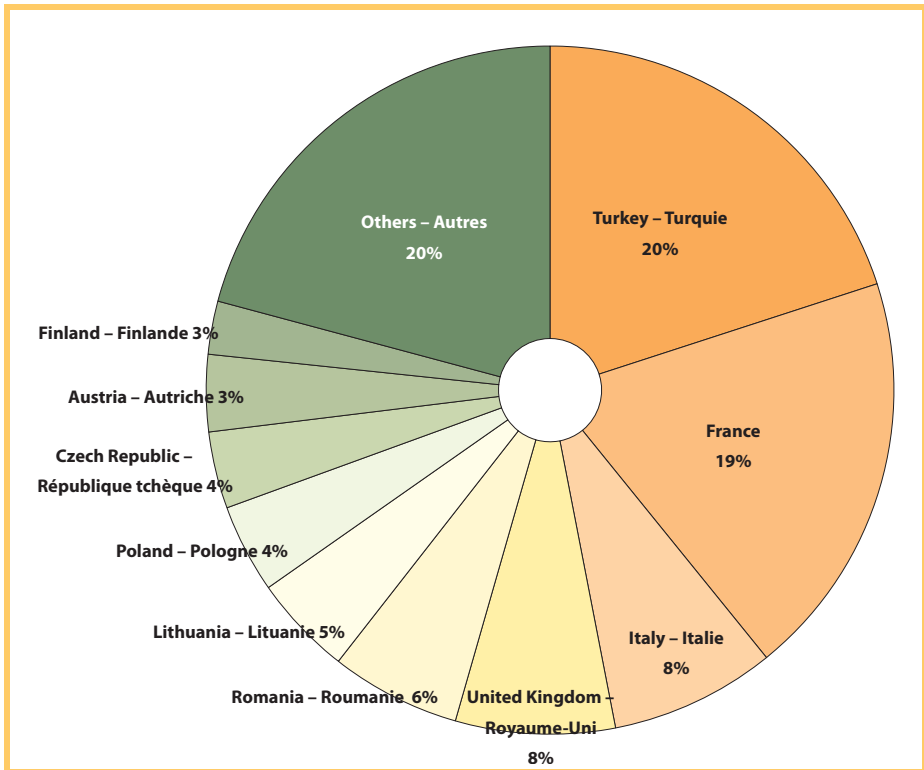
When all the information which appears necessary for the closure of a case is available, the case is presented under section 6 of the agenda to the Committee of Ministers, which assesses whether a final

resolution may be prepared. If the information is deemed satisfactory, the Committee of Ministers mandates the Secretariat to prepare a draft final resolution. At present, final resolutions adopted in a

certain year may relate to cases in which the closure decision was taken before the year in question.

Figures 9 and 10 provide an overview of, respectively, all the cases and the leading cases in which the information received during the year led the Com-

mittee of Ministers to conclude that all execution measures had been taken and only the preparation and adoption of a final resolution was required. In certain of these cases, a final resolution was already adopted before the end of the year.



**Figure 9. Total cases in which examination was in principle closed in 2009, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2009\***

\* For data see Table I, page 39.

Table I, page 39, presents, state by state, the number of:

A. all cases – whether leading or not – closed by a final resolution between 1 January and 31 December 2009, irrespective of whether their examination was closed in 2009 or earlier;

B. all cases – whether leading or not – in which examination was closed between 1 January and 31 December 2009 and the CM has requested the preparation of a final resolution. This list overlaps to a certain extent with the cases listed in column “A”, insofar as cases whose examination was closed in 2009 may also have been the subject of a final resolution adopted the same year;

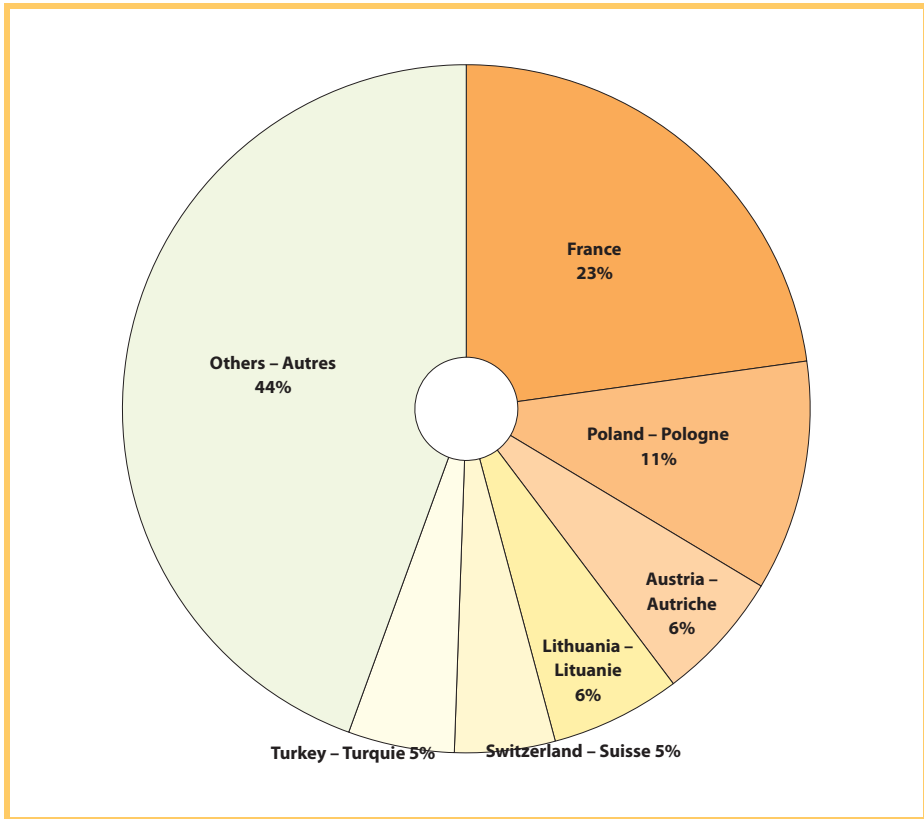
C. all cases awaiting the adoption of a final resolution at 31 December 2009. This list includes some of the cases listed in column “B” as well as cases where the decision to close the examination was taken before 2009.

It should be noted that cases in principle closed, i.e. already examined under section 6 and awaiting only the presentation of a draft final resolution, are excluded from the statistics below relating to pending cases (Figures 11 to 13 and Table II) and to the length of execution of leading cases (Figures 21 to 23 and Table VII).

Owing to the important variations in data from one year to another, depending in particular on the

nature and timetables of reforms adopted, the tables under this section do not present a comparison between the data of 2009 and 2008. The latter

can nevertheless be consulted in the 2008 *Annual report*.



**Figure 10. Total leading cases in which examination was in principle closed in 2009, resulting in the adoption of a final resolution or still awaiting a final resolution at 31 December 2009\***

\* For data see Table I, page 39.



Table I. Leading cases/Other cases – by state (cases closed during the HR meetings in 2009 and total number of cases awaiting a final resolution at 31 December 2009)

States	A Cases closed by a Final resolution in 2009 (section 1)		B Cases in which examination ended in 2009 and awaiting a final resolution (section 6.1 and 6.2)		C Cases awaiting a final resolution at 31 December 2008 (examination closed in 2009 or earlier) (section 6.2)
	Leading cases	Other cases	Leading cases	Other cases	
Albania					
Andorra					
Armenia					
Austria	2	17	5	6	43
Azerbaijan					
Belgium	2	2		2	33
Bosnia and Herzegovina					1
Bulgaria	4	1	1	4	9
Croatia		1		3	9
Cyprus			3		4
Czech Republic	2	3	2	10	17
Denmark					4
Estonia		1	1		4
Finland	4	5	2	6	14
France	9	19	19	42	91
Georgia					
Germany			1	1	20
Greece	3	4	2	2	28
Hungary			2	5	10
Iceland			1		1
Ireland	1	1			
Italy	8	9	3	22	45
Latvia	2	1	1	1	7
Liechtenstein					
Lithuania	2		5	10	21
Luxembourg	1	1			6
Malta					
Moldova		1	1	3	6
Monaco					
Montenegro					
Netherlands	2	4	3		22
Norway	1	1		1	2
Poland	3	1	9	4	42
Portugal	3		2	1	11
Romania				20	37
Russian Federation			1		6
San Marino					
Serbia	1	1	1	1	
Slovak Republic	2	3	3	4	27
Slovenia	1	1		1	3
Spain	1			1	3
Sweden	1	1	2	2	6
Switzerland	2	2	4	1	12
"The former Yugoslav Republic of Macedonia"	1	1		2	3
Turkey	5	69	4	60	113
Ukraine			2	1	10
United Kingdom	5	22	3	21	104
Total	68	172	83	237	774

### C.2. Cases pending before the Committee of Ministers at 31 December 2009

As long as a final resolution has not been adopted, a case remains formally pending before the Committee of Ministers. The tables in this section, however, present only the cases where execution measures are still required, according to the information available at 31 December, or in which the measures taken are still under assessment. These statistics do not include, therefore, the cases in principle closed and awaiting a final resolution under sections 1 or 6.

The data for 2009 include all new judgments which became final by 31 December 2009. However, as a number of these cases had not been examined yet

by the Committee of Ministers at that time, not all leading cases have been identified.

The data in Figures 12 and 11 (outer rings), and also those in Figure 13, refer to the data in Table II, page 44, i.e. the situation at 31 December 2009.<sup>31</sup> The figures presented in the inner rings of Figures 12 and 11 refer to the data in the 2008 *Annual report*.

31. It should also be noted that the large number of cases concerning certain countries is mainly explained by the large number of clone cases. Thus, if Italy e.g. has a total of 2 471 cases, representing some 31% of the total of cases pending for execution, it has to be borne in mind that more than 2 000 of these cases relate to one single problem, the excessive length of judicial proceedings.

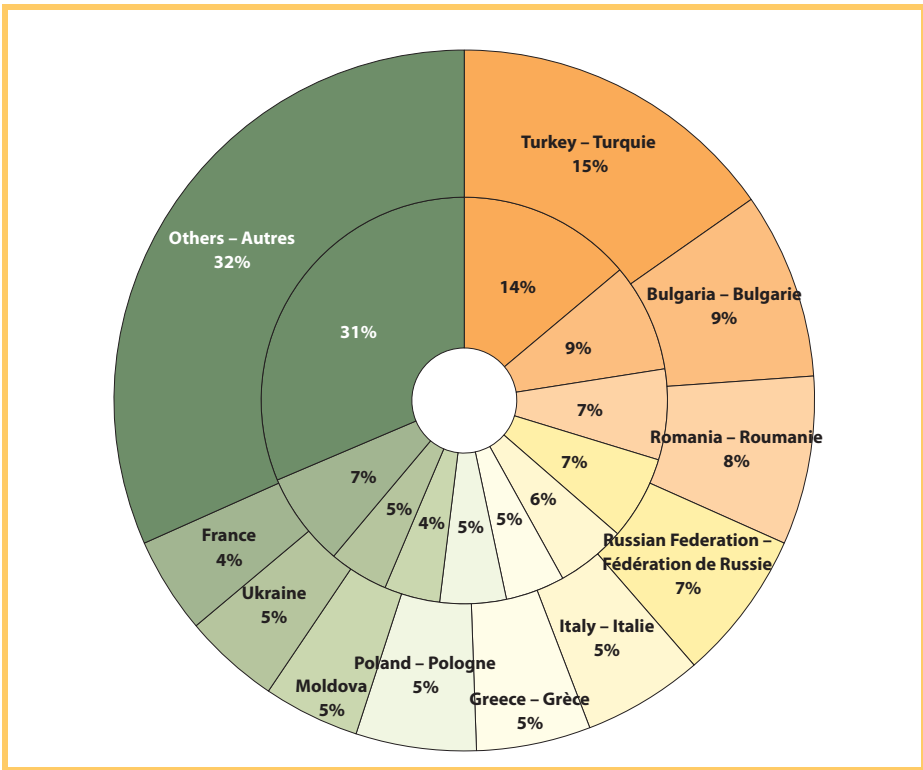
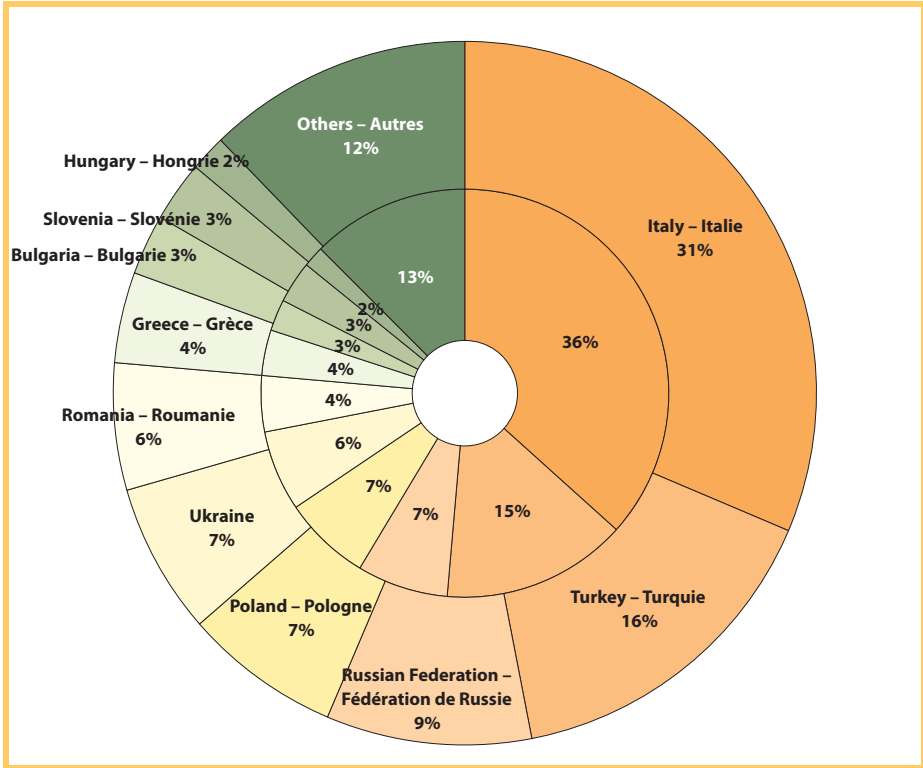


Figure 11. Pending leading cases by state at 31 December 2009 (outer ring) and at 31 December 2008 (inner ring) in relation to the total number of pending cases

The proportions of leading cases pending for execution before the Committee of Ministers in respect of the different contracting states have not much changed from 2008 to 2009.

Indeed, the ten states with the highest total of leading cases have remained the same ones during the last two years. With the exception of France, where the number of leading cases decreased in 2009 (from 59 to 35), in general the number of

these cases has increased for the other states, although in different proportions (see Figure 11).



**Figure 12. Total cases by state at 31 December 2009 (outer ring) and at 31 December 2008 (inner ring) in relation to the total number of pending cases at the same dates**

When considering the global number of leading, clone and isolated cases (see Figure 12), some bigger difference can be noted. Cases against Italy represented 31% of the total number of pending cases in 2009, while they were 36% in 2008. This development does not however mean that the number of Italian cases has decreased, on the contrary these have even slightly increased in 2009. The same is true for Slovenia, although the percentage of cases for this state appears stable as compared to 2008.

The apparent change is rather due to the increase, beyond average, of the number of cases concerning other states, that had already a considerable number of pending cases (Romania +64%, Russian Federation +58%, Hungary +33%, Bulgaria +29%, Greece +28%, Poland +27%, Turkey and Ukraine +26%). It should be noted that the increase often concerns both the leading cases and the clone and isolated cases (see Table II, page 44, as compared to the data in the 2008 *Annual report*).

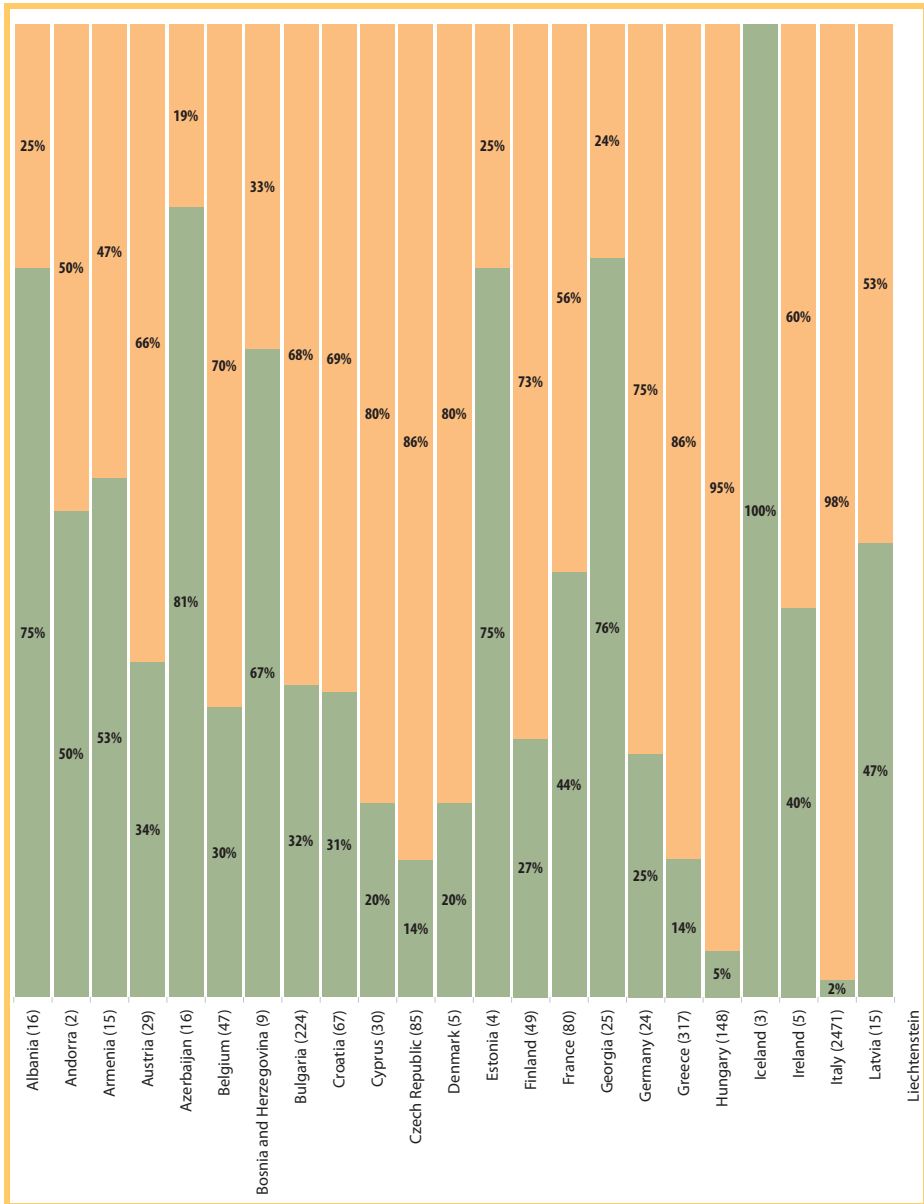


Figure 13. Types of case pending before the CM at 31 December 2009 by state (in parentheses, the total number of cases)

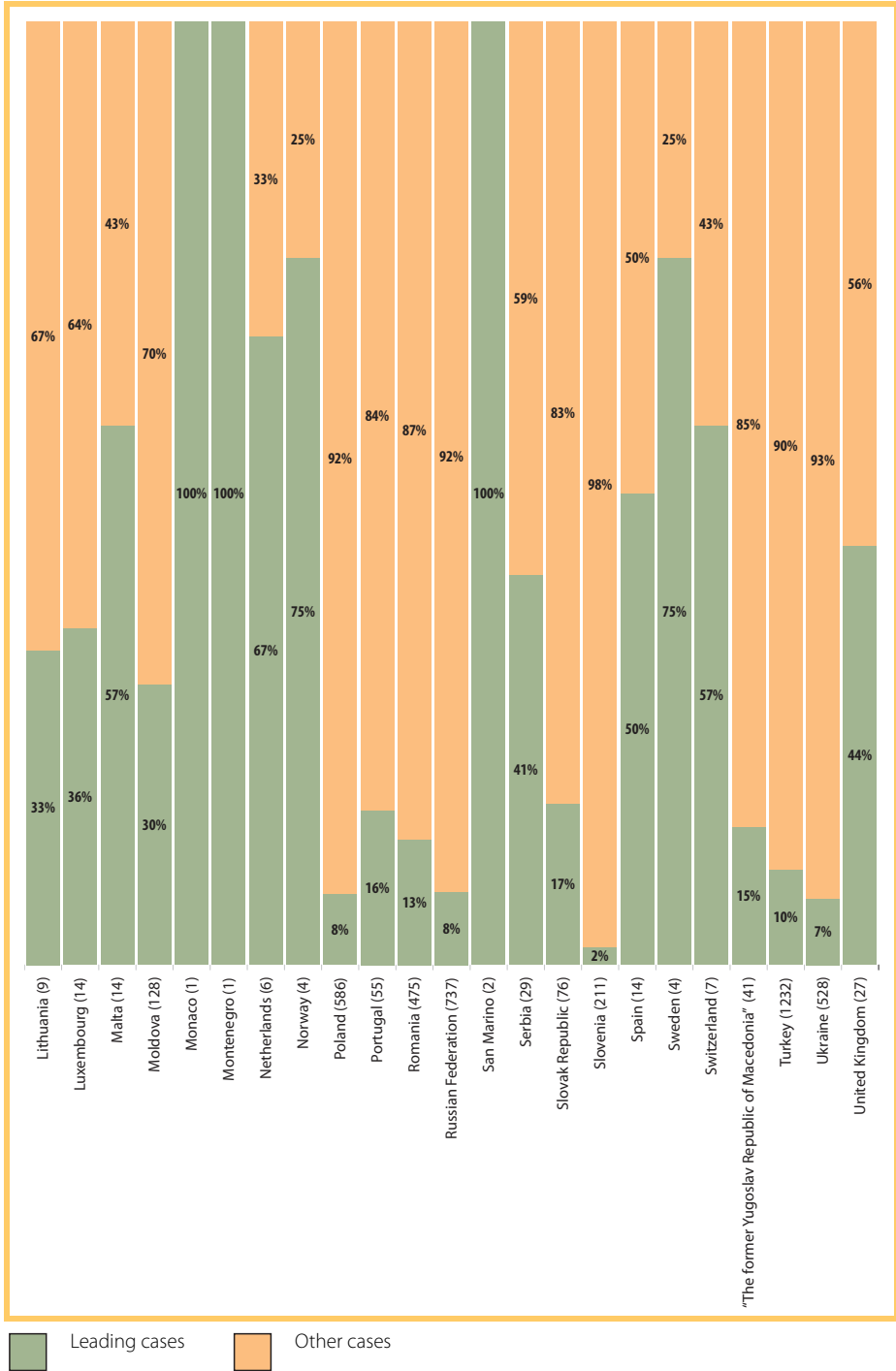


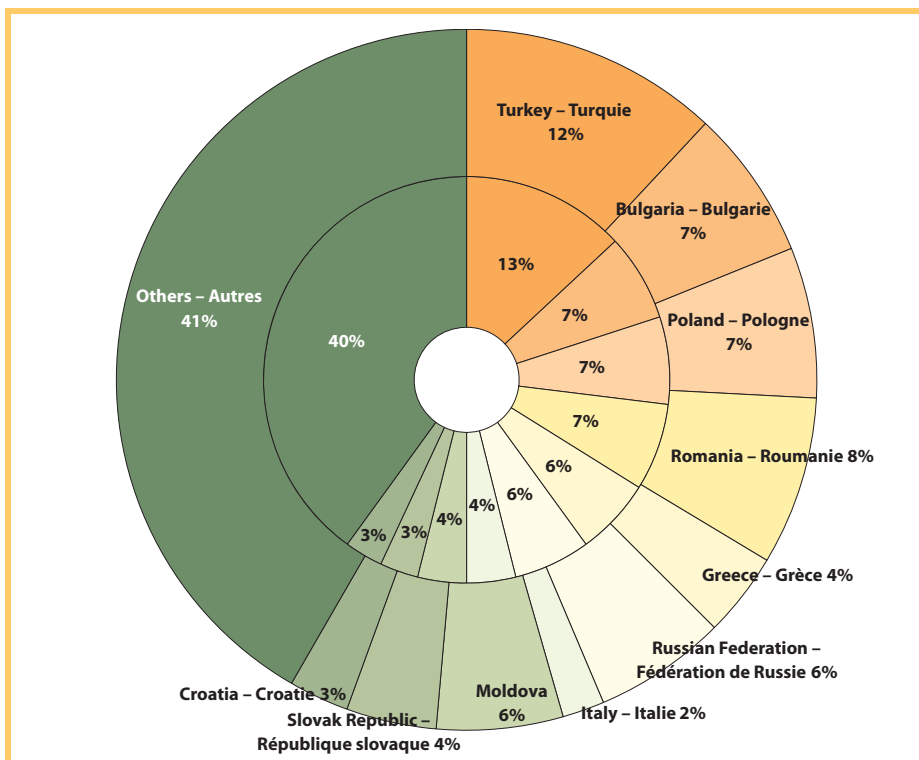
Table II. Types of case pending before the Committee of Ministers at 31 December 2009 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6.2)

State	Leading cases		Clone/repetitive or isolated cases		Cases by state	
	Number	% of all cases	Number	% of all cases	Number	% of all cases against all states
Albania	12	75.00%	4	25.00%	16	0.20%
Andorra	1	50.00%	1	50.00%	2	0.03%
Armenia	8	53.33%	7	46.67%	15	0.19%
Austria	10	34.48%	19	65.52%	29	0.37%
Azerbaijan	13	81.25%	3	18.75%	16	0.20%
Belgium	14	29.79%	33	70.21%	47	0.60%
Bosnia and Herzegovina	6	66.67%	3	33.33%	9	0.11%
Bulgaria	72	32.14%	152	67.86%	224	2.84%
Croatia	21	31.34%	46	68.66%	67	0.85%
Cyprus	6	20.00%	24	80.00%	30	0.38%
Czech Republic	12	14.12%	73	85.88%	85	1.08%
Denmark	1	20.00%	4	80.00%	5	0.06%
Estonia	3	75.00%	1	25.00%	4	0.05%
Finland	13	26.53%	36	73.47%	49	0.62%
France	35	43.75%	45	56.25%	80	1.01%
Georgia	19	76.00%	6	24.00%	25	0.32%
Germany	6	25.00%	18	75.00%	24	0.30%
Greece	45	14.20%	272	85.80%	317	4.02%
Hungary	7	4.73%	141	95.27%	148	1.88%
Iceland	3	100.00%	0		3	0.04%
Ireland	2	40.00%	3	60.00%	5	0.06%
Italy	45	1.82%	2426	98.18%	2471	31.33%
Latvia	7	46.67%	8	53.33%	15	0.19%
Liechtenstein	0		0		0	0.00%
Lithuania	3	33.33%	6	66.67%	9	0.11%
Luxembourg	5	35.71%	9	64.29%	14	0.18%
Malta	8	57.14%	6	42.86%	14	0.18%
Moldova	38	29.69%	90	70.31%	128	1.62%
Monaco	1	100.00%	0		1	0.01%
Montenegro	1	100.00%	0		1	0.01%
Netherlands	4	66.67%	2	33.33%	6	0.08%
Norway	3	75.00%	1	25.00%	4	0.05%
Poland	44	7.51%	542	92.49%	586	7.43%
Portugal	9	16.36%	46	83.64%	55	0.70%
Romania	63	13.26%	412	86.74%	475	6.02%
Russian Federation	57	7.73%	680	92.27%	737	9.34%
San Marino	2	100.00%	0		2	0.03%
Serbia	12	41.38%	17	58.62%	29	0.37%
Slovak Republic	13	17.11%	63	82.89%	76	0.96%
Slovenia	4	1.90%	207	98.10%	211	2.68%
Spain	7	50.00%	7	50.00%	14	0.18%
Sweden	3	75.00%	1	25.00%	4	0.05%
Switzerland	4	57.14%	3	42.86%	7	0.09%
“The former Yugoslav Republic of Macedonia”	6	14.63%	35	85.37%	41	0.52%
Turkey	125	10.15%	1107	89.85%	1232	15.62%
Ukraine	37	7.01%	491	92.99%	528	6.69%
United Kingdom	12	44.44%	15	55.56%	27	0.34%
<b>Total</b>	<b>822</b>	<b>10%</b>	<b>7065</b>	<b>90%</b>	<b>7887</b>	<b>100%</b>

### C.3. New cases which became final between 1 January and 31 December 2009

As indicated in the presentation of the general statistics, the process of identifying leading cases in 2009 has not yet been finalised for the most recent judgments (i.e. those which became final after October 2009) and the figures presented are thus likely to increase.

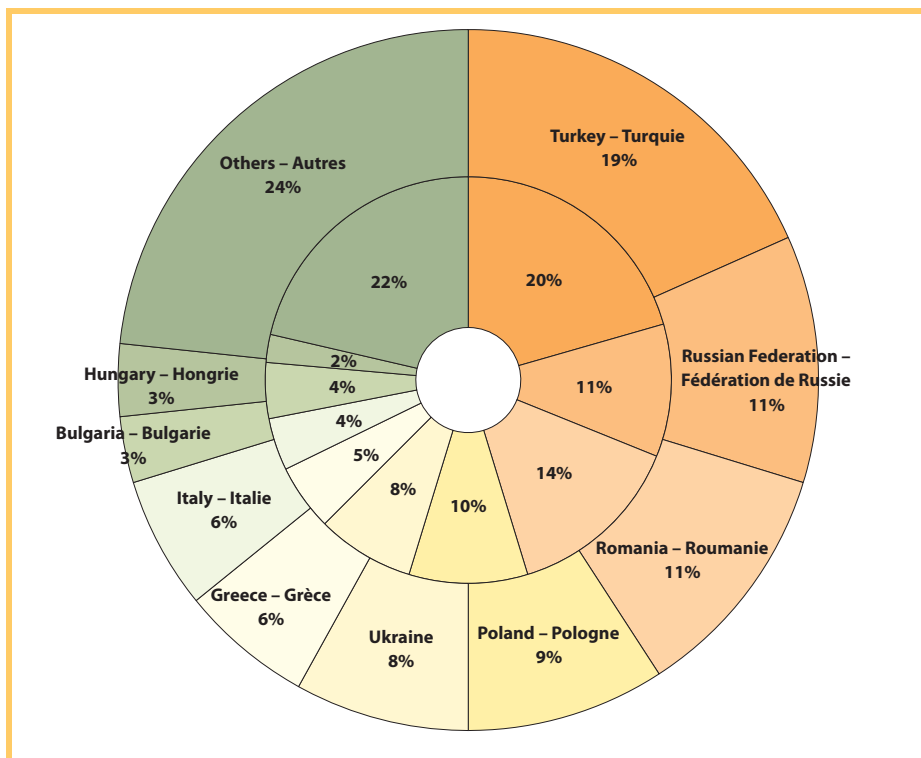
The data in Figures 14 and 15 (outer rings), and also those in Figure 16, refer to Table III, page 47. The figures presented in the inner rings of Figures 14 and 15 refer to 2008 data.



**Figure 14. New leading cases per state in 2009 (outer ring) and in 2008 (inner ring) in relation to the total number of new leading cases which became final between 1 January and 31 December**

The proportion of new leading cases increased in 2009 for Turkey, Greece and Italy. It decreased for

Romania and Moldova and has remained stable for the other states.



**Figure 15. Total of new cases per state which became final in 2009 (outer ring) and in 2008 (inner ring) in relation to the total number of new cases**

When considering all new cases which became final in 2009, without any distinction between leading and other types of cases, the states with an increased proportion of new cases, as compared to 2008, were in particular Turkey, Romania and Bulgaria. The proportion of new cases decreased for Hungary, Italy, Greece, Russian Federation and Ukraine, with Poland keeping in 2009 the same proportion of new cases as in 2008.

Figures 14 and 15 reflect, of course, the proportion of new cases in these states as compared to the total of new cases of the year. A closer look at the figures (Table III, page 47), as compared to the same data in 2008 (see the 2008 *Annual report*, Table 13) allows a more detailed assessment of the increase/decrease in the number of new cases for each state.



Table III. Types of new case which became final in 2009 – by state – details

State	Leading cases		Clone/repetitive or isolated cases		Cases by state in relation to the global number of cases	
	Numbers	% of the total of cases by state	Numbers	% of the total of cases by state	Numbers	% of the total of cases for all states
Albania	3	42.86%	4	57.14%	7	0.46%
Andorra			1	100.00%	1	0.07%
Armenia	2	25.00%	6	75.00%	8	0.53%
Austria	3	27.27%	8	72.73%	11	0.73%
Azerbaijan	3	100.00%	0	0.00%	3	0.20%
Belgium	1	12.50%	7	87.50%	8	0.53%
Bosnia and Herzegovina	2	50.00%	2	50.00%	4	0.26%
Bulgaria	14	25.45%	41	74.55%	55	3.63%
Croatia	6	37.50%	10	62.50%	16	1.06%
Cyprus	4	57.14%	3	42.86%	7	0.46%
Czech Republic	4	66.67%	2	33.33%	6	0.40%
Denmark	1	20.00%	4	80.00%	5	0.33%
Estonia	2	66.67%	1	33.33%	3	0.20%
Finland	7	28.00%	18	72.00%	25	1.65%
France	3	14.29%	18	85.71%	21	1.39%
Georgia	6	66.67%	3	33.33%	9	0.59%
Germany	4	23.53%	13	76.47%	17	1.12%
Greece	13	18.06%	59	81.94%	72	4.75%
Hungary	6	16.22%	31	83.78%	37	2.44%
Iceland						0.00%
Ireland						0.00%
Italy	8	12.31%	57	87.69%	65	4.29%
Latvia	1	20.00%	4	80.00%	5	0.33%
Liechtenstein						0.00%
Lithuania	2	13.33%	13	86.67%	15	0.99%
Luxembourg			3	100.00%	3	0.20%
Malta	3	100.00%			3	0.20%
Moldova	8	29.63%	19	70.37%	27	1.78%
Monaco	1	100.00%			1	0.07%
Montenegro	1	100.00%			1	0.07%
Netherlands						0.00%
Norway	1	50.00%	1	50.00%	2	0.13%
Poland	14	10.53%	119	89.47%	133	8.78%
Portugal	3	27.27%	8	72.73%	11	0.73%
Romania	14	7.29%	178	92.71%	192	12.67%
Russian Federation	12	4.53%	253	95.47%	265	17.49%
San Marino						0.00%
Serbia	1	8.33%	11	91.67%	12	0.79%
Slovak Republic	7	28.00%	18	72.00%	25	1.65%
Slovenia	2	33.33%	4	66.67%	6	0.40%
Spain	3	60.00%	2	40.00%	5	0.33%
Sweden	2	50.00%	2	50.00%	4	0.26%
Switzerland	1	25.00%	3	75.00%	4	0.26%
"The former Yugoslav Republic of Macedonia"	1	7.69%	12	92.31%	13	0.86%
Turkey	26	8.93%	265	91.07%	291	19.21%
Ukraine	6	5.71%	99	94.29%	105	6.93%
United Kingdom	3	25.00%	9	75.00%	12	0.79%
Total	204	13.00%	1311	87.00%	1515	100.00%

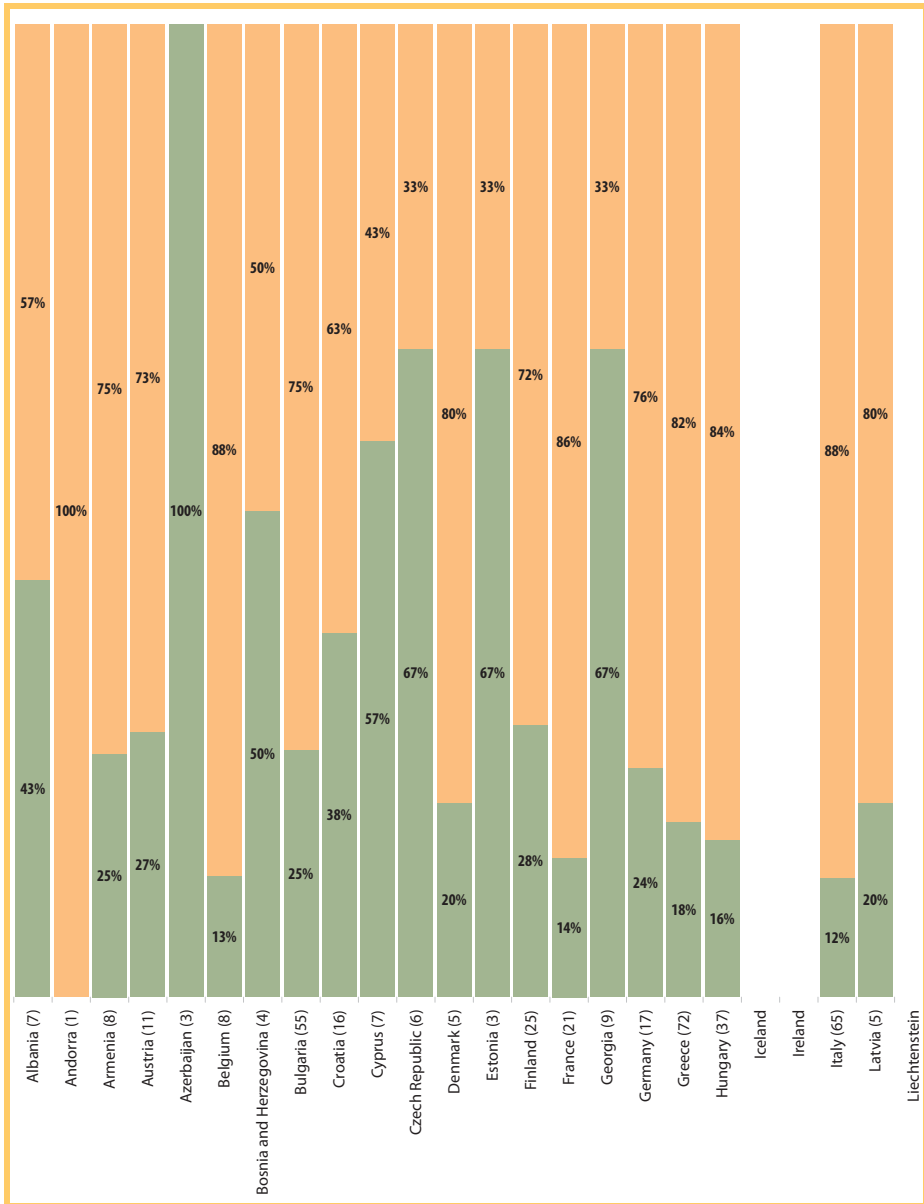
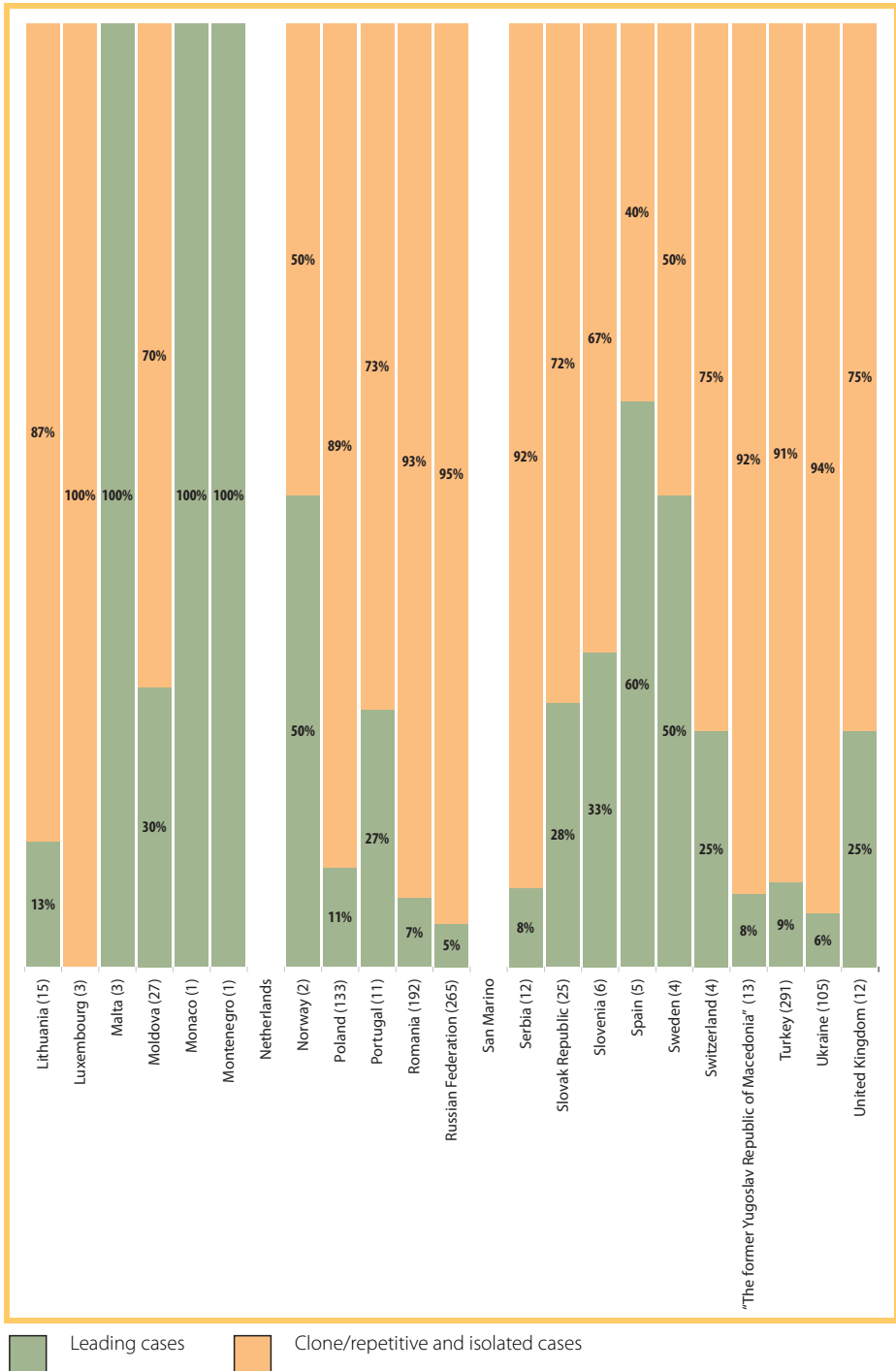


Figure 16. Types of new case which became final in 2009 by state (leading, clone/repetitive, isolated cases) (in brackets, the total number of cases)



#### C.4. Respect of payment deadlines expiring in 2009

If the European Court of Human Rights finds that there has been a violation of the European Convention on Human Rights, it can afford just satisfaction to the injured party. The payment of certain sums can also be provided for by a judgment taking note of a friendly settlement between the parties. In both cases, payment is usually expected within three months after the judgment has become final and default interest can be imposed in case of late payment.

In certain cases, the European Court of Human Rights reserves the issue of just satisfaction and delivers a judgment on this matter at a subsequent date. The statistics presented in this section include the judgments on just satisfaction which became final during the year.<sup>32</sup>

The data on respect of payment deadlines concern all cases in respect of which just satisfaction awards became due for payment in 2009. Cases where no award was made, as well as cases where the deadline expired before 1 January 2009 or after 31 December 2009, are excluded. Figures 17 and 18 refer to the data in Table IV, page 54, as regards 2009 (outer ring); for the data concerning 2008 (inner ring) see the 2008 *Annual report*.

It should be noted that the data presented reflect only the information received and assessed up to 31 December.

Accordingly, where confirmation of payment has been received and the terms of the judgment regarding just satisfaction appear to have been re-

32. These judgments are not included in the statistics concerning new cases. The latter only take into account judgments on the merits having become final in the course of the year.

spected, the case is identified as “paid within the deadlines”.

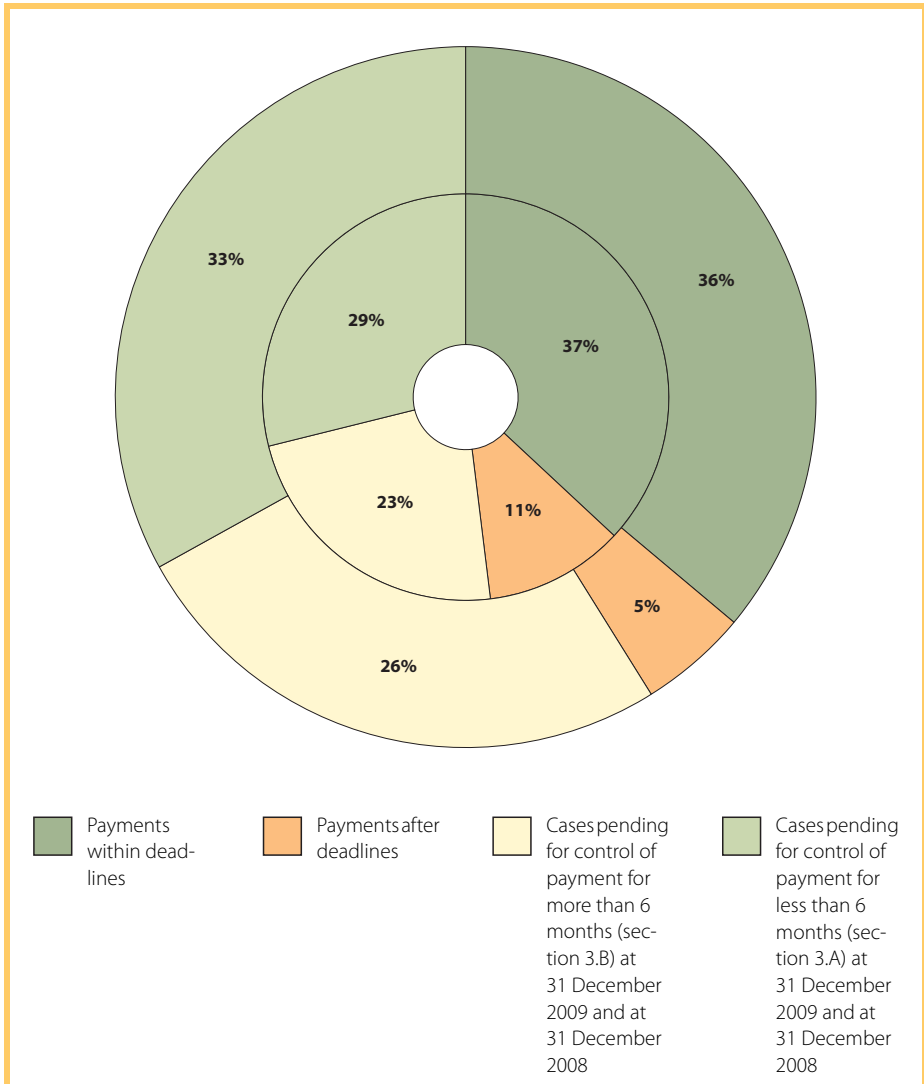
Cases are classified as “paid after the deadline” where the confirmation of payment received shows that the payment was made after the deadline for payment set by the judgment. It can be noted that the payments made after the deadlines are the exception: 5% in 2008 and 11% in 2009.

All other cases, where no information has been received or is incomplete are shown as “pending for control of payment” according to the data available at 31 December.

The cases where the lack of information on the payment can be explained by the recent expiry of the payment deadlines, are identified in Figures 17 and 18 and Table IV as “cases pending for control of payment for less than six months”. They correspond to cases which at 31 December were registered under section 3.a.

Cases in which at 31 December more than six months had elapsed since the expiry of the payment deadlines, without confirmation of full payment are presented in the tables as “cases pending for control of payment for more than six months” and correspond to cases which at 31 December were registered under section 3.b.

It is interesting to note that the percentage of cases without full confirmation of payment and thus presented as “pending for control of payment” diminished from 59% in 2008 to 52% in 2009 and that the decrease concerns both cases where the payment deadlines expired recently (these cases decrease from 33% to 29%) and cases where full payment remained to be confirmed more than six months after the expiry of the deadlines (these cases decrease from 26% to 23%).



