Parliamentary **Assembly**
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Declassified*
AS/Jur (2008) 24
26 May 2008
ajdoc24 2008

Committee on Legal Affairs and Human Rights

Implementation of judgments of the European Court of Human Rights

Introductory memorandum

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Contents

I. Introduction

1. The binding nature of the judgments of the European Court of Human Rights ("the Court" or "the Strasbourg Court"), with the Committee of Ministers' acting as the guarantor of their execution by states, is one of the cornerstones of the European Convention on Human Rights ("ECHR") system and its effectiveness. However, the Court's judgments are often implemented through a complex legal and political process, which involves a number of domestic and international institutions. Not only the Committee of Ministers, but also national parliaments and the Parliamentary Assembly, can be called upon to play an important role in this process.

2. Past experience shows that the Parliamentary Assembly has often been instrumental in contributing to the process of guaranteeing the implementation of Strasbourg Court judgments. This has been done in various ways, e.g., through reports, resolutions, recommendations, the holding of debates and by means of oral and written parliamentary questions. Since 2000, six reports and resolutions and five recommendations concerning the specific subject of implementation of Strasbourg Court judgments have been adopted by the Assembly.[1] On the basis of this work, a number of complex issues have been solved with the assistance of the Assembly and of the national parliaments and their delegations.

* Declassified by the Committee on 2 June 2008.
[1] Res 1226 (2000) and Rec 1477 (2000) of 14.01.2000; Res 1268 (2002) and Rec 1546 (2002) of 22.01.2002; Res 1297 (2002) and Rec 1576 (2002) of 23.09.2002; Res 1381 (2004) of 22.06.2004; Res 1411 (2004) and Rec 1685 (2004) of 23.11.2004; Res 1516 (2006) and Rec 1764 (2006) of 02.10.2006.

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3. In preparing the sixth report in this subject,[2] which highlighted unresolved issues raised in 13 State Parties to the European Convention on Human Rights (ECHR)[3], the former rapporteur, Mr Erik Jurgens (Netherlands, Socialist Group), took the initiative of carrying out *in situ* visits to states in which the situation was considered to be the most worrying, namely Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom. Mr Jurgens used these visits to examine, with fellow parliamentarians and national decision-makers, the reasons for non-compliance with Court judgments and to stress the urgent need for solutions to problems raised. This initiative was welcomed by the Committee on Legal Affairs and Human Rights and subsequently endorsed by the Assembly as a "*proactive approach* [which has permitted the Committee to give] *priority to the examination of major structural problems concerning cases in which unacceptable delays of implementation have arisen"* (Resolution 1516 (2006), § 5, the text of which is appended to this introductory memorandum).[4]

4. In its Resolution 1516 (2006) of 2 October 2006,[5] the Assembly also invited the parliamentary delegations of the five states which had been visited by the Rapporteur to present to it the results achieved in solving substantial problems or to show the existence of appropriate action plans.[6] In so doing, the Assembly reiterated the importance of this matter, reserving to itself the right to take appropriate action should the states concerned continuously fail to take all the measures required to speedily implement judgments of the Strasbourg Court.[7]

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5. I have the privilege and honour to be the successor of the former Rapporteur, Mr Erik Jurgens (Netherlands, Socialist Group), whose work on this subject has – over several years – been outstanding in this respect. Having been appointed to take over this heavy burden, on 7 March 2008, I will do my very best to continue the pioneering efforts of my predecessor, including – if and when need arises – to undertake visits to states in which difficult problems of execution of judgments persist. In doing so, I will pay particular attention to the Committee of Ministers' first annual report on its supervision of the execution of judgments of the European Court, adopted in March 2008[8].

6. The 7th report – which I hope to be able to present to the Committee before the end of 2009 – will continue in the vein of previous reports. It will cover a number of judgments of the Strasbourg Court, and decisions under former Article 32 of the Convention, which have been selected in accordance with the well-established 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.

7. Since the adoption of the last report, the Strasbourg Court has rendered a number of important judgments with respect to, *inter alia,* Albania, Armenia, Azerbaijan, Bosnia and Herzegovina and Serbia, which are now pending before the Committee of Ministers. I am confident that these states will fully ensure a rapid and full execution of the said judgments.

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[2] Erik Jurgens, Implementation of judgments of the European Court of Human Rights, 18.09.2006, Doc 11020.

[3] The 13 states are Bulgaria, France, Germany, Greece, Italy, Latvia, Moldova, Poland, Romania, the Russian Federation, Turkey, Ukraine and the United Kingdom.

[4] For an overview of the innovations made by Mr Jurgens in his 6th report, see Andrew Drzemczewski *"Quelques observations sur le rôle de la Commission des questions juridiques et des droits de l'homme de l'Assemblée Parlementaire dans l'exécution des arrêts de la Cour de Strasbourg »* in *Trente ans de droit européen des droits de l'homme. Etudes à la mémoire de Wolfgang Strasser* (Bruyant, 2007), at pp. 55-63.

[5] § 5.

[6] This subject will, in particular, need specific follow-up. See Erik Jurgens "Implementation of judgments of the European Court of Human Rights – Issues currently under consideration", document AS/Jur (2007) 49 rev, of 26.11.2007, which has been declassified by the Committee.

[7] Res 1516 (2006), § 22.7.

[8] http://www.coe.int/t/e/human_rights/execution/CM_annreport2007_en.pdf

8. Expeditious and full execution of the judgments of the European Court of Human Rights is an obligation for all States Parties to the ECHR, and remains a determining element for the safeguard of the unique system of the Convention. Hence the importance of Recommendation CM/Rec(2008)2, adopted by the Committee of Ministers on 6 February 2008, to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights. Persistent long delays and or failure to fully execute the Court's judgements by a not insignificant number of member states undermines the whole system and the credibility of the Court.

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9. On the basis of the information collected for the present introductory memorandum based, *inter alia,* on the Committee of Ministers' first annual report on its supervision of the Court's judgments, it would appear that several problems brought to light in the last Assembly report, have been or will soon be resolved. These will be dealt with in Part II. Nevertheless, it would appear that the non-execution of the Strasbourg Court's case-law remains a (major) problem with respect to **11** States Parties to the ECHR. An overview of the said problems is provided in Part III.

