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## Implementation of judgments of the European Court of Human Rights

### Supplementary Introductory Memorandum (revised)

#### Committee on Legal Affairs and Human Rights

Rapporteur: Mr Erik Jurgens, Netherlands, Socialist Group

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## I. Introduction

1. The present document is a **follow up to the Introductory Memorandum presented on 20<sup>th</sup> June 2005** by the Rapporteur to the Committee on Legal Affairs and Human Rights (AS/Jur(2005)35) which was the starting point in the preparation of the Assembly's 6<sup>th</sup> Report on the Implementation of judgments of the European Court of Human Rights. It may be recalled that following the Committee's decisions adopted in June, the **President of the Assembly addressed letters to the heads of 13 PACE delegations** requesting information and/or specific action to implement certain judgments and decisions finding violations of the European Convention on Human Rights (ECHR).

2. These judgments and decisions were **selected in accordance with the standard criteria applied** by the Parliamentary Assembly for this exercise:

- judgments and decisions which have not been fully implemented more than five years after their delivery;
- other judgments and decisions raising important implementation issues, whether individual or general, as highlighted notably in the Committee of Ministers' Interim Resolutions or other documents.

## II. General assessment of developments since June 2005

3. To date, 9 of the 13 delegations concerned have responded to the President's letter. A reminder was sent on 17 October 2005. Regretfully, replies from Bulgaria, France, Moldova and Ukraine have not been received to date and are still awaited.

4. Some of the replies reported encouraging news in respect of progress recently achieved in implementation of judgments. In addition to the information provided by delegations, the Rapporteur is able to report some positive developments in the implementation of judgments, on the basis of developments recorded in recent Committee of Ministers' resolutions, decisions or other documents in the public domain. It is encouraging to note the role the Assembly's members have played in initiating or facilitating some of these developments.

5. Replies received from certain delegations were not too helpful, as they were limited in restating the *status quo* already presented in the Secretariat's working paper AS/Jur (2005) 32 of 9 June 2005 and reported no specific follow-up by those delegations within their own parliaments so as to call their government to account and to resolve outstanding questions in the implementation of judgments.

6. Finally, a number of new important implementation issues have in the meantime been raised in the Committee of Ministers, which calls for the Assembly's attention and involvement in accordance with the second criterion mentioned above.

7. Accordingly, the country-by-country summary assessment provided in Part IV below concerns developments **both in cases pre-selected in June 2005 (AS/Jur(2005)35) and a number of new implementation problems of particular importance.**

## III. Further action envisaged by the Rapporteur – visits to five member states

8. At the Committee's meeting on 7<sup>th</sup> November 2005 the Rapporteur emphasised that lengthy compliance procedures and, still worse, the non-compliance with Strasbourg Court judgments over long periods of time, affect and undermine the credibility of both the ECHR's system and the Council of Europe (full text of statement appended to this memorandum). And as rightly indicated by the Heads of State and Government at the recent Warsaw Summit, priority treatment must now be given to judgments revealing structural problems including those of a repetitive nature.

9. Hence, the Rapporteur's suggestion, on 7<sup>th</sup> November 2005, endorsed by the Committee, that a number of important outstanding issues can be solved with the active involvement of the Assembly, including the suggestion to undertake **visits, in early 2006, the countries where the most numerous and/or important implementation issues arise.**

10. Such visits will no doubt increase the Assembly's ability to reach directly decision-makers in parliaments, governments and state administrations generally, permitting constructive discussions of possible solutions to outstanding problems. The five countries selected for these visits are **Italy, Turkey, the Russian Federation, Ukraine and the United Kingdom.**

11. As regards **Italy** and **Turkey**, the main issues warranting the Rapporteur's special attention have already been set out in the Introductory Memorandum (AS/Jur(2005)35, §§10-17) and are recalled in Part IV below (§§ 29-41 & §§ 81-87). Since June, Italy has shown signs of increasing willingness to improve the situation notably through granting direct effect to the Strasbourg judgments in domestic law and the plan to set up an effective domestic mechanism for supervising and coordinating the implementation of judgments. Turkey has also provided some information confirming a positive trend in compliance with judgments. That said, the most important issues raised in June remain and require continuous efforts.

12. The other three countries were selected, from among the 13 listed in the Introductory Memorandum, as they present some particular concerns that appear suitable to address through *in situ* visits.

13. **The Russian Federation** is now confronted with an increasing number of complex issues raised in recent judgments of the Strasbourg Court. Besides the well-known and still unresolved problem in the *Ilascu* case, further measures are still awaited for the country to fully comply with judgments concerning poor conditions of pre-trial detention. While substantial progress was achieved in this respect shortly after the *Kalashnikov* judgment, no new information has been provided since the end of 2004.

14. In addition to issues already raised in the Introductory Memorandum, other important problems requiring comprehensive general measures are pending before the Committee of Ministers, such as the legal uncertainty generated by supervisory review ("*nadzor*") procedure and, most importantly in terms of number of complaints, the non-execution of domestic judicial decisions in civil cases (presently at the basis of 40% of all admissible complaints against the Russian Federation before the Court). The latter problem severely affects the efficiency of the judiciary and the State as a whole, let alone the citizens' confidence in the rule of law.

15. A new issue that has been raised in three judgments concerns violations of the right to life during military operations in Chechnya and the lack of effective investigations into applicants' deaths. These judgments will no doubt require comprehensive general measures in accordance with the Committee of Ministers' practice in cases concerning similar violations found against other countries.

16. **Ukraine** was mainly selected because of certain serious problems in the functioning of its judicial system. The *Sovtransavto* judgment, which was already mentioned in the Introductory Memorandum and still remains to be fully implemented, raised important issues of legal uncertainty and of interferences with judicial independence. Very numerous judgments of the Strasbourg Court have highlighted a structural problem of non-execution of domestic judicial decisions which also requires a comprehensive solution.

17. **The United Kingdom** has a relatively big number of old judgments of the Court that have not yet been fully implemented, due principally to delays in adoption of legislation. The Committee of Ministers has been awaiting for years some important legislative or other reforms to be adopted in order, for example, to prohibit the physical punishment of children amounting to ill-treatment, to introduce adequate legal safeguards during detention in mental hospitals, to ensure clarity and precision of 'binding-over' orders.

18. Of particular importance are the measures required by the Court's judgments finding violations of the ECHR by the security forces in the Northern Ireland. While significant progress was made to prevent new similar violations, issues still remain with regard to the UK's continuing obligation to conduct effective investigations into the applicants' death so as to remedy the procedural shortcomings highlighted by the Court. In this respect, the domestic courts' failure to order the reexamination of old decisions not to prosecute and the apparent shortcomings related thereto, from the ECHR's viewpoint, of the new Inquiries Act are of particular concern.

19. **As regards the outstanding problems in implementation of judgments in the remaining 8 countries**, the Rapporteur considers it appropriate at this stage to continue "dialogue" with these countries by means of a written procedure, where need for this arises.

20. **This applies in particular to Poland**, which was specially mentioned in the Introductory Memorandum in June as a "problem country" with respect to which an increasing number of the Court's judgments were awaiting full compliance (AS/Jur(2005)35, §§18-20). In the meantime, the Committee of Ministers adopted Interim Resolution (ResDH(2005)58 of 5 July 2005) on one of the two outstanding problems – the measures expected in response to the *Broniowski* judgment – showing steady progress in the setting up of a new mechanism for compensation to the Bug river claimants. Three days later, i.e. on 8 July 2005, Polish Parliament passed the relevant legislation, which entered into force on 7 October 2005 (see more details in Part IV below, §§ 55-60).

21. The general measures in respect of the excessive length of judicial proceedings in Poland also appear to be dealt with as a priority by the authorities. While close supervision by the Assembly of the ongoing reforms and of their results remains appropriate, the Rapporteur's visit to this country does not appear necessary at present.

#### **IV. Summary overview and assessment of developments since June 2005 in implementation of judgments listed in the Introductory Memorandum.**

22. According to the information received from national delegations and/or publicly available from the Committee of Ministers, **a number of developments took place in the cases which were selected in the Introductory Memorandum as issues warranting the Assembly's special attention** (see Appendix to AS/Jur(2005)35). An **overview** of these developments and, where possible, their **preliminary assessment** by the Rapporteur, appear below. In addition, some new implementation problems falling under the criteria recalled above (see §§2 and 7) have been mentioned. A **final assessment of the developments will be provided in the Report** that to be presented for the Assembly's 2nd part-session in spring 2006.