**Figure 17. Respect of payment deadlines: situation at 31 December 2009 (outer ring) and at 31 December 2008 (inner ring)**



Figure 18. Respect of payment deadlines by states: situation at 31 December 2009 (in parentheses, the total number of cases where the deadline for payment expired in 2009)

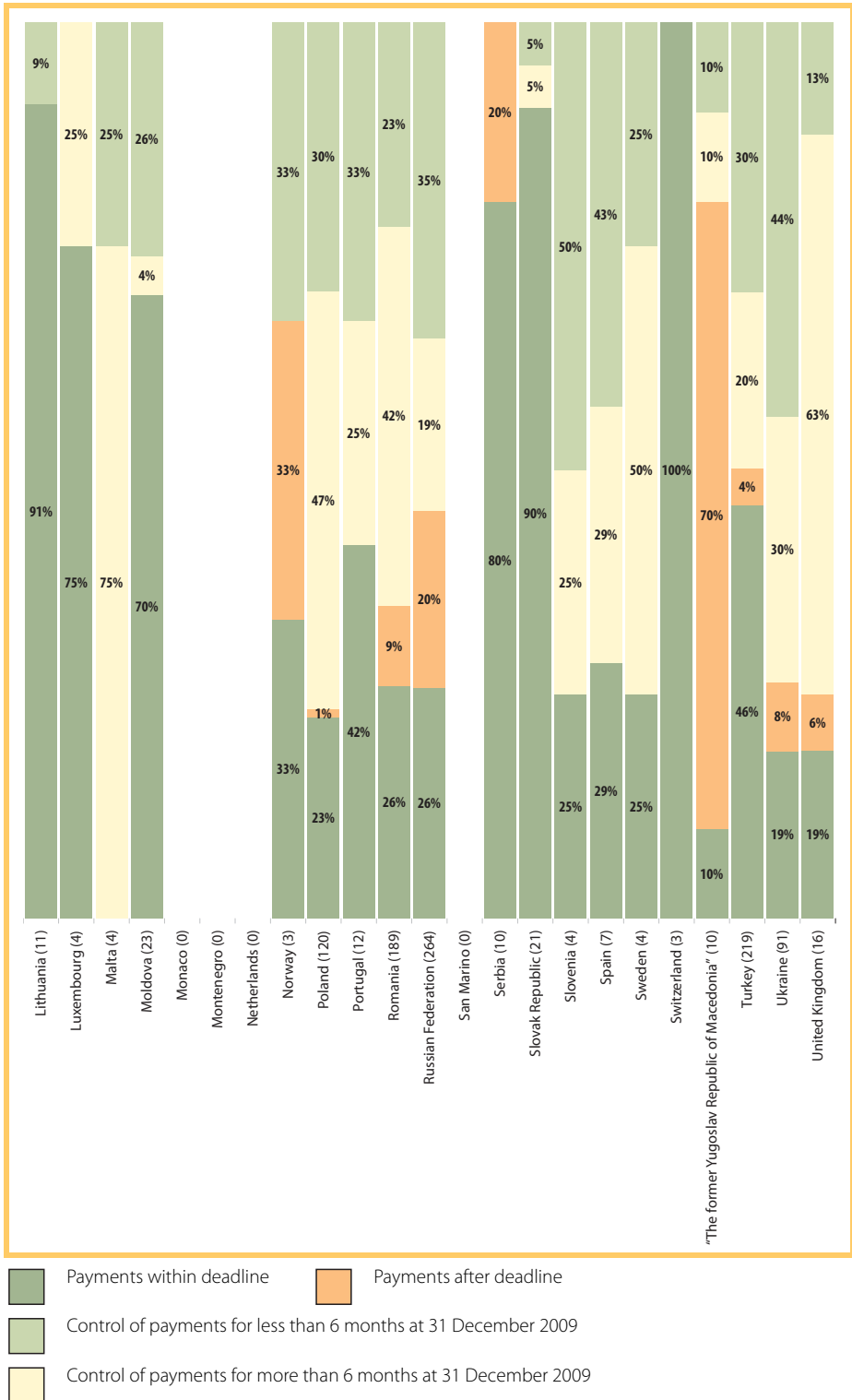


Table IV. Respect of payment deadlines by state – detail: situation at 31 December 2009 (on the basis of all cases in respect of which the deadline for payment expired in 2009)

State	Payments within deadline		Payments after deadline		Control of payment for more than 6 months at 31 December 2009		Control of payment for less than 6 months at 31 December 2009		Total
	Number	%	Number	%	Number	%	Number	%	
Albania	0		0		2	40%	3	60%	5
Andorra	0		0		1	100%	0		1
Armenia	0		0		7	100%	0		7
Austria	8	67%	0		2	17%	2	17%	12
Azerbaijan	3	50%	0		2	33%	1	17%	6
Belgium	0		0		5	63%	3	38%	8
Bosnia and Herzegovina	4	67%	1	17%	0		1	17%	6
Bulgaria	18	32%	14	25%	3	5%	21	38%	56
Croatia	20	91%	0		1	5%	1	5%	22
Cyprus	1	17%	0		4	67%	1	17%	6
Czech Republic	2	100%	0		0		0		2
Denmark	3	75%	0		1	25%	0		4
Estonia	1	50%	0		1	50%	0		2
Finland	9	38%	0		7	29%	8	33%	24
France	6	30%	7	35%	2	10%	5	25%	20
Georgia	4	67%	2	33%	0		0		6
Germany	12	100%	0		0		0		12
Greece	9	15%	10	17%	9	15%	31	53%	59
Hungary	34	85%	1	3%	0		5	13%	40
Iceland	0		0		0		0		0
Ireland	0		0		0		0		0
Italy	59	56%	20	19%	1	1%	26	25%	106
Latvia	1	33%	0		2	67%	0		3
Liechtenstein	0		0		0		0		0
Lithuania	10	91%	0		0		1	9%	11
Luxembourg	3	75%	0		1	25%	0		4
Malta	0		0		3	75%	1	25%	4
Moldova	16	70%	0		1	4%	6	26%	23
Monaco	0		0		0		0		0
Montenegro	0		0		0		0		0
Netherlands	0		0		0		0		0
Norway	1	33%	1	33%	0		1	33%	3
Poland	27	23%	1	1%	56	47%	36	30%	120
Portugal	5	42%	0		3	25%	4	33%	12
Romania	49	26%	17	9%	80	42%	43	23%	189
Russian Federation	68	26%	52	20%	51	19%	93	35%	264
San Marino	0		0		0		0		0
Serbia	8	80%	2	20%	0		0		10
Slovak Republic	19	90%	0		1	5%	1	5%	21
Slovenia	1	25%	0		1	25%	2	50%	4
Spain	2	29%	0		2	29%	3	43%	7
Sweden	1	25%	0		2	50%	1	25%	4
Switzerland	3	100%	0		0		0		3
“The former Yugoslav Republic of Macedonia”	1	10%	7	70%	1	10%	1	10%	10
Turkey	101	46%	9	4%	43	20%	66	30%	219
Ukraine	17	19%	7	8%	27	30%	40	44%	91
United Kingdom	3	19%	1	6%	10	63%	2	13%	16
<b>Total</b>	<b>529</b>	<b>37%</b>	<b>152</b>	<b>11%</b>	<b>332</b>	<b>23%</b>	<b>409</b>	<b>29%</b>	<b>1422</b>



### C.5. Just satisfaction awarded in cases which became final between 1 January and 31 December 2009

The data in this chapter take into account payment awards in all new judgments, including those on just satisfaction, which became final in 2009.<sup>33</sup> Figures 19 and 20 refer to the data in Table V, page 60.

It should be noted that the sums are those indicated in the judgment – usually in euros – and do not include default interest. In order to facilitate comparison, sums awarded in currencies other than the euro have also been converted into euros. For the

purposes of these statistics the rate used was that applicable at 31 December 2009.

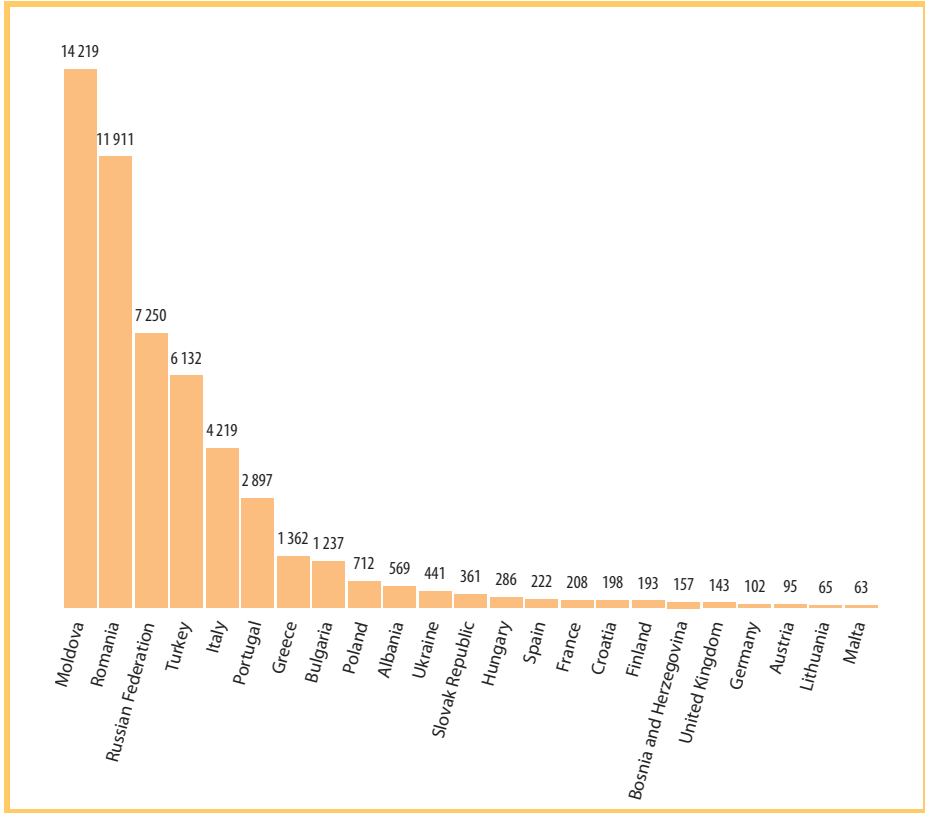
As regards cases where the European Court of Human Rights left the respondent state the choice between restitution of property and payment of its equivalent market value, as assessed by the Court itself, the latter amount has been included in the data.

In 2009, the total amount awarded by the European Court of Human Rights was 53 600 785 euros.

The highest awards of just satisfaction concerned cases against Moldova, Romania, Russian Federation, Turkey, Italy, Portugal, Greece and Bulgaria.

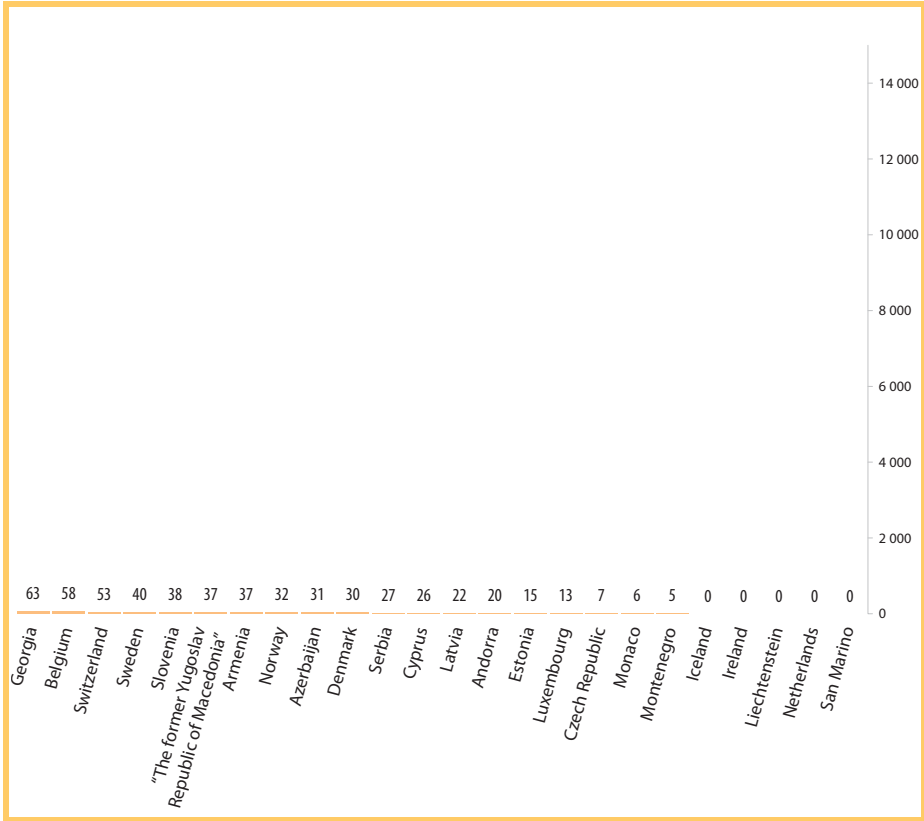
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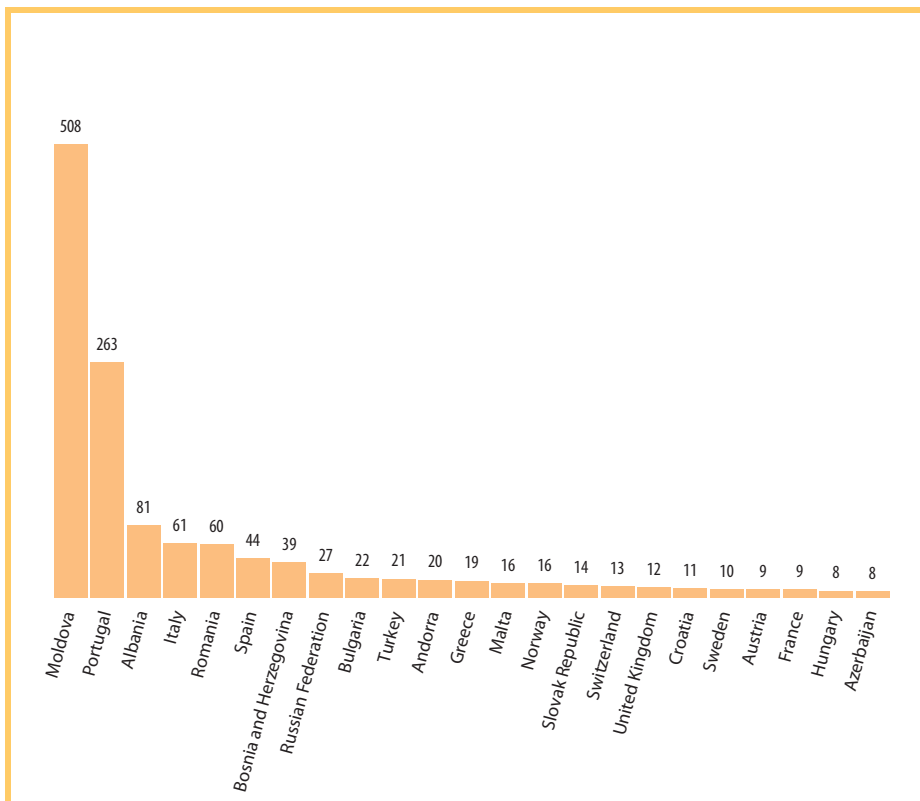
33. The total number of new cases considered in this chapter does not correspond to that of new cases in Figures 14 to 16 and Table III, because these tables only included final judgments on the merits and not those on just satisfaction.



**Figure 19. Total just satisfaction awarded in judgments which became final in 2009\***

\* Figures in thousands of euros, rounded in the graph.





**Figure 20. Just satisfaction awarded on average by case in judgments which became final in 2009\***

\* Figures in thousands of euros, rounded in the graph.

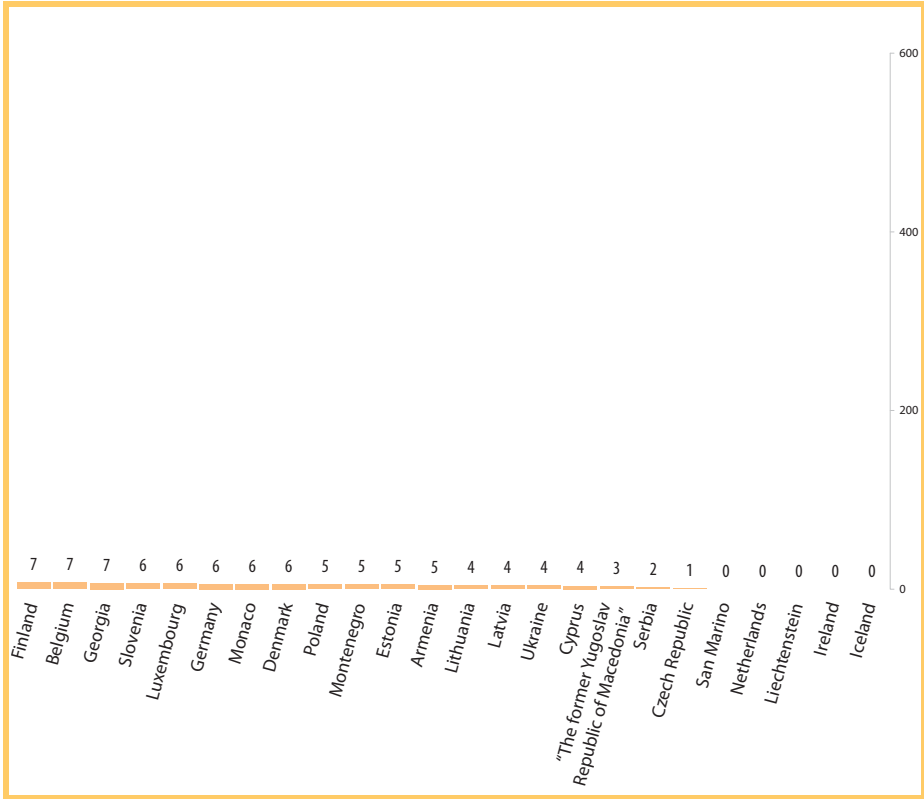


Table V. Sums awarded as just satisfaction by state – details (in judgments which became final in 2009)\*

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)	Costs and expenses (€)	Global sum (€)	Internal debts (€)	Total (€)
Albania	7	81 321	84 000	476 100		9 150			569 250
Andorra	1	20 000				20 000			20 000
Armenia	8	4 625		19 000		18 000			37 000
Austria	10	9 464		48 500		46 144			94 644
Azerbaijan	4	7 681		29 100		1 625			30 725
Belgium	8	7 309	288	42 500		15 681			58 469
Bosnia and Herzegovina	4	39 233		5 300		21 000		130 632	156 932
Bulgaria	57	21 707	810 367	228 700	102 000	96 233			1 237 300
Croatia	18	11 003	74 635	92 090		31 330			198 055
Cyprus	7	3 700		16 400		9 500			25 900
Czech Republic	6	1 167		2 000		5 000			7 000
Denmark	5	6 000		30 000					30 000
Estonia	3	5 000		6 000		9 000			15 000
Finland	26	7 431	12 795	107 800		72 617			193 213
France	22	9 435	76 041	36 000		95 534			207 575
Georgia	9	6 954	17	46 200		16 369			62 586
Germany	17	6 022		71 500		30 870			102 370
Greece	72	18 919	72 902	826 500	387 000	75 761			1 362 162
Hungary	37	7 723	2 280	220 770		62 709			285 759
Iceland									
Ireland									
Italy	69	61 147	2 971 254	515 862		332 023	400 000		4 219 139
Latvia	5	4 300		20 000		1 500			21 500
Liechtenstein									
Lithuania	15	4 306		55 800		8 795			64 595
Luxembourg	2	6 325		12 650					12 650
Malta	4	15 819	47 575	8 000		7 700			63 275
Moldova	28	507 808	13 940 006	235 500		43 120			14 218 626
Monaco	1	6 000		6 000					6 000
Montenegro	1	5 200		4 500		700			5 200
Netherlands									
Norway	2	15 750		19 000		12 500			31 500
Poland	134	5 312	15 000	660 240		36 592			711 832
Portugal	11	263 334	2 421 657	413 211		61 809			2 896 677
Romania	199	59 855	10 203 137	602 830	221 500	152 492	731 194		11 911 153
Russian Federation	268	27 052	1 101 527	5 408 450	31 000	488 568	178 000	42 263	7 249 808
San Marino									
Serbia	12	2 275		24 600		2 700			27 300
Slovak Republic	26	13 888	200 000	108 870	8 000	44 210			361 080
Slovenia	6	6 350		29 140		8 961			38 101
Spain	5	44 386	103 429	83 000		35 500			221 929
Sweden	4	9 875	6 500	8 500		14 500	10 000		39 500
Switzerland	4	13 163		25 000		27 650			52 650
"The former Yugoslav Republic of Macedonia"	13	2 869	1 800	30 100		5 400			37 300
Turkey	289	21 219	2 788 005	2 530 492	155 000	222 777		436 160	6 132 434
Ukraine	106	4 164	1 565	230 100	600	8 012	2 233	198 853	441 363
United Kingdom	12	11 936	8 185	1 000		68 770	65 279		143 234
<b>Total</b>	<b>1 537</b>	<b>34 874</b>	<b>34 942 965</b>	<b>13 337 305</b>	<b>905 100</b>	<b>2 220 801</b>	<b>1 386 705</b>	<b>807 908</b>	<b>53 600 785</b>

\* Figures rounded to whole number of euros.

Table VI. Sums awarded in foreign currency\*

State	Number of new cases	Average just satisfaction by case (€)	Pecuniary damages (€)	Non-pecuniary damages (€)	Pecuniary and non-pecuniary damages together (€)	Costs and expenses (€)	Global sum (€)	Internal debts (€)	Total (€)
Romania (lei, RON)			8 828						8 828
Russian Federation (rouble, RUR)			200 745			10 000		371 543	582 288
Russian Federation (pound sterling, GBP)						5 922			5 922
Turkey (former Turkish lira, TRL)								939 054 million	939 054 million
Ukraine (hryvna, UAH)								2 274 183	2 274 183
United Kingdom (pound sterling, GBP)								58 000	58 000

\* In Table V, page 60, sums are converted into euros at the rate applicable at 31 December 2009, in order to allow the presentation of the total amount in euros. An exact calculation would take into account the rate applicable at the date of payment.

*Pecuniary and non-pecuniary damages* cover sums awarded by the European Court of Human Rights for both pecuniary and non-pecuniary damages, without any distinction being made between the two.

*Global sum* refers to sums awarded by the European Court of Human Rights (often in friendly settlements) without any further detail. The sums can

therefore cover all kinds of damages as well as costs and expenses.

*Internal debts* cover those sums which the European Court of Human Rights has awarded under this specific heading in this judgment. Normally such sums cover “internal debt” due under a domestic judgment which has not been executed.

## C.6. Length of execution of leading cases pending before the Committee of Ministers at 31 December 2009

The Court’s judgments in general do not set an express deadline for the adoption of execution measures, other than the payment of just satisfaction. It is thus difficult to assess in absolute terms the acceptable length of execution of a judgment. Such assessment forms one of the main parts of the supervision by the Committee of Ministers and takes into account, *inter alia*, the type of measures required, any action plan and the obstacles, if any, encountered by states. Because of the great variety of situations, the time needed for execution can be very different from case to case.

In 2009 the percentage of cases pending for more than five years has increased as compared to 2008, from 11% to 15%. The percentage of cases pending for less than two years has also increased: these cases were 63% of all cases in 2009 against 54% in 2008. On the other hand, the proportion of cases pending between two and five years decreased, from 35% in 2008 to 22% in 2009.

Note that the following tables do not include cases where only the formal adoption of a final resolution is awaited (under section 6).

Furthermore, these data only reflect the information received and assessed up to 31 December 2009.

Accordingly, where no information concerning the execution measures has been received, is incomplete or still under assessment, the cases are shown as still pending, according to the data available at 31 December of the year in question, although the relevant measures might have been taken.<sup>34</sup> Only when the information is received and the Committee of Ministers has concluded that the measures taken are sufficient for the purposes of Article 46 is the examination in principle closed and a final resolution prepared and adopted.

<sup>34</sup> For instance, a number of cases appear as “pending” due to outstanding problems with payment of just satisfaction, while all other execution measures have been taken.

Moreover, it should be borne in mind that in many cases appearing as “pending”, important interim measures have been taken to limit the possibilities of new violations awaiting the entry into force of more permanent measures, whether legislative or not.

Figures 21 and 22 (outer rings) and Figure 23 refer to the data in Table VII, page 66. The figures in the inner rings of Figures 21 and 22 refer to the 2008 *Annual report*.

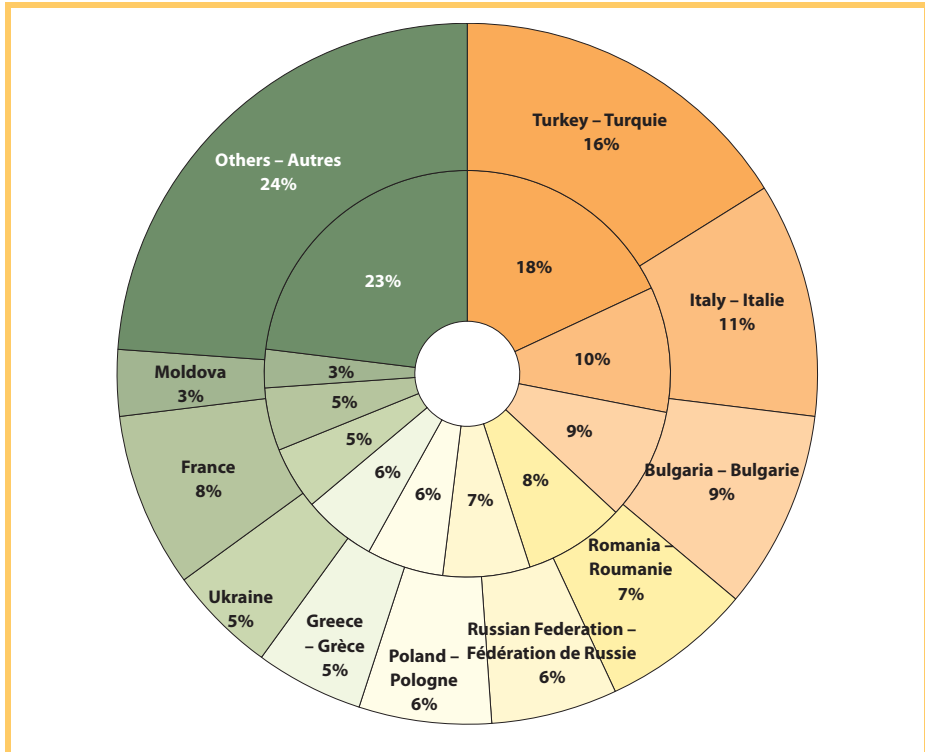
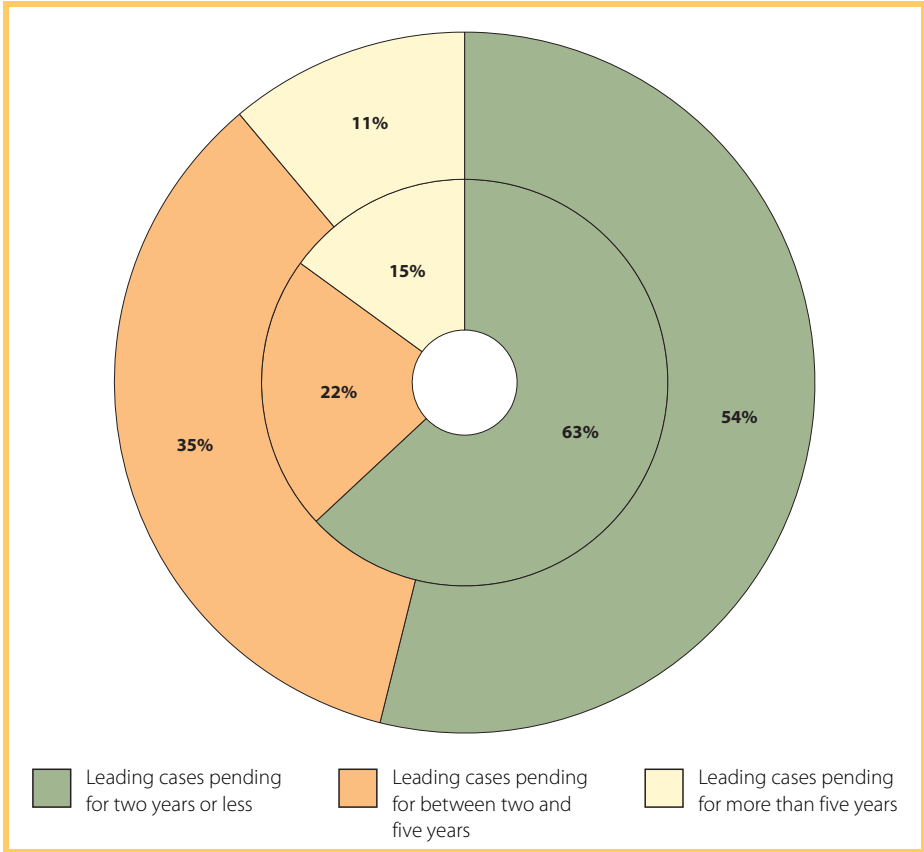


Figure 21. Leading cases, by state, pending for more than two years at 31 December 2009 (outer ring) and at 31 December 2008 (inner ring)





**Figure 22. Length of leading cases pending before the CM – global situation at 31 December 2009 (outer ring) and at 31 December 2008 (inner ring)**

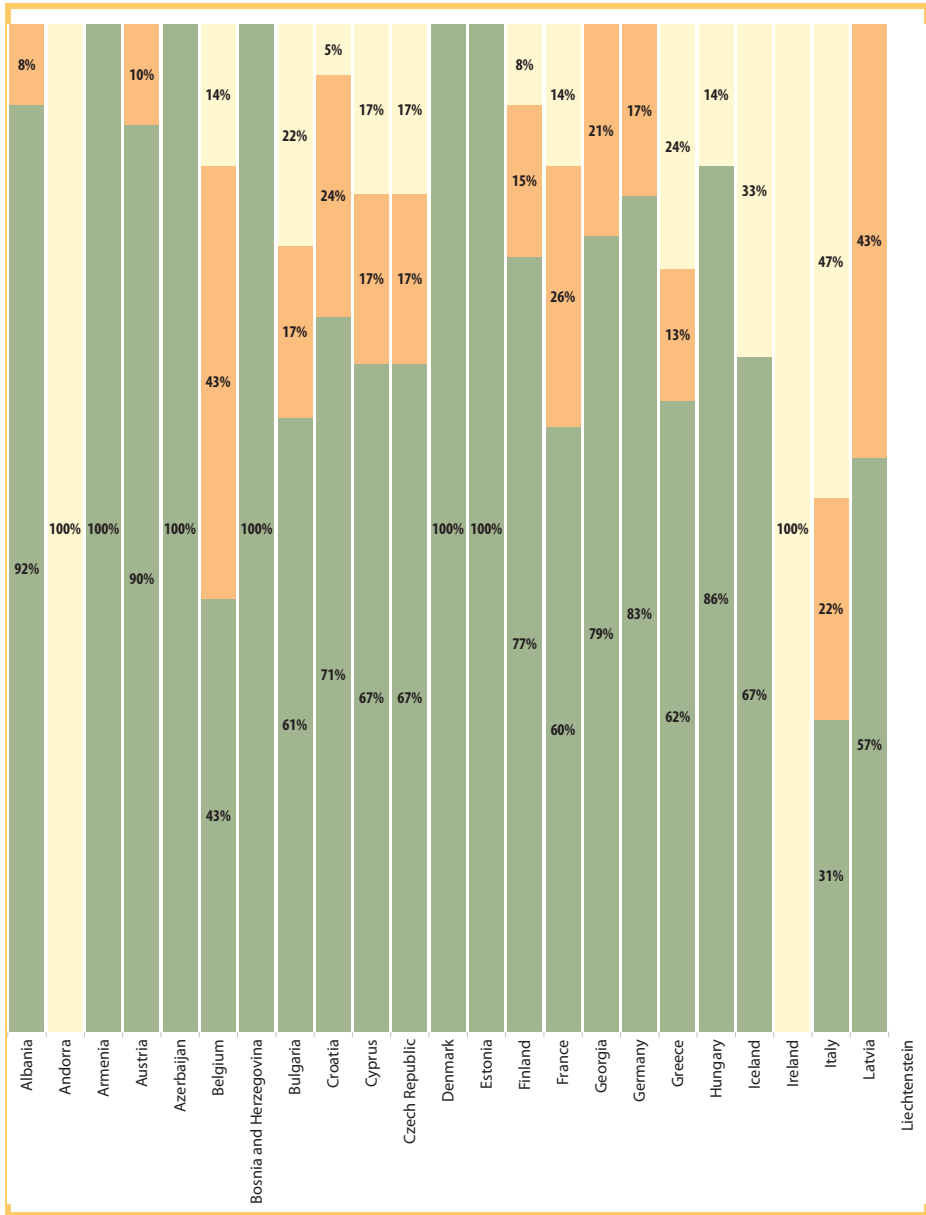
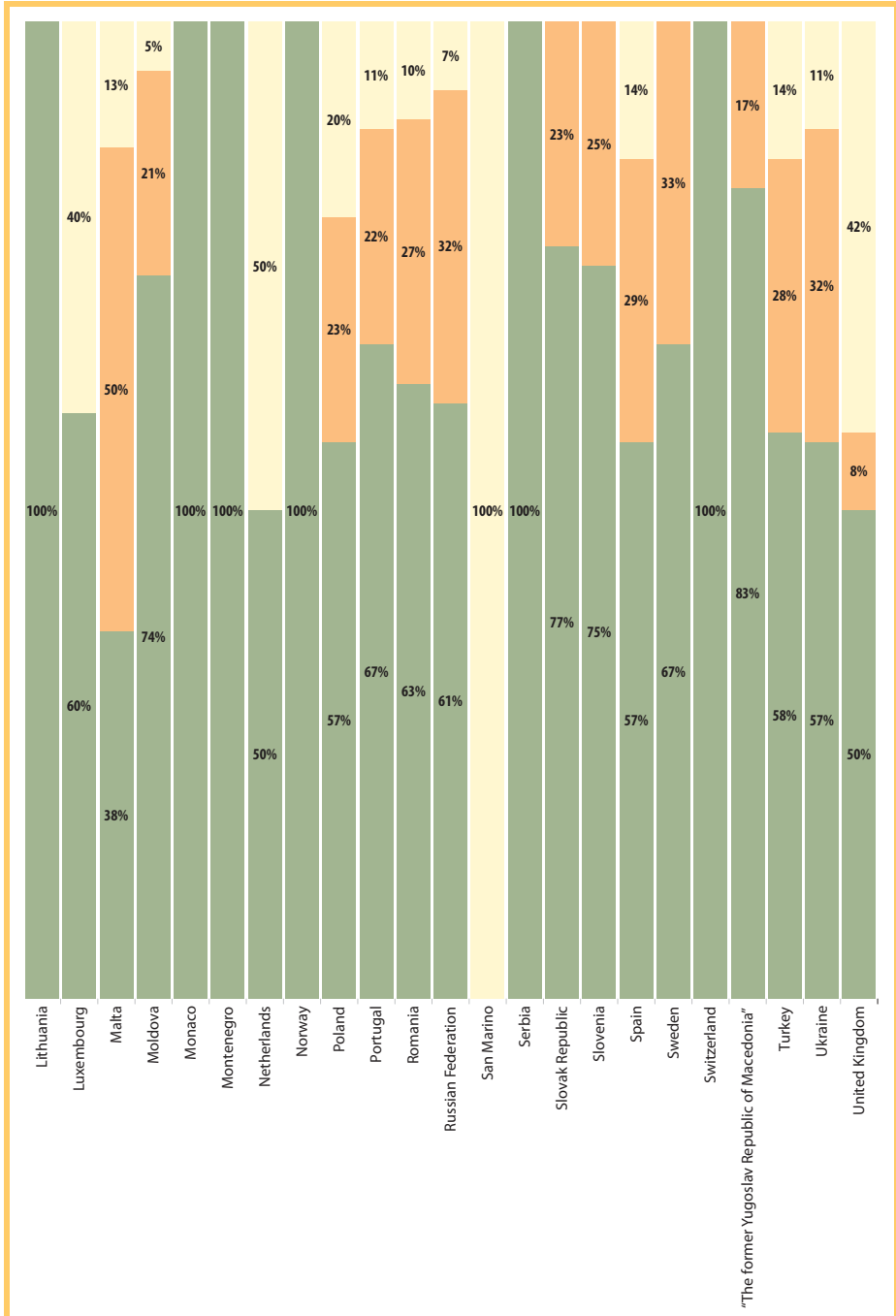


Figure 23. Leading cases pending before the Committee of Ministers at 31 December 2009 by state (in parentheses, the total number of cases)



- Leading cases pending for two years or less
- Leading cases pending for between two and five years
- Leading cases pending for more than five years

**Table VII. Leading cases\* pending before the Committee of Ministers at 31 December 2008 by state – details (except cases in principle closed, awaiting a final resolution under sections 1 and 6.2)**

State	Leading cases pending for 2 years or less		Leading cases pending for between 2 to 5 years		Leading cases pending for more than 5 years	
	Number	%	Number	%	Number	%
Albania	11	92%	1	8%	0	
Andorra	0		0		1	100%
Armenia	8	100%	0		0	
Austria	9	90%	1	10%	0	
Azerbaijan	13	100%	0		0	
Belgium	6	43%	6	43%	2	14%
Bosnia and Herzegovina	6	100%	0		0	
Bulgaria	44	61%	12	17%	16	22%
Croatia	15	71%	5	24%	1	5%
Cyprus	4	67%	1	17%	1	17%
Czech Republic	8	67%	2	17%	2	17%
Denmark	1	100%	0		0	
Estonia	3	100%	0		0	
Finland	10	77%	2	15%	1	8%
France	21	60%	9	26%	5	14%
Georgia	15	79%	4	21%	0	
Germany	5	83%	1	17%	0	
Greece	28	62%	6	13%	11	24%
Hungary	6	86%	0		1	14%
Iceland	2	67%	0		1	33%
Ireland	0		0		2	100%
Italy	14	31%	10	22%	21	47%
Latvia	4	57%	3	43%	0	
Liechtenstein	0		0		0	
Lithuania	3	100%	0		0	
Luxembourg	3	60%	0		2	40%
Malta	3	38%	4	50%	1	13%
Moldova	28	74%	8	21%	2	5%
Monaco	1	100%	0		0	
Montenegro	1	100%	0		0	
Netherlands	2	50%	0		2	50%
Norway	3	100%	0		0	
Poland	25	57%	10	23%	9	20%
Portugal	6	67%	2	22%	1	11%
Romania	40	63%	17	27%	6	10%
Russian Federation	35	61%	18	32%	4	7%
San Marino	0		0		2	100%
Serbia	12	100%	0		0	
Slovak Republic	10	77%	3	23%	0	
Slovenia	3	75%	1	25%	0	
Spain	4	57%	2	29%	1	14%
Sweden	2	67%	1	33%	0	
Switzerland	4	100%	0		0	
"The former Yugoslav Republic of Macedonia"	5	83%	1	17%	0	
Turkey	72	58%	35	28%	18	14%
Ukraine	21	57%	12	32%	4	11%
United Kingdom	6	50%	1	8%	5	42%
<b>TOTAL</b>	<b>522</b>	<b>64%</b>	<b>178</b>	<b>22%</b>	<b>122</b>	<b>15%</b>

\* The length of execution is calculated as from the date at which the judgment became final.

## Appendix 3: Where to find further information on execution of ECtHR judgments

Further information on the cases mentioned in the Annual Reports as well as on all other cases is available on

- the CM website: <http://www.coe.int/cm/>, and also from
- the special Council of Europe website dedicated to the execution of the ECtHR's judgments, kept by the Directorate General of Human Rights and Legal Affairs, Department for the Execution of Judgments of the ECtHR, at the following address: <http://www.coe.int/execution>.

The text of resolutions adopted by the CM can also be found through the HUDOC database on [www.echr.coe.int](http://www.echr.coe.int).

As a general rule, information concerning the state of progress of the adoption of the execution measures required is published some 15 days after each HR meeting, in the document called “annotated agenda with decisions” available on the CM's website: [www.coe.int/t/CM/home\\_en.asp](http://www.coe.int/t/CM/home_en.asp) (see Article 14 of the new rules for the application of Article 46,§2, of the Convention adopted in 2006).

**Council of Europe Committee of Ministers**  
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**SUPERVISION OF EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS**

In accordance with Article 46 of the Convention as amended by Protocol No. 11, the Committee of Ministers supervises the execution of judgments of the European Court of Human Rights. This work is carried out mainly at four regular meetings (DH/HR meetings) every year. Documentation for these meetings takes the form of the Annotated Agenda and Order of Business. These documents are made public, as are, in general, the decisions taken in each case. The Committee of Ministers' essential function is to ensure that member states comply with the judgments of the European Court of Human Rights. The Committee completes each case by adopting a final resolution. In some cases, interim resolutions may prove appropriate. Both kinds of Resolutions are public.

**Links**

- Meetings of the Committee of Ministers
- Adopted texts concerning human rights
- Press releases
- Human Rights – General Information and Annual Report

**Links**

- ▶ Link to the Council of Europe's web site dedicated to the execution of judgments of the European Court of Human Rights
- ▶ Link to the European Court of Human Rights
- ▶ Link to HUDOC and judgments of the European Court of Human Rights

**Meetings of the Committee of Ministers**

**General documents by meeting**

- ▶ Human Rights (DH) meetings

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- Human Rights (DH) Meetings
- Meetings & Summits

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- Documents A-Z index
- Adopted texts
- Bureau, Rapporteur & Working Groups
- CM Press Releases
- Statutory Report 2010

**EN BASIC TEXTS, WORKING METHODS & PROCEDURES**

**EN SEARCH**

- Search help
- By reference
- By metadata
- Full text

### How to search information through the CM web site:

Click on the link to “Human Rights (DH) meetings” (see above, left menu).

From there, the “Links” section gives access the special Council of Europe website dedicated to the execution of the ECtHR’s judgments as well as the HUDOC database.

The CM website gives access to the relevant meeting documents grouped either by their respective meeting (click on “Human Rights (DH) meetings”) or by type of document: agendas, orders of business, memoranda and information documents,

information communicated to the CM, decisions, resolutions, interim resolutions, declarations, replies to the Parliamentary Assembly, recommendations, press releases.

A search engine is available on the CM website (“CM search” menu) as well as on the Execution website (under “Documents” - “Search”).

Further information on where to find different documents relating to the CM’s execution supervision is found in the table below.

### Latest public information on the state of execution of a pending case and decisions adopted

On the CM website  
[http://www.coe.int/t/cm/humanrights\\_en.asp](http://www.coe.int/t/cm/humanrights_en.asp)

Consult the “**Preliminary list of items for consideration**” of the latest “CMDH” meetings held and search for the case (Ctrl+f): this will allow you to identify the latest meeting at which the case was examined and the section under which the case was examined<sup>1</sup>.

You can then consult the annotated **agenda** of the relevant meeting, where you will also find the **decisions** adopted at the meeting. Decisions adopted at the meeting can also be found separately under “Decisions”.

On the Execution website  
<http://www.coe.int/execution/>

Under “Cases”, consult the country by country “**state of execution**” or “**cases executed**” where you’ll find also the decisions and summary indications about recent information received since the last examination and not yet reflected in the notes, nor examined by the CM.

Pending cases not appearing in the abovementioned document (clone cases or cases whose examination has in principle ended) can be found in the “**List of pending cases**” database, which indicates *inter alia* at what meeting and under what section the case is going to be examined as well as, where relevant, the name of the leading case.

Consult “**Payment control**”, listing the cases for which the Secretariat has not received the written confirmation of payment of just satisfaction and/or default interest or for which the transmitted confirmation is still under examination.

<sup>1</sup> See, as regards the description of sections, Appendix 1.

## Final and Interim (execution) resolutions

<p>On the CM website  <a href="http://www.coe.int/t/cm/humanrights_en.asp">http://www.coe.int/t/cm/humanrights_en.asp</a></p>	<p>All Resolutions can be consulted in their chronological order of adoption under “Meetings of the CM” and then, for each meeting, “Resolutions”. “Interim resolutions” are also specially presented under “Adopted texts”. A link to the Hudoc database is also available.</p>
<p>On the Execution website  <a href="http://www.coe.int/execution/">http://www.coe.int/execution/</a></p>	<p>Click on “Documents”. Under “Reference documents”, consult “Collection of Interim Resolutions adopted by the CM 1988-2008” (regularly updated). Extracts from the final resolutions, i.e. the descriptions of significant individual and general measures taken in the context of the execution of ECHR cases, can also be found in the “Lists of General measures adopted...” and “List of Individual measures adopted...”. These documents (regularly updated) are also accessible from the “Reference documents” menu, under “Thematic files”.</p>
<p>On the Hudoc database  <a href="http://www.echr.coe.int/echr/">http://www.echr.coe.int/echr/</a></p>	<p>Click on “Resolutions”, on the left of the screen, and search the database by the application number and/or by the name of the case.</p>
	<p>For grouped cases, resolutions can more easily be found by their number: type in the “text” search field, the reference year and serial number of the resolution. Example: “(2007)75” (do not forget the quotation marks).</p>
	<p>The same search is possible by indicating the Resolution number – preferably preceded by the year of adoption between brackets – in the field “Resolution number”.</p>
	<p>For more precision in the search, click on the “+” next to “Resolutions” to expand the list and select “Execution”: this will exclude the resolutions on the merits adopted under former Article 32 ECHR, in which the CM itself decided whether or not there was a violation of the ECHR.</p>

## Information documents, memoranda etc.

<p>On the CM website  <a href="http://www.coe.int/t/cm/humanrights_en.asp">http://www.coe.int/t/cm/humanrights_en.asp</a></p>	<ul style="list-style-type: none"> <li>• Consult, under “meeting documents” the type of documents you are looking for;</li> <li>• CM information documents (CM/DH/Inf);</li> <li>• Documents communicated by applicants, governments or others: since 2006, these documents are indicated as information made available respectively under Rule 9.1, 8.2.a, and 9.2 of the CM Rules;</li> <li>• Correspondence of the ECtHR</li> </ul>
<p>On the Execution website  <a href="http://www.coe.int/execution/">http://www.coe.int/execution/</a></p>	<p>Click on “Reference Documents” then under “Committee of Ministers’ meeting documents” consult the type of document you are looking for:</p> <ul style="list-style-type: none"> <li>• CM information documents;</li> <li>• Documents communicated by applicants, governments or others</li> </ul>
	<p>Under “Events”, you will also find the conclusions of Round tables held on execution issues.</p>

## Parliamentary Assembly positions on execution and CM replies

<p>On the CM website  <a href="http://www.coe.int/t/cm/humanRights_en.asp">http://www.coe.int/t/cm/humanRights_en.asp</a></p>	<p>Under “Adopted texts”, consult “Committee of Ministers replies to the Parliamentary Assembly”</p>
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### Other reference documents

<p>On the CM website  <a href="http://www.coe.int/t/cm/humanRights_en.asp">http://www.coe.int/t/cm/humanRights_en.asp</a></p>	<p>The site gives you <i>inter alia</i> access to:</p> <ul style="list-style-type: none"> <li>• the <b>CM Rules</b> for the supervision of the execution of judgments and of the terms of friendly settlements (Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights) as well as to</li> <li>• <b>CM recommendations</b></li> </ul>
<p>On the Execution website  <a href="http://www.coe.int/execution/">http://www.coe.int/execution/</a></p>	<p>The site contains most of the reference documents, including (see “Documents”, “Reference documents”):</p> <ul style="list-style-type: none"> <li>• the <b>CM Rules</b> for supervision of the execution of judgments and of the terms of friendly settlements;</li> </ul> <p>the <b>Working methods</b> for supervision of the execution of the ECtHR’s judgments;</p> <ul style="list-style-type: none"> <li>• <b>Thematic files</b> including documents concerning the <b>reopening</b> of judicial proceedings as well as an overview of individual and general measures adopted in the context of execution (under “Cases closed – general measures taken” ... and “Cases closed – individual measures taken”);</li> <li>• <b>CM Recommendations, Resolutions and Declarations</b>, including those adopted at the <b>European Ministerial Conference on Human Rights</b> in 2000.</li> </ul>

### Press releases on execution issues

<p>On the CM website  <a href="http://www.coe.int/t/cm/humanRights_en.asp">http://www.coe.int/t/cm/humanRights_en.asp</a></p>	<p>Consult “Press releases”</p>
<p>On the Execution website  <a href="http://www.coe.int/execution/">http://www.coe.int/execution/</a></p>	<p>From the “Documents” menu, click on “Press releases”</p>



## Appendix 4: List of Final Resolutions adopted in 2009

Resolution CM/ResDH No.	Application No.	Title of the leading case	State	Meeting	See, for further details, Annual Report (AR)
(2009)117	37295/97+	Yildiz and three other cases	AUT	1072	-
(2009)118	38536/97+	Schreder and nine other cases concerning the excessive length of judicial civil proceedings	AUT	1072	-
(2009)146	69756/01+	Woditschka and Wilfing and four other cases	AUT	1072	-
(2009)110	44899/98	Brichet and Bouzet	BEL	1065	-
(2009)65	50372/99	Göktepe	BEL	1059	AR 2007, p. 115
(2009)111	2527/02	Panier	BEL	1065	-
(2009)119	50049/99	Da Luz Domingues Ferreira	BEL	1072	AR 2008, p. 145
(2009)77	39271/98 68177/01	Kuibishev and Yambolov	BGR	1065	-
(2009)62	39015/97	Lotter and Lotter	BGR	1051	-
(2009)76	52367/99	Mihailov	BGR	1065	-
(2009)120	59489/00	United Macedonian Organisation Ilinden – Pirin and others	BGR	1072	AR 2007, p.170 AR 2008, p.181
(2009)121	38355/05	Biondić	CRO	1072	-
(2009)46	10504/03	Linkov	CZE	1051	AR 2007, p. 165
(2009)122	57567/00+	Bulena and three other cases	CZE	1072	-
(2009)138	24668/03	Olaechea Cahuas	ESP	1072	AR 2007, p. 191
(2009)93	35062/03	Shchiglitsov	EST	1065	-
(2009)94	38267/97	H.A.L.	FIN	1065	-
(2009)78	45027/98	Narinen	FIN	1065	-
(2009)123	46601/99	M.S.	FIN	1072	-
(2009)124	39481/98	Mild and Virtanen	FIN	1072	AR 2007, p. 118
(2009)125	27824/95	Posti and Rahko	FIN	1072	-
(2009)147	40847/98	Tamminen	FIN	1072	-
(2009)148	45029/98	Lomaseita Oy and others	FIN	1072	-
(2009)149	34141/96	R.	FIN	1072	-
(2009)153	39559/02	Stark and others	FIN	1072	-
(2009)48	71665/01	Augusto	FRA	1051	AR 2007, p. 119 AR 2008, p. 147
(2009)61	27678/02	Bernard Gérard	FRA	1051	-

**Appendix 4. List of Final Resolutions adopted in 2009**

Resolution CM/ResDH No.	Application No.	Title of the leading case	State	Meeting	See, for further details, Annual Report (AR)
(2009)56	66701/01	Deshayes No. 1 and three other cases	FRA	1051	-
(2009)57	57547/00+	Dumont-Maliverg	FRA	1051	-
(2009)80	43546/02	E.B.	FRA	1065	-
(2009)47	16846/02	Labergère	FRA	1051	-
(2009)59	39282/98	Laidin Monique No. 2 and six other cases	FRA	1051	-
(2009)66	23618/94 57752/00	Lambert Michel and Mathéron	FRA	1059	-
(2009)55	39269/02	Malquarti and two other cases	FRA	1051	-
(2009)58	2021/03	Nicolas	FRA	1051	-
(2009)60	32510/96	Peter	FRA	1051	-
(2009)49	35109/02	Schmidt	FRA	1051	-
(2009)67	39922/03	Taïs	FRA	1059	AR 2007, p.30 AR 2008, p. 99
(2009)79	6253/03	Vincent	FRA	1065	-
(2009)126	25803/94	Selmouni	FRA	1072	-
(2009)68	20627/04	Liakopoulou and four other cases	GRC	1059	AR 2008, p.136
(2009)127	28524/95	Peers	GRC	1072	-
(2009)128	40907/98	Dougoz	GRC	1072	AR 2007, p. 75
(2009)129	36887/97, 34720/97	Quinn and Heaney and McGuinness	IRL	1072	-
(2009)86	15918/89	Antonetto	ITA	1065	-
(2009)87	25575/04	Drassich	ITA	1065	-
(2009)81	70148/01	Fodale	ITA	1065	-
(2009)84	14021/02	Kaufmann	ITA	1065	-
(2009)82	60033/00	L.M.	ITA	1065	-
(2009)83	26772/95 31143/96	Labita and Indelicato	ITA	1065	-
(2009)72	42053/02 51703/99	Matteoni and Vadalà	ITA	1059	-
(2009)85	23969/94	Mattoccia	ITA	1065	-
(2009)71	40750/98	Ospina Vargas and five other cases	ITA	1059	-
(2009)50	28168/95	Quadrelli	ITA	1051	-
(2009)154	59619/00	Kambangu	LIT	1072	-
(2009)155	50551/99	Siaurusevičius	LIT	1072	-
(2009)112	2196/05	Thilgen	LUX	1065	-
(2009)132	60255/00	Pereira Henriques	LUX	1072	AR 2007, p. 41
(2009)130	48321/99	Slivenko and others	LVA	1072	AR 2007, p. 70
(2009)131	58442/00, 70923/01	Lavents and Jurjevs	LVA	1072	-
(2009)150	31228/02	Ovciarov	MDA	1072	-
(2009)113	58185/00	Janeva	MKD	1065	AR 2007, p. 95 AR 2008, p. 134
(2009)139	17995/02	Stoimenov	MKD	1072	AR 2008, p 155

**Appendix 4. List of Final Resolutions adopted in 2009**

<b>Resolution CM/ResDH No.</b>	<b>Application No.</b>	<b>Title of the leading case</b>	<b>State</b>	<b>Meeting</b>	<b>See, for further details, Annual Report (AR)</b>
(2009)51	31465/96	Sen	NLD	1051	-
(2009)133	52750/99+	Lorsé and others and four other cases	NLD	1072	-
(2009)88	18885/04	Kaste and Mathisen	NOR	1065	-
(2009)109	16468/05	Riis E. and A. No. 2	NOR	1065	-
(2009)89	31443/96	Broniowski	POL	1065	AR 2007, p.180 AR 2008, p.189
(2009)63	64120/00	Niziuk	POL	1051	-
(2009)64	37774/97	P.K.	POL	1051	-
(2009)134	75955/01	Sokołowski	POL	1072	-
(2009)90	18223/04	Cruz de Carvalho	PRT	1065	-
(2009)52	41537/02	Gregório de Andrade	PRT	1051	AR 2008, p.138
(2009)53	15996/02	Magalhães Pereira No. 2	PRT	1051	AR 2007, p. 60
(2009)135	13909/05, 27935/05	Lepojić and Filipović	SER	1072	-
(2009)92	17073/04	Kaiser	SUI	1065	-
(2009)95	17671/02 10577/04	Ressegatti and Kessler	SUI	1065	-
(2009)91	3688/04	Weber	SUI	1065	AR 2008, p. 117
(2009)73	46844/99 60231/00	Bíro and Klimek	SVK	1059	-
(2009)54	62202/00	Radio Twist, a.s.	SVK	1051	-
(2009)69	44925/98	Valová, Slezák and Slezák	SVK	1059	-
(2009)136	65559/01	Nešták	SVK	1072	-
(2009)137	29462/95	Rehbock	SVN	1072	-
(2009)156	42320/98	Belinger	SVN	1072	-
(2009)70	73841/01 17350/03	Klemeco Nord AB and Rey and others	SWE	1059	-
(2009)97	16006/02 38851/02	AK and Aktaş Abdulkadir	TUR	1065	-
(2009)114	32984/96	Alfatli Ali and others	TUR	1065	-
(2009)106	75202/01+	Aslan and others and 12 other cases	TUR	1065	-
(2009)96	77191/01+	Avcı (Cabat) and others and 11 other cases	TUR	1065	-
(2009)115	29863/96	Barut	TUR	1065	-
(2009)99	4819/02+	Çem and four other cases	TUR	1065	-
(2009)101	50693/99+	Doğan Halis and others and seven other cases	TUR	1065	-
(2009)103	70145/01	Kalem	TUR	1065	-
(2009)108	9844/02	Kızılyaprak No. 2	TUR	1065	-
(2009)116	42560/98	Külter	TUR	1065	-
(2009)102	53918/00+	Önder Faik and Zeydan Oktay and eight other cases	TUR	1065	-
(2009)105	4644/03	Sak	TUR	1065	-
(2009)104	46748/99+	Salgın and three other cases	TUR	1065	-
(2009)107	54461/00+	Soysal and others and five other cases	TUR	1065	-

#### Appendix 4. List of Final Resolutions adopted in 2009

Resolution CM/ResDH No.	Application No.	Title of the leading case	State	Meeting	See, for further details, Annual Report (AR)
(2009)100	20868/02	Turan Metin	TUR	1065	-
(2009)98	52709/99+	Ulusoy and four other cases	TUR	1065	-
(2009)140	71867/01	Gök and others	TUR	1072	-
(2009)151	69763/01, 25143/94	Eytişim Basın Yayın Reklam Sanat Hizmetleri Ticarand Limited Şirketi and Yurttaş	TUR	1072	-
(2009)75	25599/94	A.	UK.	1065	AR 2007, p.46 AR 2008, p.108
(2009)141	6563/03	Shannon	UK.	1072	AR 2007, p.133
(2009)142	71841/01	Yetkinsekerici	UK.	1072	-
(2009)143	6638/03	P.M.	UK.	1072	-
(2009)144	28867/03	Keegan	UK.	1072	-
(2009)145	46477/99	Edwards Paul and Audrey	UK.	1072	-
(2009)152	73652/01+	Anderson and 13 other cases concerning discrimination between widows and widowers on grounds of gender regarding social security benefits and/or an income tax allowance	UK.	1072	-
(2009)157	12828/02+	Robertson and six other cases (friendly settlements) concerning discrimination between widows and widowers on grounds of gender regarding social security benefits	UK.	1072	-

## Appendix 5: Cases the examination of which has been in principle closed in 2009 on the basis of the execution information received (cases examined under section 6.1)

As far as groups of cases are concerned, only the references of the leading case are indicated. Cases having subsequently led to the adoption of a Final Resolution in 2009 are indicated in bold.