II. Issues resolved since the last report

10. At the outset, I am pleased to note that the Committee of Ministers was able to complete 677 cases by a final resolution in 2007 and that, for the same period, in still 774 other cases, awaiting a final resolution, all the execution measures required from the states concerned have been adopted. The presentation below focuses only on the cases that my predecessor, Mr Jurgens, dealt with in his 6th report.

1. France

Lemoine Daniel v. France (decision of 17 June 1999)

11. The Committee of Ministers closed this case by a Final Resolution on 20 June 2007.[9] The applicant could not have his case reopened as the courts seized did not consider themselves competent to re-examine the situation. However, the French authorities indicated that alternative ways remain open to the applicant to request compensation for the consequences of the violation, which probably would not have been otherwise repaired. Only this kind of redress will be possible today due to the large amount of time elapsed (almost 20 years) and the applicant's age. Under French law, it is possible to request compensation before the administration. In case of a negative decision, the applicant could appeal to the administrative courts, which could then examine the merits of his claims and/or possibly grant him compensation for loss of opportunity. These courts apply the Convention and the case-law of the Court directly and thus would be in a position to take account of the findings of violations, and to erase as far as possible their consequences.

12. As concerns general measures, a new procedure was instituted in 1999, according to which decisions concerning unfitness for work are taken by occupational health service doctors. These decisions can be contested before the Transport Labour Court inspectors. There are several possibilities of appeal to challenge the latters' decisions. General measures to avoid excessive length of civil proceedings, in particular before the Court of Cassation, have already been taken.[10] [11]

[9] CM/ResDH(2007)78.
[10] Final Resolution in the *Hermant* case, CM/ResDH(2003)88.
[11] See Resolution CM/ResDH(2008)12 on the execution of the judgments of the European Court of Human Rights in the case of Raffi against France and thirty other cases (see Appendix to the Resolution) concerning the excessive length of certain proceedings concerning civil rights and obligations or the determination of criminal charges before administrative courts and the lack of an effective remedy; and also Resolution ResDH(2005)63 concerning the judgment of the European Court of Human Rights in 58 cases against France (see Appendix to the Resolution) of excessive length of certain proceedings concerning civil rights and obligations or the determination of criminal charges before the administrative courts.

2. Latvia

Slivenko v. Latvia (judgment of 9 October 2003)

13. The judicial proceedings before Latvian courts after the Court's judgment in 2003 did not lead to a *restitutio in integrum,* i.e. the restoration of the applicant's permanent residence rights in Latvia. The negotiations mentioned in paragraph 42 of the last report led to a friendly settlement between the applicant and the authorities on 29 March 2006. On 21 June 2006, the Minister of the Interior adopted a separate decision with respect to each of the applicants, granting them permanent residence permits. The applicants received both the decisions and the stickers with the residence permit in their passports within the next month. Consequently, no other individual measure has been considered necessary. In February 2007, the Ministers' Deputies instructed the Secretariat to prepare a draft final resolution putting an end to the Committee of Ministers' supervision of this case.

Cases of continued detention in violation of Article 5 § 3 ECHR

14. The Court has found violations of Article 5 § 3 of the Convention in various cases against Latvia.[12] These violations were caused by insufficient motivation and inadequate proceedings in deciding on continued detention. A new Law on Criminal Procedure entered into force on 1 October 2005. The new law introduced a post of investigative judge whose main function is to supervise the observance of human rights in criminal proceedings. The judge decides on the application and extension of certain means of restraint (detention, house arrest, placement in an institution) as well as on complaints related to other means of restraint (e.g. restraint order, bail, conditions of police supervision). This law also imposes several time-limits for pre-trial detention. In May 2003, the Human Rights Institute of the University of Latvia organised a seminar on detention issues for judges, prosecutors, practicing lawyers, government and parliamentary representatives. In June 2006, the Ministers' Deputies instructed the Secretariat to prepare a draft final resolution.

3. Poland

Broniowski v. Poland (judgment of 22 June 2004)

15. On 8 July 2005, the Polish Parliament adopted the Law on the realisation of the rights to compensation for property left beyond the present borders of the Polish state. According to this law, compensation may be awarded in two forms, depending on the claimant's choice: either, as previously, through an auction of certain lands of through cash payment to be distributed from a special compensation fund. All the measures for the implementation of this legislation are now adopted.

16. The Polish authorities have selected a group of priority cases amongst those pending before the European Court with a view to testing the new compensation mechanism. On 4 December 2007 in its decisions in two cases of this kind, the Strasbourg Court found that the new Bug River compensation mechanism meets the requirements set out in its Grand Chamber judgment of 22 June 2004. It also observed that the maximal level of compensation provided for by the new law of 2005 is in conformity with the requirements of the Convention. Consequently, the Court decided to strike out these cases from its list (see decisions in *Wolkenberg and others v Poland*, No. 50003/99 and *Witkowska-Tobola v Poland*, No. 11208/02).

17. Forty other cases concerning this issue were struck from the list of the Court. The Court is considering whether to strike out the remaining cases (around 230 applications) so as to mark the end of the "pilot judgment procedure". The Deputies noted that nothing put into question the process of striking out of the clone cases and instructed the Secretariat to prepare a draft final resolution to be considered at their 1028th human rights meeting (3-5 June 2008).

[12] *Lavents v. Latvia* (No. 58442/00), 28.11.2002, *Freimanis and Līdums v. Latvia* (No. 73443/01 and 74860/01), 09.02.2006, *Svipsta v. Latvia* (No. 66820/01), 09.03.2006, *Moisejevs v. Latvia* (No. 64846/01), 15.06.2006, *Kornakovs v. Latvia* (No. 61005/00), 15.06.2006 and *Estrikh v. Latvia* (No. 73819/01), 18.01.2007.