##### **A. Bulgaria**

###### *Al Nashif v. Bulgaria* (judgment of 20/06/2002):

23. The domestic proceedings with a view to allowing the applicant's return to Bulgaria are still pending before domestic authorities. At the same time certain progress has been made in the legislative reform required by the judgment: the draft amendments to the Aliens Act introducing independent review of expulsions on the grounds of national security are expected to be adopted before the end of 2005 (CM/Del/OJ/DH(2005)940 Volume I Public, pp.30-31). In a communication received by the AS/Jur secretariat on 18<sup>th</sup> November, the Ministry of Justice indicated that on 14 November 2005 it had transmitted the said draft law to the Council of Ministers.

**B. France***Lemoine Daniel v. France* (decision of 17/06/1999):

24. Remedial measures are still awaited in favour of the applicant who was denied access to a court. The applicant informed the Committee of Ministers that he had – unsuccessfully at that stage – brought before the labour courts his claims relating to the validity of the decision to discharge him from his post at the S.N.C.F. but he had not yet tried to submit his claims directly to the state company. The effectiveness of the latter avenue remains to be examined in contacts with the French authorities, which are presently under way. (CM/Del/OJ/DH(2005)940 Volume I Public, p.10).

**C. Germany***Görgülü v. Germany* (judgment of 26/02/2004):

25. In the reply provided on 14 September 2005 by the Chairman of the German PACE Delegation, he assured the Rapporteur that the Government will do what is necessary to implement the judgment and gave indications of certain progress.

26. According to the latest (public) information available from the Committee of Ministers, the developments are as follows. Certain progress in granting the applicant's access to his child has been achieved since July 2005. In August 2005 the senior official appointed a new *ex-officio* guardian for the child, who has no connection with the youth welfare office of Wittenberg. So far, the new guardian has successfully arranged three visits of the applicant to his child, visits which took place on 28/08, 03/09 and 10/09/2005, albeit in the presence of the foster father.

27. However, it is not clear yet whether the applicant will be able to regularly exercise his visitation rights and information is expected as to whether these visits will take place in a good atmosphere. The domestic proceedings regarding the applicant's visitation and custody rights are still pending before the Naumburg Appeal Court (CM/Del/OJ/DH(2005)940 Volume I Public, p.85-86).

**D. Greece***Dougoz and Peers v. Greece* (judgments of 03/03/2001 and 19/04/2001):

28. In her reply of 1 November 2005, the Chairman of the Greek PACE Delegation to the Assembly recalled the complex situation at the basis of the violations found and stated that the adoption of general measures remedying the structural shortcomings in the overwhelmed Greek penitentiary system was a Herculean task. The reply did not, however, provide any specific indication regarding further progress in the adoption of measures. However, according to the information available from various public sources, the different measures announced in Interim Resolution (ResDH(2005)21 of 7 April 2005) are in progress, and in particular the construction of new detention centres and prisons. On 12/09/2005 Law 3388/2005 entered into force providing, *inter alia*, that present "independent prisons" reception capacity may not exceed three hundred (300) detainees, while the future, new ones should not exceed four hundred (400) detainees.

**E. Italy****1. General situation**

29. The problem of Italy's compliance with the Court's judgments remains a serious concern, both as regards the number of cases pending for a long time before the Committee

of Ministers (more than 60% of all cases pending before the CM are Italian cases<sup>2</sup>) and the number and the extent of structural problems that remain to be solved to comply with the judgments (some 12% of the structural problems pending before the Committee of Ministers concern Italy<sup>3</sup>). Details relating to the cases selected for the report and of problems to be resolved appear in Working Paper AS/Jur(2005)32.

30. The Committee of Ministers adopted a dozen Interim Resolutions between 1997 and 2004, repeatedly calling for Italy's compliance and suggesting specific measures. However, in spite of these efforts, real, effective progress by Italy has remained insufficient.

## 2. Most important issues identified

31. The most important outstanding issues identified in the Introductory Memorandum were as follows:

**a) Reopening of domestic proceedings impugned by the Court:** Italy is one of the very few countries not to allow reopening or re-examination of domestic proceedings following the European Court's judgments; Italy has thus not complied up to this day with its obligations in the *Dorigo* case, where the applicant is still in prison as a result of unfair proceedings, more than 6 years after the finding of the violation (see also below, point C) ;

**b) Structural deficiencies of the judicial system:** the structural inefficiency of the judicial system, which results in excessively lengthy proceedings and thus leads to ineffective protection of a wide range of other substantial rights;

**c) Non-compliance with domestic judicial decisions** concerns the respect of legal deadlines and enforcement of eviction of tenants, as well as retroactive legislative validation of the state's illegal acts, notably in the fields of expropriation and town-planning;

**d) Other problems, such as** the effectiveness of remedies against imposition of a special prison regime, the safeguard of parental rights when placing children into public care, etc.

## 3. Latest developments

32. Certain positive developments have been reported since June 2005, *inter alia*, in a lengthy and valuable letter written by the Chairman of the Italian PACE Delegation, transmitted to the Rapporteur on 28 October 2005.

33. The competent Italian authorities are for example going to examine, before end of 2005, a draft regional law which, if adopted, should solve the problem raised in the case *Grande Oriente*, thus preventing new similar violations of the right to freedom of association and lifting the restrictions still suffered by the applicant association (see Interim Resolution ResDH(2004)71).

34. Furthermore, after the adoption in October 2005, by the Committee of Ministers, of a third Interim Resolution in *Dorigo* case (ResDH(2005)85, deploring the persistent lack of execution and firmly recalling Italy's obligations to ensure the adoption of appropriate remedial measures, the Italian authorities indicated that they were exploring new possibilities to solve the problem in the *Dorigo* case through development of case-law, notably by relying on increasing direct effect granted to the ECHR by Italian courts. According to the latest press reports, on 5/12/05 the Assizes court will hold a hearing (*in camera*) to examine the request of

<sup>2</sup> As of 28/11/05, 2478 Italian cases were still pending for execution out of a total number of 3830 (with the exclusion of the cases formally pending in sections 1 and 6 of the Committee of Ministers Agenda, where all execution measures are in principle adopted).

<sup>3</sup> Namely, some 45 out of 370 «precedent cases » pending before the Committee of Ministers concern Italy, with the exclusion of cases formally pending in sections 1 and 6 of the Committee of Ministers Agenda, which do not require in principle the adoption of any further execution measure.

the public prosecutor under Article 666 of the Code of Criminal Procedure concerning the lawfulness of Dorigo's detention in the light of the violation of the ECHR.

35. On a more general level, the Chairman of the Italian parliamentary Delegation tabled a bill in Parliament which envisages setting up, at the national parliamentary level, of a special mechanism to supervise and coordinate the implementation of the Strasbourg Court's judgments.

36. Finally, certain specific measures have been initiated or adopted by Italy to respond to the Court's judgments mentioned in the Introductory Memorandum. The progress thus achieved in each case is presently being examined and will be assessed in detail in the Report.

37. However, despite these positive developments, which are most welcome, many serious concerns remain.

38. During its last DH meeting in October 2005, the Committee of Ministers discussed the fourth annual report of the Italian authorities (CM/Inf(2005)31 and addendum), presenting the efforts undertaken to solve the structural problem of excessive delays of Italian justice, and concluded that despite these efforts the problem remained unsolved. In this context, the Committee also discussed the measures announced by the Italian authorities in a special action plan for civil and criminal justice (CM/Inf(2005)39) prepared to deal with this situation. It considered that this plan did not provide a sufficiently comprehensive response to the problem and discussed the possibility of setting up an *ad hoc* commission in Italy with the task of analyzing the problem and proposing an appropriate global solution (see press release 533a of 13 October 2005 (appendix IV)). In November 2005, the Committee adopted a new Interim Resolution ResDH(2005)114 calling for a new national strategy in this area (see appendix V).

#### **4. Recommendation 1684 (2004) and the Committee of Ministers' Reply**

39. In November 2004, the Assembly adopted Recommendation 1684 (2004) and Resolution 1411 (2004) focusing on the aforementioned problems and called for appropriate action to be taken by Italy and by the Committee of Ministers so as to ensure rapid compliance with the Strasbourg Court's judgments.

40. The Committee of Ministers' reply of 13 July 2005 to Recommendation 1684(2004) is appended.

#### **5. Rapporteur's planned visit to Italy**

41. This worrying situation with Italy's compliance with the judgments obviously calls for the Assembly's very special attention. The Rapporteur welcomes the new constructive attitude of the Italian PACE Delegation and the personal engagement of its Chairman to improve the situation, to examine and to eradicate the causes of Italy's persistent non-compliance with the Court's judgments. The Rapporteur is convinced that his visit to Italy in the near future will enhance cooperation with the Italian Parliament and other responsible authorities in order to find appropriate solutions to a number of major outstanding problems.