Applica- tion No.	Case(s)	State	Meeting	See, for further details, Annual Report (AR)
35354/04	Abrahamian	AUT	1065	-
45983/99	Kaplan	AUT	1065	-
<b>1638/03</b>	<b>Maslov</b>	<b>AUT</b>	<b>1065</b>	-
12643/02	Moser	AUT	1072	AR 2007, p. 145 AR 2008, p. 167
513/05	Schmidt	AUT	1059	-
36812/97+	Sylvester	AUT	1072	AR 2007, p. 146
2293/03	Wieser	AUT	1051	-
<b>59489/00</b>	<b>United Macedonian Organisation Ilinden – Pirin and others</b>	<b>BGR</b>	<b>1065</b>	<b>AR 2007, p. 164 AR 2008, p. 182</b>
32457/05	Gashi	CRO	1059	-
34499/06	Perić	CRO	1059	-
21906/04	Kafkaris	CYP	1051	-
28025/03	Kolona	CYP	1059	-
23890/02	Phinikaridou	CYP	1051	-
10254/03+	Drahorád and Drahorádová and 3 other cases	CZE	1059	-
24021/03	Faltejssek	CZE	1059	-
55179/00	Glaser	CZE	1059	-
5935/02	Heglas	CZE	1051	AR 2008, p. 161
35450/04	Melich and Beck	CZE	1065	-
40593/05 27088/05	Regálová and Reichtová	CZE	1059	-
20728/05	Vokoun	CZE	1059	-
48548/99	Zich and others	CZE	1059	-

**Appendix 5. Cases the examination of which has been in principle closed in 2009**

<b>Applica- tion No.</b>	<b>Case(s)</b>	<b>State</b>	<b>Meeting</b>	<b>See, for further details, Annual Report (AR)</b>
38241/04	Bergmann	EST	1059	-
20511/03	I.	FIN	1059	-
18620/03	Juppala	FIN	1065	-
2872/02	K.U.	FIN	1065	-
40199/02 32993/02	Kallio and Lehtinen Hannu	FIN	1065	-
70216/01 45830/99	Laaksonnen and Nuutinen Juha	FIN	1059	-
28301/03	S.H.	FIN	1059	-
50278/99	Aoulmi	FRA	1065	-
12316/04	Asnar	FRA	1051	-
5107/04 7091/04	Djaoui and Pieri	FRA	1051	-
1914/02	Dupuis and others	FRA	1059	-
<b>43546/02</b>	<b>E.B.</b>	<b>FRA</b>	<b>1059</b>	-
58148/00	Editions Plon	FRA	1051	-
19421/04	Faure	FRA	1072	-
77773/01	Flandin	FRA	1072	-
62236/00	Guilloury	FRA	1065	-
7508/02	L.L.	FRA	1051	-
53892/00	Lilly France	FRA	1065	-
58675/00+	Martinie and two other cases	FRA	1051	-
34043/02 73529/01	Mattei and Miraux	FRA	1065	-
5356/04	Mazelié	FRA	1051	-
46096/99 76977/01	Mocie and Desserprit	FRA	1072	-
52206/99	Mokrani	FRA	1065	-
54968/00+	Paturel and four other cases	FRA	1059	-
21324/02	Plasse-bauer	FRA	1065	-
65411/01	Sacilor-Lormines	FRA	1051	-
49580/99	Santoni	FRA	1072	-
59423/00	SARL Aborcas	FRA	1065	-
70456/01	Sayoud	FRA	1072	-
75833/01	Schemkamper	FRA	1065	-
38208/03	Seris	FRA	1065	-
57516/00	Société de gestion du port de Cam- poloro et Société fermière de Cam- poloro	FRA	1051	-
<b>39922/03</b>	<b>Täis</b>	<b>FRA</b>	<b>1051</b>	<b>AR 2007, p. 30 AR 2008, p. 99</b>

**Appendix 5. Cases the examination of which has been in principle closed in 2009**

<b>Applica- tion No.</b>	<b>Case(s)</b>	<b>State</b>	<b>Meeting</b>	<b>See, for further details, Annual Report (AR)</b>
75699/01 17902/02	Vaturi and Zentar	FRA	1065	-
59842/00	Vetter	FRA	1072	AR 2007, p. 137
<b>6253/03</b>	<b>Vincent</b>	<b>FRA</b>	<b>1059</b>	-
71611/01	Wisse	FRA	1072	AR 2007, p. 65
71440/01	Freitag	GER	1051	-
<b>40907/98</b>	<b>Dougoz</b>	<b>GRC</b>	<b>1059</b>	<b>AR 2007, p. 75</b>
28340/02	Examiliotis No. 2	GRC	1051	-
21091/04	Papa	GRC	1065	-
<b>28524/95</b>	<b>Peers</b>	<b>GRC</b>	<b>1051</b>	<b>AR 2007, p. 75</b>
26137/04	Barta	HUN	1051	-
25691/04	Bukta and others	HUN	1051	-
55220/00 6437/02	Csanádi and Nagy	HUN	1051	-
9174/02	Korbely	HUN	1059	-
60669/00	Ásmundsson Kjartan	ISL	1059	AR 2007, p.178
<b>25575/04</b>	<b>Drassich</b>	<b>ITA</b>	<b>1059</b>	-
12151/86	F.C.B.	ITA	1065	AR 2007, p. 124 AR 2008, p. 149
42211/07	Riolo	ITA	1072	-
30961/03	Sannino	ITA	1065	-
37637/05 65687/01	Sarnelli and Matteoni and others	ITA	1072	-
36919/02 23373/03	Armonienė and Biriuk	LIT	1072	-
72596/01	Balsytė-Lideikienė	LIT	1072	-
10425/03	Gulijev	LIT	1072	-
14414/03	Jucius and Juciuvienė	LIT	1072	-
5457/03	Jucys	LIT	1051	-
70659/01+	Juozaitienė and Bikulčius	LIT	1072	-
10071/04	Malininas	LIT	1072	-
74420/01	Ramanauskas	LIT	1059	-
871/02	Savenkovas	LIT	1072	-
55480/00 70665/01	Sidabras and Džiautas and Rainys and Gasparavičius	LIT	1051	-
37259/04	Švenčionienė	LIT	1072	-
65022/01	Zaicevs	LVA	1059	-
45701/99 952/03	Metropolitan Church of Bessarabia and others and Biserica Adevărat Ortodoxă din Moldova and others	MDA	1072	AR 2007, p. 158 AR 2008, p. 174
41195/02	Nikolov	MKD	1051	-
52391/99	Ramsahai and others	NLD	1059	AR 2007, p. 33

**Appendix 5. Cases the examination of which has been in principle closed in 2009**

<b>Applica- tion No.</b>	<b>Case(s)</b>	<b>State</b>	<b>Meeting</b>	<b>See, for further details, Annual Report (AR)</b>
60665/00	Tuquabo-Tekle and others	NLD	1065	AR 2007, p. 71
38258/03	Van Vondel	NLD	1059	-
39742/05	Baranowski Piotr	POL	1072	-
54723/00	Brudnicka and others	POL	1065	AR 2007, p. 126
18235/02 51744/99	Dąbrowski and Kwiecień	POL	1065	AR 2008, p. 175-176
63131/00	Gębura	POL	1065	-
43797/98	Malisiewicz-Gąsior	POL	1065	-
43425/98	Skalka	POL	1065	-
41187/02	Szwagrun-Baurycza	POL	1065	-
49913/99	Zielonka	POL	1065	-
37522/02	Zmarzłak	POL	1072	-
42049/98	Związek Nauczycielstwa Polskiego	POL	1072	-
<b>18223/04</b>	<b>Cruz de Carvalho</b>	<b>PRT</b>	<b>1051</b>	-
25053/05 7623/04	Ferreira Alves No. 3 and Antunes et Pires	PRT	1065	-
73043/01	Arshinchikova	RUS	1065	-
<b>27935/05</b> <b>13909/05</b>	<b>Filipović and Lepojić</b>	<b>SER</b>	<b>1059</b>	-
35865/04	Foglia	SUI	1059	-
58757/00	Jäggi	SUI	1072	AR 2007, p. 144 AR 2008, p. 166
55705/00	McHugo	SUI	1051	-
61697/00	Meloni	SUI	1059	-
41773/98	Scavuzzo-Hager and others	SUI	1051	AR 2007, p. 37
57239/00	Kanala	SVK	1072	-
72208/01	Klein	SVK	1051	-
48666/99 14893/02	Kučera and Haris	SVK	1072	-
54334/00	Lexa	SVK	1065	-
17684/02	Rosival and others	SVK	1065	-
47473/99	Hellborg	SWE	1072	-
53507/99	Swedish Transport Workers Union	SWE	1072	-
38187/97	Adalı	TUR	1065	AR 2007, p. 38 AR 2008, p. 102
34503/97	Demir and Baykara	TUR	1072	-
68514/01	Yılmaz and Kiliç	TUR	1072	-
<b>25599/94</b>	<b>A.</b>	<b>UK.</b>	<b>1059</b>	<b>AR 2007, p. 46</b> <b>AR 2008, p. 108</b>
11002/05	Associated Society of Locomotive Engineers and Firemen (ASLEF)	UK.	1059	AR 2007, p. 168 AR 2008, p. 184



**Appendix 5. Cases the examination of which has been in principle closed in 2009**

<b>Applica- tion No.</b>	<b>Case(s)</b>	<b>State</b>	<b>Meeting</b>	<b>See, for further details, Annual Report (AR)</b>
42341/04	Bhandari	UK.	1051	-
44362/04	Dickson	UK.	1051	AR 2008, p. 119
25904/07	N.A.	UK.	1051	/
61406/00	Gurepka	UKR	1065	/
13156/02	Ponomarenko	UKR	1065	/
15123/03	Volovik	UKR	1065	/



## Appendix 6: List of Interim Resolutions adopted in 2009

Applica- tion No.	Leading Case(s)	State	Meeting	See, for further details, Annual Report (AR)	Resolution CM/ ResDH No.
22461/93 32190/96	<b>Ceteroni</b> (judgment of 15/11/1996) and other similar cases concerning the excessive length of judicial proceedings  <b>Luordo</b> (judgment of 17/07/2003, final on 17/10/2003) and other similar cases concerning bankruptcy proceedings  <i>Excessive length of judicial proceedings in Italy: progress achieved and outstanding issues in the context of general measures to ensure compliance with the judgments of the ECtHR</i>	ITA	1051	AR 2007, p. 87  AR 2008, p. 128 (Ceteroni)  AR 2007, p.182 (Luordo)	(2009)42
58263/00	<b>Timofeyev</b> (judgment of 23/10/2003, final on 23/01/2004) and other similar cases  <i>Failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities and absence of an effective remedy</i>	RUS	1051	AR 2007, p.109	(2009)43
33509/04	<b>Burdov (No. 2)</b> (judgment of 15/01/2009, final on 04/05/2009)  <i>Failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities and absence of an effective remedy</i>	RUS	1072	-	(2009)158
39437/98	<b>Ülke</b> (judgment of 24/01/2006, final on 24/04/2006)	TUR	1051	AR 2007, p46	(2009)45
28883/95	<b>McKerr</b> (judgment of 04/05/2001, final on 04/08/2001) and other similar cases  <i>Action of the Security Forces in Northern Ireland</i>	UK.	1051	AR 2007, p.40  AR 2008, p.105	(2009)44
74025/01	<b>Hirst (No. 2)</b> (judgment of 06/10/2005 - Grand Chamber)	UK.	1072	AR 2007, p. 187	(2009)160
34056/02	<b>Gongadze</b> (judgment of 08/11/2005, final on 08/02/2006)	UKR	1065	AR 2007, p. 41  AR 2008, p. 106	(2009)75

## Appendix 6. List of Interim Resolutions adopted in 2009

Applica- tion No.	Leading Case(s)	State	Meeting	See, for further details, Annual Report (AR)	Resolution CM/ ResDH No.
56848/00	Zhovner (judgment of 29/06/2004, final on 29/09/2004) and other similar cases  <i>Failure or serious delay in abiding by final domestic courts' decisions delivered against the state and its entities and absence of an effective remedy</i>	UKR	1072	AR 2007, p.110  AR 2008, p. 144	(2009)159

## Appendix 7: List of memoranda and other relevant public documents prepared by the Department for the Execution of Judgments of the European Court of Human Rights

As far as groups of cases are concerned, only the references of the leading case are indicated.

Title of the document	Document reference	Date at which the document was declassified	Case(s) (appl. No.)	State	Theme
Cases concerning the action of police forces in Greece – Individual measures	CM/Inf/DH(2009)16rev of 17/03/2009	23/03/2009	Makaratzis (50385/99)	GRC	Actions of police forces
Moldovan and others (No. 1 and No. 2) and other similar cases against Romania - Examination of the state of execution of general measures	CM/Inf/DH(2009)31 of 28/05/2009	08/06/2009	Moldovan and others No. 1 and No. 2 (41138/98)	ROM	Roma
Action Plans – Action Reports - Definitions and objectives	CM/Inf/DH(2009)29rev of 03/06/2009	08/06/2009	–	–	Working methods
Moldovan and others (No. 1 and No. 2) and other similar cases against Romania - Examination of the state of execution of general measures	CM/Inf/DH(2009)31rev of 27/11/2009	03/12/2009	Moldovan and others No. 1 and No. 2 (41138/98)	ROM	Roma
“Detention on remand: General Measures to comply with the European Court’s judgments” - Conclusions of the Round Table (Warsaw, 9-10/12/2009)	CM/Inf/DH(2009)53 of 22/12/2009	22/12/2009	-	–	Detention on remand



## Appendix 8: Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly settlements

### Decision adopted at the 964th meeting of the Committee of Ministers – 10 May 2006

The Deputies

1. adopted the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements as they appear at Appendix 4 to the present volume of Decisions and agreed to reflect this decision in the report “Ensuring the continued effectiveness of the European Convention on Human Rights – The implementation of the reform measures adopted by the Committee of Ministers at its 114th Session (12 May 2004)” and in the draft Declaration on “Sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels”;

2. decided, bearing in mind their wish that these Rules be applicable with immediate effect to the extent that they do not depend on the entry into force of Protocol No. 14 to the European Convention on Human Rights, that these Rules shall take effect as from the date of their adoption, as necessary by applying them *mutatis mutandis* to the existing provisions of the Convention, with the exception of Rules 10 and 11.

**Following the last ratification required for the entry into force of Protocol No. 14 to the European Convention on Human Rights in February 2010, Rules 10 and 11 will take effect as from 1 June 2010.**

### I. General provisions

#### Rule 1

1. The exercise of the powers of the Committee of Ministers under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the European Convention on Human Rights, is governed by the present Rules.

2. Unless otherwise provided in the present Rules, the general rules of procedure of the meetings of the

Committee of Ministers and of the Ministers’ Deputies shall apply when exercising these powers.

#### Rule 2

1. The Committee of Ministers’ supervision of the execution of judgments and of the terms of friendly settlements shall in principle take place at special

human rights meetings, the agenda of which is public.

2. If the chairmanship of the Committee of Ministers is held by the representative of a High Contracting Party which is a party to a case under examination, that representative shall relinquish the chairmanship during any discussion of that case.

### Rule 3

When a judgment or a decision is transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, or Article 39, paragraph 4, of the Convention, the case shall be inscribed on the agenda of the Committee without delay.

### Rule 4

1. The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a

systemic problem in accordance with Resolution Res (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem.

2. The priority given to cases under the first paragraph of this Rule shall not be to the detriment of the priority to be given to other important cases, notably cases where the violation established has caused grave consequences for the injured party.

### Rule 5

The Committee of Ministers shall adopt an annual report on its activities under Article 46, paragraphs 2 to 5, and Article 39, paragraph 4, of the Convention, which shall be made public and transmitted to the Court and to the Secretary General, the Parliamentary Assembly and the Commissioner for Human Rights of the Council of Europe.

## II. Supervision of the execution of judgments

### Rule 6

#### Information to the Committee of Ministers on the execution of the judgment

1. When, in a judgment transmitted to the Committee of Ministers in accordance with Article 46, paragraph 2, of the Convention, the Court has decided that there has been a violation of the Convention or its protocols and/or has awarded just satisfaction to the injured party under Article 41 of the Convention, the Committee shall invite the High Contracting Party concerned to inform it of the measures which the High Contracting Party has taken or intends to take in consequence of the judgment, having regard to its obligation to abide by it under Article 46, paragraph 1, of the Convention.

2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

- a.* whether any just satisfaction awarded by the Court has been paid, including as the case may be, default interest; and
- b.* if required, and taking into account the discretion of the High Contracting Party concerned to

choose the means necessary to comply with the judgment, whether:

- i.* individual measures<sup>35</sup> have been taken to ensure that the violation has ceased and that the injured party is put, as far as possible, in the same situation as that party enjoyed prior to the violation of the Convention;
- ii.* general measures<sup>36</sup> have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.

### Rule 7

#### Control intervals

1. Until the High Contracting Party concerned has provided information on the payment of the just satisfaction awarded by the Court or concerning possible individual measures, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, unless the Committee decides otherwise.

2. If the High Contracting Party concerned informs the Committee of Ministers that it is not yet in a position to inform the Committee that the general measures necessary to ensure compliance

35. For instance, the striking out of an unjustified criminal conviction from the criminal records, the granting of a residence permit or the reopening of impugned domestic proceedings (see on this latter point Recommendation Rec (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies).

36. For instance, legislative or regulatory amendments, changes of case-law or administrative practice or publication of the Court's judgment in the language of the respondent state and its dissemination to the authorities concerned.



with the judgment have been taken, the case shall be placed again on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise; the same rule shall apply when this period expires and for each subsequent period.

**Rule 8**  
**Access to information**

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
  - a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 46, paragraph 2, of the Convention;
  - b. information and documents relating thereto provided to the Committee of Ministers, in accordance with the present Rules, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
  - a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the injured party, by non-governmental organisations or by national institutions for the promotion and protection of human rights submitting the information;
  - b. reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;
  - c. the interest of an injured party or a third party not to have their identity, or anything allowing their identification, disclosed.
4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an injured party has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

**Rule 9**  
**Communications to the Committee of Ministers**

1. The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures.
2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.
3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

**Rule 10**  
**Referral to the Court for interpretation of a judgment**

1. When, in accordance with Article 46, paragraph 3, of the Convention, the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
2. A referral decision may be taken at any time during the Committee of Ministers' supervision of the execution of the judgments.
3. A referral decision shall take the form of an interim resolution. It shall be reasoned and reflect the different views within the Committee of Ministers, in particular that of the High Contracting Party concerned.
4. If need be, the Committee of Ministers shall be represented before the Court by its Chair, unless the

Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

**Rule 11**  
**Infringement proceedings**

1. When, in accordance with Article 46, paragraph 4, of the Convention, the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation.
2. Infringement proceedings should be brought only in exceptional circumstances. They shall not

be initiated unless formal notice of the Committee's intention to bring such proceedings has been given to the High Contracting Party concerned. Such formal notice shall be given ultimately six months before the lodging of proceedings, unless the Committee decides otherwise, and shall take the form of an interim resolution. This resolution shall be adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee.

3. The referral decision of the matter to the Court shall take the form of an interim resolution. It shall be reasoned and concisely reflect the views of the High Contracting Party concerned.

4. The Committee of Ministers shall be represented before the Court by its Chair unless the Committee decides upon another form of representation. This decision shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

**III. Supervision of the execution of the terms of friendly settlements**

**Rule 12**  
**Information to the Committee of Ministers on the execution of the terms of the friendly settlement**

1. When a decision is transmitted to the Committee of Ministers in accordance with Article 39, paragraph 4, of the Convention, the Committee shall invite the High Contracting Party concerned to inform it on the execution of the terms of the friendly settlement.
2. The Committee of Ministers shall examine whether the terms of the friendly settlement, as set out in the Court's decision, have been executed.

**Rule 13**  
**Control intervals**

Until the High Contracting Party concerned has provided information on the execution of the terms of the friendly settlement as set out in the decision of the Court, the case shall be placed on the agenda of each human rights meeting of the Committee of Ministers, or, where appropriate,<sup>37</sup> on the agenda of a meeting of the Committee of Ministers taking place no more than six months later, unless the Committee decides otherwise.

**Rule 14**  
**Access to information**

1. The provisions of this Rule are without prejudice to the confidential nature of the Committee of Ministers' deliberations in accordance with Article 21 of the Statute of the Council of Europe.
2. The following information shall be accessible to the public unless the Committee decides otherwise in order to protect legitimate public or private interests:
  - a. information and documents relating thereto provided by a High Contracting Party to the Committee of Ministers pursuant to Article 39, paragraph 4, of the Convention;
  - b. information and documents relating thereto provided to the Committee of Ministers in accordance with the present Rules by the applicant, by non-governmental organisations or by national institutions for the promotion and protection of human rights.
3. In reaching its decision under paragraph 2 of this Rule, the Committee shall take, *inter alia*, into account:
  - a. reasoned requests for confidentiality made, at the time the information is submitted, by the High Contracting Party, by the applicant, by non-governmental organisations or by national institutions

<sup>37</sup>. In particular where the terms of the friendly settlement include undertakings which, by their nature, cannot be fulfilled within a short time span, such as the adoption of new legislation.

for the promotion and protection of human rights submitting the information;

*b.* reasoned requests for confidentiality made by any other High Contracting Party concerned by the information without delay, or at the latest in time for the Committee's first examination of the information concerned;

*c.* the interest of an applicant or a third party not to have their identity, or anything allowing their identification, disclosed.

4. After each meeting of the Committee of Ministers, the annotated agenda presented for the Committee's supervision of execution shall also be accessible to the public and shall be published, together with the decisions taken, unless the Committee decides otherwise. As far as possible, other documents presented to the Committee which are accessible to the public shall be published, unless the Committee decides otherwise.

5. In all cases, where an applicant has been granted anonymity in accordance with Rule 47, paragraph 3 of the Rules of Court; his/her anonymity shall be preserved during the execution process unless he/she expressly requests that anonymity be waived.

#### **IV. Resolutions**

##### **Rule 16**

##### **Interim resolutions**

In the course of its supervision of the execution of a judgment or of the terms of a friendly settlement, the Committee of Ministers may adopt interim resolutions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

##### **Rule 15**

##### **Communications to the Committee of Ministers**

1. The Committee of Ministers shall consider any communication from the applicant with regard to the execution of the terms of friendly settlements.

2. The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of the terms of friendly settlements.

3. The Secretariat shall bring, in an appropriate way, any communication received in reference to paragraph 1 of this Rule, to the attention of the Committee of Ministers. It shall do so in respect of any communication received in reference to paragraph 2 of this Rule, together with any observations of the delegation(s) concerned provided that the latter are transmitted to the Secretariat within five working days of having been notified of such communication.

##### **Rule 17**

##### **Final resolution**

After having established that the High Contracting Party concerned has taken all the necessary measures to abide by the judgment or that the terms of the friendly settlement have been executed, the Committee of Ministers shall adopt a resolution concluding that its functions under Article 46, paragraph 2, or Article 39 paragraph 4, of the Convention have been exercised.



## Appendix 9: Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the ECtHR

*(Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

*a.* Emphasising High Contracting Parties' legal obligation under Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter referred to as "the Convention") to abide by all final judgments of the European Court of Human Rights (hereinafter referred to as "the Court") in cases to which they are parties;

*b.* Reiterating that judgments in which the Court finds a violation impose on the High Contracting Parties an obligation to:

- pay any sums awarded by the Court by way of just satisfaction;
- adopt, where appropriate, individual measures to put an end to the violation found by the Court and to redress, as far as possible, its effects;
- adopt, where appropriate, the general measures needed to put an end to similar violations or prevent them.

*c.* Recalling also that, under the Committee of Ministers' supervision, the respondent state remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention to abide by the final judgments of the Court;

*d.* Convinced that rapid and effective execution of the Court's judgments contributes to enhancing the protection of human rights in member states and to the long-term effectiveness of the European human rights protection system;

*e.* Noting that the full implementation of the comprehensive package of coherent measures

referred to in the Declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels", adopted by the Committee of Ministers at its 114th Session (12 May 2004), is *inter alia* intended to facilitate compliance with the legal obligation to execute the Court's judgments;

*f.* Recalling also that the Heads of State and Government of the member states of the Council of Europe in May 2005 in Warsaw underlined the need for an accelerated and full execution of the judgments of the Court;

*g.* Noting therefore that there is a need to reinforce domestic capacity to execute the Court's judgments;

*h.* Underlining the importance of early information and effective co-ordination of all state actors involved in the execution process and noting also the importance of ensuring within national systems, where necessary at high level, the effectiveness of the domestic execution process;

*i.* Noting that the Parliamentary Assembly recommended that the Committee of Ministers induce member states to improve or, where necessary, to set up domestic mechanisms and procedures – both at the level of governments and of parliaments – to secure timely and effective implementation of the Court's judgments, through co-ordinated action of all national actors concerned and with the necessary support at the highest political level<sup>38</sup>;

*j.* Noting that the provisions of this recommendation are applicable, *mutatis mutandis*, to the execution of any decision<sup>39</sup> or judgment of the Court recording the terms of any friendly settlement or

closing a case on the basis of a unilateral declaration by the state;

**Recommends** that member states:

1. designate a co-ordinator – individual or body – of execution of judgments at the national level, with reference contacts in the relevant national authorities involved in the execution process. This co-ordinator should have the necessary powers and authority to:

- acquire relevant information;
- liaise with persons or bodies responsible at the national level for deciding on the measures necessary to execute the judgment; and
- if need be, take or initiate relevant measures to accelerate the execution process;

2. ensure, whether through their Permanent Representation or otherwise, the existence of appropriate mechanisms for effective dialogue and transmission of relevant information between the co-ordinator and the Committee of Ministers;

3. take the necessary steps to ensure that all judgments to be executed, as well as all relevant decisions and resolutions of the Committee of Ministers related to those judgments, are duly and rapidly disseminated, where necessary in translation, to relevant actors in the execution process;

4. identify as early as possible the measures which may be required in order to ensure rapid execution;

5. facilitate the adoption of any useful measures to develop effective synergies between relevant actors in the execution process at the national level either generally or in response to a specific judgment, and to identify their respective competences;

6. rapidly prepare, where appropriate, action plans on the measures envisaged to execute judgments, if possible including an indicative timetable;

7. take the necessary steps to ensure that relevant actors in the execution process are sufficiently acquainted with the Court's case law as well as with the relevant Committee of Ministers' recommendations and practice;

8. disseminate the *vade mecum* prepared by the Council of Europe on the execution process to relevant actors and encourage its use, as well as that of the database of the Council of Europe with information on the state of execution in all cases pending before the Committee of Ministers;

9. as appropriate, keep their parliaments informed of the situation concerning execution of judgments and the measures being taken in this regard;

10. where required by a significant persistent problem in the execution process, ensure that all necessary remedial action be taken at high level, political if need be.

38. Parliamentary Assembly Recommendation 1764 (2006) - "Implementation of the judgments of the European Court of Human Rights".

39. When Protocol No. 14 to the ECHR has entered into force.

## Appendix 10: Recommendation CM/Rec(2010)3 of the Committee of Ministers to member states on effective remedies for excessive length of proceedings

*(Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Recalling that the Heads of State and Government of the Council of Europe member states, meeting at the Third Summit in Warsaw on 16 and 17 May 2005, expressed their determination to ensure that effective domestic remedies exist for anyone with an arguable complaint of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5 – hereafter referred to as “the Convention”);

Recalling Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies and intending to build upon this by giving practical guidance to member states in the specific context of excessive length of proceedings;

Recalling also the Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (adopted on 19 May 2006 at its 116th Session);

Welcoming the work of other Council of Europe bodies, notably the European Commission for Democracy through Law (Venice Commission) and the European Commission for the Efficiency of Justice;

Emphasising the High Contracting Parties' obligations under the Convention to secure to everyone within their jurisdiction the rights and freedoms protected thereby, including the right to trial within a reasonable time contained in Article 6.1 and that to an effective remedy contained in Article 13;

Recalling that the case law of the European Court of Human Rights (hereinafter “the Court”), notably its pilot judgments, provides important guidance and instruction to member states in this respect;

Reiterating that excessive delays in the administration of justice constitute a grave danger, in particular for respect for the rule of law and access to justice;

Concerned that excessive length of proceedings, often caused by systemic problems, is by far the most common issue raised in applications to the Court and that it thereby represents an immediate threat to the effectiveness of the Court and hence the human rights protection system based upon the Convention;

Convinced that the introduction of measures to address the excessive length of proceedings will contribute, in accordance with the principle of subsidiarity, to enhancing the protection of human rights in member states and to preserving the effectiveness of the Convention system, including by helping to reduce the number of applications to the Court,

**Recommends** that the governments of the member states:

1. take all necessary steps to ensure that all stages of domestic proceedings, irrespective of their domestic characterisation, in which there may be determination of civil rights and obligations or of any criminal charge, are determined within a reasonable time;
2. to this end, ensure that mechanisms exist to identify proceedings that risk becoming excessively lengthy as well as the underlying causes, with a view also to preventing future violations of Article 6;

3. recognise that when an underlying systemic problem is causing excessive length of proceedings, measures are required to address this problem, as well as its effects in individual cases;
4. ensure that there are means to expedite proceedings that risk becoming excessively lengthy in order to prevent them from becoming so;
5. take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time;
6. ascertain that such remedies exist in respect of all stages of proceedings in which there may be determination of civil rights and obligations or of any criminal charge;
7. to this end, where proceedings have become excessively lengthy, ensure that the violation is acknowledged either expressly or in substance and that:
  - a. the proceedings are expedited, where possible; or
  - b. redress is afforded to the victims for any disadvantage they have suffered; or, preferably,
  - c. allowance is made for a combination of the two measures;
8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy;
9. ensure that amounts of compensation that may be awarded are reasonable and compatible with the case-law of the Court and recognise, in this context, a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage;
10. consider providing for specific forms of non-monetary redress, such as reduction of sanctions or discontinuance of proceedings, as appropriate, in criminal or administrative proceedings that have been excessively lengthy;
11. where appropriate, provide for the retroactivity of new measures taken to address the problem of excessive length of proceedings, so that applications pending before the Court may be resolved at national level;
12. take inspiration and guidance from the Guide to Good Practice accompanying this recommendation when implementing its provisions and, to this end, ensure that the text of this recommendation and of the Guide to Good Practice, where necessary in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities can take account of it.



## Appendix 11: The Committee of Ministers

The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives in Strasbourg. It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a

collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings.

### The 47 member states

Albania	Estonia	Luxembourg	Serbia
Andorra	Finland	Malta	Slovakia
Armenia	France	Moldova	Slovenia
Austria	Georgia	Monaco	Spain
Azerbaijan	Germany	Montenegro	Sweden
Belgium	Greece	Netherlands	Switzerland
Bosnia and Herzegovina	Hungary	Norway	"The former Yugoslav Republic of Macedonia"
Bulgaria	Iceland	Poland	Turkey
Croatia	Ireland	Portugal	Ukraine
Cyprus	Italy	Romania	United Kingdom
Czech Republic	Latvia	Russian Federation	
Denmark	Liechtenstein	San Marino	
	Lithuania		

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## Appendix 12: The Department for the Execution of Judgments of the European Court of Human Rights

The Department for the Execution of Judgments of the ECtHR, composed of lawyers and assistants recruited from the member states of the Council of Europe, belongs to the Directorate of Monitoring, within the Directorate General of Human Rights and Legal Affairs.

The Department is in particular responsible for assisting the Committee of Ministers in its function of supervising the execution of ECtHR judgments by member states.

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## Appendix 13: Thematic overview of issues examined in 2009

### Introduction

The overview below presents the execution situation in a selection of ECtHR judgments examined by the CM in the course of 2009, in particular as regards cases (or groups of cases), which are particularly interesting in respect of the individual measures and/or general measures involved.

The presentation in the overview is thematic, based on the different rights and freedoms protected by the ECHR.

An index by state of major cases examined in the course of 2009 is presented at the end of the thematic overview. Cases in principle closed or already closed by final resolution in 2009 are highlighted. Furthermore, lists of cases closed by final resolution in 2009 and of those in principle closed in 2009 and awaiting the drafting of such a resolution are found in Appendices 4 and 5.

Cases contained in previous Annual Reports are presented anew if there have been major developments in 2009 *which have been presented to the CM*. In principle, the presentation is limited to new developments.

Full descriptions by state of all major pending cases can be found on the special CoE website dedicated to the supervision of the execution of the judgments of the ECtHR<sup>40</sup> under the heading “cases – state of execution”.

The information in the thematic overview is presented as follows:

- State / Case (as far as groups of cases are concerned only the references of the leading case are given) with an indication of whether the case was included in the 2007 Annual Report (AR 2007) or in the 2008 Annual Report (AR 2008) and of whether it has been closed or in principle closed;
- Application No., date of leading judgment;
- Meeting No. and Section of last examination;
- Summary of violation(s) found;
- Individual (IM) and General (GM) measures taken or outstanding (see for fuller information the case descriptions in the notes on the agenda available on the above-mentioned special Council of Europe website dedicated to the execution of the judgments of the European Court of Human Rights).

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40. <http://www.coe.int/execution/>, (also accessible via the CM's website, <http://www.coe.int/cm>, heading “Human Rights Meetings”): link to the Council of Europe website dedicated to the execution of judgments of the European Court of Human Rights, “Cases”.

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

### A.1. Actions of security forces

#### 1. AZE / Mammadov (Jalaloglu) (See AR 2007, p. 27; AR 2008, p. 98)

34445/04  
Judgment of 11/01/2007, final on 11/04/2007

Last examination: 1072-4.2

**Torture inflicted on the applicant, Secretary General of the Democratic Party of Azerbaijan at the time, while he was in police custody in October 2003 (violation of Art. 3); lack of an effective investigation into the applicant's complaints in this respect (violation of Art. 3) and lack of an effective domestic remedy, because the domestic courts simply endorsed the criminal investigation, without independently assessing the facts of the case (violation of Art. 13).**

**IM** With respect to the government's continuing obligation to conduct an effective investigation, the authorities had indicated that the Investigation Department was investigating anew the applicant's complaints (see AR 2008). However, in December 2009, the CM regretted that no information on developments was made available nearly a year after the new investigation into Mr Mammadov's complaint for ill-treatment, and called upon the Azerbaijani authorities to provide detailed information on this issue.

**GM** The information on measures already taken by the Azerbaijani authorities as well as the requested additional information on legislative and regulatory measures is summarised in AR 2007 and 2008.

In December 2009, the CM took note of the information provided on the draft law on the rights and freedoms of individuals kept in detention, which remains to be assessed, and invited the Azerbaijani authorities and the Secretariat to keep the CM informed of any modification of this draft, in particular concerning access to a lawyer, medical supervision, contacts with relatives and the remedies available to complain of violations of the rights provided for in this draft law. The CM also recalled that detailed information on the legislative and regulatory provisions applicable in case of allegations of ill-treatment, including in police custody, was awaited as well as concrete examples of implementations of these provisions.

#### 2. HUN / Barta (examination in principle closed at the 1051st meeting in March 2009)

26137/04  
Judgment of 10/04/2007, final on 10/07/2007

Last examination: 1051-6.1

**Failure to conduct an effective investigation of the applicant's complaints concerning injuries she claimed to have suffered in 2002 as a result of force used by a police officer when she resisted arrest in the context of a dispute with neighbours. In particular, the medical report ordered by the public prosecutor did not take into account the injuries suffered by the applicant, despite her repeated requests and the conclusions of the expert medical report she had privately arranged to have drafted. Moreover, there was no hearing of potential witnesses. Finally the applicant's appeal against the decision of the Public Prosecutor's Office to close the investigation was dismissed on the sole grounds that the applicant had resisted the exercise of lawful authority by the police. The private criminal proceedings which the applicant had instituted in the local court were also dismissed on the same grounds (procedural violation of Art. 3).**

**IM** According to the latest information provided by the Hungarian authorities, in January 2009, the proceedings against the police officer were still pending before the Győr court of first instance. However, the authorities also indicated that the statute of limitation for the felony of

maltreatment in the exercise of official duties had expired in the present case and that any remedy in this respect was therefore time-barred.

**GM** Under the (New) Code of Criminal Procedure in force since July 2003, factual reasons must

be cited in any decision on appeal against a prosecutorial decision to close an investigation.

The same obligation was introduced with regard to all judicial decisions dismissing private proceedings. Further amendments were made to these rules in 2006 and private proceedings may henceforth be dismissed only for formal reasons; in all other cases they must be admitted by the court. Consequently private proceedings may no longer be dismissed on grounds of a lack of factual and legal basis.

In order to guide the application of the new rules, the ECtHR's judgment was forwarded to the Public Prosecutor's Office, the Office of the National Council of the Judiciary responsible for the training of judges, and the relevant department of the ministry responsible for supervising the police, asking them to draw public prosecutors' and judges' attention to their obligations under the ECHR. The judgment has also been published on the Internet

site of the Ministry of Justice and Law Enforcement.

Moreover, following the *Kmetty* judgment in 2004 (application No. 57967/00, judgment of 16/12/2003, final on 16/03/2004 – examination in principle closed in November 2005), the Public Prosecutor sent all prosecutors a circular letter drawing their attention to their obligation to carry out effective and thorough investigations of allegations of ill-treatment which might have been inflicted by police officers. The circular specified that criminal proceedings concerning such cases could be only discontinued if there remained no doubt that the alleged crime was not committed. In addition it indicated that, where the investigation had been abandoned without this condition being met, interested parties could request referral to a court which would decide on the questions of criminal responsibility, as provided for in the 2003 Code of Criminal Procedure.

### 3. ITA / Labita (Final Resolution (2009) 83)

26772/95  
Judgment of 6/04/2000, Grand Chamber

Last examination: 1065-1.1

**Absence of effective investigations into allegations of ill-treatment in 1992 while the applicant, accused of mafia membership, was detained on remand (violation of Art. 3); excessive length of this detention as the initial grounds became, with the passage of time and the development of investigations, insufficient to justify its prolongation (violation of Art. 5§3); unlawful detention for 12 hours after acquittal in 1994 due to the absence of the competent officer (violation of Art. 5§1); unlawful monitoring of correspondence during the detention (violation of Art. 8); violation of rights to freedom of movement and to free elections as the courts refused, after the acquittal, to revoke an order for special police supervision, involving the automatic disenfranchisement of the applicant, notwithstanding the absence of any new evidence of mafia membership justifying such measures (violation of Art. 2 of Protocol No. 4 and of Art. 3 of Protocol No. 1).**

**IM** In 1995, the investigating judge discontinued the criminal proceedings engaged by the applicant against the prison authorities as the ill-treatment offences were time-barred.

The preventative measures applied against the applicant after his acquittal in 1994 (the special police supervision and the automatic suspension of his civil and electoral rights) ceased in November 1997 and shortly after he was reinstated on the electoral register. In 1998, he obtained compensation through the Italian courts for the detention on remand suffered, but without any recognition or compensation of the excessive length of this detention. In this situation and taking into account the gravity and number of the violations found, the ECtHR granted him a just satisfaction in respect of the non-pecuniary damage sustained.

In view of the above, no other individual measures have appeared to be required.

**GM** **Ill-treatment:** In 1998, the medical register was modified and circulars and guidelines were issued in order to improve the effectiveness of the follow-up given to complaints of ill-treatment in prison. See also CPT report of 2003 (Document CPT/Inf (2003) 16), in which the CPT noted the absence of recent complaints of physical ill-treatment of prisoners by prison authorities in the establishments visited.

**Grounds and length of pre-trial detention:** The protection against excessively lengthy detention on remand was reinforced by the Code of Criminal Procedure (CCP) in 1995. The new provisions strengthen the guarantees already existing under

Italian law, providing for the revocation of pre-trial detention if the reasons justifying it no longer exist and providing that the time already elapsed should be taken into account when assessing the need to maintain a person in detention (see for example Court of Cassation's decision No. 2395 of 16/10/1997). In addition, the CCP sets the maximum duration of pre-trial detention in different situations. (see Final Resolution (2005) 90 adopted in the *Vaccaro* case).

**Censorship of correspondence:** In 2004, new legislation set clear limits to the monitoring and restriction of prisoners' correspondence. In particular, correspondence with lawyers and organs of the ECHR is excluded from monitoring (see Final Resolution (2005) 55 adopted in the *Calogero Diana* case).

**Restrictions to freedom of movement and disenfranchisement:** In order to ensure that courts take

adequate account of acquittal decisions when examining the necessity of special police supervision, and thereby also of disenfranchisement, the judgment in this case was translated, disseminated to the judicial authorities concerned and published in the database of the Court of Cassation on the case-law of the ECtHR, which is widely used by all those who practice law in Italy. It was also published in several legal journals and transmitted to the Supreme Judicial Council which is competent for training magistrates and organised a seminar on this issue in February 2005.

**Detention after acquittal:** The Ministry of Justice drew the prison authorities' attention via a circular in 1999 to their duty to ensure that officials authorised to order the liberation of detainees are permanently available (see Final Resolution (2003) 151 adopted in the *Santandrea* case).

#### 4. ROM / Barbu Anghelescu No. 1 and other similar cases

46430/99

*Judgment of 05/10/2004, final on 05/01/2005*

*Last examination: 1059-4.2*

**Ill-treatment inflicted on the applicants by police officers amounting to inhuman and degrading treatment or torture between 1996 and 2001 (substantive violations of Art. 3) and ineffectiveness of the investigations into the events (procedural violations of Art. 3) in particular on account of the hierarchical or institutional links existing between the officers in charge of the investigations and those accused as well as on account of other shortcomings in the handling of evidence; absence of an effective remedy to complain of the ill-treatment suffered (violation of Art. 13); authorities' failure to investigate possible racial motives in the applicants' ill-treatment (violation of Art. 14 taken in conjunction with the procedural limb of Art. 3); infringement of the applicant's right of individual application due to the pressure allegedly put by prison doctors and to the refusal to provide the documents required in support of the application to the ECtHR (violation of Art. 34); excessive length of the criminal proceedings (violation of Art. 6§1)**

**IM** In the *Barbu Anghelescu* No. 1 case, the Office of the Prosecutor General at the High Court of Cassation and Justice, after the case was re-examined, decided to discontinue it in 2005 due to the prescription of criminal responsibility. In the *Bursuc* case, the investigation was also discontinued in 2006, after a re-examination of the evidence and the hearing of witnesses in the light of the conclusions of the ECtHR judgment. Both decisions became final as the applicants did not appeal. In these circumstances no further measures appear to be needed.

Information has been requested on the possibility of reopening the investigations in five other cases, where the original investigations were discontinued by military prosecutors that the ECtHR found to lack the necessary independence.

**GM** Ill-treatment inflicted on applicants by police: A number of awareness-raising and training measures have been taken to prevent abuses: the judgment has been disseminated to police units and police officers are kept informed of cases concerning human rights; in-service training sessions and work sessions are regularly organised for territorial police units, also involving social workers and experts in psychology and human rights, in view of creating a multidisciplinary network which is able to react to human rights violations.

The CM is assessing these measures.

**Effectiveness of the investigations into alleged police abuses:** Following a reform in 2002, police officers now have the status of civil servants instead of military officers, so that the competence to investigate and prosecute acts committed by them now



belongs to ordinary prosecutors and courts. Furthermore, the laws on the organisation of the police and the Code of Criminal Procedure have been modified in order to ensure that enquiries concerning police officers are no longer conducted by members of criminal investigation departments serving in the same police units as the persons under investigation. The authorities have also provided statistical data on prosecution of police officers for alleged ill-treatment.

The CM is assessing whether further measures are needed.

**Excessive length of criminal proceedings:** See *Stoianova and Nedelcu* group of cases.

**Lack of effective remedy:** In the light of the findings of the ECtHR that civil courts tended to follow the conclusions of the criminal inquiry, instead of making an independent assessment of the evidence brought by the plaintiffs as regards the damages suffered, information has been requested on the current practice of civil courts in cases related to claims for damages in similar situations and on measures taken or envisaged to avoid violations similar to those found in these cases.

**Discrimination:** Information is expected on the measures taken or envisaged to avoid new similar

violations. In this context, the opportunity has been raised of organising special training and issuing instructions underlining the necessity to investigate possible racial motives in similar situations (see also, *mutatis mutandis*, Moldovan group of cases).

**Interference with the right of individual application:** Information is expected on the measures taken or envisaged to avoid new, similar violations.

**Publication and dissemination:** All judgments of the ECtHR against Romania are regularly published in the *Official Gazette* and on the Internet site of the High Court of Cassation and Justice. The judgments of the ECtHR in the *Anghelescu Barbu* No. 1 and *Bursuc* cases have also been sent to the Supreme Judicial Council, to the Prosecutor General, to the Ministry of Justice and to the Ministry of Administration and Home Affairs, which have ensured their dissemination to courts of appeal, prosecutors and police units. The judgments in the *Cobzaru* and *Melinte* cases were also sent to the Supreme Judicial Council, with a view to bringing them to the attention of all domestic courts, with the recommendation that they be discussed amongst the activities related to continued education of magistrates.

## 5. RUS / Khashiyev and other similar cases (See AR 2007, p. 33; AR 2008, p. 100)

57942/00

*Judgment of 24/02/2005, final on 06/07/2005*

*CM/Inf/DH (2006) 32 revised 2, CM/Inf/DH (2008) 33*

*Last examination: 1072-4.3*

**Action of the Russian security forces during anti-terrorist operations in Chechnya between 1999 and 2002: State responsibility established for deaths, disappearances, ill-treatment, unlawful searches and destruction of property; failure to take measures to protect the right to life; lack of effective investigations into abuses and absence of effective remedies; ill-treatment of the applicants' relatives due to the attitude of the investigating authorities (violation of Art. 2, 3, 5, 8, 13 and of Art. 1 Prot. 1). Failure to co-operate with the ECHR organs contrary to Art. 38 of the ECHR in several cases.**

**IM** Domestic investigations into the circumstances at the basis of the violations have been either resumed or re-opened in order to give effect to the ECtHR's judgments. In particular, since the setting up in 2007 of the Investigating Committee within the Prosecutor General's Office, these investigations fall within the competence of this new authority and a special group of investigators within the Investigating Committee deals with these cases. The CM is monitoring the progress of the investigation in the light of the advancement of general measures. In this context, the submission lodged by certain NGOs on behalf of some of the applicants are also taken into account.

**GM** The earlier developments in this group of cases are described in AR 2007 and AR 2008. The last published analysis of the execution situation is to be found in Memorandum CM/Inf/DH (2008) 33 and its addendum, which contains the assessment of the information provided and identifies a non-exhaustive list of outstanding issues in the following areas:

- Rules governing the use of force in the context of anti-terrorist operations;
- Prevention of torture, ill-treatment and disappearances, in particular safeguards in police custody and supervision of compliance by members of the security forces with them;

- Measures to ensure effective investigations into alleged abuses, particularly public scrutiny and access of victims to the investigative procedure;
- Supervision of compliance with these rules and sanctions for abuses;
- Measures to ensure compliance with the obligation to co-operate with the ECtHR;
- Measures related to initial and in-service training of members of the security forces;
- Measures to ensure appropriate compensation to the victims of abuses.

In February and April 2009, the Secretariat held consultations in Moscow with the competent Russian authorities on the effectiveness of domestic investigations and public scrutiny.

In the light of these consultations, in June 2009, the CM welcomed the measures taken by the Investigating Committee with the *Prokuratura* of the Russian Federation, in particular the setting up of the Special Investigative Unit (first created as a special group of investigators), with a view to adopting the individual measures required by these judgments. It noted with interest the measures aimed at increasing the effectiveness of the prosecutors' control and at improving the efficiency of judicial review but underlined that the efficiency of those measures would very much depend on the progress achieved by the Special Investigative Unit in dealing with concrete cases and consequently invited the authorities to regularly provide the CM with reports on the progress made by this Unit.

The CM also noted with satisfaction the circular letter issued by the Deputy Prosecutor General requiring all prosecutors to give direct effect to the

ECHR's requirements when supervising the lawfulness of domestic investigations and encouraged them to continue their efforts in this direction. It noted that Russian criminal law as interpreted by the Constitutional Court's decisions provides for a number of victims' rights, in particular the right to receive information pending investigation, while underlining that effective implementation of this criminal legislation in practice remains to be demonstrated, in particular in cases here at issue. It further noted in this respect the existence at domestic level of a remedy (Art. 125 of the Code of Criminal Procedure) available notably to victims whose rights would have been infringed during the investigation as well as the recent measures taken by the federal Supreme Court to ensure its effective application by all courts.