4. Slovenia

Cases of length of civil proceedings and lack of an effective remedy

18. In an inadmissibility decision of 15 May 2007, the Court "[recalled] its findings in the Lukenda judgment that the average length of judicial proceedings in Slovenia reveals a systemic problem that has resulted from inadequate legislation and inefficiency in the administration of justice. By virtue of that judgment, the Slovenian State was bound to provide mechanisms for the effective redress of violations of Convention rights, both through appropriate legal measures and administrative practices (…). That judgment was followed in 2006 by approximately 200 judgments against Slovenia concerning allegations of excessive length of proceedings before domestic courts." Furthermore, the Court "note[d] that there are currently nearly 1,700 applications pending against Slovenia in which the applicants allege a violation of the "reasonable time" requirement as far as both pending and terminated domestic proceedings are concerned."

19. On 26 April 2006, Slovenia adopted an Act on the protection of the right to a trial without undue delay (published in the Official Gazette of the Republic of Slovenia, No 49/2006, of 12 May 2006) which entered into force on 1 January 2007. Under this Act, claimants may seek acceleration of proceedings pending at first or second instance by means of a supervisory appeal and a motion for a deadline. Moreover, the act also foresees remedies for compensation for the excessive length of proceedings.

20. In addition, the Slovenian Government adopted, on 12 December 2005, a Joint State Project on the elimination of court backlogs. This project aims at the elimination of backlogs in courts and prosecutors' offices by the end of 2010 by tackling the problem from several different angles, including a structural and managerial reform of the judiciary.

21. In its judgment in the *Grzinčič case* (judgment of 3 May 2007, final on 3 August 2007), the Strasbourg Court indicated its satisfaction with the aggregate remedies provided by the 2006 Act. It took note of the fact that, in cases of excessively long proceedings pending at first and second instance, this law is effective in the sense that the remedies are in principle capable of both preventing alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred (§ 98). It added that there was no reason to doubt this law's effectiveness at this stage, but that the Court's position may be subject to review in the future, with the burden of proof as to the effectiveness of the remedies remaining upon the Slovenian Government (§ 108). The Court also stressed that national authorities should ensure that the 2006 Act is applied in conformity with the ECHR as regards both future case-law and the general administration of justice (§ 109).

22. In the light of the above developments, I am of the opinion that there is no need, at this stage, for the Parliamentary Assembly to keep this set of cases under review. Needless to add, the Assembly could examine the issue again, should new cases show that the issue has not been satisfactorily resolved.

5. United Kingdom

23. As to the United Kingdom, a number of positive developments can be noted at this stage. First, after the *Johnson Stanley* (No. 22520/93) case, the Committee of Ministers also decided to close the examination of the cases of the *John Murray* group (No. 18731/91), the *Ian Faulkner* case (No. 30308/95) and the *Hashman and Harrup* case (25594/94). Second, after publishing "Implementation of Strasbourg Judgments: First Progress Report" (Thirteenth Report of Session 2005-06) in February 2006, the UK Parliamentary Joint Committee on Human Rights issued "Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights" (Sixteenth Report of Session 2006-07).[13] Both reports deal with progress made in the implementation of Strasbourg judgments. The reports constitute a very valuable contribution to the task of implementation of judgments of the Court. This work is most welcome and the practice of parliamentary verification of progress made in the execution of Strasbourg judgments should be considered an example that ought to be followed in other Council of Europe member states.

[13] Available at http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/128/128.pdf.

III. Outstanding issues

1. Bulgaria

Al Nashif v. Bulgaria (judgment of 20 June 2002)

24. The ban on Mr Al-Nashif's re-entry onto Bulgarian territory was lifted in October 2007.

25. On 23 March 2007 a draft law amending the Aliens Act was adopted. Judicial control of expulsion, of the revocation of residence permits and of bans on entry into the territory ordered for reasons of national security, is now generally possible. The Committee of Ministers is presently assessing the adequacy of these measures, as it appears that appeals against expulsion, revocation of residence permits and bans on entry into the territory based on national security grounds have no suspensive effect Similar problems arise under the new Law on the entry into, presence and departure from Bulgarian territory by citizens of the European Union and their families, which entered into force on 1 January 2007. In the view of the authorities, Article 1§2 of Protocol No.7 ECHR, does not require such suspensive effect[14]. in cases involving national security.

26. Under the Supreme Administrative Court's case law, the *Al-Nashif* judgment has evolved into a well-established practice. This evolution indicates to the competent courts that they must apply the Convention directly as interpreted by the Strasbourg Court and, consequently, must examine complaints against expulsion on the grounds of national security.

Velikova (judgment of 18 May 2000) and other similar cases

27. The judgment concerned a breach of the right to life (Article 2, ECHR). National authorities had failed to account fully for the death of the applicant's partner while he was detained in police custody. Eight subsequent cases concerned similar breaches of the right to life and/or the prohibition of ill-treatment of persons (Article 3, ECHR) held in police custody.[15] All these cases also highlighted the *lack of effective investigation* by the Bulgarian authorities into these deaths and into arguable claims of ill-treatment at the hands of the police.

28. On 17 October 2007, the Committee of Ministers adopted an Interim Resolution in this group of cases[16], calling upon the government to rapidly adopt all required individual and general measures, in particular on the follow-up given to the judgments of the ECtHR by the Prosecutor General, who is competent to ask for the reopening of the unsatisfactory criminal investigations in these cases.

29. Several positive general measures have been undertaken since the European Court's judgments. Human rights training is now a compulsory part of the initial training for police officers organised by the Academy of the Ministry of Interior. Since 2001, Bulgarian law allows for the judicial review of prosecutors' decisions not to prosecute and also empowers courts to instruct prosecutors to carry out specific investigations. The Committee of Ministers decided to pursue its supervision of execution until all necessary measures are adopted and their effectiveness does not raise any doubt.

30. The special issue of the insufficiency of the legal framework for the use of firearms by police officers is presently being examined within the framework of the case of *Nachova and others*.

Umo Ilinden-Pirin (judgment of 20 October /2005)

31. In this judgment, the Court found that the dissolution of the political party Umo Ilinden-Pirin in 2000 violated Article 11 of the Convention as nothing in the party's programme or in the declarations of its leaders challenged the principles of democracy.