#### **F. Latvia**

##### *Slivenko v. Latvia* (judgment of 9 October 2003):

42. The positive developments, which have occurred in this case since June 2005, are as follows:

43. Pursuant to the decision taken by the Committee of Ministers at its 933rd meeting (July 2005), the Chairman wrote to the Latvian Minister of Foreign Affairs on 27/07/2005 conveying the Committee's concern at the lack of progress in implementing the judgment. The Chairman recalled that the judgment requires that the applicants be rapidly granted, as



far as possible, *restitutio in integrum*, which implies in the present case the restoration of their permanent residence rights in Latvia.

44. At a later date, the Latvian authorities indicated to the Secretariat that they intend to contact the applicants in the near future with a view to finding a rapid solution to this case in line with the requirements of the judgment (CM/Del/OJ/DH(2005)940 Volume I Public, pp.16-17).

45. By a letter of 2 November 2005, the Latvian Delegation to the Assembly confirmed that an active dialogue was under way between the applicants and the Government with the assistance of the Secretariat of the Committee of Ministers on possible ways of executing the judgment.

## **G. Moldova and Russia**

### *Ilascu and others v. Moldova and Russia* (judgment of 8/07/2004)

46. The following main developments took place since June 2005:

47. At the 935th meeting (13 July 2005), in view of the absence of any progress regarding the applicant's release, the Committee of Ministers adopted a second Interim Resolution regarding this case (ResDH(2005)84).

48. In this resolution, the Committee, on the one hand, "not(ed) with interest" that since the adoption of Interim Resolution ResDH(2005)42, "the Moldovan authorities have regularly provided information regarding the steps they have taken to secure the release of the applicants who are still imprisoned". On the other hand, the Committee "deplor(ed) that, since the adoption of this Resolution, the Russian authorities have again called into question the validity of the judgment and have insisted that, by paying the just satisfaction awarded, they consider that they have fully executed the judgment"; it "deplor(ed) further that they have provided no new information regarding any efforts they may have initiated to secure the release of the applicants who are still imprisoned". Having in particular "stress(ed) that it is evident that such an excessive prolongation of their unlawful and arbitrary detention" of these applicants, more than one year after the Court's judgment was delivered, "fails entirely to satisfy the requirements of the Court's judgment", the Committee "encourage(d) the Moldovan authorities to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release"; "insist(ed) that the Russian authorities take all the necessary steps to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release"; and "decide(d) to resume its examination of this case at each of its meetings until the applicants have been released".

49. The Committee continued to examine the problem posed by this judgment and the follow up to its two Interim Resolutions at each of its subsequent meetings (see the latest public report in CM/Del/OJ/DH(2005)940 Volume I Public, pp.91-95). Given the absence of response by the Russian Federation to the Committee's Interim Resolutions, it was proposed that the Committee's Chairman address a letter to the Russian Minister of Foreign Affairs drawing his attention, in particular, to the legal and humanitarian dimensions of this case.

50. In his letter of 29<sup>th</sup> November 2005, the Chairman of the Russian Delegation to the Assembly referred to the Russian authorities' position in respect of this judgment (Statements by the Ministry of Foreign Affairs of 8 July 2004 and by the State Duma of 10 July 2004).

51. With regard to the applicants still in jail, the Chairman stated that "Russia does not have any possibilities to influence the authorities of Transdnistria", which is "an integral part of the sovereign Republic of Moldova". The Chairman stated in addition: "In 2004-2005, after Moldova suspended its participation in the negotiations, Russia did its utmost to restore confidence in the Region. Together with the mediators from Ukraine and the OSCE the Russian Federation continues efforts aimed at rendering the necessary assistance to the sides of the conflict in order to break the impasse."

52. The Rapporteur has so far received no reply from the Moldavian delegation to the Assembly in relation to the implementation of the judgment.

53. Given the persisting problem in the execution of the present judgment, the latter will be one of the subjects that Rapporteur is planning to raise during his forthcoming visit to the Russian Federation (see also §§ 13-15 above and Chapter I below).

54. Finally, the Rapporteur notes that in reply to his written question on this subject (written question No.476) the reply of the Committee of Ministers in effect referred to certain information provided above, including mention of the letter which the chairman addressed to the Russian Federation's Minister of Foreign Affairs in which he expressed the strong hope that the two applicants will be released promptly (PACE document 10740).

55. On 10 November 2005, the Committee of Ministers answered in a somewhat helpless way the written question (No 476) tabled by the Rapporteur (Doc 10740), in which the Rapporteur had asked whether it was appropriate that Russia should in 2006 assume the chairmanship of the Committee of Ministers as long as this country refuses to execute in full an important and binding judgment of the Court. This perhaps novel approach by the Rapporteur stresses how existentially important it is for the Council of Europe and for its most important institution, the Court, that no member state lags behind in implementing Court decisions.

## **H. Poland**

56. Poland was identified as giving rise to special concerns due to the increasing number of judgments requiring comprehensive general measures (see AS/Jur(2005)35, §§18-20 and Part III above, §§ 19-20). However, according to the information provided by the Chairman of the Polish Delegation to the Assembly (letter of 31 August 2005) and by the Committee of Ministers, substantial progress has been achieved on two major outstanding issues.

### *Broniowski v. Poland* (judgment of 22/06/2004)

57. On 6 July 2005, the Committee of Ministers adopted an Interim Resolution calling on Poland to rapidly conclude and implement the legislative reform required by the *Broniowski* judgment, which concerns a violation of the applicant's property rights on account of Poland's failure to ensure adequate compensation to persons repatriated from the territories beyond the Bug River in the aftermath of the Second World War.

58. The Committee of Ministers noted the general measures adopted or being taken by the authorities to remedy the underlying problem at the basis of the violation, and in particular the draft law submitted to Parliament aimed at improving the conditions for compensation of all Bug River claimants. The Committee called for rapid adoption of this reform and for the creation of the conditions necessary for its effective implementation.

59. The Committee stressed that the need for these measures was of particular concern as numerous persons in the applicant's situation are presently unable to obtain redress either domestically or from the European Court itself, which had adjourned all similar complaints pending the resolution by Poland of the aforementioned underlying problem.

60. On 8 July 2005 Polish Parliament has passed the relevant law, which entered into force on 7 October 2005. This law regulates thoroughly and in accordance with recommendations included in the judgment on *Bronowski versus Poland* the issue of realization the Bug River claimants' entitlements. As regards the just satisfaction to be awarded to the applicant, the government and the applicant reached a friendly settlement, according to which a payment of a lump sum of 237,000 PLN (about 60,000 euros) shall constitute the final settlement of the case.

Cases concerning the excessive length of proceedings

61. A number of general measures have also been adopted in respect of these cases, among which the introduction of an effective domestic remedy against the excessive length of proceedings (see decisions of 1/03/2005 in *Michalak v. Poland* (24549/03) and *Charzynski v. Poland* (15212/03). A draft Interim Resolution is presently being prepared within the Committee of Ministers to take stock of the measures adopted and possibly identify outstanding questions (see CM/Del/OJ/DH(2005)940 Volume I Public, p.63). These issues will be later addressed in the Report, possibly in the light of the Committee of Ministers' fresh assessment of the situation.

**I. Russia**

**1. Court's judgment mentioned in Introductory Memorandum**

*Kalashnikov v. Russia* (judgment of 15/07/2005)

62. Comprehensive general measures have been adopted in response to this judgment and then to Interim Resolution DH(2003)123 adopted in this case by the Committee of Ministers. However, no new information concerning progressive improvement of conditions of pre-trial detention was provided to the Committee of Ministers for more than one year. As regards the data referred to in the reply of 29 November 2005 by the Chairman of the Russian Delegation to the Assembly (i.e. §§199-214 of the Report on the Honouring of obligations and commitments by the Russian Federation, Doc. 10568), most of these statistics had already been presented to the Committee of Ministers in the context of the Kalashnikov case (see in particular §§206-210 of the said Report, and footnote 117). However, information on further developments is awaited since the end of 2004.