The CM noted however that the effectiveness of this remedy in practice remains to be assessed and consequently invited the authorities to provide further examples of and additional clarification on its application. Finally, it encouraged the Russian authorities to continue bilateral consultations with the Secretariat.

Subsequently, in December 2009, the CM took note of the information provided on the results of the bilateral consultations between the Secretariat and the competent Russian authorities and encouraged them to continue these consultations on the outstanding issues. It also decided to resume consideration of these cases in March 2010, in particular in the light of the information to be provided by the authorities on the impact of the general measures taken on certain individual cases.

## 6. UK / McKerr and other similar cases (see AR 2007, p. 40; AR 2008, p. 105)

28883/95  
Judgment of 04/05/2001, final on 04/08/2001  
IR (2005) 20, (2007) 73 and (2009) 44

Memoranda CM/Inf/DH (2006) 4 revised 2, CM/Inf/DH (2006) 4 Addendum revised 3 and CM/Inf/DH (2008) 2 revised

Last examination: 1072-4.3

**Action of security forces in Northern Ireland in the 1980s and 1990s: shortcomings in subsequent investigation of deaths; lack of independence of investigating police officers; lack of public scrutiny and information to victims' families on reasons for decisions not to prosecute (procedural violations of Art. 2).**

**IM** The authorities have been requested to take all necessary investigative steps in these cases to remedy the violations found and to keep the CM regularly informed of the progress made.

In March 2009, the CM adopted IR(2009)44, in which it decided to close its examination of the individual measures in the cases of *McShane* and *Finucane*.

On the other hand, as regards the other cases, the CM strongly urged the authorities to take all necessary measures with a view to bringing to an end, without further delay, the ongoing investigations while bearing in mind the findings of the ECtHR in these cases.

In December 2009, the authorities provided updated information on the progress of the investi-

gations in these cases. The CM is evaluating the information.

**GM** In November 2005, June 2007 and March 2008, the CM closed the examination of the general measures adopted to remedy some of the problems revealed by the judgments (see for details AR 2007, as well as the IR and Information documents). The examination of some further aspects was closed in March 2009 (see the above mentioned IR (2009) 44), namely that of:

- the results obtained in the investigation of historical cases by the Historical Enquiries Team (HET) and the Police Ombudsman of Northern Ireland, as the HET has the structure and capacities to allow it to finalise its work; and

- the interference with the right of individual petition, in the light of the assurances given by the authorities to prevent any further such interference.

The CM furthermore invited the government of the United Kingdom to provide information on their reaction to the Five Year Review report, in particular to Recommendation 13, which gives power to the Ombudsman to compel retired police officers to appear as witnesses. In this respect, in December 2009, the authorities reiterated that the government was still considering the responses given to the 12-week consultation on the Police Ombudsman's 5-Year Review, which was concluded on 5/03/2009.

## A.2. Positive obligation to protect the right to life

### 7. FRA / Taïs (Final Resolution (2009) 67) (see AR 2007, p. 30; AR 2008, p.99)

39922/03  
Judgment of 01/06/2006, final on 01/09/2006

Last examination: 1059-1.1

**Violation of the positive obligation to protect the lives of persons in custody: lack of a plausible explanation as to the cause of the injuries that resulted in the death of the applicants' son in 1993, while he was detained in a police cell in which he had been placed overnight to sober up; lack of effective police and medical supervision of the applicants' son despite his critical state (substantive violation of Art. 2); lack of a rapid and effective investigation into the circumstances surrounding the death (procedural violation of Art. 2).**

**IM** In its judgment, the ECtHR "noted that it [was] impossible for the applicants to obtain an effective enquiry or adequate compensation" and granted them 50 000 euros as just satisfaction in respect of the non-pecuniary damage sustained. Following this judgment, the Public Prosecutor examined and on 12 January 2007 rejected the applicants' request for a new investigation. He held that he did not have enough new grounds to change the initial conclusion of the investigation, i.e. that there were no sufficient charges against anyone. Moreover, the government pointed out that several other elements made it objectively impossible to rectify the shortcomings of the original investigation.

In this context, the Ombudsman (*Médiateur de la République*) and the National Human Rights Advi-

sory Board (*Commission nationale consultative des droits de l'Homme*) made a joint communication to the CM. On 20/05/2009, Mr Taïs informed the CM that following the Prosecutor's decision, he had ordered a private investigation, which could according to him "facilitate a new judicial investigation". The government replied that if he believed he had good reason to do so, the applicant could of course bring the results of such an investigation to the attention of the magistrates concerned. In that case, they would have to make a new ruling. If there were fresh charges, it would still be possible to reopen the investigation, until the facts at issue were time-barred.

**GM** See AR 2008.

### 8. UKR / Gongadze (see AR 2007, p. 41; AR 2008, p. 106)

34056/02  
Judgment of 08/11/2005, final on 08/02/2006

IR (2008) 35, (2009) 74  
Last examination: 1065-4.2

**Authorities' failure, in 2000, to meet their obligation to take adequate measures to protect the life of a journalist threatened by unknown persons, possibly including police officers; inefficient investigation into the journalist's subsequent death; degrading treatment of the journalist's wife on account of the attitude of the investigating authorities; lack of an effective remedy in respect of the inefficient investigation and in order to obtain compensation (violation of Art. 2, 3 and 13).**

**IM** In March 2008 three former officers of the Ministry of Internal Affairs were found guilty of the premeditated murder of Mr Gongadze and sentenced to 12 (two of the accused) and 13 years in prison (see also AR 2007 and 2008). Criminal investigations against the fourth officer who had been identified (and who was absconding) and against the unidentified persons who had ordered the kidnap and murder of Mr Gongadze were undertaken by the Office of the Prosecutor General. Following the adoption by the CM of IR (2008) 35 in June 2008, a group of international experts was set up to help with the analysis of certain audio recordings.

In July 2009, the absconding officer was apprehended and participated to a reconstruction of the scene and circumstances of the crime. As a result, parts of a human skull were found and submitted to

forensic and other examinations. In accordance with the investigation plan, other investigative actions to identify instigators and organisers of the kidnapping and murder of Mr Gongadze have been taken.

In its IR (2009) 74 adopted in September 2009, the CM noted with satisfaction the developments that had taken place in the investigation since the adoption of its first IR in 2008; it strongly encouraged the Ukrainian authorities to enhance their efforts with a view to bringing to an end the ongoing investigation whilst bearing in mind the findings of the ECtHR in this case and invited Ukraine to continue keeping the CM regularly informed of the measures taken, and the results achieved, to ensure full execution of the judgment.

**GM** See AR 2007 and 2008.

### A.3. Ill-treatment – special situations

#### 9. BiH / Rodić and 3 others

22893/05  
Judgment of 27/05/2008, final on 01/12/2008

Last examination: 1065-4.2

**Authorities' failure to protect the applicants, prisoners of Serbian or Croatian origin convicted of war crimes against Bosnians, from persecution by their fellow prisoners in Zenica Prison, the population of which is approximately 90% Bosnian (violation of Art. 3); lack of an effective remedy at the applicant's disposal in relation to their complaints under Art. 3 (violation of Art.13).**

**IM** The ECtHR noted that all applicants have been transferred to Mostar Prison. Just satisfaction has been awarded to all of them in respect of non-pecuniary damage for the distress suffered in connection with the violations found. In July 2009, the Bosnian authorities informed the CM that the applicant Rodić was conditionally released on 30/12/2008 and that his sentence expired on 14/03/2009. The other applicants are still serving their sentence in Mostar Prison. A recent report prepared by the administration of the Mostar Prison indicates that the other three applicants are satisfied with the conditions in prison and that they have not raised any complaints so far in this respect. In view of this report and the absence of further complaints by the applicants, in the circumstances, no further measure appears necessary.

**GM** The issues concerning the prevalent violence in Zenica Prison were also criticised in the most recent CPT report (CPT/Inf (2009) 25). According to the information provided by the Government on 02/07/2009, the 2009 Budget of the Federation of Bosnia and Herzegovina earmarked an amount of 8 million BMA for improving conditions in prisons. The funds should be used inter alia for construction of a separate pavilion in Zenica Prison to accommodate 54 prisoners belonging to risk groups, such as the war-crime convicts, which will help to resolve the problem of inter-ethnic violence in prisons. Information is now awaited on the schedule for completing the separate pavilion in Zenica Prison.

As regards the lack of an effective remedy in relation to complaints of ill-treatment, the ECtHR consid-

ered that a petition to prison inspectors at the Ministry of Justice, in combination with a constitutional appeal, could provide redress for the alleged breaches. According to the information provided by the authorities in July 2009, the vacant positions of prison inspectors were filled in May 2008 and January 2009. Since then around 50 complaints from prisoners have been registered and specific measures have been ordered in eight cases. The

Bosnian authorities also provided an example of a report issued by a prison inspector in respect of a complaint raising safety concerns. The CM is assessing the impact of the measures taken.

The ECtHR's judgment was published in the *Official Gazette* of Bosnia and Herzegovina and forwarded to all relevant authorities involved in the present case.

## 10. RUS / Chamber

7188/03

*Judgment of 03/07/2008, final on 01/12/2008*

*Last examination: 1065-4.2*

**Ill-treatment suffered by the applicant in March 2001 during his compulsory military service, when he was deliberately forced, as punishment for not having cleaned the barracks, to do 350 knee-bends which caused him intense physical suffering and resulted in a long-term damage to his health, as he could no longer walk properly (substantive violation of Art. 3); lack of an effective investigation into the applicant's complaints on ill-treatment (procedural violation of Art. 3); the outcome of the applicant's civil complaint of ill-treatment during military service was undermined as a result of the ineffectiveness of the investigation (violation of Art. 13).**

**IM** Although the applicant did not submit any claim for just satisfaction, the ECtHR, based on Rule 60 of the Rules of the ECtHR and taking into consideration that the violation of the applicant's right not to be subjected to inhuman punishment is of absolute character, found it possible to exceptionally award him just satisfaction in respect of the non-pecuniary damage sustained.

As it appears in the judgment, a medical commission of a military unit diagnosed the applicant with spinal injury and on 28/06/2001 he was discharged from military service. Following the applicant's discharge, he was diagnosed with a second-category disability, on 29/08/2001, and became entitled to a civilian disability pension. However, his attempts to claim a military pension were unsuccessful on the ground that the disability had been only diagnosed but not acquired during military service and that the applicant already had knee problems prior to his military service.

In June 2009, the authorities informed the CM that on 10/03/2009 the Military Prosecutors' Office reopened the investigation on abuse of power by the applicant's commanders upon the complaint lodged in 2001 by the applicant's mother. The CM has requested information as to the outcome of the investigation. The authorities also confirmed the possibility for the applicant to claim additional compensation in the light of the ECtHR's findings. Consultations with the authorities are pending on this issue.

**GM** **Ill-treatment during military service:** The information provided by the authorities in June 2009 on the rules governing the application of disciplinary sanctions and punishments of conscripts in the armed forces as well as on the organisation of medical care during military service is currently being assessed.

**Effectiveness of the investigation:** The ECtHR found that the investigation was not sufficiently thorough, as soldiers who could have been eye-witnesses to the alleged ill-treatment were not questioned; the applicant could not formally claim victim status, as no criminal proceedings were instituted; no independent review was exercised over the investigator's decision not to prosecute.

The new Code of Criminal Procedure entered into force in 2002, i.e. after the events at issue. Moreover, as from 7/09/2007 the investigation of offences, which previously fell within the ordinary jurisdiction of prosecutors, now falls within the jurisdiction of the special Investigating Committee set up with the Prokuratura of the Russian Federation. Prosecutors exercise control over the lawfulness of decisions taken by the investigators, not least decisions not to prosecute.

In June 2009, the authorities submitted information on the rules currently governing the initiation of criminal proceedings, which is being assessed.

**Civil-law remedy:** In its judgment, the ECtHR's found it peculiar that, according to the Russian criminal law, a decision to discontinue proceedings

on the ground that the alleged offence was not committed (отсутствие события преступления) legally bars access to a civil court on the basis of a claim for damages arising out of the same event. In the *Khashiev* group of cases, the authorities already provided examples of domestic courts' case-law on the compensation of victims even in the absence of the results of a criminal investigation. However, in the absence of a Decision of the Plenum of the Supreme Court of the Russian Federation on the application of the relevant provisions, the CM has requested more information in this respect with rel-

evant examples showing the existence of a sufficiently established and consistent case-law.

**Publication and dissemination:** The ECtHR's judgment together with a circular letter was sent to all relevant authorities, in particular the Prosecutor General's Office, the Constitutional and the Supreme Courts of the Russian Federation, Ministries of Interior and of Defence of the Russian Federation, as well as to the Investigating Committee set up with the *Prokuratura* of the Russian Federation to take measures aimed at elimination of the violations found and prevention of further similar violations.

## 11. TUR / Ülke (see AR 2007, p. 46)

39437/98

Judgment of 24/01/2006, final on 24/04/2006  
IR (2007)109 and (2009)45

Last examination: 1072-4.3

### Degrading treatment as a result of the applicant's repetitive convictions between 1996 and 1999 and imprisonment for having refused to perform compulsory military service on account of his convictions as a pacifist and conscientious objector (substantial violation of Art. 3).

**IM** The applicant has been in hiding for a long period as a result of the continuing threat of prosecution. In 2007, despite the findings of the ECtHR in this case, the applicant was summoned to serve his sentence to 17-and-a-half months' imprisonment (see, for details, AR 2007). The applicant did not respond. Pending the adoption, promised by the Turkish authorities since June 2007, of a new law on conscientious objection that would also cover the applicant's situation (see below, under GM), the applicant requested a stay of execution of his sentence. An appeal against the dismissal of this request was lodged with the Military Court of Cassation in August 2007, but no information has been provided as to the outcome of this appeal.

Since the adoption of a first IR (2007)109 in October 2007, the CM has been regularly examining this case at each of its "HR" meetings. It adopted a new IR (2009) 45 in March 2009, strongly urging "the Turkish authorities to take without further delay all necessary measures to put an end to the violations of the applicant's rights under the ECHR and to make the legislative changes necessary to prevent similar violations of the ECHR".

Given that the Turkish authorities had failed to follow the CM's encouragement to carry bilateral contacts with the Secretariat to bring to an end the continuing effects of the violation for the applicant

and that no tangible information had been provided either, on 1/10/2009 the Chairman of the CM sent a letter to his Turkish counterpart, conveying the CM's grave preoccupation regarding the absence of any information on the measures required in this case.

In December 2009, the CM noted that the Secretariat had had fruitful bilateral consultations with the Minister of Justice of Turkey; it strongly urged the Turkish authorities to ensure that the legislative work aimed at providing redress to the applicant and preventing similar violations in the future would be brought to a conclusion without any further delay and called upon the Turkish authorities to provide a reply to the letter of the Chairman of the CM containing concrete information on the legislative work under way as well as the timetable for the adoption of any draft laws proposed (see GM below).

**GM** In June 2007, the Turkish authorities indicated that a draft law was being prepared, aiming to prevent new violations of Article 3 similar to that found in the present case and also remedying all negative consequences for the applicant. The pursuit of the legislative reforms is presently intimately linked with individual measures.

In the meantime the judgment has been translated, published and disseminated to relevant authorities.

## 12. UK / A (Final Resolution (2009) 75) (see AR 2007, p. 46; AR 2008, p. 108)

25599/94  
 Judgment of 23/09/1998 (final)  
 IR (2004)39, (2005) 8, (2006) 29

Memorandum CM/Inf/DH (2008) 34  
 Last examination 1065 - 1.1

**Failure of the state to protect the applicant, a 9-year-old child, from treatment or punishment contrary to Art. 3 by his stepfather, who was acquitted of criminal charges brought against him after he raised the defence of reasonable chastisement (violation of Art. 3).**

**IM** Considering the nature of the violation, no specific measure has been deemed necessary over and above the just satisfaction awarded by the ECtHR.

**GM** Between 2003 and 2006 legislation on corporal punishment of children was amended in Scotland, England, Wales and Northern Ireland and a number of awareness-raising measures was taken. The main developments of general measures are summarised in AR 2007 and AR 2008. A more detailed presentation of these developments, together

with an evaluation by the Secretariat can be found in memorandum CM/Inf/DH (2008) 34.

The judicial review proceedings, challenging the compatibility with the ECtHR of the new provisions adopted in Northern Ireland were dismissed by the Northern Ireland Court of Appeal in February 2009. The Commissioner for Children and Young People stated in a press release of 21/04/2009 that she would not pursue further legal action. In these circumstances, the CM considered that no further measures were needed.

## B. Prohibition of slavery and forced labour

### C. Protection of rights in detention

#### C.1. Poor detention conditions

#### 13. GEO / Poghossian GEO / Ghavtadze

9870/07 and 23204/07  
 Judgment of 24/02/2009, final on 24/05/2009  
 Judgment of 03/03/2009, final on 03/06/2009

Last examination: 1072-4.2

**Treatment contrary to Art. 3 as a result of the authorities' failure to protect the applicants' health in prison, notably as a result of unsanitary prison conditions, the absence of adequate medical treatment for the virus hepatitis C and tuberculosis pleurisy which had been diagnosed, and discharge from the prison hospital before recovery against medical advice (violation of Art. 3).**

**IM** Poghossian: the ECtHR held that there was no need to award a just satisfaction, as the applicant had not submitted any claim in that respect. Moreover, the applicant, arrested on 6/12/2005 and sentenced in 2008, after appeal, to eight years imprisonment, had already been conditionally released on 5/12/2008. In this situation, no issue of individual measures has been raised before the CM. Ghavtadze: the applicant, arrested on 19/10/2006, is still serving his eight-year prison sentence. Since April 2007 he has been admitted to the Department of infectious diseases of the penitentiary hospital at Tbilisi prison no. 5 and has been treated for tuberculosis. The ECtHR awarded the applicant

just satisfaction for pecuniary and non-pecuniary damage. It also found that the Georgian authorities should guarantee, without delay, the applicant's placement in an establishment capable of providing, in parallel, the medical treatments required by his tuberculosis and hepatitis C.

Before the CM, the Government has indicated that the applicant has been transferred to the new prison hospital (see GM below) where necessary facilities exist for the treatment of diseases. His tuberculosis treatment ended on 13/04/2009. After first refusing treatment against hepatitis C, the applicant accepted such treatment on 31/08/2009. The applicant is periodically subject to medical examination

and will, if necessary, be transferred to a specialised private hospital. The Secretariat has suggested that, for the CM to decide to leave it in the future to the authorities to monitor the applicant's situation, these must inform the CM of the extent to which his current medical care corresponds to the measures required by the ECtHR's judgment, of measures taken to ensure that, in the light of the evolution of his state of health, medical advice is followed appropriately rather than hindered. The CM has requested updated information on the applicant's state of health and has invited the authorities to specify how medical advice on the treatment needed will henceforth be respected.

**GM** Noting that almost forty similar applications were pending before it, the ECtHR found that there was a systemic problem concerning the administration of adequate medical treatment to prisoners infected *inter alia* with hepatitis C.

The Government has indicated that prison no. 5 of Tbilisi, in which Mr Ghavtadze was imprisoned at the material time, was demolished in 2008 and replaced by a new building, equipped with a modern infrastructure and in which conditions of detention are in conformity with international standards. The prison hospital in which the applicant was placed in 2007 has been replaced by a new hospital, which opened on 28/11/2008 and has modern equipment and qualified medical staff. The creation of new hospitals is part of the reform of the prison system. In June 2009, the Ministry of Corrections, Probation and Legal Assistance and the Ministry of Health and Social protection issued a strategy for medical treatment of prisoners infected with hepatitis C. The strategy provides:

- the improvement of the level and quality of information given to penitentiary staff and to prisoners on hepatitis C;

- the study of the epidemic situation in prisons (medical examination and test for each new prisoner and for each person already in detention);
- placement in a specialised institution of sick prisoners who accept medical treatment after being informed of the side effects;
- implementation and follow-up of treatment; maintenance of a medical file given to prisoners on recovery.

The ECtHR's judgments were published in the Official Gazette in October 2009.

A provisional action plan until 2011 has been adopted based on the above four objectives. It should be financed by the state budget, international donor organisations and NGOs. It will be carried out under the supervision of the new Ministry of Corrections, Probation and Legal Assistance and of the Department of the State Representation before International Courts of Human Rights.

This provisional action plan is currently being assessed. It has been noted that it deals with treatment of prisoners infected with hepatitis C but does not appear to take into account the general problem of infectious diseases and in particular not complex situations resulting, as in the case of *Ghavtadze*, from the combination of several infectious conditions.

The importance of guaranteeing an effective remedy within the meaning of the ECHR also in respect of violations of the kind here at issue has been recalled.

The CM has invited the Georgian authorities to present promptly a detailed action plan, notably taking into account the European Prison rules and all relevant CPT recommendations.

The authorities have also been requested to ensure that detainees placed in hospital cannot be removed without the express authorisation of the doctor in charge.

#### 14. FRA / Vincent (Final Resolution (2009)79)

6253/03

*Judgment of 24/10/2006, final on 26/03/2007*

*Last examination: 1065-1.1*

**Degrading treatment suffered by the applicant, who is paraplegic, on account of his detention from 17 February to 11 June 2003 in a prison (Fresnes prison) where he could not move around and, in particular, leave his cell on his own (violation of Art. 3)**

**IM** Since October 2006, the applicant has been removed from the prison at issue in the judgment and detained in another one, where he can move about and, in particular, leave his cell unaided. The applicant's complaints about his detention conditions in this new prison have been examined by the

administrative judge (President of the Administrative Tribunal of Amiens) and the French Ombudsman (*Médiateur de la République*), an independent authority, and both concluded that the applicant's detention (which should end in March



2010) met the ECHR requirements and offered sufficient guarantees.

**GM** In order to ensure that disabled persons are detained in a prison equipped to fulfil their specific needs, the directorate of the prisons administration has introduced a system to manage the cells for disabled persons (118 such cells exist for motor-disabled detainees): a map of existing places and of the specific requests is kept up to date in order to best reconcile the penal, penitentiary and health requirements in each given case. Newly equipped cells are also being set up in old prisons wherever possible. Furthermore, a construction program of 13 200 extra places in the French penitentiary system has begun. These places will include 1% of cells adapted for disabled persons. Finally, under a law of 2005, all forms of handicap must be taken into account in public buildings receiving the public within ten years. Disability provision in prisons will be specifically handled in a joint decree of the Min-

istries of Equipment and of Justice which will fix accessibility rules for future constructions and for existing prisons. The situation is evolving towards adjusting all French prisons to the presence of handicapped persons from 2015 onwards.

The efforts by the French authorities to improve the way in which prisoners are treated will continue, not least in the framework of their co-operation with the CPT. In this respect, the setting up in 2007 of the post of General Controller of Places of Detention also shows the will of the French authorities to work towards better respect of fundamental rights of prisoners.

The attention of the Directorate of Prison Administration, directly responsible to the Ministry of Justice, has been drawn to the findings of this judgment. The judgment has furthermore been published, commented in widely read legal journals and disseminated to all courts and directorates of the Ministry of Justice concerned.

## 15. ROM / Bragadireanu ROM / Petrea

22088/04 and 4792/03  
Judgment of 6/12/2007, final on 6/03/2008  
Judgment of 29/04/2008, final on 1/12/2008

Last examination: 1059-4.2

**Inhuman and degrading conditions of detention, due in particular to the prison overcrowding and, in the Bragadireanu case, also the lack of facilities appropriate to the applicant's health condition (violations of Art. 3). In this latter case, also excessive length of criminal proceedings, which ended in February 2004 (violation of Art. 6§1).**

**IM** Bragadireanu: the applicant was offered medical treatment and examinations on several occasions in 2007 and 2008. Since October 2007, he is in the medical section of the prison where he has been provided with proper conditions of personal hygiene. As from June 2008 he has a personal carer that shares his cell. In addition, there is another detainee, whose presence has been consented to by the applicant. Details on the current detention conditions of the applicant have been provided and are being assessed.

Petrea: the applicant was released on probation in June 2005. The ECtHR awarded him just satisfaction in respect of non-pecuniary damage. No further individual measure seems to be necessary.

**GM** Poor detention conditions: Information has been requested on measures taken or envisaged to avoid violations resulting from inadequate detention conditions, in particular for prisoners with health problems.

Excessive length of criminal proceedings: See the *Stoianova* and *Nedelcu* group of cases.

## C.2. Unjustified detention and related issues

### 16. BGR / Gulub Atanasov

73281/01  
Judgment of 06/11/2008, final on 06/02/2009

Last examination: 1072-4.2

**Investigator's decision without judicial authorisation to commit the applicant, a person suffering from schizophrenia and placed under house arrest pending proceedings against him, to a psychiatric**

**hospital for the purpose of an examination (8 August to 4 September 2000); impossibility to challenge the committal before a court and lack of enforceable right to compensation (violations of Art. 5§1, 5§4 and 5§5).**

**IM** The applicant died in 2006. The just satisfaction in respect on the non-pecuniary damage was awarded by the ECtHR to the applicant's son. In these circumstances no other individual measure appears necessary.

**GM** As regards the unlawfulness of the applicant's committal to a psychiatric hospital, the ECtHR found that the government's argument that persons under house arrest or in custody could be placed in a psychiatric hospital for examination solely by decision of an investigator or a prosecutor doesn't follow the text and the structure of the Code of Criminal Procedure. In these circumstances, the publication and wide dissemination of the EC-

tHR's judgment appear to be sufficient for its execution. Information on this point is awaited as well as on any other measure envisaged or already adopted.

The violation resulting from the impossibility to challenge the applicant's confinement before a court appears in the above circumstances to be an isolated incident: the applicant's placement in the hospital should already have been ordered by a judicial decision as a matter of domestic law.

The issue of the lack of an enforceable right to compensation for detention contrary to Art. 5 presents similarities to violations examined in *Yankov* group of cases (39084/97).

## 17. CZE / Husák

19970/04  
Judgment of 04/12/2008, final on 04/03/2009

Last examination: 1072-4.2

**Unfairness of criminal proceedings relating to the extension of the applicant's pre-trial detention, as he could not appear in person (violation of Art. 5§4).**

**IM** The ECtHR considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. According to the information submitted by the authorities, the applicant was released on 31/08/2004. No further individual measure appears necessary.

**GM** At the relevant time (2003) the Czech Code of Criminal Procedure (CCP) did not provide for the right to a hearing for detained persons in cases of the extension of remand.

As it appears from the ECtHR's judgment in this case, in 2005, by judgment No. 45/04, the plenary of the Constitutional Court repealed the litigious provision of the CCP, stating that when courts decide on an appeal of the accused against the prosecutor's decision to extend the detention, principles of Art. 5§4 should apply. Nevertheless, these principles still did not apply to the proceedings relating to the detainee's requests for release. In 2008, by judgment No. 2603/07, the Constitutional Court observed that the requirement of a personal hearing was applicable both to the proceedings on the prosecutor's decision to extend the detention and to the detainee's requests for release. At the same time, the Constitutional Court declared that a personal hearing of the accused is compulsory and uncondi-

tional only in proceedings concerning appeals against prosecutors' decisions on the extension of detention. Such a requirement could be subject to conditions included in proceedings on detainees' requests for release, so as to avoid imposing an excessive burden on the state, by obliging the competent courts to hear the accused personally each time they challenge the lawfulness of their detention.

With respect to the procedural guarantees provided by Art. 5§4, the ECtHR considered that there was no reason to distinguish between ex officio proceedings relating to the extension of the detention and proceedings concerning the applicant's requests for release (§44 of the judgment).

The judgment of the ECtHR, translated into Czech, has been published on the website of the Ministry of Justice and sent to the domestic authorities having decided on the case.

According to the information provided by the Czech authorities, the Ministry of Justice is currently preparing a new CCP which will take into account the requirements flowing from the ECtHR's case-law including the present judgment. The CM has requested further information on the concrete application of the above case-law of the Constitutional Court by courts deciding on detention.

18. CZE / Smatana  
CZE / Fešar

18642/04 and 76576/01  
Judgment of 27/09/2007, final on 31/03/2008  
Judgment of 13/11/2008, final on 06/04/2009

Last examination: 1072-4.2

**Unjustified length of the applicants' pre-trial detention (1996-1998 and 2000-2002) (violation of Art. 5§3), excessive length of the appeals against continued detention, including before the Constitutional Court (violation of Art. 5§4); lack of an effective right to obtain compensation (Smatana case, violation of Art. 5§5).**

**IM** Smatana: Since 2003 the applicant has been serving his prison sentence, from which the period spent in pre-trial detention was deducted. The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage suffered but not for pecuniary damage as it considered that the reduction of his prison sentence was a sufficient compensation.

**Fešar:** The pre-trial detention period was also deducted from the sentence imposed on the applicant, who was released in 1998. The ECtHR did not make any pecuniary or non-pecuniary award, as the applicant did not specify any claims for just satisfaction.

In these circumstances, no further individual measures appear necessary.

**GM** Continuation of pre-trial detention without sufficient reasons: By modifying, in January 2002, the Code of Criminal Procedure the Czech authorities have adopted a number of measures to handle this issue (see especially Final Resolution (2004) 33 in the *Punzelt* case). In addition, the Czech courts have to reassess at regular intervals whether continued detention is still justified and also have to examine whether there are serious reasons why criminal proceedings are still outstanding. It appears that violations found in the present cases occurred prior to the above-mentioned measures and were probably isolated incidents resulting from particular circumstances. In these circumstances no further measures appear necessary.

Measures aimed at ensuring the presence of the detainee when examining the extension of his detention on remand are followed in cases *Husak* and *Krejcir*.

**Lack of speedy examination of the appeals against detention:** The additional guarantees to secure a speedy examination of appeals, introduced into the Code of Criminal Procedure are not applicable to proceedings before the Constitutional Court. In this situation, the Constitutional Court has examined the ECtHR's judgments and decided

to make a monthly overview of all complaints pending before it. This overview is submitted to the plenary for periodical checks. Before the CM information has been requested on the concrete effects of these measures and on their possible incorporation into legislation.

As the excessive length of the appeal proceedings was also linked with the time needed for notification of decisions, information has also been requested on measures taken or envisaged to reduce these periods.

**Lack of effective right to obtain compensation:**

At the material time, Czech law did not provide, with a sufficient degree of certainty, compensation in cases where a violation of Art. 5 of the ECHR was found. Before the CM the Czech Government has in particular referred to the 2006 amendment to the 1998 Act on State responsibility for damage caused in the exercise of public power as a result of the illegality of decisions or the conduct of proceedings.

These amendments notably provide for compensation of pecuniary and non-pecuniary damage resulting from pre-trial detention, but only in cases where a decision concerning the detention has been quashed as being unlawful or where criminal proceedings are stayed or end in an acquittal. This amendment did not, however, immediately apply to persons in the applicants' situation (these had been convicted and had obtained no domestic decision quashing the decision to maintain them in detention on remand). In order to allow also such persons to benefit from the new law, the plenary of the Constitutional Court adopted, shortly after the *Smatana* case (on 06/05/2008) an opinion according to which the Constitutional Court will henceforth, whenever it grants a constitutional complaint challenging the lawfulness of detention on remand, also quash the decision on detention, regardless of whether or not the person concerned is still in detention. As a result of the quashing of the decision, compensation will also be possible under the 1998 Act.

The government has also stated that the 2006 amendments provide for an additional possibility to claim compensation on the basis of incorrect handling of the procedure by the competent authority. The government has underlined that this remedy does not require any prior quashing of the decision relating to detention. Before the CM it has been recalled that no example of a decision on this

issue had been submitted to the ECtHR in this case.

Information is therefore still expected on the new decision-making practice of the Constitutional Court and on the functioning of the compensatory remedies provided in the 1998 Act as far as Art. 5 claims are concerned.

## 19. MDA / Sarban and other similar cases (see AR 2007, pp. 50-51; AR 2008, pp. 115-116)

3456/05

*Judgment of 04/10/2005, final on 04/01/2006*

*Last examination: 1072-4.2*

**Violations related to detention on remand in 2002-2006: arrest not based on reasonable suspicion that the applicants had committed an offence and unlawful detention on remand (violations of Art. 5§1-c); general practice of detaining accused persons without any judicial decision to this effect, solely on the ground that their case had been submitted to the trial court (violation of Art. 5§1); detention on remand or its extension without sufficient and relevant grounds, exclusion by the Code of Criminal Procedure of a particular category of accused from the right to release pending trial; (violations of Art. 5§3); failure to examine speedily the lawfulness of the applicant's detention, failure to comply with the principle of equality of arms (violations of Art. 5§4); Other violations: poor detention conditions, lack of medical assistance during detention and lack of effective investigation into allegations of intimidation whilst on remand (violations of Art. 3).**

**IM** None of the applicants was still detained on remand at the time of the ECtHR judgments and all were awarded just satisfaction in respect of non-pecuniary damage. Information is awaited on measures taken concerning the allegations of intimidation.

**GM** The CM's examination in 2009 concentrated on the issues below. The earlier examinations are presented in AR 2007 and 2008.

**Unlawful detention on remand:** At the relevant time there was no specific provision governing detention on remand once the bill of indictment had been lodged with the competent court. Detention was assumed to be prolonged pending trial without any further judicial decision being given. On 3/11/2006, the CCP was modified and a request for prolongation is today always to be submitted to the court no later than five days before the previous detention order expires. A further amendment to the CCP of 6/03/2008 introduced the obligation for trial courts to hold hearings before the expiry of the previous remand order.

**Right to be released:** At the relevant time the CCP did not allow release under judicial control of persons charged with intentional offences punishable with more than ten years' imprisonment. On

28/07/2006 and 21/12/2006 the CCP was amended and this restriction was removed.

**Lack of relevant and sufficient grounds for detention on remand:** In its judgments on these cases the ECtHR did not criticise the legislative provisions in force governing the ordering and extension of the detention on remand, but the stereotyped way in which the domestic courts applied them without attempting to justify the reasons for applying them to the applicants' cases. To remedy these practices, between 2005 and 2008, the Supreme Court of Justice and the Prosecutor General's Office have adopted a series of decisions/instructions relating to the application by the national courts/prosecution authorities of the provisions of the CCP on detention on remand and house arrest. The practice of prosecutors in furnishing reasons for requests for detention on remand and the practice of the courts in justifying their decisions have also been monitored. Training sessions for the judiciary and prosecution authorities have been organised.

The information submitted and the scope of additional reforms and/or measures required are currently under evaluation. The examination of remaining violations will be undertaken in the course of 2010.

20. NLD / Brand  
NLD / Morsink

49902/99 and 48865/99  
Judgment of 11/05/2004, final on 10/11/2004  
Judgment of 11/05/2004, final on 10/11/2004

Last examination: 1072-4.2

**Unreasonable length of the pre-placement detention of the applicants (14 and 15 months respectively in 1994 and 1998) pending availability of places in a secure psychiatric facility (violations of Art. 5§1).**

**IM** The ECtHR awarded just satisfaction in respect of non-pecuniary damage. Compensation was awarded in domestic proceedings for the pre-placement detention. The applicants are no longer in pre-placement detention contrary to Art. 5§1. In these circumstances, no further individual measure appears necessary.

**GM** The current legislation (in force as of 1997) provides for a maximum waiting period for placement in a secure institution of six months, which period may be extended by three months at a time, if the placement proves impossible. In its judgment, the ECtHR stated, however, that “[...] even a delay of six months in the admission of a person to a custodial clinic cannot be regarded as acceptable”. In accordance herewith, further information has been requested, notably on measures taken to ensure an implementation of the law in accordance with the ECHR requirements.

**Measures concerning the delay in admission to a custodial clinic:** The authorities have taken measures to increase the capacity of secure psychiatric facilities, keeping in mind that persons waiting for six months or more for placement in a custodial clinic need to be given priority. In the years 2006/2007 the capacity of the concerned clinics was to be in-

creased by a total of 260 places. The authorities have, however, indicated that despite these measures, the waiting period has not been reduced to below six months in all cases as the expanding capacity depends also on finding and appointing qualified staff. Accordingly, three-month extensions were not yet exceptional. In addition, a pilot programme was initiated under which those in detention awaiting placement may receive treatment in order to shorten their subsequent stay at a clinic.

**Measures regarding the creation of an effective remedy:** According to the information provided by the government, a person awaiting admission for more than six months may receive compensation for each month spent waiting. Reference was also made to an appeal judgment of 27/04/2006 in which a waiting period of more than four months was found excessive and therefore required compensation. In this judgment, reference was made to the findings of the ECtHR judgments in these cases. The Supreme Court confirmed the appeal judgment on 21/12/2007. Consequently, a person awaiting admission in a custodial clinic for more than four months will receive compensation.

The CM has requested information on the progress of the reforms.

21. PRT / Magalhães Pereira No. 2 (Final Resolution (2009) 53) – (see AR 2007, p. 60)

15996/02  
Judgment of 20/12/2005, final on 20/03/2006

Last examination: 1051-1.1

**Failure promptly to review the lawfulness of the applicant’s detention in a psychiatric clinic (violation of Art. 5§4).**

**IM** The applicant was released on 24/05/2002.

**GM** As far as the shortage of staff at prison psychiatric clinics is concerned, a law of 2004 provides that the courts may now request examinations and legal-psychiatric evidence from the Institute for Forensic Medicine (IFM) branch in the court district. When the local branch does not have enough psychiatrists to respond to all requests, it can ask the specialised services of the National Health System to carry them out or assign the task to prison clinic

psychiatrists others than those working in the prison where the detainee is located, so as to avoid situations in which psychiatrists are asked to conduct forensic examinations of their own patients. The same law provides the possibility to pay doctors or experts who conduct the forensic medical examination directly. Until the introduction of this legislation, they received no remuneration for the examinations they conducted, which is probably why they often refused to do so. In addition, the ca-

capacity of several regional offices of the IFM has been increased, additional psychiatrists have been recruited and new Departments for Forensic Psychiatry have been established. As regards the legal “ceilings” for the number of examinations which may be conducted per expert per year, a Decree-law in 2007 abolished the ceiling of

six examinations per expert and gave priority to the examination of persons detained in consequence of security measures or other measures depriving them of their liberty.

The ECtHR’s judgment has been translated and made available on the Internet.

## 22. SUI / Meloni (examination in principle closed at the 1065th meeting in September 2009)

61697/00

Judgment of 10/04/2008, final on 10/07/2008

Last examination: 1059-6.1

**Illegal detention of the applicant for more than two months in 2000: the request to be set free which he had lodged was not examined before the expiry of the period of detention of remand ordered and the simple refusal of the request could not be interpreted as a new detention order (violation of Art. 5§1).**

**IM** The applicant is no longer held on remand. He was convicted and given a custodial sentence from which the days spent on remand were deducted. The ECtHR awarded him just satisfaction for non-pecuniary damage, his claims for pecuniary damage having been considered to be insufficiently substantiated. In these circumstances no question of individual measures has been raised before the CM.

**GM** The ECtHR considered that the decision of 2000 at issue (dismissal of the request for release) did not dispense the authorities from their obligation to extend detention on remand through “a procedure prescribed by law”, i.e. by issuing a formal detention order as required by Art. 5§1 of the ECHR and as provided for in the Code of Criminal Procedure.

Considering the special circumstances of this case, the Swiss Government is convinced that the direct effect of the judgments of the ECtHR in Switzerland ought to prevent similar violations. The ECtHR’s judgment has thus been published and disseminated to the competent authorities.

Moreover, the legal framework has changed. The Code of Criminal Procedure of Basel-Country Canton was amended in 2003. The revised article authorises an extension of detention on remand of up to six months in special circumstances. Secondly, the new Swiss Code of Criminal Procedure was adopted in 2007 and will enter into force in 2011. This text and the Federal law on criminal procedure for minors will replace the existing 26 cantonal codes of criminal procedure and the federal law on criminal procedure.

### C.3. Detention and other rights

## 23. UK / Dickson (examination in principle closed at the 1051st meeting in March 2009) (see AR 2008, p. 119)

44362/04

Judgment of 4/12/2007 – Grand Chamber

Last examination: 1051-6.1

**Violation of the right to respect for the family life of the applicant – a prisoner serving a life sentence since 1994 – and his wife due to the Home Secretary’s refusal to grant their request for access to artificial insemination facilities (violation of Art. 8).**

**IM** In 2006, the applicant was transferred to an open prison and had periods of unescorted home leave in 2007 and 2008. He will continue to be eligible for periods of release on temporary licence as long as he keeps to the conditions of the licence and there is no change to the risk assessment in his case. In the light of this situation, the applicant’s

lawyer confirmed on 19/08/2008 that the Dicksons no longer require access to assisted conception. No further individual measures seem necessary.

**GM** The UK has amended the policy on assessing applications for permission to access assisted conception facilities by prisoners. The amended policy is less restrictive than the old one and takes

the form of a non-exhaustive list of criteria. In compliance with the judgment, the Secretary of State will apply a proportionality test when taking a decision and balance the individual circumstances of the applicant against the criteria in the policy and the public interest. Decisions made under the policy may be challenged in judicial review proceedings. The United Kingdom authorities confirmed that the policy would not be put on a legislative basis.

The new policy has been scrutinised by the Joint Committee on Human Rights, a cross-party Parliamentary Committee of both Houses, which set out their concerns in its annual report for 2007-2008. The government reassured the Joint Committee in

a Command Paper published in 2009, underlining in particular that the Secretary of State is a public authority and that section 6 of the Human Rights Act requires him to take decisions in a manner which is compatible with the Convention rights. The application of the new policy will be scrutinised at the national level in particular through the work of the Joint Committee on Human Rights. The ECtHR judgment was published in a number of law reports, journals and newspapers. It was furthermore sent out to Ministers and senior officials in December 2007, as well as to all prison governors, directors of private prisons and area managers and to the Northern Ireland Prison Service and Scottish Prison Service in February 2008.

## D. Issues related to aliens

### D.1. Unjustified expulsion or refusal of residence permit

#### 24. LIT / Gulijev (examination in principle closed at the 1072nd meeting in December 2009)

10425/03  
Judgment of 16/12/2008, final on 16/03/2009

Last examination: 1072-6.1

**Unjustified interference with the applicant's right to respect for his private and family life resulting from the rejection of his request for renewal of his temporary residence permit, upheld by the administrative courts in 2002, and his subsequent expulsion and prohibition from re-entering the country, where his wife and children lived. These measures had been taken on the sole ground of a secret report by the State Security Department qualifying the applicant as a potential threat to national security and order (violation of Art. 8).**

**IM** The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. The data concerning the applicant have been removed from the national list of prohibited aliens. He can now enter the country whenever he wishes and apply for the temporary residence permit. The applicant, his wife and their two children are currently residing in Austria.

**GM** In its judgment, the ECtHR drew attention to the national administrative law and court practice which provide that "factual data which constitute a state secret may not be used as evidence in an administrative case until it has been declassified". However, it pointed out that despite this provision the "secret" report in the present case was not only used as evidence, but was the sole ground for not granting the applicant a temporary residence permit.

The Lithuanian authorities have in line herewith indicated that the violation in the present case was not due to the wording of the national law, but to its interpretation by the administrative courts in the present case. In this respect, the authorities have referred to a decision by the Constitutional Court of 15/05/2007, i.e. after the facts of the present case, concerning Art. 57 of the Law on Administrative Proceedings (applied in the applicant's case) in which the Constitutional Court considered *expressis verbis* that "it needs to be emphasised that no court decision can be entirely substantiated by information constituting a state secret (or other classified information), which is unknown to the parties to the case".

The ECtHR's judgment has been translated into Lithuanian and placed on the official Internet site of the Ministry of Justice. The Government Agent has informed all relevant institutions and domestic courts about the judgment in writing.

## 25. NLD / Sen (Final Resolution (2009)51)

31465/96  
Judgment of 21/12/2001, final on 21/03/2002

Last examination: 1051-1.1

**Violation of the right to respect for the family and private life of the applicants, a family of Turkish nationals, owing to the Netherlands authorities' refusal to grant a residence permit to the third applicant so that she could join her parents, the first two applicants, who had been lawfully residing in the Netherlands for many years and had had two more children there (violation of Art. 8).**

**IM** The authorities have indicated that a residence permit would be issued to the third applicant, Miss Sinem Sen, when she applied for one, but she has never lodged any such application. Furthermore, the applicants have not submitted any application for just satisfaction.

**GM** The ECtHR judgment has been passed on to the authorities concerned and has also been pub-

lished. A summary of the judgment has also been included in the annual report of the Ministry of Foreign Affairs to Parliament on the ECtHR's judgments concerning the cases brought against the Netherlands. The Government considers that, taking into account of the direct effect of the ECHR and the ECtHR's case-law in the Netherlands, these measures will avoid further violations of this kind.

26. ROM / Lupsa (see AR 2007, p. 72)  
ROM / Kaya

10337/04 and 33970/05  
Judgment of 08/06/2006, final on 08/09/2006  
Judgment of 12/10/2006, final on 12/01/2007

Last examination: 1065-4.2

**Illegal interference with the applicants' private life resulting from their expulsion for security reasons, in August 2003 and April 2005, which was not provided by a law responding to the requirements of the ECHR (violations of Art. 8). Infringement of the procedural guarantees of the expulsion procedures (violations of Art. 1 of Prot. 7).**

**IM** The applicants may request the re-examination of the decisions in question under the Code of civil procedure. The ECtHR awarded them just satisfaction in respect of non-pecuniary damage.

**GM** The law at the origin of the violation was amended on several occasions and re-published in June 2008. According to its new wording, declarations of undesirability of aliens shall henceforth be made by the Bucharest Court of Appeal, seised by a public prosecutor at the request of the authorities having jurisdiction in the field of public order and national security. The data and information forming the basis of such declarations shall be placed at the disposal of the judicial authority in accordance with the conditions provided by the law regulating national security activities and the protection of classified information. The public prosecutor's submission is examined by a court chamber sitting in private, the parties being notified. The judicial authority shall inform the alien of the facts at the basis of the submission. A reasoned judgment should be given within ten days of the prosecutor's submis-

sion. It is final and shall be communicated to the alien concerned and, if the alien is declared undesirable, to the Aliens Authority for enforcement. The judgment declaring an alien undesirable can be appealed on points on law before the High Court of Cassation and Justice within ten days from the date of its notification. The Court is required to give a decision within five days from the date of receipt of the request. In justified cases and in order to avoid the production of imminent damages, the alien may request the suspension of the enforcement of a decision declaring him or her undesirable, until the end of the proceedings.

The Romanian authorities have submitted examples of decisions of the Bucharest Court of Appeal concerning the declaration of aliens as undesirable. In all cases the applicants were informed of the reasons for the request concerning them and were represented by lawyers.

Both judgments have been translated, published and transmitted to the relevant authorities.

The CM is assessing the information provided.



## 27. UK / NA (examination in principle closed at the 1051st meeting in March 2009)

25904/07

*Judgment of 17/07/2008, final on 06/08/2008**Last examination: 1051-6.1*

**Risk that the applicant might be subjected to torture or degrading or inhuman treatment in his country of origin, Sri Lanka, if the removal directions taken against him in June 2007 were to be enforced (violation of Art. 3).**

**IM** The United Kingdom authorities confirmed, in October 2008, that the removal directions would not be applied to the applicant. In January 2009, they indicated that the applicant would be able to remain in the United Kingdom with either refugee status or discretionary leave to remain.

**GM** The judgment of the ECtHR has been widely reported in the media. The domestic courts and authorities in the United Kingdom, acting in accordance with the Human Rights Act 1998, are

bound to take into account the ECtHR's judgment when determining similar cases in the future.

The United Kingdom Border Agency has accordingly updated its Operational Guidance Note on Sri Lanka to refer to the ECtHR's judgment, highlighting the key points. Internal guidance was also provided to caseworkers within the Border Agency who are responsible for considering human rights applications from Sri Lankan Tamils, to do so in accordance with the judgment, in particular in cases where the ECtHR requested, under its Rule 39, the removal directions to be suspended.

## 28. RUS / Liu &amp; Liu (see AR 2008, p. 121)

42086/05

*Judgment of 06/12/2007, final on 02/06/2008**Last examination: 1072-4.1*

**Violation of the applicants' right to respect for their private and family life in case of execution of a deportation order issued in 2005 against the first applicant for national security reasons as the order was issued under a procedure contained in legal provisions which did not contain a sufficient degree of protection against abuse (violation of Art. 8).**

**IM** Non-pecuniary damage sustained by the applicants was compensated by the ECtHR. In August 2008, the Federal Migration Service annulled its decision on the undesirability of the first applicant's presence on the territory of the Russian Federation and the deportation order of 2005 delivered against him.

In December 2008, the applicants lodged an application with the Central District Court of Khabarovsk seeking the reopening of proceedings. They asked the court to declare unlawful the refusal to grant a residence permit to the first applicant, to oblige the competent authorities to deliver him such a permit and to compensate the non-pecuniary damage sustained. In February 2009 the first applicant's case was transferred to the Khabarovsk Regional Court which, according to the Russian Code of Civil Procedure, is the only level of jurisdiction competent to examine classified information, in particular that related to state secrets. On 17/03/2009 the Khabarovsk Regional Court dismissed the applicants' claim considering the classified information provided by the Federal Security Service and concluded that the refusal to grant a

residence permit was lawful and justified. It appears that the applicants were present at the hearing. On 23/03/2009 the applicants appealed against the judgment to the Supreme Court of Russia. On 20/05/2009 the Supreme Court dismissed the applicants' appeal and confirmed that the refusal to grant a residence permit to the first applicant was lawful and justified. It appears that the applicants filed an application for supervisory review of the judgment of 17/03/2009.

The CM has requested information on the first applicant's current situation.

**GM** The questions relating to the use of an expulsion procedure entirely within the competence of the executive, without sufficient legal safeguards against arbitrariness is followed in the *Bolat* case. The judgment of the ECtHR in the present case has been translated, published and disseminated to all territorial departments of the Federal Migration Service, by a circular letter of its Director, to all courts, to the President of the Supreme Court, to the General Prosecutor's office, to the Constitutional Court and to the Representative of the Presi-

dent of the Russian Federation in the Dalnevostochniy federal district.

## D.2. Detention in view of expulsion

### 29. GRC / Dougoz (examination in principle closed at the 1059th meeting in June 2009)

40907/98

*Judgment of 06/03/2001, final on 06/06/2001*  
*IR (2005)21*

*Last examination: 1059-6.1*

**Degrading conditions of the applicant's detention between 1997 and 1998, pending his expulsion following a court order: in particular, considerable overpopulation of the detention centre and lack of bedding combined with the excessive length of his detention under such conditions (about 17 months in total); detention pending expulsion not in accordance with a procedure "prescribed by law" and impossibility for the applicant to have the lawfulness of his detention pending expulsion examined by a national court (violation of Art. 3, 5§1 and 5§4).**

**IM** The applicant is no longer detained in Greece. He was expelled in 1998. The ECtHR awarded him non-pecuniary damage, taking account of the number and seriousness of the violations found. In these circumstances, no issue of individual measures was raised before the CM.

**GM** As regards the violations of Art. 5§§1 and 4, an Inter-ministerial Decision was issued in 2000. According to it, the detention of aliens under expulsion following a court order is now subject to control by the public prosecutor and the courts. In addition, two laws were adopted in 2001 and 2005 to set up a long-term immigration policy. Detention pending expulsion is accordingly only authorised in specific cases: when an alien is considered dangerous to law and order, or if there is a risk of his escaping. An appeal before the administrative courts is allowed to challenge the legality of detention ordered. An additional appeal is available if new facts arise.