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[14] See in this respect, among others, the Court's judgment of 05.02.2002 in the case of *Conka v. Belgium* (No. 51564/99), § 83.

[15] *Anguelova* (judgment of 13.06.2002), *Kazakova* (22.06.2006), *Krastanov* (30.09.2004), *Ognyanova and Choban* (23.02.2006), *Osman* (16.02.2006), *Rashid* (18.01.2007), *Toteva* (19.05.2004) and *Tzekov* (23.02.2006).

[16] CM ResDH(2007)107.

32. Two re-registration attempts by the political party – with the same name and statutes as that unjustifiably dissolved – have failed since Court's judgment. After the first, the Committee of Ministers took note of the applicants' complaints, and in particular those stemming from the fact that the Bulgarian authorities had compelled the party to meet more strict registration requirements than the authorities could lawfully have imposed if no violation of the Convention had taken place (in fact old parties registered at the time of the dissolution were allowed and are still allowed to continue to function on the basis of the old requirements). In its last decision on this case (October 2007), the Committee of Ministers took note of the continuing commitment of the Bulgarian authorities to ensure, without further delay, full implementation of the judgment with a view to preventing any new similar violation. With respect to the individual measures at stake, it invited the Bulgarian authorities to examine, in cooperation with the Secretariat, possible solutions within the Bulgarian legal order. It would appear that consultations between the Bulgarian delegation and the Secretariat are still taking place.

2. Germany

Görgülü v. Germany (judgment of 26 February 2004)

33. As regards the visiting rights specified by the ECtHR, considerable progress has been made since August 2005. In 2006, several visits took place and in December 2006 the applicant obtained extended visiting rights, which were duly implemented in the first part of 2007. After the child spent three weeks with the father during the summer holidays, the visiting arrangements were interrupted in September and October 2007. This problem was immediately addressed by the German authorities, which drew up an action plan. Contacts between the applicant and his son have resumed since November 2007. These recent positive developments are to be assessed at the June 2008 meeting of the Committee of Ministers.

3. Greece

Dougoz and Peers v. Greece (judgments of 3 March 2001 and 19 April /2001)

34. According to an Inter-ministerial Decision, issued under the Immigration Law of 1991 and making express reference to the ECHR, the detention and expulsion of aliens following a court order is now subject to control by the public prosecutor and the courts.

35. Measures targeting the improvement of the conditions in police centres and detention centres for aliens have been undertaken, including the adoption in 2005 and in 2007 of two laws (3386/2005 and 3536/2007) foreseeing the creation of special centres for detention of aliens. These centres will be equipped so as to be able to cater for the needs of minors, women, men, and families – including those requiring specialised medical attention.

36. A number of important measures have been implemented in order to prevent prison overpopulation. A new transfer centre for detainees opened in Athens and one of its wings, with a capacity of 208 men, 150 women and 20 minors, for the exclusive use of detainees pending deportation. In addition, seven new detention centres opened in various police headquarters. Further, a new prison opened in Trikala in June 2006. Three more, in Domokos, Grevena and Hiva, opened in 2007, while another three – in Drama, Serres and Canne, initially expected to open in 2007, have been built and will open in the first half of 2008. The putting into operation of these seven new prisons will provide 2,700 new prison places. The construction of five more prisons, providing in total about 4,000 new prison places, should start in 2008. Furthermore, important refurbishment work is under way in many prisons.

37. Despite the above-mentioned positive measures, further major improvements of detention conditions in prisons are necessary especially, in the light of the concerns expressed in the 2005 report of European Committee against Torture (CPT/Inf(2006)41) and in the Council of Europe Human Rights Commissioner's follow-up Report on Greece (CommDH(2006)13).

38. Finally, information is awaited on the existence of effective remedies in similar cases concerning degrading detention conditions, in accordance with CM Recommendation Rec(2004)6 on the improvement of domestic remedies.

39. Since the *Kaja* judgment (27 July 2006), the Court has not delivered any other judgment caused by this systemic problem.[17]

Excessive length of proceedings

40. On 6 June 2007, the Committee of Ministers adopted an Interim Resolution on excessively lengthy proceedings in Greek administrative courts and on the lack of an effective domestic remedy.[18] The 90 cases concern Article 6 § 1, ECHR, and some of them also Article 13. They reveal structural problems, which cause many new, similar violations of the ECHR.

41. The Greek authorities have prepared a draft Law on compensation of litigants due to excessively lengthy judicial proceedings. This law shall provide for compensation in cases of undue delay in proceedings before administrative, civil and criminal courts. However, it must be stressed that the introduction of a purely compensatory remedy cannot solve the *underlying systemic problem* itself. Further general measures will be needed to tackle the problem at its roots. In this respect, a new draft Law on the improvement and acceleration of administrative court proceedings may help to achieve improvement. This latter draft law aims at limiting the causes of prolonged proceedings and, in particular, it provides strict deadlines for administrative courts to deliver their judgments.

4. Italy

Lengthy judicial procedures and "indirect expropriation"

42. The systemic problems of excessively lengthy procedures (see 6th implementation report for details) and "indirect expropriation" (see Committee of Ministers Interim Resolution ResDH(2007)3) need to be addressed as high priority issues.

43. These are matters which merit particular attention for obvious reasons, not least because issues tied to excessive length of procedures also pose a heavy administrative burden on the Committee of Ministers in its supervisory work.

Reopening of criminal proceedings (Dorigo case)

44. On 20 June 2007, the Committee of Ministers adopted a Final Resolution in respect of the *Dorigo* case, declaring that it has fulfilled its obligations under former Article 32 of the Convention in the present case. However, it must be stressed that this was not the result of an adoption of legislation finally allowing the re-opening of criminal proceedings. Such legislation still does not exist. Instead, the Italian Court of Cassation declared the applicant's detention unlawful and ordered his final release. The Court of Cassation referred to the direct effect of the Convention in Italian law and concluded that there is urgent need for legislative intervention to introduce the possibility to reopen criminal proceedings following judgments of the European Court of Human Rights.