**2. New important implementation issues**

*Non-execution of domestic judicial decisions in civil cases*

63. Besides the specific issue previously raised in the *Burdov* case in respect of payments to Chernobyl victims (Resolution ResDH(2004)85), the failure to enforce domestic judicial decisions against federal or regional agencies is a more general, structural problem in the Russian Federation, at the origin of many violations of the Convention and of hundreds or even thousands of applications pending before the Court.

64. By letter of 21/06/2005, the Russian authorities acknowledged to the Committee of Ministers that the number of unexecuted decisions is huge and that further comprehensive measures are called for to prevent new, similar violations. They also specified that the problem is not due to the lack of funds but to the "complicated budgetary relations between the federal authorities and the authorities of the constituent entities of the Russian Federation". The matter is presently being examined by the experts of the European Commission for the Efficiency of Justice (CEPEJ) in cooperation with the competent Russian authorities. This bilateral project aims at identifying the problems at the basis of non-enforcement of judicial decisions and proposing effective solutions to improve procedures in this field. The Russian authorities have been invited to keep the Committee of Ministers informed of progress achieved and of measures adopted or envisaged. In the meantime, the Russian authorities' attention was drawn to comprehensive general measures adopted by other European states confronted in the past with the problem of non-enforcement of judicial decisions (see Final Resolution ResDH(2004)81 on *Hornsby and other cases v. Greece*; Final Resolution DH(95)105 on *Heirs of J. Dierckx v. Belgium*, etc.) (CM/Del/OJ/DH(2005)940 Volume I Public, pp. 75-76).

Respect for “legal certainty” – a problem of supervisory review (“nadzor”) procedure

65. An important structural problem at the basis of violations found against Russia concern the judicial procedure of supervisory review (“nadzor”) which allows for the quashing of final and binding judicial decisions, thus violating the requirement of legal certainty enshrined in the ECHR.

66. While the Russian Federation has remedied certain of the problems at the basis of the violations found (the time-limit for “nadzor” applications was limited and the right to apply was essentially limited to the parties in proceedings), doubts still exist as to whether the measures taken are sufficient to prevent new, similar violations of the principle of legal certainty. The Russian authorities were thus invited to continue the reform of the supervisory review procedure so as to bring it into line with the Convention’s requirements, as highlighted, *inter alia*, by the *Riabykh* judgment.

67. Given the complexity of this issue and the ongoing reflection on this matter in Russian legal circles, it was proposed, at the 906th meeting (December 2004), to hold a high-level seminar involving representatives of the Russian supreme courts, executive, Prokuratura and advocates to take stock of the current *nadzor* practice and discuss the prospects for further reform of this procedure. This seminar was organised on 21-22 February 2005 in Strasbourg by the Directorate General of Human Rights (DG-II) in close cooperation with the Russian authorities. The progress achieved so far in reforming the *nadzor* procedure was acknowledged and outstanding questions calling for further measures identified, most importantly in the domain of civil procedure.

68. A draft Interim Resolution is presently being prepared within the Committee of Ministers to take stock of progress and to set out the remaining issues in the implementation these Court’s judgments (CM/Del/OJ/DH(2005)928 Volume I Public, p.65).

Action of security forces and lack of effective investigations into abuses

69. Three judgments delivered on 24 February 2005 found the following violations of the Convention on account of the death of applicants’ relatives during Russian military operations in Chechnya in 1999 and 2000:

- the state's responsibility for the killing of Khashiyev's and Akayeva's relatives, as the Court found it established that they were killed by military servicemen during a military operation in Grozny (violation of Article 2);
- the failure to prepare and execute military operations with the requisite care for the lives of the civilians who were killed during air strikes conducted by the Russian air forces in the countryside not far from the Chechen-Ingush administrative border (violations of Article 2 in two other cases);
- failure to carry out an effective criminal investigation into the circumstances surrounding the deaths of the applicants' relatives, as well as into the circumstances of the abovementioned military operations (procedural violations of Article 2 and violations of Article 13 in all the cases);
- failure to conduct a thorough and effective investigation into allegations of torture (violations of Article 3 in the Khashiyev and Akayeva case);
- the lack of any effective remedy as a result of the abovementioned absence of effective criminal investigation (violations of Article 13 in all the cases);
- unjustified destruction of one applicant's property as a result the abovementioned air strike by the military forces (violation of Article 1 of Protocol No. 1).

70. In the light of the Committee of Ministers' practice in cases concerning similar violations by other countries, the present judgments would require important implementation measures. The Russian authorities may therefore wish to take into account the comprehensive measures taken and/or envisaged in other countries to prevent similar violations of the ECHR (see, in particular, Interim Resolutions DH(99)434, DH(2002)98 and ResDH(2005)43 concerning the action of the security forces in Turkey and Interim Resolution ResDH(2005)20 concerning the action of the security forces in Northern Ireland).

71. At the outset, the Russian authorities have been invited to provide information on the measures envisaged or being taken to remedy the shortcomings in the investigations which were identified by the judgments, and to ensure the availability of effective domestic remedies. A plan of action is also awaited with regard to general measures to prevent new, similar violations (CM/Del/OJ/DH(2005)940 Volume II Public, pp.34-35).

### **3. Rapporteur's planned visit to Russia**

72. The above-mentioned implementation issues are highly complex and require serious and concerted efforts by the Russian authorities at all levels, and in accordance with thorough reform strategies which remain to be established. The solution to these problems should be sought urgently because they affect a very large number of people in Russia and because the effectiveness of the Russian judicial system, and indeed of the State as a whole, is at stake. The influx of numerous clone cases in the Court may also undermine the effectiveness of the ECHR mechanism. It therefore appears important that the Assembly gets involved and assists both the Russian authorities and the Convention's organs by contributing to the implementation of these judgments. The Rapporteur has thus considered it appropriate to pay visit to the Russian Federation in order to address these important issues with Russian parliamentarians and state authorities, as appropriate.

### **J. Romania**

73. The main developments concerning the two cases mentioned in the Introductory Memorandum are as follows:

#### *Rotaru v. Romania* (judgment of 04/05/2000)

74. On 5 July 2005, the Committee of Ministers adopted Interim Resolution ResDH(2005)57 dealing with the adoption by the Romanian authorities of the general (legislative) measures required by this judgment. In particular, the Committee noted the fact that Law No. 535/2004 on the prevention and repression of terrorism now provides for a procedure of judicial supervision of all secret surveillance measures, including cases involving threats to national security.

75. Nevertheless, the Committee noted with regret that, more than five years after the date of the judgment, several shortcomings identified by the European Court in its judgment of 04/05/2000 still do not seem to have been remedied. In particular the procedure to be followed in order to have access to archives taken over by the RIS from the former secret services (others than the Securitate), the absence of specific regulation concerning the age of the information which could be stored by the authorities, or the lack of a possibility to contest the holding of this information and, save for certain specific cases, their truthfulness.

76. Therefore, the Committee called upon the Romanian authorities to rapidly adopt legislative reforms necessary to respond to the criticism made by the Court concerning the system of gathering and storing of information by the secret services.

77. The Romanian authorities', and in particular Romanian Parliament's response to this Interim Resolution is awaited.

Dalban v. Romania (judgment of 28/09/1999)

78. Since June 2005 the Romanian authorities have postponed to September 2006 the entry into force of the new Criminal Code (adopted on 29/06/2004), which was expected by the Committee of Ministers to widen the possibility to use the defense of truth in criminal proceedings concerning defamation.

79. Nevertheless, following the amendment in June 2005 of the 1997 Criminal Code (currently in force), the offence of defamation is no longer punished by imprisonment, which has been replaced by a fine. Moreover, the Government has adopted a new bill decriminalising defamation, which was submitted to the Parliament in September 2005.

80. It is to be noted that the latest draft reform goes beyond the aforementioned Code adopted in 2004 and not yet entered into force. Information is awaited concerning the adoption of this new reform by Parliament.

## K. Turkey

### 1. The general situation

81. The general situation has already been described in the Introductory Memorandum (AS/Jur (2005)35, §§ 14-17). The main issues identified in June remain on the agenda, i.e.

**a) The reopening of domestic proceedings in Hulki Günes case**, in which the applicant continues to serve his prison sentence on the basis of the conviction imposed with serious violations of the right to a fair trial;

**b) Further progress to be made in implementation of Cyprus v. Turkey judgment** following the Committee of Ministers' recent Interim Resolution ResDH(2005)44, notably to ensure effective investigations into the fate of Greek Cypriot missing persons;

**c) Strict implementation of the new legal framework aiming at the respect of the ECHR by the security forces** in line with the recent Interim Resolution ResDH(2005)43

**d) Dogan v. Turkey judgment of 29/06/2004 concerning the problem of return to villages in the south-east**; A rapid solution to this problem appears to be of particular importance in view of the very large number of similar complaints pending before the Court. The implementation of this judgment must therefore be given priority.