The above-mentioned laws also address the problems raised as regards Art. 3 of the ECHR. Henceforth, detention pending expulsions may not exceed three months. In 2009, the possibility to prolong this period in certain cases has been intro-

duced. Material measures have also been adopted: special reception centres with appropriate medical staff have in particular been opened so as to accommodate adults, minors and families.

The authorities underlined the fact that the country, in view of its geographical position, faces an inflow of illegal immigrants which requires action at a European level. In this context they plan to build 27 new accommodation centres with the help of European funding. Closer co-operation between Greece, Cyprus, Malta and Italy to deal with illegal immigration has been announced by the Greek Minister for the Interior.

Finally, the authorities pointed out that access to lawyers, consular authorities and NGOs is available seven days a week in all detention centres for foreigners. In addition, leaflets outlining the rights of detainees are available in 15 languages in all centres. A personal file is set up for each person detained pending expulsion in which all events during detention are recorded. The authorities have underlined their firm commitment to pursuing their efforts to improve detention conditions, in the light, in particular, of the recommendations of the CPT.

## E. Access to and efficient functioning of justice

### E.1. Excessive length of judicial proceedings

#### 30. CZE / Borankova and other similar cases

41486/98

*Judgment of 7/01/2003, final on 21/05/2003*

*Last examination: 1072-4.2*

**Excessive length of proceedings before civil, administrative and criminal courts (violations of Art. 6§1); in certain cases, lack of an effective remedy against the excessive length of proceedings (violations of Art. 13).**

**IM** In all the pending cases, the relevant domestic courts were informed about the violations found by the ECtHR. However, in a number of cases urgent individual measures were expected, due to the requirement of special diligence. On several occasions, the Czech authorities provided information on the state of the proceedings. The CM has requested further information on the current state of all the pending proceedings and, if need be, on their acceleration.

**GM** **Length of proceedings:** Acceleration of court proceedings is an active priority of the Czech Ministry of Justice and constitutes an important pillar of the Justice Reform Concept for 2008-2010. A number of procedural changes, were brought to the Code of Civil Procedure in 2000, 2005, 2008 and 2009, intended to diminish the workload of judges, to simplify procedures and to prevent delays, notably: the replacement procedure of partial judges; the possibility to make appeal almost in all cases; the duty of judges to instruct the parties on their procedural rights and obligations, and to encourage friendly settlements; the new rules established to ensure special diligence in family cases, the speedy decision-making in proceedings concerning children and the possibility of mediation and peaceful settlement of disputes between parents; a new system for serving court documents, relying on the “presumption of service” and the “preparatory hearing” intended to make the proceedings more concentrated, so that the court can decide the case in a single hearing.

In July 2009 a new law entered into force, which introduced the electronic delivery of documents via data mailboxes.

Also, in 2007 the disciplinary proceedings concerning judges were reformed and in 2008 the *Support for Work in Mini-Teams Project*, intended to improve staffing and working methods in courts was implemented. Finally, the Ministry of Justice is regularly monitoring and assessing the length of proceedings and conducts inspections, in particular at the courts which appear to present problems.

According to the assessment and statistics presented by the Czech authorities in October 2009, the above measures will not have an immediate effect. However, the statistics already show a shortening of

the delay of proceedings in private-law (including labour and commercial) matters and criminal cases, as well as in custody and other child-related matters.

The CM acknowledged that the Czech Ministry of Justice pays particular attention to the problem of the length of proceedings and that the statistics submitted reveal a positive trend. Nevertheless, as long as the CM continues to examine the question of effective remedy, recent statistics confirming this trend towards improvement would be appreciated

**Effective domestic remedy against the excessive length of proceedings:** The Law of 2002 on courts and judges, as amended in 2004, allows a party who considers that proceedings have lasted too long to ask for a deadline for the taking of specific procedural actions. This deadline is set within 20 working days by the next highest court if it accepts the request. There is no appeal and the court concerned is bound by the deadline. However, this remedy was considered in the *Vokurka* case (No. 40552/02, judgment of 16/10/2007) to be conditional on filing the hierarchical remedy and thus ineffective. According to the Czech authorities, this shortcoming was rectified on 01/07/2009. Since then, an application to set a deadline is no longer subject to the condition of having filed a hierarchical remedy. The amendment also enabled the court concerned to carry out the procedural actions requested within 30 days before the application could be brought to the higher court.

In addition the 1998 Act on State responsibility for damage caused in the exercise of public power as a result of the illegality of decisions or the conduct of proceedings, as amended in 2006, allows for monetary compensation for moral non-pecuniary damage. Decisions are to be taken by the Ministry of Justice and may be appealable to the courts. In its decision in the *Vokurka* case, the ECtHR found that the compensatory remedy provided in this Act could be considered effective with regard to unreasonably lengthy proceedings. This has been confirmed by numerous cases.

The CM has requested information on the practical functioning of the preventive remedy, as well as examples of decisions and/or measures taken.

## 31. FIN / Ekholm

68050/01  
Judgment of 24/07/2007, final on 24/10/2007

Last examination: 1072-4.2

**Excessive length of proceedings – almost 16 years – before administrative courts concerning a dispute between neighbours regarding a private nuisance (noise), as well as refusal of the competent administrative authority (South Åland Municipal Health Board) to enforce for almost ten years the final judicial decisions rendered in response to the applicant’s complaints, consequently depriving the applicants’ right to a fair trial of all useful effect (violations of Art. 6).**

**IM** The ECtHR awarded just satisfaction in respect of both pecuniary and non-pecuniary damages suffered by the applicants because of the non-enforcement of the decisions in favour of the applicants until 26/04/2006, when the ECtHR communicated the case to the Government and the Health Board finally complied and ordered the applicants’ neighbours to take certain measures to stop or limit the nuisance. When the ECtHR rendered its judgment, a last appeal to the Supreme Administrative Court was still pending against the Health Board’s decision. Before the CM the Finnish authorities indicated that on 08/11/2007 the Supreme Administrative Court had upheld the decision. The applicants submitted no claims for

individual measures. In these circumstances no additional question of individual measures arises.

**GM** As regards the issue of **failure to comply with a final judicial decision**, the CM is awaiting information on effective remedies available to applicants in domestic proceedings to complain of non-compliance with final domestic judicial decisions by administrative authorities.

The issue of **length of the proceedings** is examined in *Kangasluoma* group of cases.

An excerpt from the judgment was published in the Finlex database (available to the public). The judgment has also been disseminated to the relevant national authorities and courts.

## 32. FRA / Richard-Dubarry and other similar cases (examination in principle closed at the 1051st meeting in March 2009) (see AR 2007, p. 84)

53929/00  
Judgment of 01/06/2004, final on 01/09/2004

Last examination: 1051-6.1

**Excessive length of civil proceedings before financial courts (violations of Art. 6§1); unfairness of civil proceedings.**

**IM** At the time of the ECtHR’s judgments, proceedings were pending only in the *Richard-Dubarry* case. When the ECtHR judgment was issued, in 2004, four sets of proceedings were still pending which had been pending since 1994. The two sets of proceedings that were pending before the *Chambre régionale des comptes* resulted in judgments on the merits in 2007. The *Cour des Comptes*, taking into account the ECtHR case-law in this case and in the *Martinie* case of 2006 (Grand Chamber judgment), acted to accelerate the two sets of proceedings that were still pending before it and pronounced itself on the merits in 2008. All these judgments have been appealed on points of law by the applicant before the *Conseil d’Etat* in 2008 and are still pending, although steps have been taken to accelerate them. The applicant has in the meantime introduced a new application before the ECtHR in December 2006, complaining of the

length of the proceedings subsequent to the ECtHR judgment of 2004.

**GM** **Excessive length of proceedings:** in addition to the amendments to the Code of Administrative Justice in 2005 (see for details AR 2007, p. 84), a new law was adopted in 2008. In particular, this new law abolishes the “double judgment” rule (provisional decision then final decision), that lengthened the procedure, and provides that court orders discharging financial administrators may be rendered by a single judge where charges are not upheld. More generally, procedures have been simplified and harmonised between regional boards and the *Cour des Comptes*, and thus rendered more efficient. For cases falling outside this law, it is recalled that judges, duly informed of the findings of violations in *Richard-Dubarry* and *Siffre, Ecoffet and Bernardini*, apply the ECHR directly and ensure respect of Art. 6§1 which covers among other things the reasonable-time requirement.

**Effective remedies** to complain about the excessive length of proceedings before financial courts exist. One remedy is an action invoking the responsibility of the state before the Conseil d'Etat.

Another is an appeal to the financial administrative courts themselves (internal supervision). In the context of this function, parties may ask the Cour des Comptes to draw up recommendations in case of lengthy proceedings before a regional board.

Furthermore, parties can always seise the president of the court so that (s)he, as responsible for the di-

rection of the court, may take the necessary measures.

It is also recalled that awareness of court president of the question of excessive length of proceedings is heightened by the supervision of the performance of public services which has been intensified since the entry into force of the Organic Law on finance acts of August 2001. This performance monitoring includes, expressly and in particular, the criterion of the average length of proceedings.

### 33. GER / Sürmeli and other similar cases (see AR 2008, p. 127)

75529/01  
Judgment of 08/06/2006 – Grand Chamber

Last examination: 1072-4.2

#### Excessive length of certain civil proceedings (violation of Art. 6§1) and lack of an effective remedy in this respect (violation of Art. 13).

**IM** All proceedings at issue have been closed. No further measure appears necessary.

**GM** **Excessive length of civil proceedings:** According to the information provided in January 2009, the average length of civil proceedings before district courts in 2007 was 4.5 months (4.4 months in 2005) and 7.9 months (7.4 months in 2005) before regional courts. For appeal cases before the regional courts the average length of civil proceedings was 5.5 months (4.9 months in 2005), which amounted to 16.5 months (15.5 months in 2005) including the length of procedure at first instance. Before the courts of appeal the average time of appeal was 7.5 months (7.5 months in 2005), but including the length of proceedings before the previous instances it amounted to 24.1 months (23.2 months in 2005).

The CM requested information on more recent statistics to allow for an assessment of trends.

**Lack of an effective remedy:** The right to trial within a reasonable time is accepted as a constitutional right in Germany. Before the ECtHR the government invoked several possible remedies (constitutional complaint, special action to challenge inaction and appeal to a higher authority,

action for damages to obtain acceleration of pending proceedings or compensation for excessively lengthy proceedings) but their effectiveness was not considered sufficiently established by the ECtHR, even if certain developments, in particular as regards the right to damages, were noted.

In the light thereof, the Sürmeli judgment has been published and sent out to the courts and justice authorities concerned, i.e. the Federal Constitutional Court, the Federal Court of Justice and all state justice administrations, all Ministries of Justice of the *Länder (Landesjustizverwaltungen)* in order to draw their attention to the situation.

The draft law proposed for a preventive forced acceleration remedy ("*Tu-Was-Beschwerde*") has given rise to a very controversial debate amongst legal practitioners and the Ministry of Justice has prepared a new draft law for a compensatory remedy for which there appears to be a broader political consensus.

The CM has requested information on further progress of the legal reform as well as on any other measure taken or envisaged to provide an effective remedy against excessive length of proceedings.

### 34. ITA / Ceteroni and other similar cases (see AR 2007, p. 87; AR 2008 p.128)

22461/93  
Judgment of 06/08/1992 (final)  
CM/Inff/DH (2005) 31 and addendum 1 and 2, CM/Inff/DH (2005) 33, CM/Inf (2005) 39, CM/Inff/DH (2007) 9, CM/Dell/Act/DH (2007) 1007 final, CM/Inff/DH (2008) 42

IR (97) 336, (99) 436, (99) 437, (2000) 135, (2005) 114, (2007) 2, (2009) 42

Last examination: 1051-4.3

### Excessive length of judicial proceedings in civil, criminal and administrative matters (violation of Art. 6§1).

**IM** The findings of the ECtHR have been notified to the domestic courts with a view to accelerating the pending proceedings. The CM has requested information on the situation, as well as on the follow-up given by the Supreme Judicial Council (see also AR 2008).

**QM** Since the early 1980s a large number of ECtHR judgments and CM decisions (under former Art. 32 of the ECHR) have established a structural problem related to the **length of judicial proceedings** in Italy, which remains to be solved despite a long series of reforms, reinforcements of resources, efforts aimed at creating an effective remedy as well as at dealing with the oldest pending cases.

The measures adopted and their assessment by the CM are presented, in particular, in a series of IR adopted since 1997 (see also for a summary AR 2007). In the last two IR adopted in 2005 and 2007 respectively (IR (2005) 114 and IR (2007) 2), the CM asked the Italian authorities to maintain their political commitment to resolve the problem of the excessive length of judicial proceedings and to undertake interdisciplinary action, involving the main judicial actors, co-ordinated at the highest political level, with a view to drawing up a new, effective strategy.

In response to these IR, the Ministry of Justice set up a special commission (“Mirabelli Commission”) and a number of legislative initiatives were taken. Several consultations were held, in 2007 and 2008, between the Secretariat and relevant Italian authorities, including at the highest political level (see AR 2008 and document CM/Inf/DH (2008) 42).

In March 2009, the CM adopted IR (2009) 42, in which, as regards **civil and criminal proceedings**,

- it called upon the Italian authorities to actively pursue their efforts to ensure the swift adoption of the measures already envisaged for civil proceedings; to envisage and adopt urgently ad hoc measures to reduce the civil and criminal backlog by giving priority to the oldest cases and to cases requiring particular diligence; to provide the resources needed to guarantee the implementation of all the reforms; and to pursue the consideration of any other measure to improve the efficiency of justice;
- it encouraged the authorities to continue implementing awareness-raising activities among judges to accompany the implementation of the reforms;

- it invited the authorities to draw up a timetable for anticipated medium-term results with a view to assessing them as the reforms proceed, and to adopt a method for analysing these results in order to make any necessary adjustments, if need be;
- it strongly encouraged the authorities to consider amending Act No. 89/2001 (the Pinto Law) 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.

As regards **administrative proceedings**, the CM encouraged the Italian authorities to continue with their undertakings:

- to measure precisely the backlog in administrative proceedings;
- to adopt any measures envisaged further to reduce that backlog;
- and to assess the impact on the backlog of any measure taken.

As regards **bankruptcy proceedings**, the CM called upon the Italian authorities to continue their efforts to ensure the Bankruptcy Proceedings Reform fully contributes to the acceleration of bankruptcy proceedings, to assess the effects of the reform as it proceeds with a view to adopting any further measure necessary to ensure its effectiveness, and to take also any measures necessary to expedite pending proceedings to which the reform does not apply.

Furthermore, as regards the measures for improving the efficiency of the judiciary, the CM invited the authorities to ensure the dissemination of best practices to other courts, implement any organisational measures taken, including the widespread use of information technologies to all jurisdictions, and adopt any additional measures to enhance more responsible and efficient behaviour from all players in the judicial system.

In conclusion, the CM decided to resume consideration of the progress achieved at the latest at the end of 2009 for administrative proceedings, with a view to considering the possibility of closing the examination of the cases concerned and mid-2010 for civil, criminal, and bankruptcy proceedings.

It also invited the Italian authorities to keep it informed of all developments in order to ensure a continued monitoring of the progress, if need be, through bilateral meetings between the authorities and the Secretariat.

Following the above IR, the Italian authorities have submitted additional information which is currently being assessed.

### 35. SUI / McHugo (examination in principle closed at the 1051st meeting in March 2009)

55705/00  
Judgment of 21/09/2006, final on 21/12/2006

Last examination: 1051-6.1

**Excessive length of criminal proceedings brought against the applicant before the judicial and other authorities of the Zug Canton (from August 1987 to December 1998, i.e. more than 11 years) (violation of Art. 6§1).**

**IM** The proceedings were closed already at the time of the ECtHR's judgment. The applicant received just satisfaction in respect of non-pecuniary damage.

**GM** **Excessive length of the proceedings:** There does not seem to be a systemic problem of excessive length of criminal proceedings in Switzerland. The authorities highlighted the attention they constantly paid to preventing such problems.

**Effective remedies against excessive length of the proceedings:** The Swiss Federal Constitution provides the right to be judged within a reasonable time. Various Cantons' Constitutions also contain similar provisions. According to the constant jurisprudence of the Federal Tribunal, unjustified delay is a particular form of formal denial of justice. Such delays may be judicially sanctioned by way of an appeal to the Federal Tribunal. In such cases, the Federal Tribunal may request the authorities concerned to decide without delay and may even fix an

appropriate time-limit. The ECtHR has considered this remedy effective (Decision of 9/03/2000, *Asbestos SA v. Switzerland*).

Moreover, according to the jurisprudence of the Federal Tribunal, where criminal proceedings are unduly lengthy, the following forms of redress are available to the authorities: taking the delay into consideration when fixing the sentence; release of the defendant if the time-limit for legal action has passed; exemption from punishment if the defendant is found guilty; termination of the proceedings. The judge must explicitly mention the violation of the "reasonable time" principle in the judgment and indicate how this violation has been taken into account. A possibility to grant compensation for non-pecuniary damage has recently been opened up by the new Swiss Criminal code (adopted by the Parliament on 05/10/2007) in certain cases where an accused is fully or partly acquitted, or where the charges are lifted.

### 36. SWE / Klemeco Nord AB (Final Resolution (2009) 70)

73841/01  
Judgment of 19/12/2006, final on 19/03/2007

Last examination: 1059-1.1

**Excessive length of civil proceedings, from 1993 to 2000 (violation of Art. 6§1).**

**IM** The proceedings had been completed at national level when the ECtHR's judgment was delivered.

**GM** Measures have been taken to prevent excessive length of civil and criminal proceedings. The effectiveness of remedies has also been tested and several remedies deemed satisfactory exist: fast-tracking of criminal and family law cases; possibility of appealing against a district court decision considered to be at the origin of procedural delays;

possibility of a more lenient sentence in the case of excessive length of criminal proceedings; scrutiny of proceedings by the Parliamentary Ombudsmen and the Chancellor of Justice; development of case-law relating to the state's civil liability, allowing compensation to be awarded to individuals for any damage caused by excessive length of proceedings.

The judgment has been sent to the government, the administration and to the different Swedish courts.

E.2. Lack of access to a court<sup>41</sup>

## 37. CRO / Vajagić

30431/03

*Judgment of 20/07/2006, final on 11/12/2006 (merits) and of 16/10/2008, final on 16/0/2009 (just satisfaction)**Last examination: 1072-4.2*

**Continuing failure of the authorities to decide on the amount of compensation to which the applicants were entitled under domestic law for the expropriation in 1976 of certain items of their property (violation of Art. 1 of Prot. 1); lack of an effective remedy which would have enabled the applicants to obtain a decision determining the amount of the compensation (violation of Art. 13).**

**IM** The ECtHR found that national law provided only partial reparation for the consequences of the violation and awarded just satisfaction to the applicants corresponding to the difference between the value of their property and the compensation they obtained at national level by the decision of the Ministry of Justice of 19/05/2006.

In view of this award by the ECtHR, the State Administration Office in Virovitica County decided to discontinue the proceedings pending at the date of the ECtHR judgment concerning the applicants' request for compensation in respect of the expropriated property. The applicants' complaint against this decision was rejected by the Ministry of Justice on 11/09/2009.

In these circumstances, no other individual measure appears necessary.

**GM** In its judgment the ECtHR noted that most of the delays at the origin of the failure to decide compensation were caused by the successive remittals which disclosed a deficiency in the procedural system. It further noted that the new Expropriation Act of 1994 provides that the decision on compensation should be given at the same time as the actual expropriation takes place.

According to the Government this remedy should settle the remaining similar cases to that of the applicants, if any. In addition, the administrative authorities have been warned of the need to conclude any similar proceedings concerning expropriation compensation as soon as possible. In the case of successive remittals, the second-instance body would apply the new case-law and award an advance payment to the party concerned pending the final resolution of the issue.

The issue of the lack of an effective remedy is examined in the framework of the case of *Počuča* (judgment of 26/06/2006).

The judgment of the ECtHR was published on the website of the Ministry of Justice and was sent to the Constitutional Court, the Supreme Court, the State Administration Office in Virovitica County, and to the Civil Law Directorate of the Ministry of Justice.

In the circumstances the global assessment is that it appears that the provisions of the Expropriation Act of 1994 and the change in administrative practice will prevent the risk of similar violations. In addition, a remedy has been introduced in respect of excessive length of administrative proceedings. However, the efficiency of this remedy remains yet to be demonstrated.

## 38. GEO / FC Mretebi

38736/04

*Judgment of 31/07/2007, final on 30/01/2008, rectified on 24/01/2008**Last examination: 1072-4.2*

**Infringement of the right of access to a court and thus to a fair hearing, in that the applicant, the Football Club Mretebi, could not continue proceedings for damages following the refusal by the Supreme Court to grant its request for exemption from court fees (violation of Art. 6§1).**

**IM** The applicant did not request just satisfaction for non-pecuniary damage. The ECtHR rejected the applicant's claim for pecuniary damage on the ground that it could not speculate about the

outcome of the domestic proceedings had they been in conformity with Art. 6§1 and considered that the most appropriate form of redress would be to have the applicant's points-of-law appeal of 5/01/

41. Lack of access to a court due to non-execution of judicial decisions is dealt with separately.



2004 examined by the Supreme Court, should the applicant so request.

According to the information provided by the applicant's representatives in March 2009, the Supreme Court of Justice after having found admissible on 28/03/2008 the applicant's appeal of 14/03/2008 to review the cassation appeal of 5/01/2004, dismissed it by decision of 21/07/2008, without examining the merits. The applicant's representatives consider that the Supreme Court's refusal to examine the applicant's cassation appeal of 5/01/2004 on its merits is a refusal to execute the ECtHR's judgment. Finally, the applicant's representatives informed the CM that considering that the Supreme Court's decision of 21/07/2008 is a decision of final instance and that there is no domestic remedy available to contest it, they filed a new application with the ECtHR.

The CM has requested information on alternative individual measures envisaged by the Georgian authorities to execute the judgment of the ECtHR.

**GM** It appears from the ECtHR's judgment that provisions concerning exemption of court fees have been changed. The Georgian authorities informed the CM in March 2009 that several provisions regarding the court fees have been changed in the Code of Civil Procedure. Accordingly, one may be partially or totally exempted by the judge from paying court fees if the inability to pay can be proven by relevant evidence concerning the financial situation. Having regard to the financial situation of the party concerned, the judge may decide to extend the time-limit for payment or reduce the amount court fees. In any of these cases the judge shall give a reasoned decision.

The CM is currently awaiting confirmation of translation and publication of the judgment of the ECtHR. Examples of application of provisions currently in force are also awaited.

#### 39. **LVA / Zaicevs (examination in principle closed at the 1059th meeting in June 2009)**

65022/01  
Judgment of 31/07/2007, final on 31/10/2007

Last examination: 1059-6.1

**Violation of the applicant's right of appeal in criminal matters: in 2000 the applicant had been sentenced to three days' administrative detention for contempt of court by a final order without possibility of appeal. Although under national law the offence was considered to be a "minor offence" liable to an administrative penalty, the ECtHR, taking account of the seriousness of the sentence (detention), held that for the purposes of the ECHR the proceedings had been criminal proceedings and that the applicant should have been entitled to appeal (violation of Art. 2 of Prot. No. 7).**

**IM** The applicant is no longer in custody. The ECtHR found that there was no causal link between the violation found and the applicant's demands with regard to pecuniary damage but awarded him just satisfaction in respect of non-pecuniary damage. In the circumstances and given

the nature of the penalty, no issue of individual measures was raised before the CM.

**GM** In 2002 the Latvian Constitutional Court found the disputed article of the Administrative Offences Code to be contrary, among other things, to Art. 2 of Protocol No. 7, and declared it null and void.

#### 40. **UKR / Gurepka (examination in principle closed at the 1065th meeting in September 2009)**

61406/00  
Judgment of 06/09/2005, final on 06/12/2005

Last examination : 1065-6.1

**Lack of appeal against a decision of the Supreme Court of the Autonomous Republic of Crimea of 1998 ordering seven days' administrative detention against the applicant for contempt of court in civil defamation proceedings (violation of Art. 2 of Prot. No. 7).**

**IM** The applicant had already served the sentence when the ECtHR judgment was issued.

He was awarded just satisfaction in respect of the non-pecuniary damage sustained.

**QM** The legislation in force at the relevant time provided that only a prosecutor or the president of a higher court could introduce an appeal in a case like the one at issue. In 2008 the Code of Administrative Offences was amended in order to introduce

an ordinary, adversarial appeal procedure. As a result, both the victim and the prosecutor have now the right to appeal against court decisions relating to administrative offences, within ten days after delivery of the decision at issue.

### E.3. Non-execution of domestic judicial decisions

#### 41. ALB / Gjonbocari and others (see AR 2008, p. 186)

10508/02  
Judgment of 23/10/2007, final on 31/03/2008

Last examination: 1072-4.2

**Non-execution of a Supreme Court’s judgment of 2003, ordering the Land Commission to take a decision regarding the applicants’ claims on land appearing to have belonged to their parents and confiscated during the communist period (violation of Art. 6§1); excessive length of proceedings, pending since 2000, concerning property claims brought by the applicants (violation of Art. 6§1) as well as the absence of an effective remedy during this period (violation of Art. 13 together with Art. 6§1).**

**IM** The applicants were awarded just satisfaction for non-pecuniary damages. Regarding pecuniary damages, the ECtHR indicated that the government should ensure the execution of the judgment of 2003 in an appropriate manner and in the shortest possible time. Before the CM, the Government has reported that the Supreme Court’s judgment has been enforced, although the decision eventually taken by the Land Commission did not grant the applicants rights over the property at issue, as this property, according to the information provided by the applicants, was seized by a third party. Considering the violation of the applicants’ right to trial within a reasonable time, the CM has requested information as to whether the decision of the Land Commission has become final.

The CM has also requested information on the state of proceedings pending since 2000 and, if possible, on their acceleration.

**QM** **Non-enforcement of final domestic decisions:** This issue is primarily examined in the *Ramadhani* and *Beshiri* cases.

**Excessive length of proceedings and lack of effective remedy in this respect:** The Code of Civil Procedure was amended on 28/12/2008, introducing notably new procedures for summoning parties, strengthening the role of the courts at preparatory hearings and fixing tighter time limits for trials on certain types of cases.

During the HR meeting in December 2009, the Albanian authorities provided extensive information related to measures taken and planned to accelerate

judicial proceedings and to improve the execution of judgments in civil cases.

The CM took note of the information provided and encouraged the Albanian authorities to continue their efforts to find adequate solutions to remaining problems, in particular through further improved training programs.

The CM further underlined the importance of ensuring the provision of domestic remedies in conformity with Art. 13 of the ECHR and encouraged the developments reported in the case-law of the Constitutional Court, and if necessary the prompt adoption of legislative measures, so as to ensure the provision of rapid acceleratory and/or compensatory redress in all situations in which parties have not obtained final judgments within a reasonable time.

In this context it should be noted that in order to share with other states its experiences in addressing the problem of non-execution of domestic judicial decisions Albania joined in 2009 the HRTF project “Removing Obstacles to the non-enforcement of domestic judgments/Ensuring effective implementation of domestic court judgments”. Activities under this three year project have begun and will further develop in 2010.

The CM is currently assessing the information provided and has requested further information on the impact of the measures taken so far as well as on further measures envisaged to accelerate domestic civil proceedings.

## 42. ALB / Qufaj Co. Sh.P.K. (see AR 2007, p. 106; AR 2008, p. 140)

54268/00

*Judgment of 18/11/2004 final on 30/03/2005**Last examination: 1072-4.2*

**Non-enforcement of a final domestic decision of 1996 ordering a municipality to compensate the applicant company for damage sustained following the refusal to grant a building permit (violation of Art. 6§1).**

**IM** No individual measure is required as all damages have been covered by the just satisfaction awarded. For more information see AR 2008.

**GM** The 2007 and 2008 AR provide an overview of measures undertaken and envisaged by the Albanian authorities in view of resolving the problem of lack of funds which was at the origin of the violation found by the ECtHR in this case. Since then, the following developments have been noted: As regards the reforms aiming at providing guarantees of payment through budgetary reforms, the government has stated that it has submitted a number of legislative amendments to give individual institutions budgetary responsibility for complying with domestic judgments. In October 2008 the government confirmed that these amendments have now been adopted by parliament. The CM is still expecting information on the existence of a mechanism to rapidly provide supplementary funds in case of an overspend.

On 15/01/2009 the new law on bailiffs entered into force creating a private bailiff service in parallel to the state service. The new law regulates their fees, responsibilities, and applicable disciplinary measures. In compliance with this law, the regulatory framework for the organisation, procedures for qualifying bailiffs and the bailiffs' ethical code had been drawn up. The status of bailiffs, criteria for li-

censing, modalities of organisation, and the duties of the private bailiffs' service are now being drawn up in detail. On 29/12/2008 amendments were made to the Code of Civil Procedure providing for deadlines for the execution of executable titles, defining the objects of seizure (which may thus apply to working means as well as a debtor's salary), and defining the Council of Ministers as the competent authority to give instructions on execution of financial obligations of state institutions, thus removing barriers encountered by the state treasury.

The problem of effective remedies appears to remain as the Constitutional Court, although today capable of establishing a state authority's non-compliance with the obligation to abide by domestic court judgments, cannot award any redress (see also the *Gjonbocari* case).

In this context it should be noted that in order to share with other states its experience in addressing the problem of non-execution of domestic judicial decisions Albania joined in 2009 the HRTF project "Removing Obstacles to the non-enforcement of domestic judgments/Ensuring effective implementation of domestic court judgments". Activities under this three-year project have begun and will further develop in 2010.

Further information is awaited on the issue of general measures.

43. ALB / Ramadhi and 5 others (see AR 2007, p. 175; AR 2008 p. 139)  
ALB / Beshiri

38222/02 and 7352/03

*Judgment of 13/11/2007, final on 2/06/2008**Judgment of 22/08/2006, final on 12/02/2007**Last examination: 1072-4.2*

**Violation of the right to a fair trial and the right to protection of property due to the non-enforcement of final judicial decisions granting in some cases restitution of plots of nationalised lands and in others compensation for their value (violation of Art. 6§1 and Art. 1, Prot. No. 1); lack of an effective remedy to obtain the enforcement of such decisions (violation of Art. 13 in conjunction with Art. 6§1 in the Ramadhi case).**

**IM** See AR 2008. In June 2009, the CM invited the authorities to take the necessary measures to refund to all applicants, without further delay, the tax of 10% levied on the sums awarded in respect of

just satisfaction and to finalise the negotiations with the applicants in the *Ramadhi* case regarding the issue of restitution.

**QM** Non-execution of final judicial decisions, property rights and absence of effective remedies: In addition to the information on taken or envisaged measures presented in the AR 2008, the following developments have taken place:

- In June 2009, the CM recalled the systemic nature of the non-enforcement of domestic judgments and administrative decisions concerning restitution and/or compensation to former owners in Albania. It welcomed the general measures taken so far, in particular the establishment of the private bailiff service (law of 11/12/2008, which entered into force on 15/01/2009) the adoption of maps for property evaluation, the establishment of a central compensation fund and a fund for compensation in kind of former owners. It invited in this context the authorities to ensure to the extent possible the allocation of adequate resources to the central compensation fund.

- The CM encouraged the authorities to continue their efforts, in consultation with the Secretariat, to resolve the remaining problems and in particular those related to the right to compensation (e.g. the right to default interest) in case of absence of execution or delayed execution and to the effectiveness of domestic remedies (see also the *Gjonbocari* case).

- It is in this context recalled that in order to share with other states its experiences in addressing the problem of non-execution of domestic judicial decisions Albania joined in 2009 the HRTF project “Removing Obstacles to the non-enforcement of domestic judgments/Ensuring effective implementation of domestic court judgments”. Activities under this three-year project have begun and will further develop in 2010.

#### 44. BIH / Jeličić and other similar cases (see AR 2007, p. 107)

41183/02  
Judgment of 31/10/2006, final on 31/01/2007

Last examination: 1072-4.2

**Violation of the right of access to court and of the right of property because of a statutory prohibition introduced in 1996 on the execution of final domestic judgments regarding the release of old savings accounts in foreign currency (violations of Art. 6 of the ECHR and 1 of Prot. 1 – these violations were established already by the Human Rights Chamber in 2000).**

**IM** No individual measure is required as all damages, including default interest for the delay, have been covered by the just satisfaction awarded.

**QM** The present problem relates to a specific aspect of a possibly larger one recently dealt with by the ECtHR in the *Suljagić* case (judgment of 3/11/2009, not final as of 31/12/2009) relating to the rights of persons with claims to old savings accounts in foreign currency (i.e. savings accounts dating from the period before the dissolution of the Socialist Federal Republic of Yugoslavia). Some 1 350 cases are presently pending before the ECtHR relating to such claims. The sole basis of the special problem raised by the present case related to the absence of effective access to court, in that statutory provisions in force since 1996 subjected all final judgments relating to such old foreign savings accounts to administrative verification.

In the light of the situation the CM requested information on the adoption of an action plan. The Council of Ministers of Bosnia and Herzegovina indicated in response that the provisions at issue were repealed in 2007 and that the new law provided for the registration of the relevant final judgments and

the payment of creditors. An action plan was being prepared to ensure the proper implementation of the new law and was expected by December 2007. This plan was, however, not prepared. The Government of Bosnia and Herzegovina instead decided on 03/07/2008 to appoint a new inter-agency task force in charge of developing the action plan. However, this decision was repealed on 27/11/2008 and only the Republika Srpska (the “RS”) was required to adopt a plan as it appeared that only one non-executed domestic court decision had been registered in the Federation of Bosnia and Herzegovina (“the Federation”) and in the District of Brčko, while the RS had some 60-70 such judgments registered (according to information of September 2008). The Government of the RS also adopted the action plan on 03/04/2009. This plan notably envisages a continuing task of recording non-executed judgments in respect of “old savings”. Information is awaited on further implementation of this action plan.

As regards in particular the recording of the non-executed final judgments in respect of “old savings” both the Federation, the RS and the District of Brčko have been ordered to adopt by laws detailing the procedure in respect of registration of the rele-

vant final judgments. However, only the RS adopted a recording regulation on 15/02/2008.

Due to the problems encountered in recording final judgments, the Council of Ministers of Bosnia and Herzegovina proposed and the Parliament adopted at first reading on 08/10/2008 amendments to section 27 of the Act. Pursuant to the amendments, creditors who have obtained final judgment concerning their “old” foreign savings accounts shall be entitled to forward their judgments to the appropriate ministries of finance for enforcement. This should expedite the recording of relevant final judgments.

As regards the number of judgments concerned the RS Action Plan of 2009 specified that only 43 judgments in respect of the “old savings” denominated in foreign currency had been submitted to the RS Ministry of Finance for payment as of March 2009. The total debt under these 43 judgments is 3.7 million “Convertible Marks” (BAM). The Council of Ministers of Bosnia Herzegovina stated in a letter of 06/10/2009 that it could only provide the number of relevant judgments which have been reported to the RS Ministry of Finance. Detailed information is awaited on the final number of judgments concerning “old savings” and aggregate debt represented.

As regards the budgetary planning, the 2008 budgets provided 5 million BAM in the RS and 2 million BAM in the Federation. The Government stated that the relevant judgments would be enforced within two years. The necessary provisions, plus 5 million BAM for interest, have been ensured also in the 2009 budgets of the two entities. According to the latest information, the RS had discharged 17 judgments out of 22 envisaged to be

paid in 2009. The RS Ministry of Finance has reserved further funds in the 2010 budget. Detailed information is awaited on further payments made or envisaged with regard to the binding judgments concerning “old savings”.

As regards measures to enhance compliance with domestic judgments it has been recalled that the 2003 Criminal Code made it criminal offence to refuse enforcement of a final and enforceable decision of the Constitutional Court, Court of Bosnia and Herzegovina or of the Human Rights Chamber of Bosnia and Herzegovina (the “HRC”). In the past five years, the State Public Prosecution has brought 64 cases against unknown perpetrators of this new crime; eight of them have been closed, while the other cases are pending. There have also been four cases against identified perpetrators, with two individuals convicted. One conviction has been set aside on appeal, while the appeal for another conviction is still pending. In addition, the Secretariat organised in co-operation with the Government Agent of Bosnia and Herzegovina a round table in Sarajevo on 11/06/2009 with particular emphasis on enhancing compliance with domestic judgments.

Information is awaited on any progress in implementing the conclusions adopted at the round table and on any new measure taken or envisaged to ensure compliance with HRC decisions.

The ECtHR’s judgments in these cases were published and forwarded to the courts involved as well as to other authorities, such as Court of Bosnia and Herzegovina, Constitutional Court, Supreme Courts and governments in both entities and Council of Ministers of Bosnia and Herzegovina.

#### 45. BIH / Karanović

39462/03  
*Judgment of 20/11/2007, final on 20/02/2008*

*Last examination: 1072-4.2*

**Non-enforcement since 2003 of a final decision of the former Human Rights Chamber of Bosnia and Herzegovina (“HRC”) finding discrimination against persons returning to the Federation of Bosnia and Herzegovina (“the Federation”) from the Republika Srpska (“RS”), after being internally displaced during the armed conflict, as they were not entitled to pension rights under the Federation fund, generally more favourable than those they had under the RS fund; the HRC notably ordered the transfer of the applicant’s pension rights to the Federation’s pension fund and that the Federation authorities should take all necessary legislative and administrative measures to remedy in general the discrimination established (violation of Art. 6§1).**

**M** The ECtHR ordered the enforcement of the HRC’s decision in respect of the applicant. The applicant’s pension was, accordingly, transferred to

the Federation Pension Fund as from 21/02/2008. The difference between the amounts he had received from the RS Pension Fund and those

payable under the more favourable regime of the Federation has been paid. No further individual measure appears necessary.

**GM** The Government of Bosnia and Herzegovina has indicated that on 16/07/2008 the Federation adopted an action plan to deal with the problem of non-enforcement of orders of the HRC raised by the *Karanović* judgment.

Based on the analysis carried out under this first plan, the Federation government amended the plan on 10/12/2008. In particular, the amended Action Plan provided that the Federation Ministry of Labour and Social Policy would initiate appropriate amendments to the Pension and Disability Insurance Act.

These amendments were drafted in February 2009 and provided for the payment of the difference in pension received from the RS Fund by those who had returned to the Federation from this entity and the pension that would have been payable from the Federation Fund, provided that the latter was greater. However, on 28/07/2009, the Federation Parliament did not adopt the proposed amendments and recommended that this issue should be resolved at the state level.

On 28/08/2009, the Federation Fund presented its assessment of the number of pensioners on the territory of the Federation who obtained their pension before 30/04/1992 and whose pensions are presently paid by the RS Fund, as well as on the costs to be incurred by the Federation Fund if it were to compensate for differences in pension levels. 3 785 pensioners were found to be entitled to additional payments. The Federation Fund also stressed that there was no reliable or comprehensive information on the number of pensioners really concerned. Available information and a request from the RS that 38 000 pensioners be transferred to the Federation Fund – made in the context of ongoing negotiations between the entities – indicated that the number of pensioners, and thus the related costs, might be considerably higher than what had been calculated on the basis of the original 3 785 pensioners identified. Bearing in mind the difficult financial situation of the Federation Fund, it proposed that the additional costs in respect of the pensioners who had returned from the RS to the Federation should be borne by the Federation Budget.

The RS Fund has also brought an action against the Federation Fund regarding this transfer of pensioners. The proceedings are currently pending before the Federation Constitutional Court.

In the context of the above-mentioned negotiations between the two entities, the Ministry of Civil Affairs of Bosnia and Herzegovina has established a task group charged with resolving the problem of payment of pensions between the entities. No agreement has been reached so far and the Ministry has taken no steps in the matter since the request to transfer 38 000 pensioners to the Federation Fund was received.

Before the CM the Government of Bosnia and Herzegovina has added that recent statistical data has shown an increase in pension amounts in the RS and a levelling of the cost of living between the two entities. According to the government, the transfer of pensioners as requested would not be appropriate under such circumstances. In addition, other decisions issued by the HRC have not ordered the transfer of pensioners to the Federation Fund, as was the case in the present case.

As regards the problem of non-enforcement in general, it has also been noted before the CM that according to the 2003 Criminal Code of Bosnia and Herzegovina (Art. 239), failure to enforce final and enforceable HRC decisions amounts to a criminal offence. Reference has also been made to the special round table organised by the Secretariat and the Government Agent of Bosnia and Herzegovina in Sarajevo on 11/06/2009 with a view to enhance compliance with domestic judgments. However, the authorities have stressed in this regard that the enforcement of the present judgment would primarily require legislative measures.

In addition, the authorities have stressed the special character of the present case and that the HRC and the Constitutional Court of Bosnia and Herzegovina has rendered four similar decisions involving 19 individual cases and that these have been, or are in the course of being, executed. The authorities have thus confirmed that the difference in pension has been paid to 17 individuals.

The assessment made so far is that, considering the number of potential applicants, it appears necessary for the authorities of the respondent state to continue their efforts to find an appropriate solution. Information is thus awaited on further progress made and a calendar for implementing the measures envisaged to eliminate discriminations in the pension legislation as ordered by the HRC decision in the *Karanović* case, including any new measure envisaged following the failure by the Federation Parliament to adopt relevant legislative amendments. Information would be also appreciated on the nature and status of the proceedings initiated by

the RS Fund against the Federation Fund before the Federation Constitutional Court. Information is also awaited on the implementation of the conclusions adopted at the round table of 11/06/2009 and on any special measure taken or envisaged to ensure that the HRC decisions are enforced.

The judgment has been translated into the official languages of Bosnia and Herzegovina, published and forwarded to all the administrative and judicial bodies involved in the present case, the Federation Pension Fund and the RS Pension Fund.

46. **GEO / SARL “IZA” and Makrakhidze (see AR 2007, p. 107)  
GEO / “Amat-G” Ltd and Mebaghishvili**

28537/02 and 2507/03  
Judgment of 27/09/2005, final on 27/12/2005  
Judgment of 27/09/2005, final on 15/02/2006

Last examination: 1059-4.2

**Infringement of the applicant companies’ right of access to a court on account of the administration’s failure to enforce final domestic judgments ordering the payment of state debts (violation of Art. 6§1 and Art. 1 of Prot. No. 1); lack of an effective remedy in this respect (violation of Art. 13).**

**IM** No individual measure is required as all damages are covered by the just satisfaction awarded.

**GM** In its judgments, the ECtHR noted that the failure to enforce domestic judicial decisions was not connected with the conduct of the enforcement authorities, but with budgetary inadequacies, and that this problem was a persistent one, recognised by the national authorities.

The initial responses by the Georgian authorities were presented in AR 2007. In March 2009, the government stated that the budgetary problem no longer existed.

Statistics were supplied concerning the state budget allocated to the enforcement of domestic judicial decisions, the amount committed to the enforcement of domestic judicial decisions by the new National Bureau of Enforcement, as well as the number of decisions enforced.

Information was also provided on the structural reform of the enforcement system. As from October 2008, following the amendments of July

2008 brought to the Enforcement Proceedings Act of April 1999, the former execution department of the Ministry of Justice was replaced by the National Bureau of Enforcement, a public-law legal entity attached to the Ministry of Justice and its regional bureaux. Significant material resources are being devoted to setting up these new structures. An action plan of the National Bureau of Enforcement for the year 2009 has been adopted for this purpose.

The CM noted in response with satisfaction that budgetary resources have been allocated to the enforcement of domestic judgments ordering payment of state debts, and that a reform of the system of execution is under way. The CM invited the authorities to keep it informed of the development of the reform and other relevant measures, recalling that detailed information is in particular awaited on the compulsory enforcement procedure against state authorities and the possibilities of obtaining compensation as well as more generally on measures aiming at ensuring the effectiveness of domestic remedies.

47. **ITA / Antonetto (Final Resolution (2009) 86)**

15918/89  
Judgment of 20/07/2000, final on 20/10/2000

Last examination: 1065-1.1

**Failure by Italian administrative authorities to enforce a judgment of the Council of State of 1967 ordering the total or partial demolition of a block of residential flats built unlawfully next to the applicant’s house (violation of Art. 6§1). The municipality refused to comply with the judgment for more than 14 years after the date of recognition by Italy of the ECtHR’s competence to examine individual petitions (1/08/1973) and despite five enforcement orders ordering demolition.**

**Breach of the applicant’s right to the peaceful enjoyment of her possessions due to the administrative authorities’ refusal, without any legal basis (until 1988, when a Law regularising illegal buildings, entered into force) to enforce final judicial decisions ordering them to proceed to the demoli-**

**tion insofar as the building at issue robbed her house of natural light and blocked her views (violation of Art. 1 of Prot. No. 1).**

**IM** The applicant died in 1993 and a just satisfaction for pecuniary and non-pecuniary damage was awarded to her heir (an association).

**GM** Italian case-law, applied in accordance with the general rules of the Civil Code, has progressively affirmed that reparation by means of compensation is the basic guarantee in situations where the damage sustained involves an interest protected under the Constitution. A case in point is the enforcement of court orders, the possibility of litigation extending to the implementation of court decisions in conformity with the case-law of the ECtHR. Since 1999, the Court of Cassation has explicitly recognised the right to compensation in

cases of illegal administrative acts. In 2000, a new law codified this principle, which is applicable in case of unreasonable delay in enforcing judicial decisions.

The above-mentioned case-law developments on state liability strengthens the provisions already in force at the material time concerning the liability of civil servants. Under the Italian Criminal Code, responsible officials may be prosecuted if they refuse to accomplish the official acts they are in charge of enforcing.

The judgment has been published and dealt with in seminars.

#### 48. **MDA / Olaru**

476/07+  
*Judgment of 28/07/2009, final on 28/10/2009 (Pilot judgment)*

*Last examination: 1072-2.1*

**Violations of the applicants' right of access to a court and right to peaceful enjoyment of their possessions on account of the state's failure to enforce final domestic judgments awarding them housing rights or monetary compensation in lieu of housing (violations of Art. 6 and Art. 1 of Prot. No. 1).**

**IM** The ECtHR decided that the question of just satisfaction under Art. 41 of the ECHR must be reserved and that a further procedure be fixed, with due regard to the possibility of an agreement being reached between the Moldovan Government and the applicants.

**GM** The ECtHR used the "pilot-judgment" procedure to handle the problem raised by the present case. It stressed that the non-enforcement of final judgments is Moldova's prime problem in terms of number of applications pending before it and that the violations found in the present judgment reflect a persistent structural dysfunction.

The ECtHR provided in its judgment further indications with regard to the general problem revealed. These may be summarised as follows:

- **The general problem of implementing decisions regarding social housing rights:** The problems at the root of the violations found stem from provisions in Moldovan law granting social housing to a very wide category of persons at the expense of local authorities without providing adequate funding for such social projects. The new law prepared by the Ministry of Justice adopted on 4/12/2009 cancels the social housing privileges for

twenty-three categories of persons. This law should solve the problem for the future, but not for the already existing judgments granting social housing rights. Therefore, the ECtHR left it to the CM to ensure that the Moldovan Government adopts the necessary measures.

- **Lack of effective domestic remedies:** The ECtHR invited the Moldovan authorities to introduce, under the supervision of the CM and within six months of the date on which this judgment became final, a remedy which secures genuinely effective redress for violations found in this judgment. However, a distinction has to be made between the cases already pending before the ECtHR and the potential cases to be brought in the future.

As regards the individual applications lodged with the ECtHR before the delivery of the pilot judgment, the respondent state is expected to grant adequate and sufficient redress within one year of the date on which the judgment became final. Pending the adoption of domestic measures by the Moldovan authorities, the ECtHR decided to adjourn adversarial proceedings in all these cases for one year from the date on which this judgment became final.



Concerning the individual applications lodged after the delivery of the pilot judgment, the ECtHR decided to adjourn, for a period of one year from the date on which this judgment become final, the proceedings on all new applications, in which the applicants complain solely of non-enforcement and/or delayed enforcement of domestic judgments concerning social housing.

When examining the situation in December 2009, the CM took note of the information provided shortly before the meeting and at the meeting by the Moldovan authorities regarding the measures taken to comply with the pilot judgment (notably relating to the proposals to abolish the housing law privileges and to the work being carried out to iden-

tify all other persons concerned by the problem revealed by the ECtHR's judgment).

The CM stressed the importance of timely compliance with the pilot judgment and called upon all Moldovan authorities to give priority to finding appropriate solutions in order to provide adequate and sufficient redress to all persons in the applicants' situation within the time-limits set by the ECtHR.

The CM further noted that the Moldovan authorities appealed for possible financial support for the proper execution of the measures required by the pilot judgment to the Council of Europe Development Bank and to other international financial institutions. Bilateral consultations took place in Chisinau on 10-11 December 2009.

#### 49. MKD / Jankulovski and other similar cases

6906/03

*Judgment of 03/07/2008, final on 03/10/2008*

*Last examination: 1065-4.2*

**Infringement of the applicants' right to a fair trial (all cases) and to the peaceful enjoyment of possessions (*Jankulovski* case) as a result of the authorities' failure to carry out effective enforcement proceedings (pending from as early as 1989) against other civil parties as well as lack of an efficient remedy in respect of excessive length of enforcement proceedings (*Krsto Nikolov* case) (violations of Art. 6§1, of Art. 13 and of Art. 1 of Prot. No. 1).**

**IM** Considering the lack of any causal link between the violation found and the pecuniary damage alleged, or the unsubstantiated claims for the pecuniary damage alleged, the ECtHR awarded only non-pecuniary damage, except in the *Jankulovski* case, where no claim for just satisfaction has been submitted.

Before the CM the Government indicated on 9/04/2009 that in cases of *Peevi* and *Krsto Nikolov* the enforcement proceedings have been closed while in the other cases the proceedings were still pending. Subsequently the Government indicated that in accordance with a draft law on the transfer of competence for enforcement proceedings to private bailiffs, the applicants would be enabled to request the transfer of their enforcement cases from ordinary courts to private bailiffs until 01/07/2010. After that date, the applicants will be under an obligation to withdraw their enforcement cases from the courts and to transfer them to private bailiffs within six months.

The CM has requested information on measures taken or envisaged by the authorities with a view to ensuring that the still pending enforcement proceedings are effectively and rapidly brought to an end, bearing in mind that those in the *Jankulovski* case have been pending since 1996.

**GM** Some twenty similar cases concerning the excessive length of enforcement proceedings are currently pending in respect of the respondent state before the ECtHR. Similar violations, but in a particular context, are also examined in the *Nesovski* case (judgment of 24/04/2008).

**Effective enforcement proceedings and peaceful enjoyment of possessions:** It appears from the information provided by the authorities, most recently on 29/06/2009 that the new Enforcement Act, in force since 2006, and the new system of private bailiffs are capable of preventing the excessive length of enforcement proceedings. According to the statistical data provided, after the introduction of the private bailiffs system, the percentage of enforced court decisions has doubled and significant efforts have been done to accelerate enforcement proceedings. The "old" enforcement cases will continue to be enforced by the domestic courts until 2010 and as from 2011 the private bailiffs will be exclusively responsible for enforcement. Preparations for the transfer of "old" enforcement cases from the domestic courts to the private bailiffs are under way.

The CM has thus requested information on further developments in respect of the measures envisaged to transfer enforcement to private bailiffs and on

further statistics concerning the percentage of enforced court decisions in 2009 and the first half of 2010. In addition, the CM has also requested information on the measures taken to secure, if necessary, police assistance in enforcement proceedings and to avoid any protraction resulting from the excessive length of expert examinations.

The issue of effective remedy in respect to excessive length of proceedings is being examined in the *Nesevski* case (judgment of 24/04/2008).