45. Information on the state of progress of a draft law on the reopening of criminal proceedings following judgments of the European Court of Human Rights would be very useful. I count on the assistance of parliamentary colleagues on the PACE delegation to help me in this respect.

Criminal proceedings in abstentia

46. On 16 May 2007, the government laid before Parliament a reform of *in absentia* conviction (draft law AC 2664). The preamble of this text emphasised that "it seems that an in-depth reform of *in absentia* proceedings may be delayed no longer" and that "over recent years, the European Court of Human Rights has rendered several condemnatory judgments on the subject, judgments which impose an obligation on the state to comply under Article 46 of the ECHR". The bill proposed a number of changes to the Code of Criminal Procedure, in particular to adapt the provisions concerning communication with the accused to the requirements of the Convention. Following the dissolution of Parliament in February 2008 this bill, like all others, fell.

[17] See § 29 of the sixth report.
[18] CM/ResDH(2007)74, http://wcd.coe.int/ViewDoc.jsp?id=1146395&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.

5. Moldova

Ilaşcu and others v. Moldova and the Russian Federation (judgment of 8 July 2004)[19]

47. The two last applicants who were detained illegally and arbitrary, Mr Ivanțoc and Mr Popa (initially Petrov-Popa), were finally released on 2 and 4 June 2007. The Committee of Ministers adopted a fifth interim resolution on 12 July 2007,[20] again noting that the authorities of the Republic of Moldova have regularly informed the Committee of the efforts they have made to secure the applicants' release. In the light of the applicants' prolonged detention after the Court's judgment, the Committee also underlined the obligation incumbent on respondent states under Article 46 § 1, of the Convention to erase, as far as possible, the consequences of the violations at issue. In this respect, the Committee noted that Mr Ivanțoc and Mr Popa have lodged a new application with the Court against Moldova and the Russian Federation (No. 23687/05) regarding their prolonged arbitrary detention beyond the Court's judgment of 8 July 2004, and thus decided to suspend its examination of this case until after the Court's final determination of the new application.

Metropolitan Church of Bessarabia and others v. Moldova (judgment 13 December 2001)

48. This case concerns the failure of the Moldavian Government to recognise the Metropolitan Church of Bessarabia. The Court found that this amounted to an interference with the applicants' right to freedom of religion under Article 9 of the Convention and a violation of Article 13, ECHR, since the absence of recognition deprived the applicants of an effective remedy to claim property entitlements.

49. Following the Court's judgments, the Moldovan authorities recognised and registered the applicant Church on 30 July 2002. However, the applicant Church complained about problems with the registration of some of its local entities and the continuation of a negative campaign by the authorities against the Church and its members, despite its registration and the entry into force of the new law on religious denominations. The Moldovan authorities were asked rapidly to resolve the outstanding problems and to provide details on the remedies available to the applicants as regards their different claims.

50. In terms of general measures, the Moldovan Law on Religious Denominations as well as the pertinent provisions of the Code of Civil Procedure as amended in 2002 were found to be insufficient to prevent new, similar violations since they did not reflect the requirement of proportionality and the right of a religious community to take judicial proceedings to challenge a registration decision was not provided with sufficient clarity. Different versions of a draft law consequently have been elaborated in consultation with the secretariat of the Committee of Ministers. A new law on Religious Denominations was promulgated and published in the Official Journal on 17 August 2007. However, certain matters raised in Interim Resolution ResDH (2006)12 do not appear to have been taken into account. During their 1020th meeting (4-6 March 2008) the Deputies took note of the information provided by the authorities on the implementation of the new law, but found that numerous questions still remain unresolved, in particular, those related to:

- the preoccupations of the Committee of Ministers regarding the large number required (100 members) for the registration of a religious denomination
- the measures taken to ensure the progress of implementation of the new system of registration.

The Deputies decided to resume consideration of this case at its 1028th meeting (3-5 June 2008).

[19] See also point 8, under Russian Federation
[20] CM/ResDH(2007)106, http://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2007)106&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

6. Poland

Cases concerning excessive length of proceedings

51. On 4 April 2007, the Committee of Ministers adopted an Interim Resolution concerning the judgments of the European Court of Human Rights in 143 cases against Poland relating to the excessive length of criminal and civil proceedings[21]. The Committee of Ministers welcomed the reforms adopted to date by the Polish authorities in order to remedy the structural problems related to the excessive length of judicial proceedings. Whereas the introduction of a domestic remedy for cases of excessively long judicial proceedings cannot be considered as directly helping to solve the *underlying systemic problem,* the administrative and structural measures adopted, particularly those increasing the number of judges and administrative personnel, increasing courts' budgets and establishing monitoring mechanisms, have to be highlighted. During high level meetings in which the staff members of the Council of Europe's Secretariat participated in Warsaw (20-22 February 2008) and at the 1020th Ministers' Deputies' DH meeting (4-6 March 2008) the Polish authorities announced certain further measures taken or foreseen in response to the Interim Resolution.

52. According to statistical data provided by Polish authorities (see Interim Resolution), the number of cases pending for more than five years is decreasing and the efficiency of criminal courts is increasing. However, the mechanism for evaluating the average length of proceedings at the national level is not sufficiently clear to make a proper supervision of the evolution of the duration of proceedings possible.

53. Moreover, the Committee of Ministers encouraged the Polish authorities to provide for an effective remedy against excessive length of pre-trial proceedings, since the latter was not covered by the recent reform introducing a remedy for cases of excessive length of judicial proceedings. At the 1020th DH meeting (4-6 March 2008) the Polish authorities informed the Committee about a legislative amendment aimed at introducing such a remedy.

Cases of excessive length of detention on remand

54. On 6 June 2007 the Committee of Ministers adopted an Interim Resolution concerning the judgments of the European Court of Human Rights in 44 cases against Poland[22] relating to the excessive length of detention on remand.[23] The Committee stressed the importance of rapid adoption of general measures in cases where judgments reveal structural problems.