### 2. Recent developments

82. Since June 2005, certain new information was provided to the Rapporteur by the Chairman of the Turkish Delegation to the Assembly (letter of 30 September 2005 supplemented by an information note of 9 December 2005) concerning progress in the implementation of the judgments concerned. It is worth mentioning that the authorities rely extensively on new Article 90 of the Constitution and count heavily on the domestic courts' capacity to use this article in order to grant the Court's judgments direct effect in domestic law. The authorities specifically referred to several decisions to that effect already delivered by domestic courts.

83. Positive developments concerning the *Cyprus v. Turkey* case can also be noted. The secondary school of Rizokarpaso, reopened in September 2004, now seems to work in a globally satisfactory manner, ensuring full secondary education. A new procedure for the screening of schoolbooks has been adopted, abolishing censorship as such: the books are examined and returned along with a report containing only recommendations. The basic principles for the functioning of the Greek Cypriot schools in the Karpas region (including the

screening procedure) are contained in Decree adopted by the “TRNC Council of Ministers” passed on 23 May 2005, amended on 11 November 2005.

84. Furthermore, the Committee for Missing Persons meets on a regular basis since its reactivation in August 2004. Burial sites were identified, emergency exhumations enabled the recovery of some remains, and an anthropological laboratory is expected to start working in the Buffer zone soon. That said, concrete results in this respect are expected rapidly and additional measures remain to be adopted (see Interim Resolution ResDH(2005)44).

85. Despite the aforementioned positive developments, the number and complexity of the measures still required from Turkey by the Court’s judgments call for further efforts. The proper implementation of new laws and the ECHR itself will be contingent on developments in domestic case-law and courts’ real capacity **systematically** to grant direct effect to the Strasbourg Court’s judgments.

86. Of more concern is that the first of the issues identified – the reopening of impugned proceedings in *Hulki Günes case* – still remains unresolved despite repeated calls addressed to Turkey for a substantial period of time by the Committee of Ministers. In November 2005, the Committee of Ministers adopted Interim Resolution ResDH(2005)113 calling on Turkey, without further delay, to redress the violations of the right to a fair trial found by the Court in this case (see appendix VI)

### **3. Rapporteur’s planned visit to Turkey**

87. In view of the above considerations, and given the very positive experience of the Assembly’s cooperation with the Turkish authorities on these matters, the Rapporteur feels it appropriate to visit Turkey before the submission of his report. This visit would appear to be all the more timely and instrumental in resolving the outstanding issues in the light of positive trends reported recently by the Turkish Delegation to the Assembly.

## **L. United Kingdom**

### **1. Recent developments**

88. The general situation and the main concerns regarding the United Kingdom’s compliance with the European Court’s judgments are stated above (§§ 17-18). The main developments since June 2005 may be summarized as follows.

#### *Hashman and Harrup v. the United Kingdom* (judgment of 25/11/1999)

89. On 5 July 2005, the Committee of Ministers adopted an Interim Resolution (ResDH(2005)59) urging the United Kingdom to take the remaining necessary measures to overcome the lack of precision of binding-over orders, which was at the basis of the violation of the right to freedom of expression found in the *Hashman and Harrup case*.

90. In this judgment, Court considered that the binding-over order imposed on the applicants, based on the notion of “behaviour contra bonos mores”, had been too vague, and that it could not be said that it must have been apparent to the applicants what they were being bound over not to do. The order therefore did not comply with the requirement under Article 10 of the European Convention on Human Rights that it be “prescribed by law”.

91. The Committee noted certain measures taken by the United Kingdom in response to the judgment, in particular the guidelines issued to prosecutors in 2000 and a consultation document published in 2003. It regretted, however, that all the necessary steps have not yet been taken to prevent similar breaches of the Convention in future, whether through the enactment of legislation or issuing practice directions to courts. It therefore urged the United Kingdom authorities to take the remaining measures necessary to meet its obligations under the Court’s judgment without further delay.

92. It may be noted that the power of magistrates to “bind over” individuals has existed in one form or another in the UK for more than 600 years. Around 20,000 people are bound over by the UK courts each year (see press-release 383a of 6/07/2005).

McKerr v. the United Kingdom, Funicane v. the United Kingdom (judgments of 04/05/2001 and of 01/07/2003) and 4 other cases

93. These cases concern violations of the right to life due to the lack of effective investigations by the authorities into homicides allegedly committed by members of security forces in Northern Ireland. The Committee of Ministers continues closely to supervise the adoption of both individual measures to remedy the failings in domestic investigations and general measures to prevent new similar violations.

94. The latest public documents show that steady progress is being made on many problems raised with regard to the general measures. At the same time, a number of issues still arise with regard to the United Kingdom’s continuing obligation, which was stressed in the Committee Interim Resolution DH(2005)20, to conduct effective investigations in the cases at issue. Information on the progress of the inquests in the Jordan and McShane cases and on the question how the United Kingdom intends to provide for an Article 2 compliant investigation in the cases of McKerr, Shanaghan and Kelly and others is awaited. In addition, questions still remain whether an inquiry into the death of Mr Finucane based on the Inquiries Act 2005 would conform to Article 2 requirements (see in particular CM/Del/OJ/DH(2005)928 Volume I Public, p.100-101).

Other cases mentioned in the Introductory Memorandum (John Muray: A.; Faulkner Ian; Jonson Stanley):

95. The issues raised in these cases seem to remain outstanding since June 2005 and the adoption of the relevant texts is still awaited.

## **2. Rapporteur’s planned visit to the United Kingdom**

96. The United Kingdom’s compliance with the Court’s judgments gives rise to certain concern since a number of problems raised have not been fully solved for a long time. While the Committee of Ministers has been calling through Interim Resolutions for solution these problems, the latter persist due to delays in the amendment of laws or other texts at the basis of violations. In these circumstances, the Assembly has an important role to play in promoting the implementation of judgments, notably by fully exploiting its privileged relations with national legislators and other authorities. The Rapporteur has therefore decided to seize the opportunity of visiting the United Kingdom prior to submission of the report, with a view to exploring solutions to most important and longstanding implementation problems.

## **M. Ukraine**

### **1. Important implementation issues**

97. The situation concerning the Ukraine’s compliance with the Court’s judgments has been described above (§ 16) and is generally marked by an increasing number of important implementation problems, many of which concern the functioning of the judicial system. Of very special concern are the problems relating to the independence of the judiciary and the non-execution of domestic judicial decision in civil cases.

98. The first mentioned problem was highlighted by *Sovtransavto Holding v. Ukraine* (judgment of 25/07/02), which also concerned the violation of the requirement of legal certainty on account of recourse to supervisory review (“nadzor”) procedure. The judgment still remains to be fully complied with by the authorities by adopting general measures to prevent new similar violation (CM/Del/OJ/DH(2005)940 Volume I Public, pp.100-101).



99. The second of the above-mentioned problems constitutes a structural problem in Ukraine. It has already been raised in more than 20 of judgments and hundreds similar applications are pending before the Court.

100. The lack of enforcement of domestic judgments was mostly due to

- failure to ensure the payment by state-owned companies of the applicants' salary areas, disablement benefits or work related benefits and of default interest for delay in payment; or
- the State Treasury's failure to pay the applicant compensation ordered by domestic courts for unlawful seizure and confiscation of his car; or
- a Police Department's failure to pay the applicant compensation ordered by domestic courts for non-pecuniary damage caused by Police;

101. Among the reasons invoked for non enforcement of judicial decisions were:

- the lack of funds on the debtors' accounts;
- the impossibility of attaching any property of the State or of bankrupt companies owned by the State according to the 2001 Moratorium on the Forced Sale of Property;
- the impossibility of attaching any property located in Chernobyl area without the State special authorization which was denied;
- more generally, the lack of the appropriate enforcement procedures.

102. It has already been stated in the Committee of Ministers that comprehensive general measures are required by the present judgments. Information is expected on the measures under way or envisaged by the Ukrainian authorities to solve this structural problem, as well as to allow victims of excessive length of enforcement proceedings to obtain compensation before domestic courts and/or acceleration of the enforcement proceedings. It was also suggested that the experience of other countries confronted with similar problems in the past might be taken into account in planning and adopting general measures in these cases (see, for example, *Hornsby against Greece* and *Burdov against Russia*, which were closed by final resolutions ResDH(2004)81 and ResDH(2004)85 respectively). Individual measures to ensure enforcement of domestic decisions in the cases already decided by the Court are also required.