## 50. RUS / Burdov No. 2

33509/04  
Judgment of 15/01/2009, final on 04/05/2009 (Pilot judgment)

CM/Inf/DH (2006) 19rev2, CM/Inf/DH (2006) 45, IR (2009) 43, (2009) 158

Last examination: 1072-4.3

**Violation of the applicant's right to a court due to the structural problem of the social authorities' failure to enforce final judicial decisions ordering them to pay certain compensation and allowances (with subsequent indexation) for health damage sustained by the applicant during emergency and rescue operations at the Chernobyl nuclear plant and damages for their delayed enforcement (violations of Art. 6§1 and of Art. 1 of Prot. No. 1); lack of an effective remedy in respect of the continued non-enforcement of the judgments in the applicant's favour (violation of Art. 13).**

**IM** All domestic judgments in the applicant's favour have been enforced. The ECtHR awarded just satisfaction in respect of non-pecuniary damage sustained.

**QM** The measures aimed at solving the structural problem of non-enforcement or delayed enforcement of final judicial decisions are examined in the context of the *Timofeyev* group of cases.

**Measures in respect of other similar applications pending before the ECtHR:** Pursuant to the "pilot judgment procedure", the ECtHR held, as regards the individual applications in other similar cases, lodged before the delivery of the judgment and communicated to the Government, that the Russian Federation was under an obligation to grant adequate and sufficient redress, before 04/05/2010, to all victims of non-payment or unreasonably delayed payment by state authorities of a domestic judgment debt in their favour. The ECtHR furthermore decided to adjourn until 04/05/2010 the proceedings in all these cases as well as on all new similar applications lodged after the delivery of the *Burdov No. 2* judgment.

In its IR (2009) 158, adopted in December 2009, the CM acknowledged the authorities' engagement in ad hoc settlement of numerous similar individual cases pending before the ECtHR and encouraged them to continue their efforts to that effect. Information is awaited on ad hoc measures taken to

**Publication and dissemination:** The ECtHR's judgments have been translated and published on the website of the Ministry of Justice and were sent out with a note on the violations found to all relevant courts and authorities, including to all courts of appeal in the country and to the Supreme Court. The *Jankulovski* judgment was distributed in electronic version by the Academy for Training of Judges and Public Prosecutors to members of the judiciary. It was also studied in depth during training provided for judges and public prosecutors.

grant adequate and sufficient redress to all victims of non-payment or unreasonably delayed payment by state authorities of domestic judgment debts in their favour.

**Lack of effective remedy:** The ECtHR's judgment indicated that a draft constitutional law setting up a remedy before domestic courts in case of excessive length of proceedings and execution proceedings had been prepared by the Supreme Court of the Russian Federation and submitted in September 2008 to the Parliament. In its decision, the ECtHR held that the Russian Federation had to introduce within six months from the date on which the judgment became final, i.e. before 04/11/2009, a remedy which secured genuinely effective redress for the violations of the ECHR on account of the state authorities' prolonged failure to comply with judicial decisions delivered against the state or its entities.

Before the CM the government indicated that the above draft law had not received the necessary support and that a special working group involving representatives of the main state agencies had been set up upon the President's mandate with a view to introducing the remedy required by the ECHR in the Russian legal system.

It was in this context recalled before the CM that, in its IR (2009) 43 in the *Timofeyev* group of cases adopted in March 2009 shortly before the present

judgment became final, the CM had called upon the Russian authorities [...] to set up [...] effective domestic remedies either through rapid adoption of the draft constitutional law mentioned above or through amendment of the existing legislation in line with the ECHR's requirements.

**CM global assessment in IR (2009) 158:** In September 2009, the Russian authorities sent to the Secretariat the draft law prepared by the special working group mentioned above and, upon the authorities' request, the Secretariat provided its comments on the preliminary version of this draft law, based on the experience of other countries in resolving similar problems and on the ECtHR's case-law. The draft law was, however, not rapidly submitted to Parliament and in December 2009, the CM adopted IR (2009) 158 in which it:

- Recalled that it had given priority to the case in accordance with the rules for the supervision of the execution of the judgments of the ECtHR, with particular focus on the urgent requirement to introduce an effective domestic remedy and to settle similar cases lodged with the ECtHR before the delivery of the pilot judgment;
- Noted with satisfaction the Russian authorities' prompt and constructive response to the pilot judgment of the ECtHR and to the CM's above-mentioned IR;
- Noted with interest that the Russian authorities have engaged without delay in the ad hoc settlement of numerous individual cases pending before the ECtHR and offered redress to the first group of applicants in line with the requirements of the pilot judgment;
- Noted further the efforts deployed within the above mentioned special inter-ministerial commission, which resulted in the preparation of draft laws setting up a domestic remedy;
- Noted with satisfaction that these draft laws were subject to consultations with the Council of

Europe's Department for the execution of the judgments of the ECtHR;

- Recalled that the need to set up such a remedy was widely acknowledged at the domestic level and was underlined in the strong political message delivered by the President of the Russian Federation in his address to the Federal Assembly on 5/11/2008;
- Regretted, however, that the deadline set by the ECtHR for the introduction of an effective domestic remedy expired on 4/11/2009 without these draft laws having even been submitted to the Parliament;
- Considered in this respect that the positive developments of the case-law presented by the Russian authorities, tending to offer redress in certain circumstances, did not obviate the urgent need for the adoption of a law securing the availability and effectiveness of a domestic remedy against the state's recurrent failure to honour judgment debts, as required by the pilot judgment of the ECtHR and the CM's IR (2009) 43;
- Stressed the obligation of every state, under Art. 46, paragraph 1 of the ECHR, to abide by the judgments of the ECtHR;
- Recalled with concern that large categories of persons, including vulnerable groups, continued to be deprived of an effective domestic remedy against violations by the state of its obligation to honour judgment debts, including those in the social domain;
- Strongly urged the Russian authorities to adopt without further delay the legislative reform required by the pilot judgment;
- Encouraged them to continue to resolve the similar individual cases lodged with the ECtHR before the delivery of the pilot judgment and to keep the CM regularly informed of the solutions reached and of their subsequent implementation.

#### 51. RUS / Timofeyev and other similar cases (see AR 2007, p. 109)

58263/00  
*Judgment of 23/10/2003 final on 23/01/2004*  
*CM/Inf/DH (2006) 19rev2, CM/Inf/DH (2006)*  
*19rev3, CM/Inf/DH (2006) 45*

*IR (2009) 43*  
*Last examination: 1072-4.3*

**Violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour including decisions ordering welfare payments, pension increases, disability allowance increases, etc. (violations of Art. 6§1 and of Art. 1, Prot. No. 1).**

**M** The ECtHR awarded just satisfaction to all applicants in respect of non-pecuniary damage

sustained and, in most cases it also indicated that the appropriate form of redress was enforcement of

the outstanding judgments within a period of three months from the date on which the ECtHR's judgments became final. The CM has been informed that in most of the cases, the domestic judgments have been enforced. Information is expected on the progress made in the enforcement of still outstanding domestic judgments as well as on the payment of default interest in case of delayed enforcement (see also AR 2007).

**GM** In 2005, the Russian authorities engaged in a bilateral project with the European Commission for the Efficiency of Justice (CEPEJ) in order to examine the situation and find appropriate solutions. In view of the complexity of the problem, the Department for the execution of judgments of the ECtHR also held in October 2006 and June 2007 high-level Round Tables in Strasbourg (see for details AR 2007).

In the light of the information provided by the Russian authorities, the CM adopted IR (2009) 43 in March 2009, in which it welcomed the political will repeatedly affirmed by the President of the Russian Federation to resolve the problem of non-enforcement of domestic judicial decisions against the State. The CM called upon the competent authorities to rapidly translate this political will into concrete actions in line with hundreds of judgments delivered by the ECtHR in favour of large vulnerable groups of the Russian population.

The CM also recognised the Russian authorities' important efforts to resolve the underlying structural problems. The CM noted in this context with satisfaction that these measures are, to a certain extent, based on the proposals made in the CM's documents (see in particular CM/Inf/DH (2006) 19 rev 3 and CM/Inf/DH (2006) 45) and welcomed the authorities' co-ordinated and interdisci-

plinary approach to their implementation. It considered, however, that the major effects of the adopted measures yet remained to be demonstrated and that further action was also needed in certain problematic areas such as the enforcement of judicial awards concerning Chernobyl victims, compensation for damages sustained during the military service and the provision of social housing.

The CM in particular emphasised the importance of setting up effective remedies and that the provision of such remedies was all the more pressing in case of repetitive violations, so as to enhance the remedial capacity of the national judicial system.

It noted with interest the draft federal constitutional law submitted by the Supreme Court of the Russian Federation to Parliament on 30/09/2008 and that a special working group involving the representatives of the main state agencies had been set up upon the President's mandate rapidly to find an appropriate solution with a view to introducing a remedy required by the ECHR in the Russian legal system.

As regards the latter point, in January 2009 the ECtHR delivered a pilot judgment, which became final on 04/05/2009, requiring the Russian Federation to introduce a remedy to secure effective redress for the violations of the ECHR on account of the state authorities' prolonged failure to comply with judicial decisions delivered against the state or its entities. The examination of general measures in this respect is pursued in the framework of the execution of this pilot judgment (see *Burdov No. 2* case, 33509/04 and IR (2009) 158).

In June 2009, the Russian authorities provided new information on the measures which were being taken following IR (2009) 43. This information is being assessed.

## 52. UKR / Zhovner and other similar cases (see AR 2007, p. 110; AR 2008, p. 144)

56848/00  
Judgment of 29/06/2004, final on 29/09/2004  
IR(2008)1, (2009) 159

Memorandum CM/Inf/DH (2007) 30 (rev. in English only) and CM/Inf/DH (2007) 33

Last examination: 1072-4.3

**Failure or serious delay by the Administration or state companies in abiding by final domestic judgments; absence of effective remedies to secure compliance; violation of applicants' right to protection of their property (violations of Art. 6§1, 13 and 1, Prot. No. 1).**

**IM** Information remains expected on the measures taken to ensure the rapid enforcement of domestic judgments, where needed.

**GM** In December 2009, the CM, taking stock of the developments since its last IR (2008) 1, adopted a new IR (2009) 159, in which it notably:

- Recalled that it had been supervising the adoption by Ukraine of general measures to prevent new

similar violations of the ECHR for more than five years;

- Stressed that more than three hundred judgments delivered within this period highlighted the existence of complex structural problems at domestic level affecting large categories of persons;
- Recalled its consistent position, shared by the Ukrainian authorities, that the resolution of these problems required the implementation of comprehensive and complex measures;
- Noted that, notwithstanding a number of initiatives reported by the authorities, no satisfactory results had been achieved in their implementation;
- Noted further that these initiatives, which are summarised in its first IR (2008) 1, adopted on 06/03/2008, addressed only certain specific aspects of the complex problem of non-enforcement of domestic courts' decisions;
- Recalled that in this first IR it therefore strongly encouraged the Ukrainian authorities to enhance their efforts in tackling the problem of non-enforcement of domestic courts' decisions by setting up an overall effective strategy, coordinated at the highest political level;
- Recalled, in particular, that it requested the Ukrainian authorities to take urgent measures to resolve the structural problems underlying the repetitive violations found by the ECtHR, as well as to set up a domestic remedy against the excessive length of enforcement of domestic courts' decisions;
- Noted with grave concern that no concrete or visible progress has been made in this field since the adoption of its first IR;
- Recalled that the dysfunction of the justice system, as a consequence of the non-enforcement of

the domestic courts' decisions, represents an important danger, not least for the respect of the Rule of Law, frustrates citizens' confidence in the judicial system and questions the credibility of the state;

- Deplored that, despite the urgency of the situation and its repeated calls to that effect, the authorities had continuously failed to give priority to finding effective solutions to the important problem of non-enforcement of domestic courts' decisions;
- Reiterated its call to the authorities at the highest level to adhere to their political commitment to resolving the problem of non-enforcement of domestic courts' decisions and thus complying with Ukraine's obligation under Art. 46§1 of the ECHR, to abide by the judgments of the ECtHR;
- Strongly urged the authorities:
  - to rapidly adopt general measures, including legislative initiatives previously reported to the CM, to solve structural problems at the origin of these persistent violations of the ECHR;
  - to set up as a matter of priority a domestic remedy against excessive length of enforcement of domestic courts' decisions which would secure adequate and sufficient redress in line with the ECHR requirements.

It is in this context to be noted that in order to share with other states its experiences in addressing the problem of non-execution of domestic judicial decisions Ukraine joined in 2009 the HRTF project "Removing Obstacles to the non-enforcement of domestic judgments/Ensuring effective implementation of domestic court judgments". Activities under this three-year project have begun and will further develop in 2010.

#### E.4. Unfair proceedings – civil rights

##### 53. BGR / Mihailov (Final Resolution (2009) 76)

52367/99  
Judgment of 21/07/2005, final on 21/10/2005

Last examination: 1065-1.1

**Lack of judicial review of the refusal by two medical commissions, not qualifying as "tribunals", to classify the applicant's disability status as first-degree in 1998 (violation of Art. 6§1).**

**IM** After the applicant's death in 2001, his children, who had continued the proceedings before the ECtHR, had the possibility to ask for the reopening of the civil domestic proceedings concerning their father's disability status.

**GM** In 2004, after the facts at the origin of the case, a new Health Act was adopted, which provides for a judicial review by the Sofia City court in cases similar to this one.

54. **FRA / Asnar (examination in principle closed at the 1051st meeting in March 2009)**

12316/04  
Judgment of 18/10/2007, final on 18/01/2008

Last examination: 1051-6.1

**Unfairness of proceedings before the Conseil d'Etat in 1999, concerning the applicant's request for an early pension and for his military service to be taken into account for this purpose: violation of the adversarial principle, due to the fact that a submission by the Ministry of Education had not been communicated to the applicant. Given that this submission included a reasoned opinion on the merits of the applicant's claim, the ECtHR held that the applicant should have been given the opportunity to submit his comments (violation of Art. 6§1).**

**IM** The applicant won his case at first instance and was consequently awarded a pension by the Ministry of Education in 1991. Following the decision of the Conseil d'Etat in 1999, finding for the state and establishing that the applicant was only entitled to a pension from 1996 onwards, the aforementioned ministry asked for reimbursement of the unduly paid amounts (over 122 000 euros).

The applicant appealed to the French administrative courts against the decisions requiring reimbursement of the pension (these decisions have been suspended) and requested an award for damages allegedly sustained as a result of the postponement of his pension entitlement from 1991 to 1996. In 2005 the Bordeaux Administrative Tribunal acceded in part to his request and ordered that the State pay the applicant 120 000 euros for pecuniary damage and 11 000 euros for non-pecuniary damage.

Before the ECtHR, whereas the appeal against this decision was still pending, the applicant requested the reimbursement of the sums which had been claimed by the authorities, but the ECtHR rejected this request, on the ground that it could not speculate on outcome of the proceedings at issue in the absence of a violation of Art. 6§1.

The decision handed down by the Bordeaux Administrative Tribunal in 2005 was subsequently confirmed in 2008 by a judgment of the Administrative Court of Appeal. This judgment was not challenged. The CM therefore concluded that the case did not raise any other issues of individual measures.

**GM** The judgment was published and sent to the different administrative courts concerned. Taking into account that the French courts grant direct effect to the ECHR, the measures taken to draw their attention to this judgment should suffice to avoid new similar violations.

E.5. **Unfair proceedings – criminal charges**55. **ARM / Harutyunyan (see AR 2008, p. 144)**

36549/03  
Judgment of 28/06/2007, final on 28/09/2007

Last examination 1072-4.2

**Breach of the right to fair trial on account of the use of statements obtained under duress when convicting in 1999 the applicant, a serviceman in the army, for murder of another serviceman to 10 years' imprisonment (violation of Art. 6§1).**

**IM** The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. The applicant was detained from 17/04/1999 to 22/12/2003, when he was released on parole. In 2007, after the ECtHR's judgment, the applicant sought to obtain the reopening of the incriminated proceedings before the Court of cassation on the basis of the provisions of the Code of Criminal Procedure in force at the time. After lengthy proceedings before different jurisdictions, including the Constitutional Court, and following a change

of the law, the applicant finally obtained the reopening of the proceedings.

The CM has stressed that the new trial must respect the requirements of Art. 6 of the ECHR and has invited the Armenian authorities to keep it informed of the development of the proceedings. In addition, information is awaited regarding the wording today of the relevant provisions concerning the reopening of domestic criminal proceedings.

**GM** Under the Code of Criminal Procedure (Art. 105), as worded already at the time of the events, it is illegal to use as a basis for a criminal charge, or as evidence in criminal proceedings, facts obtained by force, threat, fraud, violation of dignity or through the use of other illegal actions. Recent examples of the application of this provision of the Code of Criminal Procedure have been requested.

Confirmation that the judgment is included in the general training curriculum for police officers, prosecutors and judges as well as other further measures inter alia the dissemination of the ECtHR's judgment to military and civil courts and to the police, have been requested. The ECtHR's judgment has been translated and published.

56. **BEL / Göktepe (Final Resolution (2009) 65) (see AR 2007, p. 115)**

50372/99  
Judgment of 2/06/2005, final on 2/09/2005

Last examination: 1059-1.1

**Unfairness of criminal proceedings brought against the applicant and the two co-accused in 1998: lack of individual examination on the question of the extent of the applicant's guilt, the East Flanders Assize Court having refused to formulate individual questions to the jury on the existence of aggravating circumstances (violation of Art. 6 § 1).**

**IM** In the circumstances of the case, reopening of the impugned proceedings seemed the best means of remedying the violation and erasing its consequences. At the time of the judgment, however, Belgian law did not provide for such a possibility.

A law allowing criminal proceedings to be reopened following a judgment of the ECtHR was therefore adopted on 1/04/2007 and came into force on 1/12/2007. Following a violation of the ECHR, application may be made to reopen proceedings in cases resulting in the conviction of the applicant or another person of the same offence and on the basis of the same evidence (new Art. 442 bis of the Code of Criminal Investigation). Such application may be made by the person convicted or his beneficiaries, or by the Prosecutor General at the Court of Cassation either of his own motion or at the request of the Minister of Justice. Requests to re-open proceedings must be lodged within six months of the date on which the ECtHR's judgment becomes final, and are examined by the Court of Cassation which orders the reopening if it considers that the applicant or his beneficiaries continue to suffer very serious negative consequences and the decision impugned is contrary to the ECHR, or if the violation arose from mistakes or procedural shortcomings so

serious as to raise significant doubt regarding the outcome of the proceedings at issue.

The law provides for transitional measures to render it applicable to the instant case and any other case that may have been pending before the CM when it was adopted. In such cases, the application for reopening proceedings must be lodged within six months of the entry into force of the law. In May 2007, the Federal Justice Service wrote to the applicant's counsel informing him of the possibility for the applicant to lodge a request to have the proceedings reopened. The government indicated that the applicant had been granted leave from prison in April 2006 and that he had been released on parole on 30/05/2007.

**GM** The ECtHR's judgment has been examined by a group of experts on criminal procedure within the Collegium of Prosecutors General. It was quickly transmitted to the Collegium of Prosecutors General in order to be sent out to the country's appeal courts, to the Federal Prosecutor and to the Prosecutor General at the Court of Cassation. Following the broad dissemination of this judgment to courts, Assize Court presidents now formulate individual questions to juries regarding objective aggravating circumstances.

57. **FIN / Kallio (examination in principle closed at the 1065th meeting in September 2009) FIN / Hannu Lehtinen**

40199/02 and 32993/02  
Judgment of 22/07/2008, final on 22/10/2008  
Judgment of 22/07/2008, final on 22/10/2008

Last examination: 1065-6.1

**Unfairness of tax surcharge proceedings brought against the applicants, due to the administrative courts' refusal, in decisions of 2001 and 2002, to hold oral hearings and to hear the applicants' testimony or that of witnesses (violations of Art. 6§1).**

**IM** The ECtHR awarded both applicants just satisfaction in respect of non-pecuniary damage. One of the applicant's also requested pecuniary damage, but this claim was rejected by the ECtHR as it could not speculate on the outcome of the proceedings had they been fair.

According to the Administrative Judicial Procedure Act of 1996, an administrative final decision may be subject to an extraordinary appeal lodged by an individual by means of procedural complaint, restoration of expired time or annulment. The deadline for lodging an application for annulment before the Supreme Administrative Court is in general of five years from the date the impugned decision became final, but it can be extended if there are very significant reasons. Thus it seems that the applicants may request re-opening of the administrative proceedings following the ECtHR's judgments.

**GM** The ECtHR observed that, although the Administrative Judicial Procedure Act provides for

the holding of an oral hearing if requested by a private party, except when such a hearing is deemed clearly unnecessary, in fact from 2000 to 2006 the Supreme Administrative Court had not held any such oral hearings in tax matters. As to the eight administrative courts, out of the 603 cases where an oral hearing was requested, such a hearing was only held in 129 cases.

According to the new statistics submitted by the Ministry of Justice as to the number of oral hearings held in tax matters proceedings in 2006, 2007 and 2008, the proportion of requests for oral hearings accepted has risen and is now between 30% and 40%. This increase concerns all tax matters proceedings, not only tax surcharge proceedings.

In addition to this development, Finnish excerpts/summaries of the judgments were published in the Finlex legal database and the judgments were sent out to numerous domestic authorities in order to underline the ECHR requirements.

58. **FIN / V.**

40412/98  
Judgment of 24/04/2007, final on 24/07/2007

Last examination: 1072-4.2

**Unfair criminal proceedings (1996-97) as the police concealed important facts (notably the metering information on the applicant's telephone), denying the applicant the opportunity to argue in full and in due time his allegation that he was entrapped by the police into committing the drug offences he was charged with. Consequently, the courts were prevented from assessing the relevance of the withheld information for the defence (violation of Art. 6§1).**

**IM** As a result of the above proceedings, the applicant was convicted in 1996 for drug related offences and sentenced to three years and six months' imprisonment. The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. The Finnish Code of Judicial Procedure allows the applicant to request the reopening of criminal proceedings that have violated the ECHR. The CM has not been informed of any such request from the applicant and no further issue of individual measures has been raised.

**GM** At the material time, the national legislation did not contain any provision on the use of undercover transactions or of undercover agents. After the lodging of the case with the ECtHR, the authorities have undertaken a number of adjust-

ments and reforms of the legislative and regulatory framework regarding unconventional preventive methods and investigative techniques, including undercover operations and induced deals.

A first amendment was the Act on the Openness of Government Activities in 1999 providing for the right of access to information for any person whose right, interest or obligation in a matter is concerned.

Subsequently, the Police Act was amended in 2001 and in 2008 both the Police Act and the Coercive Measures Act were supplemented with a new regulation of the Ministry of Interior on arranging, using and supervising secret information gathered by the police.

In May 2009, the Ministry of Justice received a report on an overall reform of the Criminal Investi-



gations Act, the Coercive Measures Act and the Police Act, drafted by a committee specially appointed for this purpose in 2007. The draft bill should be submitted to the parliament in spring 2010.

According to the report, the Criminal Investigations Act should give parties the right of access to what has appeared during the investigation. The Coercive Measures Act should provide that at the conclusion of the pre-trial investigation, the suspect must be informed of undercover actions and coercive measures related to him, such as the telephone metering, and all irrelevant information gathered must be destroyed. If the pre-trial investigation has not ended within a year calculated from the

moment the use of coercive measure had ceased, the suspect must nevertheless be notified, unless the court decides otherwise.

The CM awaits information on the development of the legislative process under way and on the final legislative framework concerning access of accused persons to all information available to the police relevant for their defence.

The ECtHR's judgment has been published on Finlex (a database accessible to the public) and disseminated to the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the Ministries of Justice and Interior, the office of the Prosecutor General and other relevant authorities.

### 59. ITA / Drassich (Final Resolution (2009) 87)

25575/04

Judgment of 11/12/2007, final on 11/03/2008

Last examination: 1065-1.1

**Infringement of the applicant's right to be informed in a detailed manner of the nature and cause of the accusation, as well as of the right to be given adequate time and facilities for the preparation of defence due to the reclassification of the acts by the Court of Cassation in 2004 without informing the applicant (violation of Art. 6§§3 (a) and (b), together with Art. 6 § 1).**

**IM** Following the ECtHR's judgment, the applicant asked the Venice Court of Appeal to declare its judgment of 12/06/2002 non-enforceable. By applying the case-law of the Court of Cassation of 2006 (see Final Resolution (2007) 83 in the *Dorigo* case), the Court of Appeal recognised its judgment as non-enforceable as far as the part relating to corruption was concerned and sent the applicant's original appeal against its judgment to the Court of Cassation.

In its judgment of 11/12/2008, the Court of Cassation considered that the article of the Code of Criminal Procedure providing a special appeal to remedy factual errors in judgments of the Court of Cassation could be applied, *analogia legis*, to breaches of the right of defence. It considered however that, in the present case, the *restitutio in integrum* had to be confined to setting aside the part of its judgment which did not respect the principle of adversarial argument.

As a result, the Court of Cassation annulled its own judgment of 2004 solely as far as the offence of corruption defined as corruption in judicial acts was concerned and ordered a new examination of the applicant's appeal before the Court of Cassation against the judgment of 2002 of the Venice Court of Appeal. In the new proceedings, the Court of Cassation will not fail to take into account the ECHR requirements on fairness of proceedings.

**GM** As regards the reclassification of offences without applying the principle of adversarial argument, the recent case law of the Court of Cassation has provided a new interpretation of the law in compliance with the ECtHR's case law. In its judgment of 11/12/2008, the Court of Cassation thus acknowledged that the decision of the ECtHR had the effect of enlarging the scope of application of the principle of adversarial argument in the national legal order. The Court of Cassation observed that the ECtHR's judgment implies that from now on this principle applies to every stage of proceedings, including when the Court of Cassation is checking the compliance of a judgment with the law where a modification *ex officio* of the accusation has had an effect on the determination of the applicant's sentence.

As regards the reopening of proceedings following a finding of violation, in its judgment of 11/12/2008 the Court of Cassation considered that in cases like the present one, the judgment of the ECtHR did not call into question the decision on the merits, but merely the fairness of the Court of Cassation's judgment on account of a lacuna in the legal system (failure to apply the adversarial principle). Therefore the revision of decisions on the merits is not necessary and the application *analogia legis* of Art. 625 *bis* of the Code of Criminal Proce-

ture is sufficient to fill the legal lacuna in similar cases.

The judgment of the ECtHR has been sent out to the competent authorities and published on the internet sites of the Ministry of Justice and of the

Court of Cassation, as well as in the database of the Court of Cassation on the case-law of the ECtHR. This website is widely used by all those who practice law in Italy: civil servants, lawyers, prosecutors and judges alike.

#### 60. ITA / Sejdovic and other similar cases (see AR 2007, p. 124; AR 2008, p. 149)

56581/00

*Judgment (final) of 01/03/2006 – Grand Chamber*

*Last examination: 1072-4.2*

**Unfairness of criminal proceedings by which the applicants were sentenced *in absentia* to several years' imprisonment although it had not been shown that the applicants had been willfully absconded or renounced to their right to attend the hearings (violations of Art. 6§§1 and 3).**

**IM** In the absence of a any provision providing for the retroactive applicability of the 2005 amendments to *in absentia* proceedings (see below under GM) and the absence of any general provision regarding the reopening of criminal proceedings found by the ECtHR to have breached the ECHR, the main remedy first tried by the applicants in the present group of cases (and also in the case of *F.C.B.*) was to lodge an *incidente d'esecuzione* which could lead to the quashing of the detention decision and an order that the applicant be set free (see e.g. the *Dorigo* (Final Resolution (2007) 83 and *Zunic* cases).

In 2006 the Court of Cassation, in the case of *Somogy*, found, however, that the new amendments could be retroactively applied so that also applicants convicted *in absentia* prior to this date could obtain the reopening of the proceedings following the judgments of the ECtHR. In the event of retroactive application, the 30 days available for applying for a reopening of the impugned proceedings run as from the date at which the ECtHR's judgment become final or, in case of extradition, from the date when the applicant was delivered to the Italian authorities.

The CM has requested confirmation that the applicants in these cases have had the possibility to avail themselves of this new remedy. In two cases the issue remains to be clarified: *Sejdovic* and *Kolicaku*.

**GM** In 1989, Italy adopted a new Code of Criminal Procedure improving the guarantees in case of *in absentia* proceedings (see Resolution DH (93) 6), but insufficiently as the ECtHR found in 2004, in its chamber judgment in the *Sejdovic* case (10/11/2004). In 2005, Italy amended the regulation of *in absentia* proceedings and introduced a new Art. 175 to the Code, making it possible to appeal out of time against such judgments, except where the accused had "effective knowledge" of the proceedings against him or of the judgment, but had willfully decided not to appear or to appeal.

In a decision of November 2008 (in the case of *Cat Berro*, 34192/07, the applicant in the case of *F.C.B.*), the ECtHR concluded that the wording of the new Art. 175 CCP appeared to have filled the gaps it found in the past, insofar as it allowed the accused to have a fresh judicial determination, after having been heard, on the validity of the accusations against him.

#### 61. LIT / Ramanauskas (examination in principle closed at the 1059th meeting in June 2009)

74420/01

*Judgment of 05/02/2008 – Grand Chamber*

*Last examination : 1059-6.1*

**Violation of the right to fair trial: the applicant, a prosecutor, has been recognised guilty in 2000 of corruption, after having been actively incited to commit the crime by state agents acting as private persons, with the authorisation of competent authorities (violation of Art. 6§1).**

**IM** The applicant, sentenced to 19 months' imprisonment and confiscation of certain properties, was conditionally released in January 2002. The prohibition to work in law-enforcement insti-

tutions was lifted in July 2002. His conviction was lifted in January 2003.

The ECtHR considered that it would be equitable to make an award in respect of damage as the case file suggested that the applicant would not have

been imprisoned or dismissed from his post in the legal service if the incitement in issue had not occurred. It thus awarded compensation for the actual loss of earnings because of the conviction. Following the ECtHR's judgment the criminal proceedings were reopened: by a judgment of December 2008, the Supreme Court quashed the earlier decisions (thus eliminating the entries into the criminal records) and indicated that it was not necessary to pursue the reopened proceedings. As a result, all the consequences of the violation have been erased.

**GM** In the above-mentioned judgment of 2008, the Supreme Court defined the general principles to be applied in cases where a "mechanism for simulation of criminal behaviour is used". First, the criminal conduct simulation model may be applied only if credible and objective information had already been obtained to the effect that the criminal activity had been initiated. Secondly, state officials may not act as private persons to incite third parties to commit an offence, while the act of

private persons acting to incite third parties to commit an offence under the control and instructions of state officials shall constitute such an incitement. Thirdly, it may be inferred that there is an act of incitement even if state officials do not act in a very intensive and pressing manner, including in situations when contact with third parties is made indirectly through mediators. Fourthly, the burden of proof lies with the state authorities in judicial proceedings. Fifthly, once the act of incitement is established, no evidence obtained through incitement of third parties shall be admissible. Sixthly, it is advised that the legal framework governing the use of undercover techniques is subject to the supervision of domestic courts.

The ECtHR's judgment has been translated into Lithuanian and put on the internet site of the Ministry of Justice. The Government Agent has disseminated the judgment to institutions and courts concerned. Both measures were accompanied by explanatory notes.

## 62. **TUR / Hulki Güneş and other similar cases (see AR 2007, p. 129; AR 2008, p. 155)** \_\_\_\_\_

28490/95  
Judgment of 19/06/2003, final on 19/09/2003  
IR (2005) 113; (2007) 26; (2007) 150

Last examination: 1072-4.3

**Unfair criminal proceedings (judgments final 1994-99), because of convictions to lengthy prison sentences (on the basis of statements made by gendarmes or other persons who never appeared before the court, or on the basis of statements obtained under duress and in the absence of a lawyer); ill-treatment of applicants while in police custody; lack of independence and impartiality of state security courts; excessive length of criminal proceedings; absence of an effective remedy (violations of Art. 6 §§ 1 and 3, 3 and 13).**

**IM** The applicants continue to serve their sentences, as the current provisions on reopening of criminal proceedings, which entered into force in 2003, are not applicable to their cases, although they are applicable to cases decided by the ECtHR before the ones here at issue, as well as to new cases decided by the ECtHR. The CM has, ever since the issuing of the first judgment in these cases, expressed its concern and urged the authorities to provide tangible information on the measures they envisaged taking to solve the applicants' situation (see for details AR 2007 and 2008). To this effect, the Chairman of the CM sent letters to his Turkish counterpart in 2005 and 2006. The CM also adopted three interim resolutions between 2005 and 2007. In September 2008 the CM "noted that, if the present situation persisted, it would amount to a manifest breach of Tur-

key's obligation under Article 46, paragraph 1, of the ECHR" and decided to examine the present cases at each regular meeting of the CM should the Turkish authorities fail to provide, for December 2008, any tangible information on the measures envisaged. Given that the information requested was not provided, the CM decided to examine the cases also at each regular CM meeting, as from the first meeting in January 2009.

In response hereto, in October 2009, the Turkish authorities indicated that "a draft law aimed at allowing the reopening of proceedings in the applicants' cases had been prepared by the Ministry of Justice and sent to the office of the Prime Minister and would be submitted with priority to parliament as a proposal of the government with a view to its adoption before the end of 2009". Subsequently the

CM was informed that the draft law had been sent to Parliament.

The CM has welcomed this information and taken note with satisfaction that the Turkish Government will accord priority to this piece of legislation. It has encouraged the authorities to take measures to ensure that the draft law when adopted is applied in conformity with the CM's Recommendation Rec (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the ECtHR and invited the authorities to

provide it with the text of the draft law in question and keep it informed of the developments regarding its adoption. Further information is currently awaited.

**GM** Relevant general measures have been taken and/or are supervised in the context of other cases (see e.g. Final Resolution (99) 555 in the *Çıraklar* case) and cases regarding actions of the Turkish Security Forces (*Aksoy* group of cases).

## E.6. Non-respect of final character of court judgments

### 63. ALB / Driza (see AR 2008, p. 140)

33771/02  
Judgment of 13/11/2007, final on 02/06/2008

Last examination: 1072-4.2

**Breach of the right to legal certainty because a final judgment of 1998 granting compensation for property nationalised during the communist regime was subsequently quashed twice by the Supreme Court, once in parallel proceedings and once by means of supervisory review (violation of Art. 6§1); lack of impartiality of the Supreme Court due to the role of its president in the supervisory review proceedings and because a number of judges had to decide a matter on which they had already expressed their opinions, and even justify their earlier positions (violation of Art. 6§1); the lack of enforcement of the final judgments also deprived the right of access to court of all useful effect (violation of Art. 6§1); the interference also violated the applicant's property rights and demonstrated a lack of effective remedies (violation of Art. 1 of Prot. No. 1 alone and in conjunction with Art. 13).**

**IM** The ECtHR ordered the restitution of one of the plots of land and indicated that failing such restitution additional just satisfaction should be paid. It also awarded just satisfaction for pecuniary and non-pecuniary damages in respect of both plots of land. Before the CM, the Albanian authorities have confirmed that the land at issue (1650 sq. m) has been registered in the name of the applicant. In June 2009, the CM invited the authorities to take the necessary measures to refund the applicant, without further delay, the tax of 10% levied on the sums awarded in respect of just satisfaction.

**GM** Lack of legal certainty and lack of impartiality of the Supreme Court: The provisions at the origin of the violation in this case, concerning the supervisory review procedure, are no longer in force, having been repealed in 2001, and the finality of domestic court judgments is now secured. Concerning the problem of parallel proceedings for the same case in the same court, the CM has been informed that a civil case management system has been operating during 2008. This system enables

all courts to be connected in a network, provides them with a website, allows individuals access to any information they might need on the dates of trials, decisions which become final, status of decisions, etc. The CM has invited the authorities to take the further necessary measures to remedy the lack of legal certainty resulting from contradictory decisions in parallel proceedings (the present violation occurred notwithstanding the fact that the courts were aware of the parallel proceedings) and the lack of impartiality of the Supreme Court and to keep it informed about these measures.

**Absence of enforcement of final judgments, interference with property rights and lack of effective remedy:** In order to assist the respondent state in complying with its obligations under Art. 46 as far as these issues are concerned, the ECtHR gave a number of indications similar to those in the *Ramadhi* case. The advancement of execution on this point is thus also similar to the one in the *Ramadhi* and *Beshiri* cases and to some extent also the *Qufaj* case.

## F. No punishment without law

### 64. CYP / Kafkaris (examination in principle closed at the 1051st meeting in March 2009)

21906/04  
Judgment of 12/02/2008 – Grand Chamber

Last examination: 1051-6.1

**Infringement of the principle of “no punishment without law”: the quality of the law applicable in 1987, at the time when the murders were committed, was such that the applicant was unable to discern precisely the scope of the penalty of life imprisonment and the manner of its execution. In 1987 the penalty of life imprisonment was understood in practice as being equivalent to a period of twenty years’ imprisonment, to be served in full, whereas subsequently, when the applicant was convicted in 1989, sentencing practice had changed in such a way as to exclude any possibility of remission of sentence. Life imprisonment therefore meant imprisonment for the rest of the person’s life (violation of Art. 7).**

**IM** The ECtHR did not accept the applicant’s argument that a heavier sentence had been retroactively imposed on him since it could not be said that at the material time the penalty of a life sentence could clearly be taken to have amounted to 20 years’ imprisonment. The ECtHR therefore held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damages sustained. No individual measure was therefore considered necessary by the CM.

**GM** The change in practice in 1988 was not immediately reflected in the Prison (General) Regulations of 1987, which continued to state that the sentence of life imprisonment was understood as 20 years’ imprisonment. These regulations were declared unconstitutional by the Supreme Court in 1992 and replaced in 1996 by new regulations

which specify that life imprisonment means imprisonment for the rest of one’s biological life. However, the Constitution empowers the President of the Republic to order a suspension, remission or commutation of sentence, including in the case of persons sentenced to life imprisonment. Furthermore, a bill concerning persons sentenced to life imprisonment is in the process of being finalised. This bill lays down a minimum period to be served before life prisoners can become eligible for parole.

The judgment has been sent to the authorities concerned (Ministry of Justice and Public Order, Presidents of the Cyprus Bar Association and the Legal Affairs and Human Rights Parliamentary Committees). It has also been published on the Government Legal Service website and has been widely publicised and discussed in the media.

## G. Protection of private and family life

### G.1. Home, correspondence and secret surveillance

#### 65. FIN / Narinen (Final Resolution (2009) 78)

45027/98  
Judgment of 01/06/2004, final on 01/09/2004

Last examination: 1065-1.1

**Violation of the applicant’s right to respect for his correspondence on account of the opening of the applicant’s letters by an official receiver appointed to his estate in bankruptcy proceedings in the absence of specific, legally binding rules on the matter (violation of Art. 8).**

**IM** The ECtHR considered that the finding of a violation in this case constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

**GM** According to the new bankruptcy legislation, which entered into force on 1/09/2004, the bankruptcy trustee shall have a right, without the debtor’s consent, to receive and open mail and other messages, as well as parcels, addressed to the debtor

which pertain to his or her economic activities. According to the travaux préparatoires, the provision concerns only mail and messages relating to debtor's economic activities and cannot be applied to any personal mail.

The judgment of the ECtHR has in addition been published on the Finlex database and immediately

sent out to the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the Supreme Court, the Supreme Administrative Court, the Ministry of Justice, the Espoo District Court and the Helsinki Appeal Court.

#### 66. FRA / Lambert and Matheron (Final Resolution (2009) 66)

23618/94 and 57752/00

Judgment of 24/08/1998

Judgment of 29/03/2005, final on 29/06/2005

Last examination: 1059-1.1

**Infringement of the applicants' right to respect for their private life (in the context of criminal investigations for aggravated theft and illegal possession of weapons in the *Lambert* case and for international drug trafficking in the *Matheron* case): refusal by the courts to allow the applicants to contest the legality of the inclusion of transcriptions of telephone intercepts in their case-files on the ground that such a right did not exist because the phone-tapping had taken place on a line belonging to another person (final decision in 1993 in the *Lambert* case) or in proceedings to which the applicant was not a party (final decision in 1999 in the *Matheron* case (violations of Art. 8).**

**IM** The applicants had the possibility to ask for their cases to be re-examined under Art. L626-1 of the Code of Criminal Procedure.

**GM** The origin of the violation in these cases lay in the case-law of the Court of Cassation at the time. This case-law has gradually changed in view of the direct effect given to the ECHR by French courts, following the dissemination of these judgments to the relevant authorities and their publication in specialised legal journals.

For example, in a judgment delivered in 2003, the Court of Cassation initially established that any person charged with an offence has the right to contest telephone intercepts resulting from the tapping of other people's lines. However, it rejected the idea of the investigating chamber examining the

lawfulness of intercepts carried out in a different investigation.

In December 2005, however, the Court of Cassation accepted that the investigating chamber might examine the lawfulness of telephone intercepts carried out in separate proceedings but attached to the file of the case under examination. The investigating chamber must check in particular: the aim of the intercept ordered, whether it is in accordance with the rules, whether it is necessary and whether the interference in the applicant's privacy is proportionate having regard to the seriousness of the offences committed. The case law of the Court of Cassation has remained constant since this judgment.

#### 67. NLD / Doerga (see AR 2008, p. 162)

50210/99

Judgment of 27/04/2004, final on 27/07/2004

Last examination: 1059-5.1

**Interception of telephone conversations of a prisoner in 1995 in the absence of clear and detailed legal rules (violation of Art. 8).**

**IM** The applicant declined to make any claims in respect of pecuniary or non-pecuniary damage, stating that he intended instead to pursue such claims before the domestic courts. No information has been provided by the applicant on subsequent developments.

The recordings concerned and the transcripts thereof are no longer in the possession of the au-

thorities. In these circumstances no further measure appears necessary.

**GM** The draft regulation on the recording of prisoners' telephone conversations in judicial institutions (*Amvb Toezicht telefoongesprekken in justitiële inrichtingen*) – adopted following the ECtHR's judgment (see AR 2008) – has been prepared. In June 2008, the consultation period ended

and a more explicit legal basis for the regulation was adopted. Between June and September 2009 the draft regulation has been sent for advice to the Officials' Commission, to the Council of Ministers and to the Council of State. After this consultation it was expected that the draft regulation, with any

possible amendments incorporated into it, would be sent to the parliament.

The CM has requested information on the time-frame for the adoption of the regulation, as well as the text of the regulation.

## 68. RUS / Smirnov

71362/01  
Judgment of 07/06/2007, final on 12/11/2007

Last examination: 1065-4.2

**Unjustified interference with the applicant's right to respect for his private life, and in particular to respect of the lawyer-client privilege, as a result of an indiscriminate search of his home in March 2000 and subsequent seizure of documents and the central unit of his computer by the investigative authorities in the context of criminal proceedings against his clients (excessively vague search warrant and judicial control of the seizure available only after it had taken place) (violation of Art. 8 and of Art. 1, Prot. No. 1); lack of an effective remedy to challenge the retention of the computer (violation of Art. 13 taken together with Art. 1, Prot. No. 1).**

**IM** The ECtHR granted no just satisfaction to the applicant since he failed to submit a claim in this respect within the specified time-limit.

It appears that when the ECtHR delivered its judgment, the applicant's computer was still retained by the authorities and that the applicant's civil claim for damages earlier lodged before the domestic courts was still pending. As it appears that the applicant has lodged no new proceedings for damages after the ECtHR's judgment, the CM has requested information on the outcome of the pending ones. It has also asked for information on the fate of the applicant's computer which contained the data subject to professional secrecy and especially whether these data have been returned to him or destroyed.

**GM** **Respect for the lawyer-client privilege and for peaceful enjoyment of possessions:** The new Code of Criminal Procedure (CCP) from 2002 contained no additional guarantees as regards seizure. Such guarantees were introduced the same year through the Advocates' Act which provides that residential and professional premises of an advocate may henceforth only be searched on the basis of a judicial decision. Information, objects and documents obtained may be used as evidence only if they are not covered by the attorney-client privilege. In addition, the Constitutional Court held in 2005 that the judicial order shall specify the concrete object of the search and the reasons for its authorisation so as to avoid that a search may lead to the disclosure of documents concerning other clients.

However, it appears that these measures have not entirely remedied the shortcomings identified in this case, as a similar violation was found in the *Aleksayan* judgment (of 22/12/2008, final on 5/06/2009), notably because of the vagueness of a judicial search warrant issued in April 2006 (it did not specify what items and documents were expected to be found in the applicant's office or how they would be relevant to the investigation). The CM has thus requested information on the measures taken or planned to ensure that domestic practice complies with the ECHR's requirements and on measures taken or envisaged to ensure necessary safeguards to ensure that seizures do not unjustly interfere with professional secrets.

**Effective remedy in respect of the unlawful restriction on property rights:** During the criminal investigation, a decision to retain objects seized may be subject to judicial review according to Art. 125 of CCP. If the case is transmitted to the trial court, the retention decision may be challenged together with the decision on the merits. The CM has requested more details regarding the powers of the courts when examining retention decisions together with relevant examples of case-law.

**Publication and dissemination:** The ECtHR's judgment was translated into Russian and published on the website of the Ministry of Justice. It was sent to the President of the Supreme Court, to the General Prosecutor's office, to the Constitutional Court and to the Representative of the President of the Russian Federation in the Severo-Zapadny federal district. It has been sent to all judges, together with a circular letter from the Deputy of

the President of the Supreme Court of the Russian Federation. It was also discussed during a working

meeting with the judges of the Civil, Criminal and Military Chambers of the Supreme Court.

69. **SVK / Stanková**

7205/02  
Judgment of 09/10/2007, final on 31/03/2008

Last examination: 1072-4.2

**Violation of the applicant's right to respect for her home as a result of a local authority's unconstitutional refusal to pass to the applicant, after the death of her father, the tenancy rights of a flat which her father had leased and where she had lived with him since 1992 and her subsequent eviction in 1999 from the flat (violation of Art. 8).**

**IM** In 1996, in connection with the issuing of the eviction order, the applicant was registered on a list of persons seeking tenancy of a communal flat. She also challenged the eviction before the Constitutional Court which found that the local authority's decision was in breach of the Constitution and that, although the situation did not meet the Civil Code's criteria on inheritance, eviction was nevertheless in breach of the applicant's right to private and family life. However, at that time the Constitutional Court could not provide redress for any violations found. Shortly after her eviction the flat was allocated to a municipal employee who later acquired ownership thereof for a relatively small sum in accordance with the relevant law.

The ECtHR awarded the applicant just satisfaction only for non-pecuniary damage, as the claim for pecuniary damages was not shown to be linked to the violation.

In September 2008, the Slovak authorities indicated that the applicant was still registered on the list of persons seeking tenancy of a communal flat in the municipality at issue. In December 2009 it was noted before the CM that the applicant had still not been provided with alternative accommo-

dation. It was also noted, however, that it had been open to her to apply, in principle within three months from the ECtHR's judgment, for the reopening of the eviction proceedings to the extent that the consequences of the violation had not been duly remedied by the award of just satisfaction. Information is particularly awaited as to whether the applicant applied to reopen the proceedings.

**GM** Following an amendment to the Constitution, natural and legal persons can complain about a violation of their fundamental rights and freedoms and the Constitutional Court may grant adequate financial satisfaction or order the authority concerned to take action, as from 2002.

In addition, the Civil Code permits granting relief from hardship in justified cases by ensuring that alternative accommodation measures are provided to persons who have been ordered to move out of a flat.

The ECtHR judgment has been translated, published and distributed to competent courts and authorities.

No further general measures appeared necessary.

G.2. **Respect of physical integrity**

70. **BGR / Bevacqua and S.**

71127/01  
Judgment of 12/06/2008, final on 12/09/2008

Last examination: 1072-4.2

**Failure by the authorities to take appropriate action in the context of divorce proceedings 2000-02 (rapid adoption of interim custody measures and sanctions or other measures in response to the father's unlawful and violent behaviour) to ensure respect for the private and family life of the applicants, a mother and her son (violation of Art. 8).**

**IM** After the divorce, custody was granted to the first applicant (the mother) and at the time of the ECtHR's judgment both applicants (mother and son) were living abroad. The ECtHR awarded them just satisfaction in respect of the non-pecu-

niary damage sustained. Under these circumstances no issue of individual measure appears to arise.

**GM** The ECtHR considered that certain administrative and policing measures – among them, for



example, those mentioned in the CM's Recommendation (2002) 5 of 30/04/2002 on the protection of women against violence or those subsequently introduced in Bulgarian law by the Domestic Violence Act 2005 – were called for.

Before the CM the authorities have been invited to provide examples demonstrating that current practices ensure that sanctions are imposed on individuals who commit unlawful or violent acts of the kind described in this case and/or that measures are also taken to prevent the persons in question from committing such acts.

Information has also been requested on existing remedies at the disposal of interested parties to challenge delays in examining requests for interim custody measures in divorce proceedings.

Information is furthermore awaited on the publication of the ECtHR's judgment and its dissemination to competent courts, to draw their attention to their obligation to examine requests for interim custody measures in family dispute proceedings with due diligence, affording them the priority that may be necessary. Wide dissemination is also awaited to prosecutors and police with a circular emphasising the conclusion of the ECtHR that the failure to impose sanctions in response to unlawful and violent behaviour, or otherwise to prevent such behaviour, is incompatible with the authorities' positive obligation to secure the enjoyment of rights under Art. 8.

## 71. POL / Tysiąc

5410/03

*Judgment of 20/03/2007, final on 24/09/2007*

*Last examination: 1065-4.2*

**Authorities' failure to their positive obligation to safeguard the applicant's right to her private life, due to the absence of an adequate legal framework for the right to therapeutic abortion inscribed in Polish law in case of disagreement between the patient and the specialist doctor empowered to decide on such an abortion. As a result of the refusal, the applicant is now disabled, her eyesight having significantly deteriorated (violation of Art. 8).**

**IM** The applicant was awarded just satisfaction in respect of non-pecuniary damage, but not in respect of pecuniary damage, as the ECtHR considered that it could not speculate as to the correctness of the doctors' conclusions concerning the future deterioration of her eyesight. In these circumstances, no other individual measure appeared to be necessary.

**GM** The ECtHR judgment was published on the website of the Ministry of Justice and a new draft law was prepared. The Centre for Reproductive Rights and the Polish Federation for Women and Family Planning has presented observations to the CM on the draft new law, concerning in particular the need to fix short time-limits in appeal proceedings against a doctor's refusal to carry out an abortion.

In November 2008, a new law was adopted on the Protection of Individual and Collective Rights of Patients and the Patient Rights' Ombudsman. Most of its provisions entered into force on 24/04/2009. The law defines inter alia the patients' rights and procedures concerning their access to healthcare and shall also apply to the conduct of lawful abortion. The law provides for the right to appeal against a physician's opinion or decision, if the

latter has an influence on the patient's rights and/or obligations. The appeal shall be examined by the Commission of Physicians within 30 days. The Commission is composed of three physicians, appointed by the Patient Rights' Ombudsman, whose activity is supervised by the Prime Minister. Their decisions are final and the proceedings are not governed by the provisions of the Code of Administrative Procedure.

Before the CM clarifications have been requested as to whether:

- a woman seeking therapeutic abortion will be heard in person and have her views considered before the Commission of Physicians;
- the decisions of the Commission of Physicians will contain written grounds;
- these decisions will be delivered in a timely manner so as to limit or prevent damage to a woman's health which might be occasioned by a late abortion; in this context, the 30 day time limit for a decision has been recalled. It has been observed that in cases of therapeutic abortion, decisions should be delivered "without delay", to comply with the requirement of timeliness stemming from the ECtHR's judgment.

### G.3. Retention of information in violation of privacy

#### 72. UK / S. and Marper

30562/04+  
Judgment of 04/12/2008 – Grand Chamber

Last examination: 1072-4.2

**Unjustified interference with the applicants' right to respect for their private life due to the retention of cellular samples, fingerprints and DNA profiles taken from them in 2001, in connection with their arrest for offences for which they were ultimately not convicted (S., an 11-year-old, was acquitted of attempted robbery and Marper saw charges dropped as the complaint against him for harassment was withdrawn) (violation of Art. 8)**

**IM** The ECtHR considered that the finding of a violation, with the consequences which would ensue, constituted in itself sufficient just satisfaction.