55. Although in most of the cases the detention on remand impugned by the European Court has ended and some progress has been made in the field of general measures, the Polish authorities were nonetheless encouraged to examine and adopt further measures, to take appropriate awareness-raising measures, to encourage domestic courts and prosecutors to consider the use of other preventive measures provided in domestic legislation and to establish a clear and efficient mechanism for evaluating the trend concerning the length of detention on remand. The number of cases in which detention on remand lasts for more than a year is still high. Further information from the Polish authorities is expected.

56. According to the Polish Code of Criminal Procedure, the maximum length of pre-trial detention is three months. In exceptional cases it might be prolonged to twelve months. The maximum period of detention on remand before a judgment is given is generally limited to two years. However, Article 263 § 4 of the Code of Criminal Procedure lists a number of reasons for the appeal court to extend the duration beyond

[21] At the 1020th DH meeting (4-6 March 2008) the number of cases concerning these problems amounted to 192.

[22] *Trzaska* (judgment of 11.07.2000), *Cabała* (08.08.2006), *Cegłowski* (08.08.2006), *Celejewski* (04.05.2006), *Chodecki* (26.04.2005), *Czarnecki* (28.07.2005), *Drabek* (20.06.2006), *Dzyruk* (04.07.2006) Gąsiorowski (17.10.2006), *Gołek* (25.04.2006), *Goral* (30.10.03), *Górski* (04.10.2005), *Harazin* (10.01.2006), Iłowiecki (04.10.01), *J.G.* (06.04.2004), *Jabłoński* (21.12.00) *Jarzyński* (04.10.2005), *Jaworski* (28.03.2006), Kankowski (04.10.2005), *Kozik* (18.07/2006), *Kozłowski* (13.12.2005), *Krawczak* (04.10.2005), *Kreps* (26.07.01), *Kubicz* (28.03.2006), *Łatasiewicz* (23.06.2005), *Leszczak* (07.03.2006), *Malik* (04.04.2006), *Michta* (04.05.2006), *Miszkurka* (04.05.2006), *Olstowski* (15.11.2001), *Pasiński* (20.06.2006), *Paszkowski* (28.10.2004), *Skrobol* (13.09.2005), *Stankiewicz* (17.10.2006), *Stemplewski* (24.10.2006), *Stenka* (31.10.2006), *Świerzko* (10.01.2006), *Szeloch* (22.02.2001), *Telecki* (06.07.2006), *Wesołowski* (22.06.2004), *Żak* (24.10.2006), *Zasłona* (10.10.2006), *Zborowski* (31.10.2006), *Zych* (24.10.2006). Currently there are nearly 100 cases concerning this problem pending before the Committee of Ministers for execution.

[23] See CM/ResDH(2007)75, http://wcd.coe.int/ViewDoc.jsp?id=1146407&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.

two years. On 24 July 2006, the Polish Constitutional Court found that this provision contradicted the Polish Constitution in so far it provided for the possibility to extend pre-trial detention beyond the two-year period at the investigation stage because of 'other obstacles whose removal has not been possible'. Consequently, the provision was amended. If a case is pending at the investigation stage, detention on remand may be extended over the period of two years only on the grounds clearly mentioned in this provision.

57. It is encouraging that Polish courts have begun to refer regularly to the Convention and the Court's case law. However, those references do not mean that the requirements of the ECHR are seriously taken into account in the majority of cases. Above all, the examination of the detention's proportionality does not seem to be in line with the Court's practice. It must be stressed that an initially lawful detention may no longer be proportionate after a certain period of time.

7. Romania

Rotaru v. Romania (judgment of 4 May 2000)

58. More than seven years after the judgment, the necessary general measures have not yet been fully implemented. However, the Romanian authorities informed the Committee of Ministers that the ongoing reform in the field of national security was considered to remedy the Convention violations mentioned in the Court's judgment. The Romanian authorities took the view that the national security reform, constituting the adoption of five acts, explained the delay. This package - including a Law on national security, a Law on the organisation and functioning of the Romanian information service, a Law on the external information service, a Law on information activities, counter-information and protection of information and a Law on the professional status and carrier of information officers - has recently been adopted by the Chamber of Deputies and is currently under debate before the second chamber (Senate).

59. The Deputies, taking note of the ongoing legislative reform and noting with interest the draft provisions relating to the possibility to challenge the holding, by the intelligence services, of information on private life or to refute the truth of such information, urged the Romanian authorities to provide more concrete information on the provisions contained in the announced draft laws relating to other shortcomings identified by the European Court. They also noted with interest that bilateral consultations between the Romanian authorities and the Secretariat, in particular concerning the outstanding issues in this case, were to take place in March 2008, in Bucharest. Consequently, they decided to resume consideration of this item at their 1028th meeting (3-5 June 2008), in the light of the results of those bilateral consultations and further information to be provided by the Romanian authorities.

Dalban v. Romania (judgment of 28 September 1999)

60. The Romanian authorities have provided examples of case-law where courts, directly applying the Convention, have acquitted defendants in cases concerning criminal libel in view of their intention to make public information and ideas on issues of public interest. This is a very positive development.

61. As far as legislative measures are concerned, Law No. 160/2005, which entered into force on 5 June 2005, abolished imprisonment for defamation. Following the entry into force on 11 August 2006 of Law No. 278/2006, which abrogated Articles 205-207, both insult and defamation were decriminalised. However, in January 2007 the Constitutional Court declared the decriminalising law to be unconstitutional. Clarifications as to the impact of this decision on the existing judicial practice and legislation seem to be necessary. The Ministers' Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008), in the light of information to be provided concerning general measures.

Ignaccolo-Zenide v. Romania (judgment of 25 January 2000)

62. The case concerned the failure of the Romanian authorities to enforce a court injunction requiring the return of the applicant's children. As the children have reached the age of majority, the Committee of Ministers terminated the supervision of the execution of individual measures. As far as general measures are concerned, in 2004, Romania adopted Law No. 369/2004 on the Implementation of the Hague Convention. However, the law provided neither for the possibility that the abducted child might require psychological therapy in order to prepare him or her for being reunited with the bereft parent, nor for the possibility that parents might obtain provisional access rights pending the outcome of return proceedings based on the Hague Convention. The Romanian authorities consider these issues to be regulated indirectly in the new law or in other legal acts such as Law No. 272/2004 on the protection and promotion of the rights of the child. However, the application of the relevant provisions by national authorities will have to prove the provisions' compatibility with the Convention. Thus, the Ministers' Deputies decided to resume consideration of this item

at the latest at their 1028th meeting (3-5 June 2008), in the light of further information to be provided on general measures.