103. The Ukrainian authorities indicated that they were envisaging legislative measures to solve the structural problem at the basis of these violations (CM/Del/OJ/DH(2005)940 Volume I Public, p.82; CM/Del/OJ/DH(2005)940 Volume II Public, pp.46-47)

## **2. Rapporteur's planned visit to Ukraine**

104. As in the case of Russia (see assessment in §72 above), the aforementioned implementation problems are obviously of such extent and complexity that they strongly call for the Assembly more active involvement in their resolution. The Rapporteur therefore considers that a visit to Ukraine would be timely and instrumental in promoting the comprehensive measures that are required by the present judgments.

## APPENDIX I

### Statement by the Rapporteur (Mr Jurgens),

Paris, 7 November 2005

Colleagues,

Back in June 2005 I presented you with an "Introductory memorandum" on this, my 6<sup>th</sup> report, which is to concentrate on:

- Strasbourg Court judgments which have not been fully implemented for over five years, and
- Judgments that otherwise raise important implementation issues, including those which reveal important structural problems.

Please permit me to make 3 comments on this subject:

**Firstly**, for our meeting on 13<sup>th</sup> December, or at the latest at our next meeting in Strasbourg in January 2006, I will provide you with an "**Interim Report**" indicating progress achieved and difficulties encountered in the preparation of this report. I will need to decide - with your help - how best to deal with this subject in a situation in which six of the 13 PACE delegations that were asked to provide me with updated information by 10<sup>th</sup> September have not yet done so, despite reminder letters sent in early October.

Lengthy compliance procedures and, still worse, the non-compliance with judgments over long periods of time undermine the credibility of both the ECHR's system and the Council of Europe. Hence my proposal to obtain the Committee's authorization, already today, to invite chairmen of PACE delegations in countries in which the situation is most acute to an "exchange of views" with us. Such an "exchange of views" could be organized under the auspices of the Sub-Committee of Human Rights during our January 2006 part-session.

**My second point:** I would be interested to know how many members of this Committee – that is to say how many delegations – followed up my suggestion and have posed specific questions in their parliaments about outstanding problems of implementation of Strasbourg Court judgments.

National parliaments - and the Parliamentary Assembly - have an important role to play in this process and should be instrumental in ensuring proper implementation of the Court's judgments. I propose we become more "pro-active" in this respect. Here again, with your permission Mr. Chairman, I suggest that in December or in January we have a 'tour de table' with all Committee members to see what they have done or envisage doing in their respective parliaments on this subject. For example, the Committee of Ministers' insistent calls for the re-opening of judicial proceedings after the finding of violations in Strasbourg have not been followed by the Italian and Turkish parliaments for years (see Interim Resolution DH (2005) 85 in *Dorigo v. Italy* and *CM/Del/OJ/DH (2005) 940 Vol.I Public*, pp.99-100 for *Hulki Günes v.Turkey*). Why have the necessary draft laws not been given priority?

**My third and last point, Mr. Chairman.** We all agree that the Assembly should continue, and indeed have a more prominent role, in ensuring compliance with the Court's judgments. Back in June you permitted me, as Rapporteur, to assess the seriousness of the situation in each of the then 13 countries concerned – in the light of replies received – and propose such measures as may be appropriate in each case, including the idea of proposing specific monitoring procedures in the most serious cases of non-compliance. But before so doing, I wish to visit certain countries in which serious problems exist. This I could do in early 2006. At present I feel such visits could be undertaken in 5 countries, namely Italy, Turkey, Russia, the Ukraine and the United Kingdom. **I seek your authorization to do so.**

I believe that we need to enhance the Assembly's effectiveness in the implementation of Strasbourg Court judgments. Such visits would permit us to better identify existing problems and propose appropriate solutions, not only to the national authorities, but also to our colleagues in the parliamentary bodies concerned.

## APPENDIX II

Summary of principal problems encountered in the execution of judgments with respect of 13 Contracting State Parties to the ECHR<sup>1</sup>

Country	Case / Date of Judgment(s) or decision(s)	Violation(s)	Outstanding problem(s) in the execution of the judgment(s)/decision(s)
1. Bulgaria	Al-Nashif and others (20/06/02)	Art.5§4, Art.8, Art.13	Domestic proceedings still pending with a view to allowing the applicant's return to the country; Reform of the Alien Act to be completed.
2. France	Lemoine Daniel (17/06/99)	Art.6§1	Adoption of remedial measures vis-à-vis the applicant who was denied access to a court/
3. Germany	Görgülü (26/02/04)	Art.8	A father is still to be granted access to his 5-year old child born out of wedlock.
4. Greece	Dougoz (06/03/01) Peers (19/04/01)	Art.3, Art.5§1 Art.5§4 Art.8	Improvement of detention conditions.
5. Italy	<b>see Part III above, and document AS/Jur (2005) 32</b>		
6. Latvia	Slivenko (09/10/03)	Art.8	Restoring the applicants' residence rights in Latvia.
7. Moldova and Russia	Ilascu and others (08/07/2004)	Art.3, Art.34, Art.5§1	Applicants who are still in detention to be released.
8. Poland	<b>see Part V above, and document AS/Jur (2005) 32</b>		
9. Russia	Kalashnikov (15/07/02)	Art.3, Art.5§3, Art.6§1	Improvement of detention conditions.
10. Romania	Rotaru (04/05/00)	Art.8, Art.13, Art.6§1	Reform of the laws regulating the activities of secret services.
	Dalban (28/09/99)	Art.10	Entry into force of the new provisions of the criminal code concerning defamation.
11. Turkey	<b>see Part IV above, and document AS/Jur (2005) 32</b>		
12. United Kingdom	McKerr (04/05/01) Finucane (01/07/03) and 4 other cases	Art.2	Effective investigations to be carried out in the applicants' cases; Legislative and other reforms to be completed to ensure that adequate procedural safeguards surround such investigations.
	Murray John (08/02/96) and 4 other cases	Art.6§1, Art.6§3	Entry into force of Section 36 of the Criminal Evidence (Northern Ireland) Order 999, on non-permissible inferences from suspects' silence prior to their access to a lawyer.
	A. (23/09/98)	Art.3	Legislative or other reforms to prohibit effectively the physical punishment of children in breach of Article 3 in Scotland and Northern Ireland; Possible further measures to ensure effective deterrence of such ill treatment throughout the United Kingdom.
	Hashman and Harrup (25/11/99)	Art.10	Legislative or other reforms to ensure "binding over" orders are sufficiently clear and precise.
	Faulkner Ian (30/11/99)	Art.6§1	Adoption of a statutory scheme for legal aid in civil cases in Guernsey.
	Johnson Stanley (24/10/97)	Art.5§1	Adoption of a new Mental Health Bill, currently before Parliament.
13. Ukraine	Sovtransavto Holding (25/07/02)	Art.6§1, Art.1 of Protocol 1	Concrete measures to prevent impermissible interference by the executive with the administration of justice; Further development of training of judges on the ECHR; Reform of the civil procedure to be completed to abolish prosecutors' power to apply for quashing of final judgments.

<sup>1</sup> For more details consult document AS/Jur (2005)32 and Addendum .

**APPENDIX III****Doc. 10651**

26 July 2005

**Implementation of decisions of the European Court of Human Rights**

Recommendation 1684 (2004)

Reply from the Committee of Ministers

adopted at the 935<sup>th</sup> meeting of the Ministers' Deputies (13 July 2005)

1. The Committee of Ministers shares most of the concerns expressed by the Parliamentary Assembly in Recommendation 1684 (2004) and Resolution 1411 (2004) about difficulties and delays in the execution of some judgments. As a general remark, the Committee of Ministers wishes to point out that collective supervision of the execution of judgments by all member states is a unique responsibility entrusted to it by Article 46 of the Convention. Experience has often shown that execution of judgments may not always prove easy for the respondent states, especially when general measures are required to solve broad structural shortcomings of a complex nature. Supervision is also a complex task, requiring in-depth reflection on the measures proposed or taken by the respondent state as to their effective ability to solve the problems identified. Even the mere payment of just satisfaction has sometimes given rise to delicate problems that called for lengthy discussions and caused corresponding delays in implementation.

2. Although this may delay the closure of some files, such discussions stem from the right of each member state, including the respondent state, to express its views on the relevant issues. Moreover, they constitute an essential part of the task entrusted to the Committee of Ministers by Article 46 of the Convention, and the Committee of Ministers must be in a position to carry out its duties with the accuracy and attention required by their importance, complexity and delicacy.