Following a request from the applicants, the responsible police authority has destroyed the cellular samples, fingerprints and DNA profiles taken in connection with the arrests at issue.

The CM has welcomed these measures. The Government has added that the applicant S. has had further biometric data taken on suspicion of having committed a subsequent criminal offence. The assessment is, however, that the retention of such later data is linked to the issue of general measures.

**GM** A first legislative proposal implying considerable delegation of the definition of the retention powers to secondary legislation, was withdrawn following criticism that the definitions were not contained in primary legislation.

New proposals were thus adopted by the Government, after a public consultation in the summer of 2009, and included in the Crime and Security Bill, which is presently pending before parliament.

The CM examined the situation in the light of the new proposal in December 2009. In its decision the CM:

- recalled that the ECtHR had found that “the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests

and that the respondent state has overstepped any acceptable margin of appreciation in this regard”;

- noted that the government now proposes to implement the necessary legislative reform by way of primary legislation and that the relevant bill has been presented to parliament;

- welcomed the steps taken in the meantime by the United Kingdom authorities to delete information held on the National DNA Database concerning all persons under the age of ten years,

- welcomed the fact that the new proposals foresee that all cellular samples should be retained for a maximum of six months from the date on which they were obtained and that time limits for the retention of fingerprints and DNA profiles should be introduced, with special provisions for minors;

- noted nevertheless that a number of important questions remained as to how the revised proposals take into account certain factors held by the ECtHR to be of relevance for assessing the proportionality of the interference with private life here at issue, most importantly the gravity of the offence with which the individual was originally suspected, and the interests deriving from the presumption of innocence (see paragraphs 118-123 of the judgment), and requested, accordingly, that the Secretariat rapidly clarify such questions bilaterally with the United Kingdom authorities;

- noted that further information was also necessary as regards the institution of an independent review of the justification for retention in individual cases.

### G.4. Establishment of paternity

#### 73. CYP / Phinikaridou (examination in principle closed at the 1051st meeting in March 2009)

23890/02  
Judgment of 20/12/2007, final on 20/03/2008

Last examination: 1051-6.1

**Violation of the right to respect for the private life of the applicant, who was born in 1945, owing to the rigid time-limit for the exercise of paternity proceedings. Under the 1991 Children (Relatives and Legal Status) Law, an adult could only bring such proceedings within three years from the date of the introduction of the law, i.e. until 1994. Consequently, the proceedings instituted by the applicant in 1997, when she was informed of the presumed identity of her father, were unsuccessful (violation of Art. 8).**

**IM** The ECtHR awarded just satisfaction in respect of non-pecuniary damages. It found, however, that there was no causal link between the violation and the amount claimed and therefore dismissed the application for pecuniary damages. Her putative biological father died in 2004. In August 2008, the applicant's lawyer confirmed that the applicant still wished to establish paternity. Following the amendments to the law, presented below, it appears that the applicant can now bring new proceedings to establish paternity.

**GM** Following the judgment of the ECtHR, the limitation period provided for under the 1991 Children (Relatives and Legal Status) Law was amended in 2008 and now starts as from the date on which the persons concerned were informed of

the identity of their putative father. It is up to them to prove that they were unable to obtain such information any earlier. If they became aware of the facts before the 2008 amendments, the limitation period begins to run from the day that the amendments came into force. This also applies to claims pending before the courts or under judicial consideration at the time the amendments came into force. Moreover, it is henceforth possible to institute paternity proceedings even if such proceedings had been dismissed or withdrawn before the amendments to the relevant law came into force in 2008.

Copies of the ECtHR judgment were sent to the relevant courts and authorities and the judgment was published on the Internet in English and Greek and in the *Cyprus Law Journal*.

#### 74. MLT / Mizzi (see AR 2007, p. 143)

26111/02  
Judgment of 12/01/2006, final on 12/04/2006

Last examination: 1065-4.2

**Impossibility for the applicant, in 1997, to challenge the legal presumption of his paternity, established in 1967, due to the legal framework, which was too strict: the domestic courts rejected his claims because such claims were only possible within six months after birth. In so doing they failed to take account of the fact that the DNA tests upon which the applicant relied had not been available in 1967 (violation of Art. 6§1); failure to strike a fair balance between the applicant's legitimate interest in having a judicial determination of his presumed paternity and the protection of legal certainty and of the interests of the other people involved in his case (violation of Art. 8); discrimination as regards the strict time-limit applied to the applicant but not to other interested parties (violation of Art. 14 in conjunction with Art. 6§1 and 8).**

**IM** The ECtHR awarded the applicant just satisfaction for the non-pecuniary damage suffered as a result of his inability to disavow his paternity and his subsequent participation in the domestic litigation which had caused him anxiety, frustration and distress. Following the general measures taken, the applicant was also offered the possibility to bring an action for disavowal of paternity before the Maltese courts until 31/12/2008. In these circumstances no further measures appear necessary.

**GM** Violation of Art. 6§1 and 8: The legislative reform presented in AR 2007 has now been adopted, including the proposed amendment of

Art. 70 (4) of the Civil Code which appears to remedy the position for those who, like the applicant, were previously excluded from bringing claims for disavowal of paternity, fixing the deadline for such claims until 31/12/2008. In these circumstances no further measures appear necessary.

**Violation of Art. 14:** As it is not clear how the reform has solved the problem of the discrimination between persons in the applicant's situation and other interested persons, the CM has requested information on measures taken or foreseen to avoid new similar violations.

## G.5. Placement in public care, custody and access rights

75. **AUT / Moser (examination in principle closed at the 1072nd meeting in December 2009) (see AR 2007, p. 145; AR 2008, p. 167)**

12643/02  
Judgment of 21/09/2006, final on 21/12/2006

Last examination: 1072-6.1

**Violation by a domestic court of the right to respect for family life of a mother and her son (both Serbian nationals) as the child was placed with foster parents eight days after his birth in 2000 and custody transferred to the Youth Welfare Office without alternative solutions having been explored in an appropriate manner (violation of Art. 8); violation of the principle of equality of arms because of the lack of opportunity to comment on reports of the Welfare Office, the absence of a public hearing and of public pronouncement of the decisions (3 violations of Art. 6§1).**

**IM** In April 2005, the applicant was granted visiting rights (see for details AR 2007, p. 145) and in July 2007 she started proceedings with a view to have these rights extended. The District Court dismissed her request, essentially on the ground of the opinion of an expert appointed by the Court that maintaining the existing visiting rights was in the best interest of the child. On appeal, however, in October 2009, the St. Pölten Regional Court decided to extend the monthly visiting rights from two to three hours, and determined that further visits should take place around the applicants' birthdays and Christmas. It also ordered the Vienna Youth Welfare Office to inform the mother of all important developments concerning the child. Acknowledging the difficulties incurred by all parties, the court appealed to mutual understanding of the various positions and welcomed the first applicant's reasonable approach towards extending visiting rights smoothly according to the needs of the child.

In October 2008, the Ministry of Interior refused the mother's request to prolong her residence permit, as she had not submitted the documents requested by the authorities. However, it gave instructions not to proceed to the expulsion as long as the proceedings on visiting rights were pending. In the meantime, in April 2009, the Administrative Court, seized on appeal by the mother, granted suspensive effect to the expulsion and these proceedings, concerning the prolongation of the residence permit, are still pending.

The Austrian authorities indicated that, given the direct effect granted to the ECHR and the case-law of the ECtHR, the Administrative Court will examine the applicant's situation in the light of the decision concerning her visiting rights and taking into account her rights under Art. 8 of the ECHR as well as the ECtHR judgment in this case. The authorities moreover gave assurances that the applicant's rights would be taken into consideration in future decisions concerning her situation with regard to her rights in respect of her child.

**GM** Considering the direct effect of the ECHR and the ECtHR's case-law in Austria, the publication of this judgment and its dissemination to the competent authorities and courts was considered sufficient to prevent similar violations of the **right to respect for family life**. For this purpose, the Federal Chancellery, in 2007, sent out a summary of the judgment to the relevant Austrian authorities as well as to Parliament and courts. A summary of the judgment was also published in German.

As regards the **equality of arms**, see the measures adopted in the framework of the execution of the *Buchberger* case.

As regards the **absence of a public hearing**, the applicable law has been amended in 2005 and allows now for family law and guardianship proceedings to be held in public as well as for public pronouncement of decisions. In this context, the publication and dissemination of the judgment mentioned above will enable domestic courts to apply these provisions in accordance with the requirements of the ECHR (see also AR 2007, p. 145).

76. **AUT / Sylvester (examination in principle closed at the 1072nd meeting in December 2009) (see AR 2007, p. 146)**

36812/97  
Judgment of 24/04/2003, final on 24/07/03

Last examination: 1072-6.1

**Lack of adequate measures to enforce court decisions of 1995 ordering the return of a child to her father living in the United States (violation of Art. 8).**

**IM** In 1996, the Austrian courts gave the mother custody of the child on account of the fact that the relation with the father had already *de facto* broken down because of the lapse of time. This has made it impossible to enforce the 1995 return order. Until 2005, the father had regular contacts with his daughter in Austria on the basis of an out-of-court agreement with the child's mother, but complained that the existing restrictions to his visiting rights were the result of the ECHR violation. In 2005, the United States authorities, on the applicant's behalf, sent the Austrian authorities a request based on the Hague Convention concerning access to the child. In the course of the judicial proceedings in Austria the relation between father and child worsened and consequently the contacts between the applicant and the child were suspended. In March 2006, the applicant, considering that the judicial proceedings had harmed his

relationship with his daughter who had refused to talk to him on the telephone since July 2005, decided to discontinue the pursuit of legal proceedings and agreed with the mother to take up out-of-court negotiations to reach an agreement on his visiting rights. The applicant confirmed this decision in September 2009. Under the applicable law, proceedings can be resumed at any time on one party's request and, should that be the case, the wishes of the child would be taken into consideration. In these circumstances it has not been considered necessary to further pursue the issue of individual measures.

**GM** A number of new measures, legislative and other, aiming at ensuring the prompt enforcement of return orders or visiting rights under the 1980 Hague Convention were adopted soon after the judgment (see also AR 2007).

**77. BEL / Leschiutta and Fraccaro**

58081/00+  
Judgment of 17/07/2008, final on 17/10/2008

Last examination: 1072-4.2

**Infringement of the right of respect for family life, following the failure of the Belgian authorities to rapidly take adequate and sufficient measures to ensure the return of the applicants' children to their fathers in Italy following the children's abduction by their mother to Belgium (violation of Art. 8).**

**IM** The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained by the applicants to compensate the belated implementation by the Belgian authorities of the decisions of the Italian courts ordering the return of their children.

According to the ECtHR's judgment, the fathers and children returned to Italy in June 2000. No measure appears necessary concerning Mr Leschiutta's son, as he is of age. Mr Fraccaro's son, Andrea, is a minor, having been born in 1995. In October 2003 the Venice Children's Court awarded custody of Andrea to the mother, who undertook, under the supervision of and with the father's approval, to take her son to Belgium for short holidays

only. In March 2008 the proceedings concerning the final award of custody were still pending before the Venice Children's Court. At this stage, Andrea's parents appear to have reached an agreement on his situation and, according to the information available, the question of his custody is apparently pending before the Italian courts. Bilateral contacts are under way in this respect.

**GM** The CM is awaiting information on measures taken or envisaged to avoid new, similar violations, as well as on the publication of the ECtHR's judgment and its dissemination to the competent authorities.

**78. CZE / Andělová**

995/06  
Judgment of 28/02/2008, final on 29/09/2008

Last examination: 1059-4.1

**Authorities' failure to deploy adequate and sufficient efforts to ensure respect for the applicant's visiting rights, so to enable her to re-establish contact with her daughter, born in 1994, (violation of**

**Art. 8). Despite court orders in April 2002 and August 2003 granting the applicant visiting rights, all contacts between the applicant and her daughter have been de facto suspended between April 2002 and March 2004 or submitted, since April 2004, to conditions that are much more restrictive for the applicant than those laid down by the above-mentioned court orders.**

**IM** Since the end of 2006, contacts have been taking place regularly and without problems between the mother and the daughter on the basis of direct arrangements between them. The ECtHR awarded the applicant just satisfaction in respect of non-pecuniary damage. In these circumstances, no further individual measures appear necessary.

**GM** In the context of the examination of the *Reslova* group of cases (application No. 7550/04, judgment of 18/07/2006, final on 18/10/2006 – see also AR 2008, p. 168), the Czech authorities indicated that on 01/10/2008, a law amending the Code of Civil Procedure and the Act on Social and Legal Protection of Children had entered into force. The changes were adopted with a view to ensuring speedy decision-making, developing the possibility of mediation and peaceful settlement of disputes between parents and underlining courts' obligation to seek the child's opinion. Consequently, in proceedings concerning minors, courts may now order the parties to take part in out-of-court conciliation, mediation meetings or family therapy and the parental agreements concluded in such out-of-court meetings are then endorsed in the judgments.

By virtue of an interim measure, courts may also order that a child whose life or favourable development are threatened is to be placed, during the necessary period, in a "suitable environment". Immediate execution of such an interim measure is ensured by the courts in co-operation with other authorities and appeals against interim measures have to be dealt with within 15 days. On 30/09/2008, the Ministry of Justice published an indicative list of institutions for child victims of parental conflicts, together with information on services provided and target groups.

The provisions of the Code of Civil Procedure on the execution of court decisions concerning minors

have been completely rewritten. The former initial phase, consisting in giving advice and requesting voluntary discharge of obligations, has become part of trial proceedings. Repeated fines, which have often proved ineffective in the past, should now be limited to cases in which this approach is useful, courts being required to substantiate it. In enforcement proceedings, courts may also order parents not fulfilling their obligations to participate in out-of-court meetings or therapy or to set out a plan of an "adaptation regime" enabling gradual contacts, which should be accompanied by an expert opinion. If these measures appear unsuccessful, forced reunion of the parent with the child may be ordered.

Finally, in May 2009 the Ministry of Justice submitted a draft act on mediation in non-criminal matters, aimed at reducing courts' workload and contributing to speedy out-of-court solution of conflicts involving minors. According to the draft, mediation services should be provided by "registered mediators" and mediation agreements concluded with the help of such mediators and endorsed by the competent courts will have the status of enforceable decisions.

Information has been requested on the concrete effects of these legislative changes, including examples of application of the measures mentioned, as well as on the progress of the draft act on mediation in non-criminal matters.

The judgment of the ECtHR has been translated, published on the website of the Ministry of Justice and sent out to the authorities concerned (courts and child welfare authorities). Moreover, the ECtHR case-law in the field of family life as well as the amended rules of the Code of Civil Procedure are the regular subject of seminars held at the Judicial Academy and regional courts.

79. CZE / Havelka and others (see AR 2007, p. 147, AR 2008, p. 167)  
CZE / Wallowa and Walla (see AR 2007, p. 147, AR 2008, p. 167)

23499/06 and 23848/04  
Judgment of 21/06/2007, final on 21/09/2007  
Judgment of 26/10/2006, final on 26/03/2007

Last examination: 1043-4.2

**Violation of the applicants' right to respect for their private and family life on account of the fact that their children had been taken into public care on the sole ground that the families' economic and social conditions were not satisfactory: the fundamental problem was their housing; neither the**

applicants' capacity to bring up their children, nor the affection they bore them had ever been called into question (violation of Art. 8).

**IM** **Havelka case:** (See also AR 2008) In 2009, the first applicant was 59 and his children were 15, 16 and 17 years old. According to the information provided by the Czech authorities, the children are still in public care and their placement is subject to judicial review at six-month intervals to establish whether the conditions for public care still exist. Since then, the CM has been informed that the applicant's requests to obtain a flat for rent or a welfare flat from the local authorities have been rejected with reference to his economic situation. Talks on the possibility of finding him temporary accommodation in an asylum house have been held. In April 2009, the Government Agent and the applicant's representatives met and agreed that the latter would try to approach Mr Havelka again and that the solution to his housing problem should reflect his current wishes. According to the information available in July 2009, the representatives had not managed to contact Mr Havelka. Bilateral contacts are under way to clarify the situation. The CM requested a copy of a recent judicial decision, taken in the context of the courts' regular control of the placement, which reflects the applicants' current situation as well as principles flowing from the ECtHR's judgment.

**Wallowa and Walla case:** (See also AR 2008) As of 2008, the two eldest children are of age. The care order concerning the third child was annulled in February 2006 and he returned to live with his parents. Custody of the two youngest children (8 and 11 years old) had been given to foster parents in January 2005 and was confirmed in June 2007, shortly after the ECtHR's judgment, when the applicants' proceedings to obtaining custody of them were dismissed. Meanwhile, the authorities were working together progressively to restore ties between the two children and the applicants, and create conditions for their eventual reunion. However, serious emotional and psychological problems were encountered during the meeting between the mother and her 11-year-old son, although the meeting with the youngest daughter was positive. In September 2008, the applicants dropped their application for visiting rights to their children in foster care. In these circumstances, no further individual measure appears necessary at this stage.

**GM** In December 2009 the CM noted that the ECtHR found that the placement of the children in public care merely because of the parents' material

and economic situation constituted a disproportionate measure. The systemic character of the problem has been acknowledged by the Czech authorities and a series of measures, including the Amendments to the Act on Socio-Legal Protection of 2006 presented in AR 2008, have been taken to remedy the problem. These measures encompass notably the following.

The ECtHR's case law has been integrated in relevant national case-law. In a decision of 10/10/2007 the constitutional court thus quashed the placement of a minor child in public care, referring extensively to the ECtHR's case-law. In a similar decision of 02/04/2009, the Constitutional Court noted *inter alia* that placement of a child in public care also amounted to an interference with the child's personal liberty (the family environment being the child's most natural "space of freedom"), which implied his/her right to be heard before the court in person.

In addition, the Government adopted on 13/7/2009 a National Action Plan for the period 2009-2011 aiming at transforming and unifying the care system of endangered children. This plan defines key activities, instruments and specific tasks relevant to improving the care of endangered children, and aims in particular at reducing the number of children placed in public care. According to the authorities, a narrower action plan, aimed at solving the specific problems identified by the ECtHR in the present judgments, is under preparation.

Also, a new social housing regulation, of 17/08/2009, provides the legal framework of granting financial support for the construction of flats to be rented by persons with low income or by disabled persons.

Finally, in February 2009, the Ombudsman and relevant state authorities have drawn up a handbook of good practices with recommendations on preventing the creation or enlargement of socially excluded communities. It also contains a chapter on children's rights including guidelines on dealing with situations where a child risks being placed in public care due to the loss of housing.

In December 2009 the CM recalled the systemic character of the problem and noted with interest the information submitted concerning general measures, and in particular the adoption of the National Action Plan for transformation and unification of the care system for children at risk.

The CM invited the Czech authorities to provide further information on the general measures taken and/or envisaged to avoid placing children in public institutions on economic grounds, in partic-

ular on the impact of the measures already adopted and on the implementation of the National Action Plan.

#### 80. ROM / Lafargue (see AR 2007, p. 153)

37284/02  
Judgment of 13/07/2006, final on 13/10/2006

Last examination: 1065-4.2

**Authorities' failure to make adequate and sufficient efforts to ensure respect of the applicant's right of access to his child, born in 1995, as defined by the domestic courts in 2000 and 2005 (the latter proceedings engaged by the Ministry of Justice under the Hague Convention on request from the French authorities): primarily absence of adequate preparatory measures, but also absence of efficient coercive measures (violation of Art. 8).**

**IM** The ECtHR awarded the applicant non-pecuniary damage. The programme of meetings between the applicant and his child drawn up in the 2005 proceedings was initially only pursued during a period of five months. However, a number of further steps to ensure the renewal of contact have been taken since the ECtHR's judgment. In May 2007 the Bucharest court notably established a precise visiting schedule and holiday stays, including the possibility to send the child to his father's residence in France during those periods. The Ministry of Justice requested a bailiff's office to undertake all necessary measures to ensure the implementation of this decision. From a report presented beginning 2008 by the Romanian authorities it appears that the applicant spent the Christmas holidays with his child but that the latter had expressed in an interview with the psychologist certain wishes concerning inter alia the way the meetings were organised. Additional information has been requested on the progress in the implementation of the applicant's right of access to and residence with his son.

proving the respect of these rights, in particular by reinforcing the capacity of the authorities to take adequate preparatory measures so as to facilitate the rapid exercise of visiting rights accorded. Also information on improvements of the enforcement measures available is expected.

As regards, in particular, **access rights in the framework of the implementation of the 1980 Hague Convention**, a new law entered into force in Romania on 29/12/2004. Specific provisions of this law relate to the right of access and provide for enforcement measures and for the preparation of the child for the contact with its parent. Furthermore, on 5/04/2005, the Ministry of Justice adopted Order No. 509/C to approve the Regulation on the modalities of exercising the duties of the Ministry of Justice as a Central Authority designated through Law No. 100/1992 on Romania's accession to the 1980 Hague Convention. The CM is assessing the statistical data and the examples of the application of the Law of 2004 and Order No. 509/C submitted by the authorities.

**GM** As regards the enforcement of **access rights in general**, the CM is awaiting information on the general measures taken or envisaged in view of im-

The ECtHR's judgment was sent to the Supreme Judicial Council, with a view to bringing it to the attention of all domestic courts.

#### 81. SER / V.A.M. (see AR 2008, p. 170)

39177/05  
Judgment of 13/03/07, final on 13/06/07

Last examination: 1072-4.2

**Excessive length of divorce and custody proceedings started by the applicant in 1999: the proceedings were still pending when the ECtHR's judgment was delivered, notwithstanding the exceptional diligence required in proceedings of this kind (the more so, since the applicant was HIV positive); absence of any effective domestic remedy (violations of Art. 6§1, 13 and 8). Disrespect of family life because of the non-enforcement of an interim court order given in 1999 granting the applicant certain visiting rights (violation of Art. 8).**



**IM** The ECtHR drew attention in its judgment to the obligation of the respondent state to enforce, “by appropriate means”, the interim access order of 23/07/1999 and to “bring to a conclusion, with particular diligence, the ongoing civil proceedings” (§166 of the judgment).

The proceedings at issue were closed in December 2007, i.e. approximately six months after the ECtHR’s judgment became final. The new judgment, replacing the 1999 interim order, left custody to the father and confirmed the applicant’s visitation rights and was confirmed on appeal on 12/03/2008. Execution was ordered on 2/06/2008. The proceedings have thus, to this extent, been brought to a conclusion as ordered by the ECtHR.

As regards the enforcement issue, little progress has been made notwithstanding the different steps taken by the Serbian authorities. Enforcement proceedings have been engaged and sanctions imposed on the father, work has begun with school and social authorities to prepare the child (born in 1995) for visits. The prospects of continuing the preparatory work remain to be assessed, in view of the child’s firm unwillingness to see her mother.

In addition, the applicant has engaged proceedings to deprive the father of parental rights. These are still pending.

When the case was last examined in December 2009, the Serbian authorities were expected to continue their efforts to secure execution. Further information is thus awaited.

**GM** **Excessive length of civil proceedings:** The Government has underlined that the Serbian Constitution protects the right to a fair trial within reasonable time. Similarly, both the 2005 Civil Procedure Act and the 2005 Family Law emphasise the importance of deciding on claims and motions within reasonable time. All family-related disputes involving children must be resolved urgently.

Among other measures referred to, the introduction inter alia in 2005 of mediation as an alternative means of dispute resolution aims to further alleviate the workload of the courts. 2006 saw the adoption of a special law on training and education of members of the judiciary, as well as a National Strategy of Judiciary Reform and an Action Plan for 2006-2012, which stressed in particular the need for increased efficiency. 2008 saw the adoption of a number of laws to implement a comprehensive reform of the court system. Budgetary appropriations to secure the good functioning of the courts have also been secured.

Amendments to the Civil Procedure Act are currently being drafted with a view to further increase efficiency. A number of other issues are also under discussion, including the writ of execution, the introduction of a register of court Injunctions and the service of documents (notably in view of the widespread non-compliance with regulations concerning residence registration, resulting in a frequent inability to service court documents on the parties). Further efforts to improve efficiency comprise improved parameters to measure court productivity, training of judges, notably in case management, rationalisation of court and prosecution work, improved access to IT technologies, improved budgetary responsibility, notably by making the new High Judiciary Council the direct administrator of budget appropriations for personnel and operating costs.

During the examination of this case by the CM, it has appeared that the new legislative framework has improved the possibilities of preventing lengthy proceedings. Certain problems still persist, however, and information has thus been requested on further developments.

**Violation of right to respect for family life (non-enforcement of a court decision):** The importance of speedy enforcement is stressed in the 2004 Enforcement Procedure Act. The Minister of Justice has nevertheless set up a working party in May 2008 to consider amendments to this Act, notably the introduction of private bailiffs.

In co-operation with the Execution Department, the Serbian authorities organised a seminar in Belgrade on 25-26/09/2008 relating to the problems of enforcement in family matters. The conclusions are available on the website of the Serbian Government Agent in Serbian. Another seminar on the same topic was organised in Belgrade on 15/10/2009 by the Council of Europe and several other organisations. A number of problems emerged, notably related to a lack of co-ordination, communication and supervision between various national bodies. In response, the Ministry of Labour and Social Policy has adopted instructions for courts and social care centres based on the ECHR requirements. The problems identified are also taken into account in the ongoing reflections on amendments to the Enforcement Procedure Act.

Further information is awaited.

**Lack of an effective remedy:** The Constitutional Court Act was adopted in 2007. It creates a new remedy before the Constitutional Court in case of breach of human and minority rights and freedoms

guaranteed by the Constitution, including the right to a trial within reasonable time, even if other legal remedies have not been exhausted. If the complaint is upheld, the complainant may claim damages from a special Damages Commission appointed by the Minister of Justice. If no decision has been received within 30 days or if the applicant is dissatisfied with the amounts proposed, it is possible to seek damages before a court of law. No provision is made for acceleratory remedies. Statistical data re-

garding the Constitutional Court's case load and the handling of complaints by the Damages Commission have been provided. Reference has also been made to different Council of Europe activities in support of the Constitutional Court.

Notwithstanding this new Act, the assessment so far is that the evidence provided does not establish the availability in practice of an effective remedy for the type of violation here at issue. Further information has been requested.

## H. Cases concerning environmental protection

### H.1. Non-respect of judicial decisions in the field of the environment

### H.2. Non-protection of persons living in risk zones

#### 82. RUS / Budayeva

5339/02+

*Judgment of 20/03/2008, final on 29/09/2008*

*Last examination: 1065-4.2*

**Failure of the authorities, in spite of the warnings received from a specialised surveillance agency, to comply with their positive obligation and protect the applicants' lives against the mudslide which devastated the town of Tyrnauz (Republic of Kabardino-Balkaria) in July 2000, causing several deaths including that of the first applicant's husband, as well as lack of an adequate judicial enquiry in this respect (substantive and procedural violations of Art. 2).**

**IM** The ECtHR awarded just satisfaction in respect of the non-pecuniary damage sustained.

**GM** **Protection of the right to life – substantive aspect:** In June 2009, the Russian authorities informed the CM that on 6/01/2006 the government adopted a Federal Programme aimed at lowering the risks and reducing the consequences of emergencies of natural and industrial origins covering the period until the end of 2010. To implement this, the parliament of the Republic of Kabardino-Balkariya adopted a regional programme focusing in particular on setting up an adequate legislative and administrative framework, improving monitoring and forecasting systems and developing the warning infrastructure. This information is being assessed.

**Judicial enquiry:** Clarification is still awaited as to measures taken or envisaged to ensure effective investigation capable of securing full accountability of state agents, having regard to the ECtHR's finding concerning the ineffectiveness of the investigation carried out at the domestic level following the mudslide.

**Publication and dissemination:** The ECtHR's judgment was published in English in the Consultant Plus database, a summary of the judgment was published in Russian in the Bulletin of the ECtHR. A copy of the judgment was sent to the President of the Supreme Court and sent out to lower courts. It is planned to discuss the judgment at the forthcoming meetings of the Commission on Disaster Prevention and Relief of RKB and the regional branch of the Ministry of Disaster Relief.

## I. Freedom of religion

83. AUT / Religionsgemeinschaft der Zeugen Jehovas and others  
AUT / Verein der Freunde der Christengemeinschaft and others

40825/98 and 76581/01  
Judgment of 31/07/2008, final on 31/10/2008  
Judgment of 26/02/2009, final on 26/05/2009

Last examination: 1072-4.2

**Unnecessary restriction to the right to freedom of religion of Jehovah's Witnesses because of the belated decisions to confer legal personality – granted only in 1998 although the application had already been made in 1978 (violation of Art. 9) and discrimination in both cases given that both religious communities had to wait ten years before being able to request registration as religious societies (the latter enjoy privileged treatment in many areas such as exemption from military service and civilian service, reduced tax liability or exemption from specific taxes, facilitation of the founding of schools, and membership of various boards) (violation of Art. 14 taken in conjunction with Art. 9); excessive length of proceedings (1998-2004) concerning the Jehovah's Witnesses' second request for recognition as a religious society (violation of Art. 6§1).**

**IM** In both cases the ECtHR awarded just satisfaction in respect of non-pecuniary damage. It rejected the Jehovah's Witnesses claim for pecuniary damage as there was no causal link between the violation found and the alleged damage.

**Violation of Article 9:** Jehovah's Witnesses were granted legal personality as a religious community in 1998 after the entry into force of the 1998 Religious Communities Act (just as the Verein Freunde des Christengemeinschaft).

**Violation of Article 14 in conjunction with Article 9:** The ECtHR found a discrimination because of the excessively lengthy waiting period – ten years – prescribed by the 1998 Religious Communities Act although none of the religious communities was a newly established and unknown religious group but rather groups which were long established in the country and therefore familiar to the competent authorities. The ECtHR noted, however, that registration as a religious society was not automatic after expiry of the period as there were also other requirements. In this situation it could not speculate on the outcome of the registration proceedings.

In July 2008, the ten-year waiting period expired as regards the first applicants. They may lodge a new request for recognition as a religious society. On 7/05/2009 the Jehovah's Witnesses' new request was

granted and they were recognised as a religious society by a decree.

**Violation of Article 6§1:** The domestic proceedings concerning the Jehovah's Witnesses which the ECtHR had found to be excessively long are over. In the light of the above no further individual measure appears necessary.

**GM** The 1998 Religious Communities Act is still in force. The recognition in 2003 of The Coptic Orthodox Church, which had also been registered as a religious community in 1998, demonstrates that the ten-year waiting period is not applied in all cases by the Austrian authorities. The CM has requested information on measures taken or envisaged to avoid new similar violations.

The issue of excessive length of proceedings is examined in the *Ortner* group of cases (next examination, June 2010).

The ECtHR's judgment concerning the Jehovah's Witnesses was published. In March 2009 both judgments were widely disseminated to parliament, Human Rights co-ordinators, all Federal Ministries, the Constitutional, the Administrative and the Supreme Court. Moreover, the ministries were requested to take these judgments into consideration when applying the law and/or when drafting further legislative proposals.

84. MDA / Metropolitan Church of Bessarabia and others (examination in principle closed at the 1072nd meeting in December 2009)  
MDA / Biserica Adevărat Ortodoxă din Moldova and others

45701/99 and 952/03  
Judgment of 13/12/01, final on 27/03/02

Judgment of 27/02/2007, final on 29/05/2007

*Last examination: 1072-6.1*

**Government refusal, upheld by the courts, to recognise and register the Metropolitan Church of Bessarabia with the consequence that the church could neither organise itself nor operate and, lacking legal personality, it could not bring legal proceedings to protect its assets or other interests; its members could not meet to carry on religious activities and could not defend themselves against acts of intimidation; refusal by the government in 2001 both to register the Biserica Adevărat Ortodoxă din Moldova and others as ordered by the courts, and to pay the damages awarded by the courts on account of this refusal (violations of Art. 9 and 13 of the ECHR and of Art. 1 of Prot. No. 1).**

**IM** **Metropolitan Church of Bessarabia:** In its judgment the ECtHR awarded certain sums in respect of non-pecuniary damages. The applicants did not claim any pecuniary damage.

**Recognition and registration of the applicant Church:** The Metropolitan Church of Bessarabia was registered on 30/07/2002 after an amendment to the law on Religious Denominations (see GM below). The Church thereby acquired recognition and legal personality, allowing it, and its members, to fully enjoy freedom of religion on a par with other registered churches and also to protect its interests usefully, including by pursuing its property claims (see below) and the CM decided to close the issue. However, as number of parishes encountered problems, notably because they did not obtain from municipal authorities the certificate of presence required for registration, the issue of IM was reopened. According to the Government the matter was addressed and finally solved after this requirement was abolished following the entry into force of the new Law on Religious Denominations on 17/08/2007 (see GM).

However, complaints about registration problems of parishes also continued under the new system. The government acknowledged the existence of “teething” problems, and measures were adopted to overcome them (see GM). The government has also stressed that the applicants have not pursued any of the complaints submitted to the CM before the domestic courts. These complaints have nevertheless been communicated, as formulated to the CM, to the new registration service so that it can investigate possible additional assistance to the applicant church.

**The protection of assets and other interests:** Following registration, the applicant church has been capable of bringing proceedings to protect its property interests, notably by challenging before the courts the government’s approval in 2001 of an amendment to the statute of the Moldovan Metropolitan Church declaring this church to be the legal successor to the former Metropolitan Church of

Bessarabia (which ceased its activity in 1944). It also has full access to the church archives, today deposited at the National Archives.

As regards protection against intimidation (negative campaigns), the government has stressed its neutrality in religious matters as prescribed by the new law and the positive resolution of a number of incidents invoked by the applicant church. The government has underlined that under the new law on Religious Denominations, acts which hinder the free exercise of a religious cult or which spread religious hatred are punishable and that acts which otherwise infringe the rights enshrined in the new law may be challenged before the courts.

**Biserica Adevărat Ortodoxă din Moldova and others:** the applicant church was registered on 16/08/2007. Under Article 41 of the Convention, the Court had already awarded just satisfaction in respect of pecuniary and non-pecuniary damage suffered.

**Conclusion:** In view of these developments, notably the creation of effective remedies (see also GM below) which appear to allow for an examination possible remaining complaints in the light of the ECHR and the case-law of the ECtHR, the CM closed its examination of these issues.

**GM** **The recognition of religious freedom and creation of effective remedies; the complex reform of the law on religious denominations:** a first amendment to the Moldovan Law on Religious Denominations was brought about on 12/07/2002 (see also IM above). The CM found, however, these amendments insufficient to prevent new, similar violations, notably as they did not sufficiently reflect the requirement of proportionality and as the right of appeal against registration decisions was not provided with sufficient clarity.

Between March 2003 and February 2006, six draft laws were submitted and examined by a number of independent experts commissioned by the Council of Europe to examine the draft laws in the context of the organisation’s political dialogue with

Moldova, and/or the Execution Department. The importance of not reserving registration and recognition only for larger groups, as well as that of providing effective remedies, were particularly stressed. As time passed without a satisfactory final draft law, the CM adopted an IR (ResDH (2006) 12) in March 2006 urging the Moldovan authorities rapidly to adopt the necessary legislation and the ensuing implementing measures without further delay. The new law on Religious Denominations was adopted by the Moldovan parliament on 11/05/2007 and entered into force, on 17/08/2007.

**The complementary reform work and special training activities:** after examining the new law, the CM noted with concern that it was only partially operational, and that this situation was particularly regrettable since numerous entities of the applicant church had not still obtained registration. It also noted with regret that although the text presented many improvements compared to previous drafts, some of the recommendations made or concerns expressed had still not been taken into consideration.

In response hereto, the government first informed the CM of the measures taken to ensure the proper functioning of the registration process (notably the abolishment of the requirement of a certificate of presence from the municipal authorities).

The CM noted these developments, but reiterated the need to clarify a number of further aspects, in particular those related to the effectiveness of remedies and to the rights of religious groups or denominations which did not fulfil these requirements (or which did not for other reasons wish to be registered). In this respect the CM encouraged the rapid organisation of meetings between the Execution Department and the Moldovan authorities to clarify the outstanding issues.

The Secretariat presented its conclusions of the meetings in Memorandum CM/Inf/DH (2008) 47 revised (December 2008). Progress was noted in ensuring the proper functioning of the new registration service; assurances had been given by the Ministry of Justice, the Ministry of the Interior and the Prosecutor General that also non-registered religious groups enjoyed freedom of religion and state protection; such groups could use other forms of associations than those under the new Law on Religious Denominations to protect their interests. A number of questions were nevertheless found to be outstanding, notably as regards the registration procedure (allegations of unjustified registration requirements), the rights of those not registered (con-

sidering e.g. the Court's judgment in the *Talgat Masaev* case criticising sanctions imposed in 2004 on an unregistered group which had held religious service in private premises) and the scope and justifications of a number of rights and duties obtained through registration. There also appeared to be a need to harmonise the new law with a number of other laws, including the Code of Contraventions, in order to fully safeguard freedom of religion.

In response the government informed the CM that the registration procedure had been clarified through the issuing, in February 2009, of guidelines with examples of adequate registration requests and that it found that any allegation of unjustified registration requirements would best be examined in the context of judicial review of the registration process (which would clearly ensure respect for the ECHR requirements).

As regards the **freedom of religion of those not registered**, the undertakings made during the Secretariat's visits were renewed and the government also indicated its intention to amend the Code of Contraventions accordingly. Awaiting the adoption by parliament of the amendments prepared by the government in 2009, clear instructions have been given to police and prosecutors to apply the existing Code in accordance with the proposals.

In addition, information was given on special efforts to improve the training of judges and prosecutors on the ECHR requirement in respect of religious freedom, not least through the new National Institute of Justice, inaugurated in 2007. A special training session on religious freedom was also organised with the participation of the Execution Department's in June 2009. Further activities are planned. Special training programmes on the requirements of the ECHR have also been organised for the police.

**The effectiveness of the remedies set up:** The new Law on Religious Denominations clearly ensures judicial review in cases of refusal of registration. In the course of the different contacts taken with relevant authorities a clear consensus also emerged that the law, read together with the Law on Administrative Procedure, also provides access to judicial review in face of absence of reply or unreasonable delay in providing a reply. The law also provides clear judicial protection of other aspects of freedom of religion (see e.g. IM above).

In response to the violation in the case of *Biserica Adevărat Ortodoxă din Moldova*, the government has stressed that this was an isolated incident which will not be repeated. The special questions linked

with the delayed enforcement of judicial decisions awarding of damages which also arose in that case are dealt with in the context of the Committee's examination of the group *Luntre and others*.

**Publication and other measures to improve the direct effect of the ECtHR's judgments:** The judgments were rapidly published in the Official Journal and posted on the website of the Ministry of Justice. Besides the legislative and other measures mentioned above, the government has also stressed the important efforts made in Moldova to improve the direct effect of the ECHR and the case-law of the ECtHR in Moldova, including the recent dec-

laration of 30/10/2009 made by the Moldovan Parliament regarding the state of justice in the Republic of Moldova and measures required to be taken in order to improve the situation. These measures should, together with the training activities, ensure that the new system is applied in an ECHR conform manner.

**Conclusion:** In light of the above developments and assurances given the CM has found that the Moldovan authorities have complied with their obligations under the ECtHR's judgments in the two cases here at issue.

## J. Freedom of expression and information

### J.1. Defamation

#### 85. FIN / Juppala (examination in principle closed at the 1065th meeting in September 2009)

18620/03  
Judgment of 02/12/2008, final on 02/03/2009

Last examination : 1065-6.1

**Disproportionate interference with the applicant's right to freedom of expression on account of her criminal conviction in 2002 and sentencing to the payment of a fine for defamation of her son-in-law, after she had taken his child (i.e. her grandson) to a doctor and voiced in good faith a suspicion that the child might have been hit by his father (violation of Art. 10).**

**IM** The sums that the applicant had been sentenced to pay as a result of her conviction are covered by the just satisfaction awarded by the ECtHR, which also took into account the non-pecuniary damage sustained.

The applicant may, under Finnish law, seek the reopening of criminal proceedings having infringed the ECHR.

**GM** To allow courts to take due account of this judgment, it was published in the legal database Finlex, which is accessible to the public, and sent

out to relevant domestic authorities, including the parliament/ Constitutional Law Committee, the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the Supreme Court, the Supreme Administrative Court, the Ministries of Justice and Interior, the Tampere District Court and the Turku Court of Appeal. In view of the direct effect given to the ECHR and the ECtHR's case-law in Finland, these measures should be sufficient to prevent new, similar violations.

#### 86. FRA / Paturel and other similar cases (examination in principle closed at the 1059th meeting in June 2009)

54968/00  
Judgment of 22/12/2005, final on 22/03/2006

Last examination: 1059-6.1

**Violation of the right to freedom of expression of the applicants, who were given criminal or civil convictions, whereas the value judgments they had expressed had some basis in fact and/or did not include any excessive language (violation of Art. 10).**

**IM** In these cases, the CM concluded that no individual measures were required, in view of the fact that:

- In the *Paturrel* case, as a result of the just satisfaction awarded by the European Court of Human Rights, the fine and damages which the applicant

had been ordered to pay following his criminal conviction were fully reimbursed. The government has also stated that, in order for the conviction to be removed from the applicant's criminal record, the applicant may apply for the proceedings to be reopened on the basis of the ECtHR's judgment. He may also initiate a process of rehabilitation or ask to be dispensed from having an entry in his criminal record (however, the last two procedures concern only part of the criminal record and do not therefore make it possible for the entry to be fully removed).

- In the *Brasilier*, *Giniewski*, *Desjardin* and *Chalabi* cases, the applicants were ordered in civil proceedings to pay certain sums; but these convictions do not seem to have had any consequences for them, as in one case, the applicant was not ultimately required to pay the sum in question (*Chalabi*), in another, the ECtHR awarded just satisfaction (*Desjardin*) and in the final two (*Brasilier* and *Giniewski*), the damages were symbolic.

**GM** In these cases, it was not the relevant legislation that the ECtHR called into question but the grounds relied on by the domestic courts in finding against the applicants for defamation. This is why

special efforts have been made to publicise these ECtHR judgments widely so that the competent courts, applying the ECHR directly, can take account of them in practice. In particular, the judgments have been sent out to relevant courts and directorates of the Ministry of Justice, and the Court of Cassation has published on its website a document entitled *Liberté d'expression et protection de la personnalité en matière de presse* ("Freedom of expression and protecting reputation in the press"). The document describes the ECtHR's case-law in this area in detail and provides a more general overview of the Council of Europe's actions and decisions in this sphere.

The *Paturel* judgment has also been published and commented on (along with the *Mamère* judgment, which centred mainly on a defence based on establishing the truth of the defendant's assertions) on the Intranet site of the Office of European, International and Constitutional Law of the Directorate of Public Freedoms and Legal Affairs of the Ministry of the Interior. Lastly, the *Brasilier* and *Giniewski* judgments have been sent to the Court of Cassation, which has issued a commentary in the European Law Observatory, which has been accessible to all judges since July 2007.

#### 87. SER / Lepojić (examination in principle closed at the 1059th meeting in June 2009) SER / Filipović

13909/05 and 27935/05  
Judgment of 06/11/2007, final on 31/03/2008  
Judgment of 20/11/2007, final on 20/02/2008

Last examination: 1059 – 6.1

**Unjustified interference with the freedom of expression of local politicians as these were convicted of criminal defamation or insult and subsequently ordered in civil proceedings to pay substantial damages to the plaintiff, a local mayor, although the statements at issue were not "gratuitous personal attacks" and the applicants clearly had legitimate reason to believe that the mayor might have been involved in the illegal activities alleged (violations of Art. 10).**

**IM** In the *Lepojić* case, the ECtHR awarded non-pecuniary damage. Subsequently, the Municipal Court of Babušnica ordered the deletion of the applicant's conditional conviction from his criminal records.

In the *Filipović* case, the applicant's claim for just satisfaction was submitted out of time and thus dismissed by the ECtHR. Although the criminal conviction for insult was not examined by the ECtHR, *ratione temporis*, the Ministry of Interior erased the applicant's conviction from his criminal records shortly before the ECtHR's judgment.

**GM** The ECtHR's judgments were rapidly published in the *Official Gazette*, as well as on the website of the government agent. The agent forwarded the judgments with a note to the Ministry of Justice, the Supreme Court, the District Court of Pirot and Municipal Court of Babušnica. In addition, he published comments in the *Paragraf* legal journal and in the leading Serbian daily *Politika* on 22/11/2007. The judgments were also included in a book published by the Office of the Government Agent. On 25/11/2008 the Serbian Supreme Court adopted a legal position allowing the direct application of the case-law of the ECtHR in the particular context of the present type of cases. According to

this legal position, the degree of acceptable criticism is much wider for public figures than private individuals. The legal position is binding for all lower courts in the country.

The Serbian authorities also provided a copy of a judgment rendered by the District Court of Valjevo

on 12/08/2008 in an unrelated case. Referring to Article 10 of the ECHR, this judgment states that the holders of public offices had to accept any criticism expressed on their account, even if such criticism exceeds the limits of customary decency.

#### 88. SVK / Klein (examination in principle closed at the 1051st meeting March 2009)

72208/01

*Judgment of 31/10/2006, final on 31/01/2007*

*Last examination: 1051-6.1*

**Violation of the right to freedom of the expression of the applicant, a journalist, given a criminal conviction (fine, convertible into a one-month prison sentence) for defamation following the publication, in March 1997, of an article criticising Archbishop Ján Sokol: the article criticised only the Archbishop personally and neither interfered with the right of believers to express and practise their religion nor denigrated their faith (violation of Art. 10).**

**IM** As the applicant had not paid the fine himself and had failed to prove that he was still under a legal obligation to reimburse the third party which had paid it (a private company in the process of liquidation), the ECtHR dismissed his claims in this connection, but awarded him just satisfaction for non-pecuniary damage.

The applicant also claimed that his conviction prevented him from applying for certain posts for which a clean criminal record was required (state authorities, municipalities, legal persons falling under the competence of those entities).

In 2005, an extraordinary remedy was lodged before the Supreme Court by the Minister for Justice against the impugned judgment. The Minister for Justice expressly stated that in his opinion the article of the Criminal Code on the basis of which the applicant had been convicted, defining the offence of defamation of nation, race and belief, was contrary to the Constitution. By decision of June 2007, the Supreme Court dismissed the appeal, stating that it was not competent to decide on the compliance of a generally binding legal provision with the Constitution. Moreover, it did not consider itself to be bound by the legal opinion of the ECtHR insofar as Slovak criminal law did not regulate the legal consequences of the ECtHR's judgments in respect of the judgments delivered by the Slovakian courts. In October 2007, the Government's Agent before the ECtHR published a press release in which she described this development as unfortunate. She pointed out that in the light of Art. 46, states were under an obligation to remove or redress the violations of the ECHR found by the ECtHR, and that this applicant remained subject to a conviction by a final decision of a domestic court.

Following these events, the Košice District Court agreed to reopen the proceedings in question in January 2008 and quashed the impugned judgment. Following a new set of proceedings on the basis of the original charge, the applicant was finally acquitted in September 2008.

**GM** Several seminars on the freedom of expression, in the light of Art. 10 of the ECHR and the ECtHR's case-law, were held in November 2005, February 2006 and February 2008 by various Slovakian judicial bodies and agencies. They were attended by judges, public prosecutors and justice officials.

The judgment was published in a Slovakian legal journal, and distributed to all regional courts and the Supreme court by circular letter of the Minister for Justice. The presidents of the regional courts and the president of the criminal division of the Supreme Court were asked to notify the judgment to all judges within their administrative jurisdiction and to all judges dealing with criminal cases.

With regard to the direct effect of the ECHR in Slovakian law, the authorities indicated that the Supreme Court's decision in the extraordinary remedy was not typical of the case-law of the Supreme Court which often refers to the ECHR. On 30/01/2009 the president of the criminal division of the Supreme Court made a statement to the effect that the Court accepted the obligation to abide by the final judgments of the ECtHR and the direct effect of the ECHR in domestic criminal law, as required by Art. 46 of the ECHR.

Moreover, in August 2008, the Government's Agent before the ECtHR sent a letter to the President of the Košice regional court, clearly stipulating that the judgment of the ECtHR was binding on



the state. A similar letter was also sent on the same date to the state prosecutor.

Following this information regarding the individual and general measures, the Committee of Ministers decided, in March 2009, to close the case.

## J.2. Broadcasting rights

### 89. ARM / Meltex Ltd and Mesrop Movsesyan

32283/04  
Judgment of 17/06/2008, final on 17/09/2008

Last examination: 1072-4.2

**Unlawful interference with the applicant's right to freedom of expression on account of the refusal by the National Television and Radio Commission (NTRC), on seven occasions in 2002 and 2003, to deliver the applicant a broadcasting licence in the context of different tender calls. The refusals were not required by law to be motivated and the system did thus not provide adequate guarantees against arbitrariness (violation of Art. 10).**

**IM** The ECtHR awarded the applicant company just satisfaction in respect of non-pecuniary damage.

The Armenian authorities stated that individual measures in this case are tightly linked to the issue of general measures (see below). A new call for tender would not satisfy the requirements of the ECtHR's case-law if the law on radio and television was not first modified.

In the meantime, the applicants company informed the CM that following the ECtHR's judgment it had requested the reopening of the judicial proceedings it had brought in vain against the NTRC's decisions at issue (the courts had found in these proceedings that the NTRC's actions had fully complied with the law). The CM was subsequently informed that the two requests lodged had been dismissed in February 2009 by the Court of Cassation. In September 2009 the Armenian authorities informed the CM that a new call for tenders will take place in July 2010, at which the applicant will be given the possibility to participate.

The CM has invited the authorities to keep it informed of progress made in preparing the call for tenders as well as of any interim measure that they may envisage in favour of the applicant company. It has also invited the authorities to provide full information on the remedies pursued by the applicant before the competent national judicial authorities.

**GM** The Law on Television and Radio Broadcasting has been subject to several amendments since the facts of the case. According to the new amendments as of 28/04/2009, the National Television and Radio Commission shall give full reasons for its decisions to award, reject or revoke a broadcasting licence and ensure the transparency and accessibility of its decisions.

The judgment has been translated and published in relevant official publications, on the official websites of the judiciary and of the Ministry of Justice. The translated text of the judgment has also been sent to the National Television and Radio Commission and to the Court of Cassation.

### 90. SUI / Verein gegen Tierfabriken Schweiz (VgT) No. 2

32772/02  
Judgment of 30/06/2009 – Grand Chamber

Last examination: 1065-2.1

**Failure of the Swiss authorities to comply with their positive obligation to take the necessary measures to allow the applicant (an animal protection association) to broadcast a television commercial, after the ECtHR had found, in a first judgment in 2001 (*Verein gegen Tierfabriken (VgT)* No. 24699/94, judgment of 28/06/2001), that the ban imposed on the applicant's commercial had violated its freedom of expression (violation of Art. 10). In particular the Swiss Federal Court had refused on excessively formalistic grounds the applicant's request to have the proceedings at issue in the 2001 case reopened.**

**IM** As to the interaction with Art. 46 ECHR in general, the ECtHR notably reiterated that it did

not have jurisdiction to order the reopening of the proceedings. It added, however, that where an indi-

vidual has been convicted following proceedings that have entailed breaches of the requirements of Art. 6 of the ECHR, it may indicate that a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redress and referred on this point also to the CM's guidelines in Recommendation Rec (2000) 2.