Constantinescu v. Romania (judgment of 27 June /2000)

63. The case concerned the applicant's criminal conviction in 1994 for defamation. Having been acquitted by the first-instance court, he was convicted upon appeal by a court which was entitled to make a "thorough assessment of the question of his guilt or innocence", without being given the opportunity to provide evidence and defend his case before the court which convicted him.

64. The authorities have already undertaken various general measures in order to avoid future violations. Thus, besides the publication of the European Court's judgment, various training programmes were organised. Furthermore, the Code of Criminal Procedure was amended in 2006 (Law No. 356/2006). According to the provisions currently in force, the appeal court is obliged to hear the defendant, provided that he/she has not been heard by the first-instance court or the first-instance court has not convicted him/her. Similarly, as regards appeals on points of law, the court is obliged to hear the defendant provided that he/she has not been heard by the first- and second-instance courts or been convicted by these courts. Nevertheless, some additional clarifications on the scope of the amendments seemed to be necessary. Therefore, the Ministers' Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008), in the light of further information to be provided on general measures.

8. Russian Federation

Deficient judicial review over pre-trial detention, resulting in its excessive length and overcrowding of detention facilities

65. Since the *Kalashnikov* judgment (15 July 2002), a number of positive developments have taken place in the Russian Federation (for more details see the Committee of Ministers' Interim Resolution ResDH(2003)123 and Memorandum CM/Inf/DH(2007)4).

66. As regards the improvement of material conditions of detention, the construction of new and the renovation of old detention facilities are being pursued through the Federal Programme for reforming the Ministry of Justice's penitentiary system for 2007-2016, which provides for the construction of 26 new detention facilities and for the modernisation of 97 existing ones (the previous Programme for 2002-2006 resulted in the creation of more than 10,988 places).

67. As regards judicial review of pre-trial detention, the Supreme Court of the Russian Federation, by Decree of its Plenum of 27 September 2006, identified the important shortcomings of judicial decisions regarding pre-trial detention and announced a number of remedial measures, e.g. monitoring of judicial practice. The results of this monitoring would be most helpful.

68. The Russian authorities are also considering the possibility of further amendments to the Code of Criminal Procedure in order to ensure that pre-trial detention is only applied as a last resort measure.

Chronic non-enforcement of domestic judicial decisions delivered against the state

69. Different Russian authorities have acknowledged the existing structural problem and have engaged in in-depth reflection on ways to remedy it.[24] A number of important steps have already been taken by the Russian authorities to set up an efficient and coherent mechanism for enforcement of judicial decisions by the public authorities (for more details and outstanding issues see the Committee of Ministers' Memorandum CM/Inf/DH(2006)19 revised 3). Special consideration is currently given to ensuring coherence of the present execution procedures by allowing different actors to act in a complementary manner in their respective fields of competence and under appropriate judicial review. A strong emphasis is also put on possible ways of preventing litigation against the State through improved budgetary proceedings, which would allow the State, in a short period of time, to comply with its pecuniary obligations. The importance of establishing remedies

[24] See the Conclusions of the Round Table on non-enforcement of court decision against the state and its entities in the Russian Federation: remaining problems and solutions required, held in Strasbourg, 30-31.10.2006 (CM/Inf/DH(2006)45).

against non-execution at the domestic level has also been stressed for the effective prevention of new, similar violations of the Convention.[25] This matter now needs urgent consideration.

70. Given the number of countries confronted with the same issue, another Round Table was held in Strasbourg in June 2007[26]. During this second Round Table the Russian authorities reported some progress achieved by the Bailiffs' service and by the Federal Treasury. However, special emphasis was placed on the urgent need to adopt a comprehensive reform with a view to ensuring that the relevant Convention rights are adequately protected at the domestic level. The Russian authorities are expected to give priority - in 2008 - to finding an effective and comprehensive solution to this outstanding problem.

71. In the meantime, the Russian authorities have taken a number of sector-specific measures to ensure the effectiveness of different rights to housing conferred to certain professional groups: former members of the armed forces, retired judges or Chernobyl workers. In the cases concerning the non-payment of pension arrears and child allowances in the Voronezh Region, the Federal Budget law 2005 was amended in order to provide funds for the execution of domestic judgments regarding indexation of old-age pensions due to their belated payment in 1998 and 1999. In June 2006, the Administration of the Voronezh Region applied for additional funds for the payment of pension arrears for the period starting in 2000.

72. Although this sector-specific approach is welcomed, the authorities have been strongly encouraged, by the Committee of Ministers, to continue their efforts with a view to improving the existent execution procedures. In this respect, the adoption of the new Law on enforcement proceedings should be noted as well as the initiative of the Supreme Court of the Russian Federation to prepare a draft law setting up a domestic remedy notably in case of lengthy non-enforcement of domestic judgments. This latter initiative was particularly welcomed by the Committee of Ministers. Information on the progress of this draft law is expected.

Violations of the requirement of legal certainty by extensive quashing of binding judicial decisions through the nadzor *procedure*

73. The Committee of Ministers adopted an Interim Resolution ResDH(2006)1 regarding two cases against the Russian Federation[27] on 8 February 2006 in which the Russian authorities undertook to present an action plan for the execution of these judgments within one year.