3. The difficulties encountered by Italy in implementing the Strasbourg Court's judgments to date, due to the large number of judgments and the complexity of some of the structural problems raised (such as those related to the efficiency of the judicial system, the lack of effective compliance with domestic law and judicial decisions in numerous instances in particular in the fields of housing and town planning) call for special efforts on the part of the authorities of the respondent state.

4. The variety and complexity of the outstanding issues make it difficult to reply in detail about the implementation problems encountered in each pending case or group of cases involved.

5. However, the Committee of Ministers has repeatedly urged Italy to comply with the Court's judgments by adopting specific measures to resolve the problems at the basis of the violations found. Between 1997 and 2004 a dozen interim resolutions were adopted to that effect in various Italian cases and numerous other steps taken, such as the setting up of a special annual monitoring of the situation concerning the reform of justice aimed at solving the problem of the excessive length of judicial proceedings (following Interim Resolution DH(2000)135).

6. The Committee furthermore notes that it will be easier to implement rapidly the necessary execution measures relating to individual applicants once it is possible in Italy to re-open certain categories of proceedings having violated the Convention.

7. The Committee stresses in this connection that it is paying particular attention to Italy's continuing non-compliance with its decisions and resolutions in the Dorigo case, concerning which the Committee's Chairman wrote on 18 January 2005 to the Italian Minister of Foreign Affairs urging the authorities to ensure rapid implementation through either reopening of the impugned proceedings or adequate *ad hoc* measures providing redress for the violation found. The issue is all the more urgent as the applicant has served more than 11 years of the prison sentence imposed in violation of his right to a fair trial, a violation already established six years ago. The Italian Ministry for Foreign Affairs replied on 28 January 2005 that the Ministry of Justice was considering the possibility of granting the applicant presidential pardon.

8. Against this general background, the Committee welcomes the recent introduction before the Italian Parliament of a draft law of ratification of Protocol No. 14, which Italy signed on 13 May 2005, as well as some recent positive developments which tend to indicate that the question of compliance with the Strasbourg Court's judgments is receiving increasing attention in parliamentary, governmental and judicial circles in Italy, for example:

- new legislation to bring Italian rules on the detention regime and inspection of prisoners' correspondence into compliance with the requirements of the Convention as identified by the European Court;
- the recent introduction before the Italian Parliament of a draft law allowing reopening of proceedings following a finding of a violation of the Convention by the European Court;
- the recent entry into force of a new law (known as "the law on competitiveness" No. 80/05 of 14 May 2005) containing *inter alia* provisions which, according to Italian authorities, may have a positive impact on the length of proceedings;
- the recent entry into force of a new law (No. 60/05 of 22 April 2005) aimed among other things at extending, in conformity with the ECHR case-law, the possibility to appeal *in absentia* convictions, under certain conditions;
- some improvement in the general situation concerning the expulsion of tenants, following recent case-law of the Constitutional court and the Court of Cassation on this issue;
- recent judgments of the Court of Cassation and certain courts of appeal, which go some way towards granting direct effect to the Convention, as interpreted by the European Court;
- the forthcoming visit to Strasbourg of a delegation of the Supreme Judicial Council (CSM) and plans to set up a training programme for Italian judges aimed at improving their knowledge and awareness of the obligations stemming from the Convention;
- plans to establish a centralised authority or inter-ministerial agency to ensure adequate and prompt execution of Strasbourg Court judgments.

9. The Committee trusts that the outstanding implementation issues will be handled by the Italian authorities without further delay and that priority will be given to the most urgent, overdue issues. Pursuant to its responsibilities under the Convention, the Committee will maintain the situation under close supervision, in order to ensure, as it does in respect of all member states, that the Court's judgments are properly executed.

10. As regards points iii) and iv) of the Recommendation, the Committee would like to recall that it is engaged in an ongoing preliminary general reflection on adequate responses in the event of slow or negligent execution or non-execution of judgments. New developments in the Committee's working methods adopted in April 2004 and the increase in the use of interim resolutions have resulted from this reflection. Protocol No. 14 also addresses some of these problems (the CDDH is currently engaged in preparing proposals for a revision of the Rules) as do a number of recommendations referred to in the Committee of Ministers' declaration "Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels" of 12 May 2004. In the context of this ongoing reflection, the Committee is also examining proposals made by the Parliamentary Assembly on this subject and will keep the Assembly informed of the progress on these issues. The Committee stresses, however, that sanctions in the event of slow or negligent execution or non-execution of judgments are a matter for legally binding instruments adopted in the forms provided for by international law.

11. The Committee furthermore stresses that, in their capacity as national legislators, members of the Parliamentary Assembly have an eminent role to play in facilitating the rapid execution of the judgments of the European Court of Human Rights by promoting as a priority the adoption in their respective parliaments of the legislative measures needed to bring domestic law into conformity with the Convention.

**APPENDIX IV*****PRESS RELEASE*****Delays of Italian justice: situation remains serious**

Strasbourg, 13.10.2005 – The Committee of Ministers of the Council of Europe continued today its examination of the execution of a large number of judgments of the European Court of Human Rights relating to the excessive length of judicial proceedings in Italy. The Committee discussed the fourth annual report of the Italian authorities (CM/Inf(2005)31 and addendum), presenting the efforts undertaken in order to solve this structural problem, and concluded that despite these efforts the problem of the excessive delays of Italian justice remained unsolved.

The Committee also discussed the measures announced by the Italian authorities in a special Action plan for civil and criminal justice (CM/Inf(2005)39) prepared to deal with this situation. It considered that this plan did not provide a sufficiently comprehensive response to the problem and discussed the possibility of setting up an ad hoc commission in Italy with the task of analyzing the problem and proposing the appropriate global solution. The Committee decided to pursue the examination of the situation on 29-30 November with a view to adopting an Interim resolution on this issue.

Under the European Convention on Human Rights, the European Court's judgments require the adoption by the respondent states, under the Committee supervision, of all measures necessary to grant the applicants appropriate redress and to prevent new similar violations in the future ([http://www.coe.int/T/E/Human\\_Rights/execution/](http://www.coe.int/T/E/Human_Rights/execution/)).

## APPENDIX V

### PRESS RELEASE

#### **Persistent delays of Italian justice: a need for a new national strategy and commitment at the highest level**

Strasbourg – 01.12.2005 - The Committee of Ministers of the Council of Europe yesterday adopted an Interim Resolution on the problem of delayed justice in Italy at the basis of numerous violations of the European Convention of Human Rights since the 1980's. Having assessed the results achieved over the last years, the Committee called for a new national strategy to solve this problem.

The Committee noted that despite the efforts undertaken by the authorities, a solution will not be found in the near future to this problem which constitutes a real danger for the respect of the rule of law in Italy.

The Committee also stressed that the persistence of the situation clearly highlights the structural and complex nature of the underlying problems and that an interdisciplinary approach and commitment at the highest level, involving the key actors, is required for its solution.

The Committee noted therefore with great interest the ongoing discussion and new initiatives currently pending before the Italian parliament to promote implementation of judgments of the Court and welcomed the renewed efforts made by the Government to that effect.

In conclusion the Committee:

URGED the Italian authorities to enhance their political commitment and make it their effective priority to meet Italy's obligation under the Convention and the Court's judgments, to secure the right to a fair trial within a reasonable time to all persons under Italy's jurisdiction;

CALLED UPON the competent authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to achieving a comprehensive solution to the problem and to present by the end of 2006 at the latest a new plan of action based on a stocktaking of results achieved so far and embodying an efficient approach to its implementation;

DECIDED to maintain these cases under close supervision and resume consideration of them at its last meeting (DH) in 2006, noting the commitment of the Italian authorities to keep the Council of Europe informed of progress in the preparation of the said action plan.