In the instant case the ECtHR considered that reopening could constitute an important aspect of execution to the extent that it would afford the authorities with the opportunity to abide by the conclusions and the spirit of the ECtHR's judgment to be executed, while complying with the procedural safeguards in the ECHR. This applied all the more where, as in the instant case, the CM (when supervising the execution of the first judgment) had merely noted the existence of a reopening procedure without awaiting its outcome.

The ECtHR stressed that respondent states are required to provide the CM with detailed, up-to-date information on developments in the execution process.

Turning to the facts of the present case, the ECtHR noted at the outset that the publicity at issue had not been broadcast after its first judgment.

As regards the Federal Court's refusal to accept the applicant association's request to reopen, after the ECtHR's judgment in 2001, the impugned proceedings whereby the Federal Court had imposed the broadcasting prohibition at issue, the ECtHR notably found that the Federal Court's assessment:

- that the association had not provided a sufficient indication of its position as to the nature of "the amendment of the judgment and the redress being sought" was overly formalistic in a context in which it was clear from the circumstances as a whole that the application necessarily concerned the broadcasting of the commercial in question;
- that the applicant association had not sufficiently shown that it still had an interest in broadcasting in fact amounted to take the place of the association, which alone was competent at that stage to judge whether there was still any purpose in broadcasting the commercial; moreover, the Federal Court did not offer its own explanation of how the

interest in public debate had become less topical, nor did it show that after the ECtHR's judgment in 2001 the circumstances had changed so as to cast doubt on the validity of the grounds for the original violation of Art. 10;

- that the applicant association had alternative options for broadcasting, for example via private and regional channels, since that would require third parties, or the association itself, to assume a responsibility that fell to the national authorities alone: that of taking appropriate action on a judgment of the Court.

The ECtHR lastly noted that the contracting states are under a duty to organise their judicial systems in such a way that their courts can meet the requirements of the ECHR and that this principle also applies to the execution of the ECtHR's judgments. Accordingly, the ECtHR also found that it was equally immaterial to argue that the Federal Court could not in any event have ordered that the commercial be broadcast following the ECtHR's judgment. The same was true of the argument that the applicant association should have instituted civil proceedings.

When this case was first examined in September 2009, the Swiss authorities informed the CM that following the ECtHR's judgment in this case the applicant association filed a new request for review. The CM noted this information with interest and invited the Swiss authorities to inform it of the developments in the new review procedure. Subsequently, the Government has indicated that it considered the issue of individual measures solved as the reopening request has been granted and that the commercial spot would soon be broadcasted. This information is being evaluated.

**GM** The ECtHR's judgment has been published and disseminated. The CM invited in September 2009 the Swiss authorities to provide an action plan/action report on measures taken or envisaged. Information regarding the evaluation of the situation in the light of the individual measures has been received and is being evaluated.

### J.3. Protection of sources

#### 91. NLD / Voskuil

64752/01  
Judgment of 22/11/2007, final on 22/02/2008

Last examination: 1059-5.1

**Unjustified pressure (detention for 17 days) to compel a journalist, who had written articles alleging foul play by the police in the context a criminal investigation, to reveal his sources within the police so that action could be taken against the sources: the pressure used was too far reaching, considering the right of the public to be informed of improper methods used by public authorities (violation of Art. 10); unlawfulness of the applicant's detention during three of the 17 days as he had been provided with a written copy of his detention order too late, in violation of the procedure prescribed by domestic law (violation of Art. 5§1).**

**IM** The applicant has been released and has made no claim for just satisfaction. In these circumstances no further individual measure seems necessary.

**GM** **Publication and dissemination:** The ECtHR's judgment was published in law journals and has been disseminated to the judiciary.

**Violation of Art. 10:** The ECtHR found that the interference with the applicant's freedom of expression had a basis in law (Art. 294§1 of the Code of Criminal Procedure) but that it was disproportionate.

By letter of 9/04/2009 the Netherlands authorities provided information that following the ECtHR's judgment a draft law was prepared to regulate journalists' right not to disclose their source of informa-

tion. The consultation period ended on 30/01/2009 and adjustments have been made according to the suggestions by the consulted organisations before it was sent to the Officials' Commission (*voorportaal*) on 23/04/2009. Afterwards, the Draft was sent for advice to the Council of Ministers and to the Council of State.

The CM has invited the authorities to provide information on the text of the draft law and the progress made in its adoption.

**Violation of Art. 5§1:** Art. 224 of the Dutch Code of Criminal Procedure provides that detention orders are notified in writing within 24 hours. This procedure was not followed in this case. The violation seems to be an isolated incident. No further measure appears necessary.

#### J.4. Threats to public order or national security

##### 92. HUN / Vajnai

33629/06  
Judgment of 08/07/2008, final on 08/10/2008

Last examination: 1065-4.2

**Unjustified interference with the applicant's right to freedom of expression because of his criminal conviction in 2005 for wearing a totalitarian symbol (i.e. the red star) during a lawfully organised, peaceful demonstration (the applicant was vice-president of a registered, left-wing political party with no known totalitarian ambitions) (violation of Art. 10).**

**IM** The ECtHR considered that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

According to the information provided by the Hungarian authorities to the CM in January and July 2009, on 17/12/2008 the Prosecutor General's Office filed a petition *ex officio* for review in respect of the final judgment convicting the applicant. Thereafter, the applicant's case was reopened before the Supreme Court. On 10/03/2009 the Supreme Court reversed the previous decisions and acquitted the applicant. Considering the above, no further individual measure appears necessary.

**GM** Section 269/B of the Hungarian Criminal Code does not require proof that actual display of a

red star amounted to totalitarian propaganda; instead, the mere display is irrefutably considered to be so. For the ECtHR, this indiscriminate feature of the prohibition corroborates the finding that it is unacceptably broad.

According to the information on individual measures, the Supreme Court acquitted the applicant on 10/03/2009 and revised its previous decisions in this matter. Thus, the Supreme Court changed its case-law concerning Section 269/B of the Hungarian Criminal Code at issue. The ECtHR's judgments and the Supreme Court's decisions, including the Supreme Court's decision of 10/03/2009, are binding upon lower courts in Hungary. However, if any similar case appears before the Supreme Court, it will apply its recent case-law.

The ECtHR's judgment was translated and published on the website of the Ministry of Justice and Law Enforcement as well as in professional journals. It was sent to the Office of the National Judicial Council for dissemination to courts nationwide

and to the Prosecutor General's Office in order to initiate the review proceedings.

The CM is currently assessing whether the measures taken by the Hungarian authorities so far appear to be sufficient.

## K. Freedom of assembly and association

### 93. ARM / Galstyan and other similar cases (see AR 2008, p. 142)

26986/03

*Judgment of 15/11/2007 final on 15/02/2008*

*Last examination: 1072-4.2*

**Breach of the applicants' right to freedom of assembly due to their arrest and sentencing to several days' of detention for their alleged or effective participation in rallies in February 2003, as well as following the presidential elections of April 2003 (violation of Art. 11); infringement of the applicants' right to adequate time and facilities for the preparation of their defence (violation of Art. 6§3b combined with of Art. 6§1); breach of the right of appeal in criminal matters (violation of Art. 2 of Prot. No. 7).**

**IM** The ECtHR awarded just satisfaction in respect of non-pecuniary damage to all applicants which submitted such claim. The applicants' detention ceased before the ECtHR's judgment. Up to now, no information has been presented by the authorities on any possible record of the applicants' conviction and on measures taken or envisaged in their favour. Such information continues to be requested.

**GM** **Freedom of assembly:** Amendments to the law on conducting meetings, assemblies, rallies and demonstrations, have been adopted on 11/06/2008, after an expert examination by the Venice Commission. The importance of setting up of an effective and independent system for monitoring the enforcement of the law, underlined also by the Venice Commission, has been stressed. Moreover,

the ECtHR's case-law, according to which in no circumstances should penalties be applied for mere participation in a rally which has not been prohibited, has been recalled before the CM. Accordingly, the Armenian authorities have been invited to provide information on penalties potentially applicable to participants in a rally, as well as details on the publication of the ECtHR's judgments in these cases and their dissemination to administrative and criminal courts. The CM noted in December 2009 that the above issues were still outstanding and decided to resume consideration in the light of further information to be provided by the authorities.

**Fair trial and right to appeal in criminal matters:** it appears from the judgment of the ECtHR in the *Galstyan* case that the provisions applicable at the material time are no longer in force.

### 94. BGR / UMO Ilinden-Pirin and others (Final Resolution (2009) 120) (see AR 2007, p. 164; AR 2008, p. 182)

59489/00

*Judgment of 20/10/2005, final on 20/01/2006*  
*CM/Inf/DH (2007) 8*

*Last examination: 1072-1.1*

**Infringement of the freedom of association of an organisation aimed at achieving "the recognition of the Macedonian minority in Bulgaria" due to the dissolution in 2000 of its political party, based on considerations of national security (alleged separatist ideas) when the applicants had not hinted at any intention to use violence or other undemocratic means to achieve their aims (violation of Art. 11)**

**IM** Following the judgment of the ECtHR the applicants requested on three occasions re-registration of a political party with the same name

and similar statutes as that unjustifiably dissolved in 2000 (see also for details AR 2008 and 2007). The

CM followed the proceedings in question up to their outcome.

In December 2009, the CM decided to close the examination of the case:

“Recalling that it has expressed concerns more particularly as regard the fact that the decision of the first-instance court on the second request for registration of the applicants’ political party reiterated grounds incriminated by the Court;

Stressing in this respect that the judicial decisions relating to the applicants’ third request for registration do not reiterate such grounds and are exclusively based on the non-compliance with the law of the material acts for the constitution of the party and of the related documents to be submitted;

Having noted with satisfaction the declaration of the government according to which it “sees no obstacle to the applicants’ obtaining the registration of their organisation as a political party on the condition that the requirements of the Constitution of the state and the formal requirements of the Political Parties Act are met, without any grounds such as those incriminated by the European Court being opposed to the applicants”;

Underlying in this context that the Political Parties Act, as modified in January 2009, reduced from 5 000 to 2 500 the level of members required to form a political party and that this new level seems, in addition, likely to resolve the problems encountered by the applicants in forming their party in conformity of the requirement of the 2005 Political Parties Act”.

In view of the above considerations, the CM considered that the applicants could apply for the reg-

istration of their party in proceedings which are in conformity with Art. 11 ECHR and that, accordingly, no further individual measure was needed.

**GM** As the ECHR is part of the Bulgarian domestic law, the government considered it sufficient to ensure a ECHR conform interpretation of Bulgarian law to send the ECtHR’s judgment, with a covering letter indicating that the transmission was made in the context of Bulgaria’s execution of the ECtHR’s judgment, to the Constitutional Court and to the competent court for the registration of political parties. In addition, with a view to raising the awareness of the competent authorities, a CD manual, elaborated by the National Institute of Justice, was sent to 153 courts, the same number of prosecutor’s offices and to 29 investigation offices. The manual contains examples of case-law of the ECtHR in the field of the freedom of association and freedom of assembly, as well as articles, studies and other material relating to these areas. The judgment was furthermore published.

Following the decisions adopted by the CM, several training activities have been organised between October 2007 and October 2008, with the participation in particular of judges from the Supreme Court of Cassation, from the Sofia City Court and of representatives of the prosecution office.

The Government undertook to continue to organise awareness raising activities in the field of application of Art. 11 of the ECHR, including visits to the Council of Europe of judges in particular from the competent courts.

#### 95. HUN / Bukta and others (examination in principle closed at the 1051st meeting in March 2009)

25691/04  
Judgment of 17/07/2007, final on 17/10/2007, rectified on 25/09/2007

Last examination: 1051-6.1

**Disproportionate restriction of the applicants’ right to freedom of assembly: dispersal of a peaceful demonstration, organised in connection with a visit to their country by a foreign head of state, on the ground that the organisers had not fulfilled the obligation provided for in legislation to notify the police three days before the demonstration, whereas they had been informed of the visit of the Head of State only on the day before it took place (violation of Art. 11).**

**IM** The ECtHR considered that that the finding of a violation was sufficient just satisfaction for the damage suffered. Before the CM the applicants have not raised any issue of individual measures.

**GM** In a decision of 2008 the Constitutional Court held that prior notification provided for in law was necessary but stated also that banning a peaceful assembly on the sole ground that there has not been prior notification because of exceptional circumstances, is unconstitutional.

The police and the courts have to take this principle into consideration in their decision-making process.

The ECtHR's judgment was published on the website of the Ministry of Justice and in profes-

sional journals. It was passed on to the legal and police authorities concerned, namely the Office of the National Judicial Council, various government departments in charge of police services, the national police headquarters and the Supreme Court.

#### 96. MKD / Association of citizens Radko and Paunkovski

74651/01

*Judgment of 15/01/2009, final on 15/04/2009*

*Last examination: 1065-2.1*

**Unjustified dissolution in 2002 of the applicant association shortly after its foundation following a decision of the Constitutional Court, declaring the association's articles null and void without any evidence having been provided that the association posed a clear and imminent threat to public order (violation of Art. 11).**

**IM** The ECtHR awarded just satisfaction to the applicants in respect of non-pecuniary damage as a consequence of the violation of their right to freedom of association. As to the applicants' request for registration, the ECtHR noted that it is unclear whether the applicants were requesting that the association be registered as a "political party", for which specific rules apply. Having regard to its case-law in respect of Art. 11 and Art. 46, the ECtHR stated that it saw no reason to issue a specific ruling on the applicants' request for registration.

Before the CM, the Government indicated in May 2009 the second applicant, Mr Paunkovski, had requested "the renewal of the registration" of the applicant association. On 28/05/2009 the authorities had replied that there was no possibility for the automatic registration of the association and that it

could apply for registration to the Central Register, in accordance with the legislative amendments introduced in 2007.

The CM has requested information on whether the applicant association has applied for registration under the applicable procedures and, if so, the outcome of this request.

**GM** The ECtHR's judgment had been translated and published on the Internet site of the Ministry of Justice and had been forwarded to the Constitutional Court, Ohrid Court of first instance, all appeal courts in the county, the Supreme Court and the Central Register in charge of registering citizens' associations.

The CM has requested the authorities to provide information on an action plan/action report.

## L. Right to marry

## M. Effective remedies – specific issues

## N. Property rights

### N.1. Expropriations, nationalisations

#### 97. BGR / Manolov and Racheva-Manolova

54252/00

*Judgment of 11/12/2008, final on 11/03/2009*

*Last examination: 1072-4.2*

**Absence of adequate compensation for deprivation of property lawfully acquired in 1982 from the state, as a result of proceedings brought against the applicants in 1992 by the heirs of the original owners who had been "compelled" to sell the property to the state in 1976 and 1978, but who had subsequently acquired a right under the Restitution of Stores, Workshops and Storage Houses Act 1991 to reacquire their property upon payment to the state of the original sale price, irrespective of**

subsequent sales by the state to third persons such as the applicants; such third persons were only entitled to compensation for improvements made to the property, without any revalorisation of the amounts spent to cover the effects of inflation which in the 1990s had drastically reduced its value (violation of Art. 1 of Prot. No. 1).

**IM** The ECtHR found, considering the nature of the violation, that the applicants were entitled to just satisfaction for pecuniary damage reasonably related to the present market value of the lost property. The ECtHR also awarded non-pecuniary damage for the distress suffered by the applicants as a result of being deprived of their property. In this situation, no further individual measures has appeared necessary.

**GM** The case presents certain similarities to the *Velikovi and others* group (43278/98, Section 4.2) which concerns application of the 1992 Law on the Restitution of Real Property. However, the ECtHR noted that the 1991 Act here at issue did not aim at securing redress for expropriations carried out by the Communist regime without compensation, as

the Restitution Law 1992 did, but at restoring title to persons who had been “compelled” to sell their properties to the state in the 1970s at certain state regulated prices. The injustice which the 1991 Act sought to correct was thus less significant than that at issue under the Restitution Law 1992. Consequently, the ECtHR found it difficult to accept that the aim of correcting the injustices dealt with by the 1991 Act could justify depriving the applicants of their property lawfully acquired with compensation only for improvements made, the value of which could only result in a token award as inflation had drastically reduced its value.

The CM awaits information on measures taken or envisaged to prevent similar violations.

98. **GRC / Papastavrou (see AR 2007 p. 176)**  
**GRC / Katsoulis**

46372/99 and 66742/01  
*Judgments of 10/04/03, final on 10/07/03 (merits) and of 18/11/04, final on 18/02/05 (just satisfaction)*  
*Judgments of 08/07/2004, final on 08/10/2004 and of 24/11/05, final on 24/02/06*

IR (2006)27

Last examination: 1059-4.2

**Reforestation by state of land possessed in good faith by applicants and violation of their property rights; excessive length of proceedings before the Council of State (violation of Art. 1, Prot. No. 1 and 6§1)**

**IM** The ECtHR and awarded the applicants just satisfaction covering the pecuniary damage. Possible consequences of the violation still suffered by the applicants should be remedied in the context of the interim and long-term general measures (see below). The applicants have not communicated any further claims.

**GM** For more details see AR 2007 and IR (2006) 27.

In its IR (2006) 27 the CM notably encouraged the rapid development of a remedy capable of providing compensation for bona fide persons such as the applicants, affected by reforestation decisions and involved in lengthy litigation related to recognition of the ownership of forests. It also encouraged the competent Greek authorities, in particular the Ministry of the Environment, Urban Planning and Public works, to intensify its efforts in setting up a cadastral and forest register.

In 2009 the government provided further information on the issue of remedies, notably the development of the domestic courts’ case-law relating to the possibility to provide compensation to persons who, like the applicants, are affected by decisions to reforest plots of land possessed by them.

The government also furnished information on the progress of the national land and forest register project: By May 2008, 325 regions had been registered, which amounts to a surface area of 7 948 201 hectares and 6 278 762 property titles. In June 2008 began the registration of a further 107 regions, covering the entirety of the urban centres and two-thirds of the country’s population concerning property rights. By 2011 when this phase ends, it is estimated that a further 3 million hectares and around 6 million property titles will have been registered. In view of the amount of work required and its significant cost, the completion of the national

land and forest register project is not expected before 2016.

The CM took note of the information provided at its June meeting and indicated that the information required assessment.

99. **ROM / Străin and others and other similar cases (see AR 2007, p. 181; AR 2008, p. 189)**

57001/00  
Judgment of 21/07/2005, final on 30/11/2005

Last examination: 1059-4.2

**Non-restitution of properties nationalised by the earlier communist regime to their owners as a result of the sale of the properties by the state to third parties; absence of any clear domestic rules on compensation to the owners in such situations (violation of Art. 1, Prot. No. 1). In one case, also excessive length of the proceedings for recovering the property at issue, from 1993 to 1999 (violation of Art. 6§1).**

**IM** The ECtHR awarded just satisfaction for non-pecuniary damage in most cases and ordered the return of the properties in question or payment of just satisfaction for pecuniary damage corresponding to their market value within three months of the date on which its judgments became final. In most cases, where the judgment left to the authorities the choice between returning the properties and paying a compensation corresponding to the market value of the properties, the authorities have chosen the latter option (except in the *Străin* case). In some cases, however, the applicants had already recovered their property before the ECtHR judgment.

Information is awaited on the current situation, in particular, whether the different properties at issue in the different cases have been returned or if the owners have received compensation instead.

**GM** As from 2005 a series of legislative changes were made in order to ensure the implementation of the obligation, instituted in 1996 to reconstitute properties nationalised during the communist regime or to pay compensation. The new law specifies that compensation is to be equivalent to the market value of the property and paid in the form of participation, as shareholders, in a mutual investment fund or, only for sums up to 500 000 RON, monetary compensation. In 2008, the Romanian authorities provided statistics on the functioning of this mechanism (see AR 2008 for details).

In December 2008, however, the ECtHR concluded in a new case (*Viașu v. Romania*, 75951/01, judgment of 9/12/2008, final on 09/03/2009) that the repeated legislative changes had been ineffective and had created a climate of legal uncertainty. In this context, the ECtHR noted the existence of a systemic deficiency in the Romanian legal order, affecting a large number of people. Invoking CM Resolution Res (2004) 3 and its Recommendation Rec (2004) 6, the ECtHR indicated measures that might be appropriate to remedy the systemic problem identified. Thus, it considered that the authorities have to assure by appropriate legal and administrative measures the effective and rapid implementation of the right to restitution, either in kind or compensation, according to the principles provided for by Art. 1 of Protocol No. 1 and the case-law of the ECtHR. Those objectives might be achieved, for example, by amending the current restitution mechanism and urgently setting up simplified and efficient procedures based on consistent legislative and regulatory measures capable of striking a fair balance between the rights at issue.

In the light of these findings of the ECtHR, the CM, in June 2009, invited the Romanian authorities to submit an action plan on measures taken or envisaged to improve the current restitution mechanism.

The judgments of the ECtHR in the *Străin*, *Păduraru* and *Porteanu* cases were published and disseminated.

## N.2. Disproportionate restrictions to property rights

100. **ISL / Kjartan Ásmundsson (examination in principle closed at the 1059th meeting in June 2009)**

60669/00  
Judgment of 12/10/2004, final on 30/03/2005

Last examination: 1059 – 6.1



**Disproportionate interference with the applicant's property rights as a result of a legislative change in 1997 which altered the basis for the assessment of disability, in order to put in order the finances of the Pension Fund to which the applicant paid premiums: the law deprived him of the entirety of his disability pension entitlements, despite the fact that he was still considered 25% incapacitated to perform work and that his entitlements constituted at the time no less than one-third of his gross monthly income (violation of Art. 1, Prot. No. 1).**

**IM** The ECtHR awarded the applicant a compensation for the pecuniary damage in an amount reasonably related to the prejudice suffered, covering the period up to his retirement, scheduled in 2009. It indicated that it could not award him the full amount claimed, precisely because a reasonable and commensurate reduction in his entitlement would have been compatible with his ECHR rights. In these circumstances, no issue concerning individual measures was raised before the CM.

**GM** The applicant belongs to a limited group of 54 persons who had their pension entitlements en-

tirely withdrawn as a consequence of the new law. According to the information provided by the authorities, a few people contacted the Ministry of Justice after the ECtHR judgments. The Ministry advised them to contact the office of Attorney General in order to claim for compensation. No such compensation has, however, yet been paid to any of these people since no one has been in exactly the same situation as the applicant. Appeals against these decisions can be introduced before the courts.

The judgment of the ECtHR was published in Icelandic on the Internet homepage of the Ministry of Justice.

#### 101. LIT / Jucys (examination in principle closed at the 1051st meeting in March 2009)

5457/03  
Judgment of 08/01/2008, final on 08/04/2008

Last examination: 1051-6.1

**Interference with the applicant's right to the peaceful enjoyment of his possessions: prolonged inability, after being acquitted in 1997 of charges of smuggling, to obtain an adequate compensation, corresponding to the value of the possessions which had been seized and sold in auction by the state during the proceedings on account of their being perishable goods (violation of Art. 1 of Prot. No. 1).**

**IM** The Supreme Court reopened the domestic proceedings and eventually awarded the applicant interest on the sums returned to him. The ECtHR granted him just satisfaction for the outstanding pecuniary and non-pecuniary damages sustained. In these circumstances, no issue of individual measures was raised before the CM.

**GM** The entry into force of the new Civil Code in 2001 (which did not apply to the merits of the applicant's claims at the time) should prevent new

violations similar to the one found in this case. This new code specifically allows for pecuniary and non-pecuniary damages for actions of investigating authorities including unjustified procedural measures of enforcement (such as seizure, confiscations, etc).

The ECtHR's judgment was translated into Lithuanian and placed on the official website of the Ministry of Justice. It was also sent out to Lithuanian judicial institutions.

#### 102. TUR / Loizidou (see AR 2007, p. 185; AR 2008, p. 195)

15318/89  
Judgment of 18/12/1996 (final)

IR (99) 680, (2000) 105, (2001) 80, (2003) 190, (2003) 191

Last examination: 1072-4.3

**Continuous denial of access by the applicant to her property in the northern part of Cyprus and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).**

**IM** After the payment of just satisfaction on 02/12/2003 (see IR (2003) 190 and (2003) 191), the CM resumed consideration of the merits of the

case, including the issue of individual measures in November 2005.

The situation of the applicant's property was examined *ex proprio motu* by the "Immovable Property Commission" and, in November 2007, the applicant was offered monetary compensation as well as the possibility of an exchange of property.

In response to the applicant, who insisted on restitution, the authorities indicated that immediate restitution could not be envisaged under the "Law of 2005 on the compensation, exchange or restitution of immovable property" as the applicant's properties had been allocated to refugees from the south and that restitution after "the solution of the Cyprus problem" could not be envisaged either under the 2005 law because the refugees had developed the properties so that its 1974 value had doubled.

Further clarifications on the offer made have been given by the Turkish authorities in December 2008 and these were noted with interest by the CM.

The CM noted also that the offer made to the applicant was based on the 2005 law and recalled that all the relevant issues of the effectiveness of this mechanism had not been addressed in detail by the ECtHR so far. In this respect, the CM underlined, in June and December 2009, that the ECtHR was currently seized of the question of the effectiveness of the compensation, exchange and restitution mechanism and considered that the ECtHR's conclusions on this point might be decisive for the execution of this judgment. The CM decided in consequence to resume consideration of this case at the latest at their June 2010 meeting.

**GM** The main information regarding the system set up under the 2005 law is presented in the case *Cyprus against Turkey*.

### 103. TUR / Xenides Arestis (see AR 2007, p. 185; AR 2008, p. 196)

46347/99

*Judgments of 22/12/2005, final on 22/03/2006 (merits) and of 07/12/2006, final on 23/05/2007 (just satisfaction), CM/Inf/DH (2007) 19*

IR (2008) 99

*Last examination: 1072-4.3*

**Violation of the right to respect for applicant's home (violation of Art. 8) due to continuous denial of access to her property in the northern part of Cyprus since 1974 and consequent loss of control thereof (violation of Art. 1, Prot. No. 1).**

**IM** **Payment of just satisfaction:** the sums awarded in the judgment of 22/12/2005 (final on 22/03/2006) have been paid (for the question of whether VAT was included in the costs, see Memorandum CM/Inf/DH (2007) 19). However, the sums awarded by the ECtHR in its judgment of 07/12/2006 for pecuniary and non-pecuniary damage and costs have not been paid (for more information, see AR 2008, p. 196).

On 4/12/2008, the CM adopted IR (2008) 99, in which it deplored the fact that Turkey had not yet complied with its obligation to pay to the applicant the sums awarded by the ECtHR in its judgment of 07/12/2006 and insisted strongly that Turkey pay them, as well as the default interest due. It also invited the Turkish authorities to provide information on the measures they envisaged, in addition to the payment of the just satisfaction, to remedy the consequences of the continuing violation of the ap-

plicant's property rights and right to respect for her home.

At its latest examination of the case, in December 2009, the CM recalled that its chairman had sent, in October 2009, a letter to his Turkish counterpart informing him of the CM's continuing concern relating to the lack of information on the payment of the sums awarded for just satisfaction and emphasising the Turkish authorities' obligation to pay these sums without further delay, including the default interest due. The CM regretted that this letter had remained unanswered and instructed the Secretariat to prepare a draft interim resolution for the next examination of this case, unless the Turkish authorities provide by then relevant information on the steps taken towards payment of the above mentioned just satisfaction.

**GM** The main information available is presented in the context of the case of *Cyprus against Turkey*.

## O. Right to education

### 104. NOR / Folgerø and others (see AR 2007, p. 186; AR 2008, p. 197)

15472/02

*Judgment of 29/06/2007 – Grand Chamber*

*Last examination:1072-4.2*

**Refusal by the domestic authorities to grant to the applicants' children full exemption from Christianity, Religion and Philosophy ("KRL") classes taught throughout the ten-year compulsory schooling, the syllabus of which suggests clear quantitative and qualitative preponderance of Christianity (violation of Art. 2 of Prot. No. 1).**

**IM** The ECtHR considered that the finding of the violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants. The applicant's children are no longer in compulsory education. In view thereof, no further individual measure seems necessary.

**GM** Prior to the ECtHR judgment, the government had already undertaken to reform the legal framework following a decision of the United Nations Human Rights Committee in 2004 (seized by different applicants) declaring the laws incompatible also with the International Covenant on Civil and Political rights of 1966.

In 2005, the 1998 Education Act was amended. This reform remedied some of the issues at the origin of the violation. Further amendments to the Education Act entered into force after the ECtHR judgment in August and December 2008, with effect from the school year 2008/2009 to respond to the remaining concerns of qualitative equality between Christianity and other religions and philosophies. The curriculum has also been changed in consequence of the amendments as from the 2008/2009 school year. As a consequence, Christianity is not referred any longer as the starting point for teaching and it is henceforth mentioned as one, but not the only source in which the foundation values of education must be found. Although there will still be more objectives regarding knowledge of Christianity, due to its role in Norwegian and European culture, according to the government this will not raise any qualitative difference between different religions and philosophies of life. Finally a circular letter of August 2008 gave all schools infor-

mation about the amendments and instructed them to take immediate measures to implement the new Curriculum for the subject Religion, Philosophies of Life and Ethics, specifying that it must be presented in an objective, critical and pluralistic manner, in accordance with human rights.

Also, measures have been taken to facilitate exemption from religion classes. On the one hand, parents can now request such exemption for their children without giving any reason. On the other hand, the schools are obliged to give them adequate information in this respect, to ensure that exemption is implemented and adapt teaching in consequence and in such a way as to ensure the right to equivalent education.

**GM** Communications have been received by two NGOs, to the effect that the measures taken are insufficient in practice to prevent future violations

In December 2009, the CM noted that all the provisions found by the ECtHR to be in breach of Art. 2 of Protocol No. 1 have been amended and circulars issued concerning the application of the new legal framework. In particular, the redefinition of the content of Religion classes, in the light of the ECtHR considerations as to the state's margin of appreciation in this field, appears to be in compliance with the ECHR requirements.

Nonetheless, the difficulty the ECtHR found as regards the practicability of the exemption clause appears to remain, in particular on account of the lack of a concrete distinction between knowledge and activity. Bilateral contacts are under way between the Secretariat and the Norwegian authorities to clarify outstanding issues.

## P. Electoral rights

### 105. UK / Hirst No. 2

74025/01

*Judgment of 06/10/2005 – Grand Chamber*

IR (2009) 160

Last examination: 1072-4.2

**General, automatic and indiscriminate restriction on the right of convicted prisoners in custody to vote (violation of Art. 3 of Prot. No. 1).**

**IM** The applicant was sentenced in 1980 to a term of discretionary life imprisonment. His tariff (that part of the sentence relating to retribution and deterrence) expired in 1994. He was released on licence in 2004. In the event of being recalled to prison, the applicant's eligibility to vote will depend on the GM adopted.

**GM** The law of the United Kingdom (section 3 Representation of the People Act 1983) imposes a blanket restriction on voting for convicted offenders detained in penal institutions, i.e. more than 70 000 people.

In their action plan, presented in April 2006 and revised in December 2006, the authorities undertook to conduct a two-stage consultation process, with a view to introducing before parliament the necessary legislative reform by May 2008. The consultations took into account several options for the partial enfranchisement of prisoners and, in partic-

ular, the impact of basing such enfranchisement on sentence lengths of one to four years. Following the second-stage consultation, which ended on 29/09/2009, the authorities are currently undertaking a detailed analysis of the responses thereto, in order to determine how best to implement a system of prisoner enfranchisement based on the length of custodial sentence handed down to prisoners.

In December 2009, the CM adopted IR (2009) 160, in which it expressed serious concern at the substantial delay in implementing the judgment which has given rise to a significant risk that the next United Kingdom general election, which must take place by June 2010, will be performed in a way that fails to comply with the ECHR. The CM urged, therefore, the United Kingdom to rapidly adopt the measures necessary to implement the ECtHR judgment.

**Q. Freedom of movement****106. AZE / Hajibeyli**

16528/05

*Judgment of 10/07/2008, final on 10/10/2008*

Last examination: 1065-4.2

**Excessive length of criminal proceedings (from 4/05/2000 to 14/09/2005) against the applicant charged with obstructing state officials following his participation in a demonstration (violation of Art. 6§1); disproportionate and unlawful restriction (from 23/05/2000 to 14/09/2005) of the applicant's right to freedom of movement as the preventive measure prohibiting him from leaving his place of residence had remained effective until 14/09/2005, although the charges against the applicant became time-barred on 30/04/2005 (violation of Art. 2 of Prot. No. 4).**

**IM** As it appears from the ECtHR's judgment, the proceedings against the applicant were closed on 14/09/2005 and the restriction on his freedom of movement has been lifted. The ECtHR awarded just satisfaction in respect of non-pecuniary damage sustained. In these circumstances no further individual measure seems necessary.

**GM** As regards the issue of the **excessive length of criminal proceedings**, the CM has requested information on measures envisaged to avoid the repetition of the violation found in this case. The CM has in this connection also requested information on the existence of an effective remedy, both in law and in practice, to complain about the length of proceedings.

Concerning the issue of **unlawful restriction of the applicant's freedom of movement**, the ECtHR noted that there had been no review of the necessity of the continued restriction of his freedom of movement. The CM has therefore requested information on existing review proceedings of measures restricting the freedom of movement and, examples of concrete application of these proceedings.

The ECtHR's judgment was translated and published in *Human Rights Bulletin* No. 7/2008; it was also sent to judges, notably of Courts of Appeal and other legal professionals, as well as included in the curricula for the training of judges, prosecutors and candidates to the position of judge. The CM awaits confirmation of the dissemination of the judgment

to prosecutors and criminal courts possibly with a circular drawing their attention to the shortcomings underlined by the ECtHR and to means available to avoid such shortcomings.

## R. Discrimination

### 107. BGR / Angelova and Iliev BGR / Dimitrov Nikolay

55523/00 and 72663/01  
Judgment of 26/07/2007, final on 26/10/2007  
Judgment of 27/09/2007, final on 27/12/2007

Last examination: 1072-4.2

**Failure of the authorities to conduct an effective investigation into a racially motivated attack in 1996, causing the death of a relative of the applicants, although the main assailants had been identified immediately after the attack, and to distinguish racially motivated offences and prosecute such offences (*Angelova and Iliev*) (violation of Art. 2 and of Art. 14 combined with Art. 2); failure of the authorities to conduct an effective investigation into the applicant's credible allegations, supported by medical evidence, of ill-treatment inflicted in August 1997 by other individuals (*Dimitrov Nicolay*) (violation of Art. 3).**

**IM** *Angelova and Iliev*: the ECtHR awarded just satisfaction in respect of the non-pecuniary damages suffered by the applicants. The proceedings against most of the assailants have been discontinued because of prescription. Investigations are still pending against two of the assailants. On 30/05/2008 the Shumen regional prosecution service lodged an indictment against the first suspect for the premeditated murder of the applicant's relative and against a second person for hooliganism. At the first hearing in July 2008 the applicant claimed approximately 50 000 euros for damages. The recently provided information on the developments in these proceedings is being currently assessed. *Dimitrov Nikolay*: the ECtHR awarded the applicant just satisfaction in respect of the non-pecuniary damages suffered. The CM has requested the

authorities to provide in writing the information on individual measures presented during its HR meeting in December 2009 and to keep it informed of any development in this matter.

**GM** The ECtHR's judgments in these cases did not criticise the legal framework which protected the applicants against racist offences or other offences committed by third persons. The violations were instead linked to the inefficiency of the criminal investigations carried out. As a first measure the judgments have been published and training activities have been organised by the National Institute of Justice. An action plan or report is expected from the authorities in the execution of the ECtHR's judgments in these cases.

### 108. BGR / Lotter and Lotter (Final Resolution (2009) 62)

39015/97  
Judgment of 19/05/2004, friendly settlement

Last examination: 1051-1.4

**The applicants, who are Jehovah's Witnesses, alleged discrimination on the basis of their religious denomination and a breach of their right to freedom of religion following the withdrawal of their residence permits and the order issued to them to leave Bulgarian territory, in 1995, on the ground that they constituted a threat to national security. These decisions followed a government decision of 1994 denying registration as a religion to Jehovah's Witnesses and entailing the prohibition of all activity by that religion (complaints based on Art. 9 and 14). In the friendly settlement, the government undertook to annul the decision to withdraw the residence permits and to inform the ECtHR of changes in legislation and regulations relating to Jehovah's Witnesses.**

**IM** In August 2004 the Director of the Plovdiv Regional Directorate of the Ministry of the Interior, in accordance with the undertakings given in the friendly settlement, annulled the 1995 decisions to

withdraw the applicants' residence permits and to require them to leave the country.

**GM** In 1998 the Bulgarian authorities officially recognised and registered Jehovah's Witnesses as a religious denomination by a decision of the Deputy Prime Minister, in accordance with the undertaking that they had given in a previous friendly settlement (case of *Khristiansko Sdruzhenie "Svideteli na Jehova"/Christian Association Jehovah's Witnesses*, application No. 28626/98, report of 9/03/1998 by the former European Commission of Human Rights).

Following the undertaking given by the government in the present friendly settlement to provide information about changes in the legal status of Jehovah's Witnesses, the Bulgarian authorities added, in January 2005, that a new law on religious denominations had been adopted in 2002, and that, in 2003, the Sofia City Court had registered *ex officio* the Jehovah's Witnesses as a legal entity. The authorities indicated that the organisation had more than 30 regional sections, registered by the mayors in accordance with Art. 19 of the Religious Denominations Act.

109. **CZE / D.H. and others (see AR 2008, p. 197)**

57325/00  
Judgment of 13/11/2007, final on 13/11/2007

Last examination: 1059-4.2

**Discrimination in the enjoyment of the right to education due to the applicants' assignment to special schools between 1996 and 1999 on account of their Roma origin (Violation of Art. 14 in conjunction with Art. 2 of Prot. No. 1).**

**IM** The applicants are today over 18 years old and have therefore exceeded the age of primary education. The ECtHR awarded them just satisfaction in respect of non-pecuniary damage. No further individual measure appears necessary.

**GM** The legislation at the origin of this case has been repealed in 2005 and the current legislation provides that children with special educational needs, including socially disadvantaged children, are to be educated in ordinary primary schools. The effectiveness of these measures in practice has been contested before the CM by a specialised NGO (European Roma Rights Centre), according to which further progress remains needed to achieve real school desegregation.

In April 2009, the Czech authorities provided detailed information on the measures taken to increase the inclusiveness of education and improve Roma Children's academic achievements. In June 2009, they submitted an action plan of further measures under way or envisaged. These measures

include surveys aimed at identifying the causes of the problems and finding the most appropriate solutions; training and awareness raising measures for teachers and Roma children's parents; better targeting of the counselling system; development of a National Plan of Inclusive Education.

The CM has requested information on the findings of the surveys and on the other measures taken to implement the action plan, having regard in particular to Recommendation Rec (2000) 4 of the CM to member states on the education of Roma/Gypsy children in Europe.

Statistical data remain also expected on the impact of the new Schools Act in practice, as well as information on awareness-raising of all actors concerned, including information on how the ECtHR's judgment has been disseminated to the competent authorities, apart from its translation and publication on the website of the Ministry of Justice.

110. **FRA / E.B. (Final Resolution (2009)80)**

43546/02  
Judgment of 22/01/2008 – Grand Chamber

Last examination: 1065-1.1

**Discriminatory treatment suffered by a homosexual person in violation of her right to respect for her private life on account of the fact that her application for authorisation to adopt a child was rejected in 1999 to a large extent because of her sexual orientation (violation of Art. 14, combined with Art. 8).**

**IM** Following the ECtHR's judgment, the applicant lodged a new application for authorisation to adopt a child. This application was however rejected, by decision of 26/01/2009 on grounds not relying on her sexual orientation. She contested that decision before the administrative courts and she lodged a complaint before the French High Authority against Discrimination and for Equality (Haute Autorité de Lutte contre les Discriminations et pour l'Égalité).

In this respect, the French authorities have underlined that the administrative judges seised of the case apply the ECHR directly and are well aware of the ECtHR's judgment of 22/01/2008, at all degrees of jurisdiction, and will accordingly not fail to examine the applicant's complaint in conformity with the principles laid down by the ECtHR in this judgment.

**GM** French law allows adoption by single persons, regardless of their sexual orientation. In order to prevent homosexuals being discriminated against when applying for authorisation to adopt, the judgment has been sent out to all the authorities competent in this field. Applying the ECtHR's judgment directly, they will avoid similar violations.

First, the judgment has been sent out to the authorities competent to deliver authorisations to adopt a child; it has been published on the Ministry of Interior's Intranet site, in the Local Authorities' Legal Information Bulletin and in several specialised journals. Furthermore, the report on adoption in France of 19/03/2008 refers to the judgment and explains its content in details. This ensured wide publicity for the attention of the departments in charge of adoption matters in the Conseils Généraux. Finally, the Directorate General of Social Action – Ministry of Health, confirmed that it transpires from the regular contacts held with the Conseils Généraux that the E.B. judgment is now well known by the departments in charge of adoption matters.

Secondly, the judgment was sent out to courts competent to rule on the legality of refusals to deliver authorisation. The ECtHR's judgment has been brought to the attention of the Conseil d'Etat and of administrative tribunals and courts of appeal via their intranet sites, with a view to ensuring the broadest possible dissemination of the judgment amongst administrative judges.

#### 111. ROM / Moldovan and others (No. 2) and other similar cases (see AR 2007, p. 190)

41138/98

*Judgments of 05/07/2005 (friendly settlement) and of 12/07/2005, final on 30/11/2005 (finding of violations)*

*CM/Inf/DH (2009) 31 rev*

*Last examination: 1072-4.2*

**Cases concerning the consequences of racially motivated violence against Roma, between 1990 and 1993: improper living conditions following the destruction of the applicants' houses, failure to protect the applicants' rights and degrading treatment by the authorities (violation of Art. 3 and 8); excessive length of judicial proceedings (violation of Art. 6§1); discrimination based on the applicants' Roma ethnicity (violation of Art. 14, 3, 6 and 8).**

**IM** In May 2006, the authorities found that it was not legally possible to open criminal proceedings against the government agents involved in the events of 1993 because there was no evidence that they were involved in the homicides and the criminal liability for incitement to destruction or to perjury was time-barred.

Information remains awaited on the outcome of the pending procedure of forced execution of the sums granted to the applicants by the decision of the domestic authorities of 25/02/2005.

**GM** In some of these cases, friendly settlements have been reached, on the basis of the Romanian authorities' undertakings aimed at preventing discrimination against Roma, at carrying out adequate and effective investigations and at adopting social,

economic and educational policies to improve the conditions of the Roma community.

The National Agency for the Roma, an organ subordinated to the Romanian Government, has drawn up a "General Plan of Action" on the implementation of these undertakings. In conformity with this plan of action, a "Community Development Programme" was drafted and approved by the government, which addresses issues such as education, the fight against discrimination, the prevention of family or community conflicts, professional training, employment and the development of infrastructure, culture, etc.

In 2006, Romania ratified Protocol No. 12 to the ECHR. The government has also indicated that an amendment of the legislation concerning the fight

against discrimination is planned, in order to create a direct and effective possibility to obtain redress for discriminatory acts. Moreover, the National Agency for the Roma signed an agreement with UNDP (United Nations Development Programme). The parties committed themselves to establish six assistance social centres for Roma to facilitate their socio-economic integration.

In September and December 2009, the CM took note of the information submitted by the Romanian authorities, in particular as regards the status of implementation of the action plan adopted, as presented in Memorandum CM/Inf/DH (2009) 31 rev. In response the CM notably invited the authorities to take into account the assessments made

of specially appointed experts as to the needs of some of the communities at issue. It also noted that further information and clarification were necessary concerning the continuation and the financing of the action plan for another community. Finally the CM underlined the need for the authorities to evaluate the impact of measures already implemented and the necessity to adopt further measures for all the localities at issue, and to inform the CM of their conclusions in this respect.

The judgments in the *Moldovan and others* case have been translated into Romanian, published in the *Official Gazette* and included in the training programme for judges and prosecutors of the National Institute of Magistrates.

## S. Co-operation with the ECtHR and respect of right to individual petition

### 112. ITA / Ben Khemais

24/6/07

*Judgment of 24/02/2009, final on 06/07/2009*

*Last examination: 1065-2*

**Failure to comply with an interim measure ordered by the ECtHR, thus hindering the effective exercise of the right of petition to the ECtHR: the applicant's expulsion to Tunisia in June 2008, in spite of the ECtHR's order to suspend it, prevented the ECtHR from effectively examining his complaint that he risked being tortured in Tunisia. Furthermore, the applicant had no effective remedy to challenge the deportation order before Italian courts (violation of Art. 3 and Art. 34).**

**IM/GM** At its first examination of the case, in September 2009, the CM stressed the fundamental importance of complying with interim measures indicated by the ECtHR under Rule 39 of the Rules of Court. It invited the Italian authorities to provide to the CM, in the form of an action plan, updated and tangible information on measures

taken or envisaged with the aim of preventing similar violations, as well as on any measures envisaged with respect to the applicant. The CM decided to resume consideration of this case at the latest at their HR meeting in March 2010, in the light of information to be provided on general and individual measures.

## T. Interstate case(s)

### 113. TUR / Cyprus (see AR 2007, p. 194; AR 2008 p. 203)

25781/94

*Judgment of 10/05/2001 – Grand Chamber IR (2005) 44 and (2007) 25*

*Last examination: 1072-4.3*

**Fourteen violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 and concerning:**

- Greek Cypriot missing persons and their relatives (violation of Art. 2, 5, 3);
- Home and property of displaced persons (violation of Art. 8, 1 Prot. No. 1, 13);
- Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus (violation of Art. 9, 10, 1 Prot. No. 1, 2 Prot. No. 1, 3, 8, 13);
- Rights of Turkish Cypriots living in the northern part of Cyprus (violation of Art. 6).



Following the measures adopted by the authorities of the respondent state with a view to complying with the present judgment, the CM decided to close the examination of the issues relating to (for further details see IR (2005) 44 and (2007) 25):

- the **rights of Turkish Cypriots living in the northern part of Cyprus**, i.e. the possibility for civilians to be tried by military courts;
- the **living conditions of the Greek Cypriots in the northern part of Cyprus** as far as secondary education, censorship of schoolbooks and freedom of religion are concerned.

As regards the issues under CM examination the situation may be described as follows:

#### Missing persons

The Committee on Missing Persons in Cyprus (CMP) has met regularly since 2004 and the Turkish delegation keeps the CM informed of the main work carried out in this context. The Exhumation and Identification Programme, launched in 2006, has led, until 14/01/2010, to the exhumation of 600 missing persons and the return of the remains of 196 persons to their relatives. The exhumation activities are being pursued. A special information unit for families started to function on 12/11/2004 within the Office of the Turkish Cypriot Member of the CMP.

In March 2009 the CM held an exchange of views with the members of the CMP and concluded that it was crucial that the CMP should be able to carry out its work under the best possible conditions and without delay. In this context, while reaffirming that the execution of the judgment requires effective investigations, the CM noted that these should not jeopardise the CMP's mission. It considered that the sequence of the measures to be taken within the framework of the effective investigations and carrying out of the work of the CMP should take into consideration these two essential aims.

The importance of the CMP's activities for exhumation and identification of remains was later acknowledged by the ECtHR in the Grand Chamber judgment of 18/09/2009 in the *Varnava* case. The ECtHR noted, however, that while the CMP's work was an important first step in the investigative process, it was not sufficient to meet the respondent state's obligation under Art. 2 to carry out effective investigations.

During the latest examination of this issue, in December 2009, the CM took note with satisfaction, in particular, of the measures taken to promote and accelerate the work of the CMP. It encouraged the Turkish authorities to take concrete measures to

ensure the CMP's access to all relevant information and places, without impeding the confidentiality which is essential to the carrying-out of its mandate. It reiterated the importance of preserving all the data obtained during the Programme of Exhumation and Identification carried out by the CMP and invited the Turkish authorities to inform them already now of the concrete measures that they could envisage in continuity with the CMP's work with a view to the effective investigations required by the judgment.

#### Home and property of displaced persons

*With regard to measures to put an end to the continuing violations:* Following the judgment of 22/12/2005 in the *Xenides-Arestis* case, an "Immovable Property Commission" (IPC) was set up under "Law No. 67/2005 on the compensation, exchange or restitution of immovable property" ("the 2005 Law"). The questions linked with the interpretation of this judgment and that on Art. 41 in the same case are presented in the context of the *Xenides-Arestis* case.

The CM has on several occasions in the context of its examination of the present case recalled that the ECtHR is seized of the question of the effectiveness of the mechanism of restitution, exchange and compensation established in the northern part of Cyprus and has considered that the ECtHR's conclusions on this point might be decisive for the examination of this question.

In light of this situation the CM has invited the Turkish authorities regularly to provide all additional information on the functioning of the new compensation and restitution mechanism set up, as well as on the concrete results achieved in this context.

According to the latest information available up to November 2009 the total number of requests addressed to the IPC had reached 437. The IPC has concluded 85 friendly settlements (in four cases they stipulate the restitution of the property at issue, in one case restitution "once the Cyprus problem has been solved", in 74 cases compensation in the amount of the current value of the property and in two cases the exchange of property). As of June 2009, applicants had asked for monetary compensation in 326 cases, and for an exchange of property in 14 cases. The deadline for seising the IPC was due to expire on 22/12/2009.

*With regard to the need for protective measures:* In February 2006 (955th meeting) the Cypriot authorities expressed their concern at the fact that dis-

placed persons' property was being affected either by transfers of title or by construction work.

The CM has regularly asked for detailed and concrete information on changes and transfers of properties at issue in the judgment and on the measures taken or envisaged regarding this situation (see also the IR (2007) 25 adopted in April 2007).

In this respect, the Turkish authorities indicated that immediate restitution is possible, with some exceptions, in cases where the properties "have been transferred to the state" and that restitution "after the settlement of the Cypriot problem" does not appear feasible in cases where:

- improvements have been made to the properties which exceed the value of the properties at the date when they are considered to be abandoned;
- projects envisaging improvements of such nature have been approved;
- the properties at issue have been acquired by Turkish-Cypriot refugees.

In December 2009 the CM recalled the importance of preserving all possibilities of settlement offered by the mechanism, in particular on restitution of property (protective measures). It noted with interest the information submitted by the Turkish authorities on legal and practical consequences of the introduction of an application before the IPC concerning restitution of property and considered that this information required detailed examination. The CM also firmly recalled, in this context, their invitation to the Turkish authorities to provide information on questions already raised concerning different types of title deeds, real estate projects or the transfers of property as regards property "belonging to the state". the conditions for attribution of new title deeds to displaced Turkish Cypriot refugees from the south, and whether, when granting

planning permission, the authorities take into account the category of title deed concerned.

*With regard to the demolition of several houses in the Karpas region belonging to Greek Cypriots:* The Turkish authorities indicated that these demolitions were aimed at ensuring public security as the houses were abandoned and represented a danger for the population and provided indications as to the legal basis applicable and procedure used before such demolitions were authorised.

In response to requests for further information, the Turkish authorities have specified that all cases of demolition concern persons having definitely left Karpas before February 1975, or in certain rare cases, persons currently living in the region. Owners of properties abandoned before 1975 may seize the "Immovable Properties Commission" and the demolition of a property does not affect the remedies available under the 1975 Law, being it compensation, exchange or restitution.

*With regard to the property rights of enclaved Greek Cypriots in the northern part of Cyprus:* The main elements of the legal situation as regards property rights of enclaved Greek Cypriots as far as their right to bequeath their properties to Greek Cypriots or their right to keep their properties in case of permanent departure have been outlined in the *Annual Report 2008*.

In 2009 the CM received additional information from the Turkish authorities on the regulation of the property rights of the enclaved. The CM examined this information at its September meeting and noted that a certain number of questions still needed to be examined in depth. To this effect it invited the Turkish authorities to provide for 15 December 2009 a copy of the entirety of the legislation as amended and related decisions relevant for the examination of the issue.

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