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COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS

#### **Interim Resolution ResDH(2005)114**

**concerning the judgments of the European Court of Human Rights and decisions by the Committee of Ministers in 2183 cases against Italy relating to the excessive length of judicial proceedings** (Adopted by the Committee of Ministers on 30 November 2005 at the 948th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of former Articles 32 and 54 and of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"),

Having regard to the numerous judgments of the European Court of Human Rights (hereinafter referred to as "the Court") and decisions of the Committee of Ministers since the early 1980s finding violations by Italy of Article 6, paragraph 1, of the Convention, due to the excessive length of judicial proceedings;

Recalling that the important structural problems at the basis of these violations have been examined by the Committee for almost 20 years with a view to ensuring that the Italian judicial system is brought into conformity with the requirements of the Convention, thus preventing new, similar violations before criminal, civil and administrative courts;

Recalling that, in the 1990s, the efforts already deployed by the Italian authorities to solve these problems had led the Committee to close its supervision on the assumption that the comprehensive measures adopted would achieve satisfactory results (see e.g. as regards civil proceedings, Resolution DH(95)82 in the case of Zanghi);

Recalling, however, that the Committee had to conclude, in particular as a result of continuing influx of new cases to the Court, that the problem of the excessive length of judicial proceedings in Italy persisted and that it was necessary to reopen its supervision of the question of the general and individual measures required to remedy the violations found and to prevent similar violations;

Recalling that, in the context of this renewed supervision, the Italian authorities presented in 2000 various lines of action (Interim Resolution DH(2000)135), providing for:

- the in-depth, structural modernisation of the judicial system to achieve improved long-term efficiency;
- special action (sezioni stralcio) to deal with the oldest cases pending before national civil courts or, at least, to produce short-term positive effects;
- the acceleration of compensation procedures through the creation of a domestic remedy in cases of excessive length of proceedings;

Recalling that the Committee supported these lines of action and called upon the Italian authorities, in view of the gravity and persistence of the problem, to maintain the reform of the Italian judicial system as a high priority, to continue to make rapid and visible progress in the implementation of the reforms, and to continue their examination of further measures necessary effectively to prevent new similar violations;

Noting with interest the responses given by Italy to this Interim Resolution, and in particular:

- the numerous legislative initiatives subsequently taken to increase the efficiency of the judicial system and the management efforts undertaken by the courts to improve their case-handling capacity, while noting the absence of a sufficiently coherent approach and the fact that a number of reforms still remain to be adopted or implemented;
- the rapid setting-up of the sezioni stralcio to deal with the oldest cases, while regretting that the implementation of the reform has not been such as to allow the termination of these cases within the time-limits initially set;
- the setting-up of a domestic remedy providing compensation in cases of excessive length of proceedings, adopted in 2001 (the "Pinto" law), as well as the recent development of the case-law of the Court of cassation, increasing the direct effect of the case-law of the European Court in the Italian legal system, while noting that this remedy still does not enable for acceleration of proceedings so as to grant effective redress to all victims;

Stressing that the setting-up of domestic remedies does not dispense states from their general obligation to solve the structural problems underlying violations;

Finding that despite the efforts undertaken, numerous elements still indicate that the solution to the problem will not be found in the near future (as evidenced in particular by the statistical data, the new cases before both domestic courts and the European Court, the information contained in the annual reports submitted by the government to the Committee and in the reports of the Prosecutor General at the Court of cassation);

Welcoming the renewed efforts made by the Italian Government and Parliament and also by the judicial authorities themselves in recent years, in particular the plan of action recently submitted to the Committee of Ministers, concentrating on legislative changes to accelerate civil proceedings;

Taking into account Parliamentary Assembly Recommendation 1684 (2004), on the implementation of decisions of the Court, which urges the Committee of Ministers to ensure, without further delay, that the Italian authorities take the necessary execution measures in respect



of all outstanding judgments older than five years and in all cases where individual measures are urgently expected;

Stressing the importance the Convention attaches to the right to fair administration of justice in a democratic society and recalling that the problem of the excessive length of judicial proceedings, by reason of its persistence and extent, constitutes a real danger for the respect of the rule of law in Italy;

Noting that the persistence and development of this situation, since the 1980s, clearly highlights the structural and complex nature of the underlying problems, which affect most Italian courts, including the highest ones, in the civil, criminal and administrative fields;

Stressing that the gravity and complexity of the problem of excessive length of judicial proceedings requires an interdisciplinary approach and commitment at the highest level, involving the key actors;

Noting therefore, with great interest, the ongoing discussion and new initiatives currently pending before the Italian parliament, in particular the draft bill creating a particular competence, at the highest governmental level, to promote the implementation of judgments of the Court,

URGES the Italian authorities to enhance their political commitment and make it their effective priority to meet Italy's obligation under the Convention and the Court's judgments, to secure the right to a fair trial within a reasonable time to all persons under Italy's jurisdiction;

CALLS UPON the competent authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to achieving a comprehensive solution to the problem and to present by the end of 2006 at the latest a new plan of action based on a stocktaking of results achieved so far and embodying an efficient approach to its implementation;

DECIDES to maintain these cases under close supervision and resume consideration of them at its last meeting (DH) in 2006, noting the commitment of the Italian authorities to keep the Council of Europe informed of progress in the preparation of the said action plan.

**APPENDIX VI****PRESS RELEASE****Hulki Günes v. Turkey judgment: Call for urgent measures to redress an unfair trial**

Strasbourg, 01.12.2005 –The Committee of Ministers of the Council of Europe called on Turkey, without further delay, to redress the violations of the right to a fair trial found by the European Court of Human Rights in the Hulki Günes v. Turkey case.

The Interim Resolution adopted yesterday notes that the violations found cast serious doubts on the outcome of the applicant's trial and notes the gravity of the life sentence imposed. The Committee therefore called for the reopening of the impugned criminal proceedings or other appropriate *ad hoc* measures to redress the violations found.

The reopening of the criminal proceedings at issue can so far not be granted due to a lacuna in Turkish law which makes it impossible to reopen any case that was pending before the European Court on 4 February 2003 (date of adoption of the relevant provisions).

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COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS

**Interim Resolution ResDH(2005)113**

**concerning the judgment of the European Court of Human Rights of 19 June 2003 in the case of Hulki Günes against Turkey** (Adopted by the Committee of Ministers on 30 November 2005 at the 948th meeting of the Ministers' Deputies)

The Committee of Ministers, having regard to the judgment of the European Court of Human Rights ("the Court") of 19 June 2003 in the Hulki Günes v. Turkey case (application no. 28490/95) transmitted on 19 September 2003 to the Committee for supervision of execution in accordance with Article 46 § 2 of the European Convention on Human Rights ("the Convention");

Recalling that, in that judgment, the Court found violations of the applicants' right, under the Convention, to a fair trial before the Diyarbakir State Security Court, on account of:

- the lack of independence and impartiality of the tribunal due to the presence of a military judge on the bench of the State Security Court (violation of Article 6 § 1);
- the impossibility for the applicant to examine or to have examined the witnesses who testified against him (violation of Article 6 §§ 1 and 3(d));

Noting that, as a result the unfair proceedings, the applicant was sentenced to death, a sentence which was subsequently commuted to life imprisonment;

Recalling that the Court also found that the applicant had been subjected to inhuman and degrading treatment while in police custody (violation of Article 3);

Stressing the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including through the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant;

Considering that, in addition to the payment of the just satisfaction awarded by the Court, the adoption of individual measures is necessary in view of the specific circumstances of the present case, notably the extent of the violations found, the serious doubts they cast on the outcome of the criminal proceedings at issue and the gravity of the sentence imposed on the applicant;

Regretting that, more than two years after the finding of the violations in this case, no measures have been taken by the Turkish authorities, beyond the payment of just satisfaction, to grant the applicant adequate redress for the violations found;

Considering that the reopening of the impugned domestic proceedings remains the best means of ensuring restitutio in integrum in this case;

Regretting that the Turkish Code of Criminal Procedure does not enable the criminal proceedings to be reopened in the present case, inasmuch as the Code only provides for the reopening of proceedings in respect of European Court judgments which became final before 4 February 2003 or judgments rendered in applications lodged with the Court after 4 February 2003;

Noting with disappointment that the Turkish authorities have so far not responded to the Committee's repeated calls to correct this lacuna in Turkish law;

Recalling, with regard to the other aspects of the execution of the judgment in this case, that the Turkish authorities have already taken comprehensive general measures in order to prevent new similar violations of the right to a fair trial and are presently implementing a comprehensive set of measures aimed at preventing ill-treatment by members of the security forces (Interim Resolution ResDH(2005)43);

Recalling in particular the recently amended Article 90 of the Constitution enabling direct effect to be given in Turkish law to the requirements of the Convention and case-law of the Court;

**CALLS ON** the Turkish authorities, without further delay, to abide by their obligation, under Article 46, paragraph 1, of the Convention, to redress the violations found in respect of the applicant through the reopening of the impugned criminal proceedings or other appropriate ad hoc measures;

**DECIDES** to continue to supervise the execution of the Court's judgment in this case at each of its "Human Rights" meetings until full compliance is secured.