74. On 6 February 2007, the Supreme Court of the Russian Federation submitted to the State Duma a draft law aiming at the reform of the supervisory-review procedure (*Nadzor*). This draft notably took into account a Constitutional Court decision of 5 February 2007. The Law was adopted on 14 November 2007. A Decree of the Plenum of the Supreme Court providing lower courts with guidelines on the implementation of this reform notably in the light of the Convention requirements was issued on 12 February 2008. It would appear that this reform focused on the critical observations made by the European Court in its judgments. In order to bring this procedure in line in particular with the legal certainty requirement, the time-limit for lodging a *nadzor* application was reduced from one year to six months as well as the number of *nadzor* applications permitted. This reform also introduced an obligation to exhaust ordinary appeals before lodging a supervisory-review application.

75. The Committee of Ministers has welcomed the reform, while noting at this stage that its effectiveness may be contingent on further steps, notably aimed at increasing the efficiency of ordinary appeals and of the Russian judicial system as a whole. Information in this respect is awaited.

[25] For a deeper analysis, see the Round Table Conclusions (note 24) and Conclusions of the Round Table on non-enforcement of courts decisions in the member states: general measures to comply with the European Court's judgments, held in Strasbourg, 21-22.06.2007.
[26] See the Conclusions of the Round Table on non-enforcement of domestic courts decisions in member states: general measures to comply with the European Court judgments", held in Strasbourg, 21-22.06.2007 (CM/Inf/DH(2007)33).
[27] *Ryabykh* (judgment of 24.07.2003), Volkova (05.04.2005).

Violations of the ECHR in the Chechen Republic

76. A number of judgments of the Court have highlighted important violations of the Convention by Russian security forces during anti-terrorist operations in Chechnya.[28] In this connection, the Russian authorities informed the Committee of Ministers about the re-opening of proceedings and new investigations under the supervision of the Chief Military Prosecutor or the Prosecutor General, as well as some other procedural steps taken. At the Ministers' Deputies 1020th Human Rights meeting, the Russian authorities provided the Committee with information on the progress of certain domestic investigations required by the judgments of the European Court. They also indicated that these investigations now came under the jurisdiction of the Investigating Committee recently established with the *Prokuratura* of the Russian Federation. On this occasion, the authorities were reminded that to comply with the requirements of the Convention, such investigations should be effective and should be conducted with reasonable expedition and adequate public scrutiny[29].

77. The Russian authorities have also been invited to consider possible measures to comply with their obligation under the Convention to provide all necessary facilities in the establishment of facts to the European Court (Article 38 of the Convention) notwithstanding the restrictions in Russian law concerning the disclosure of information from an investigation file.[30]

78. It has been acknowledged at the outset that these judgments require a complex set of general measures to prevent new similar violations of the Convention. Some amendments of the *legal and regulatory framework* governing the activities of the security forces, which clarify a number of questions raised by the Court's judgment, were adopted in July 2006. However, some issues relating to the use of force, planning of operations and safeguards against disappearances require further clarification, notably through the setting up of detailed regulatory framework governing the action of the security forces in the context of anti-terrorist operations. Certain measures in respect of *awareness raising and training* have been implemented in the wake of the Court's judgments. However, more information and confirmation, e.g. on the dissemination of the judgments to courts with an explanatory note from the Supreme Court, is awaited. As far as the guarantee to provide *effective remedies in cases of abuses* is concerned, some important measures have been implemented to provide for the necessary infrastructure. However, it is not yet clear to what extent the current procedures and their implementation conform to the detailed Convention requirements. A number of important questions have been brought up by the Committee of Ministers in this respect.[31] As far as redress for victims is concerned, encouraging developments have taken place. Nevertheless, questions on the functioning and interaction of compensation schemes remain open. New provisions appear to totally exclude from compensation individuals taking part in a terrorist act, even where the harm or injury suffered has been unlawfully inflicted.

79. In the meantime, legislative and other changes have taken place in the Russian Federation, in particular in the Chechen Republic. Two major reforms deserve a mention, i.e. the adoption of the new Law on counterterrorism and the setting-up of an Investigating Committee within the General Prosecutor's Office. In order to effectively address these changes and outstanding issues raised in the Committee of Ministers' Memorandum, a Round Table was held in Moscow on 3-4 July 2007, in which a member of the Parliamentary Assembly (Mr Gross), the Commissioner on Human Rights, as well as staff members of the Council of Europe's Secretariat participated, in addition to representatives of the Russian Federal and Chechen authorities. Subsequently, the Russian authorities provided the Committee of Ministers with extensive information on the issues raised in the Memorandum CM/Inf/DH(2006)32 revised 2, in particular on regulatory measures implementing the new legal framework mentioned above. This information is currently

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[28] See *Khashiyev and Akayeva* (No. 57942/00+), 24.02.2005; *Bazorkina* (No. 69481/01), 27.07.2006; *Isayeva* (No. 57950/00), 24.02.2005; *Isayeva, Yusupova and Bazayeva* (No. 57947/00+), 24.02.2005; *Estamirov and Others* (No. 60272), 12.10.2006. See also, most recently, *Alikhadzhiyeva v. Russia* (No. 68007/01), 05.07.2007, where the Court found the Russian Federation responsible for the "disappearance" of Ruslan Alikhadzhiyev, the former Speaker of the Chechen Parliament.

[29] Decision adopted at the 1020th DH meeting, https://wcd.coe.int/ViewDoc.jsp?id=1259267&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

[30] See the judgments of the Court in the cases of *Bazorkina* (No. 69481/01), 27.07.2006 and *Imakayeva v. Russia* (No. 7615/02), 09.11.2006, and the Committee of Ministers' Memorandum CM/Inf/DH(2006)32 revised 2, § 15. See also PACE Resolution 1571 (2007) and Recommendation 1809 (2007) on member states' duty to co-operate with the European Court of Human Rights, Doc 11183 and Addendum, 09.02.2007, for which I had the honour to be the Rapporteur of AS/Jur. (http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc07/edoc11183.htm), especially §§ 54 et seq.

[31] CM/Inf/DH(2006)32 revised 2, p. 13.

being assessed by the Secretariat and will be reflected in the new version of the Memorandum to be issued for the 1035th Human Rights meeting (September 2008).

Ilaşcu and others v. Moldova and the Russian Federation (judgment of 8 July 2004)[32]

80. The two last applicants who were detained illegally and arbitrary, Mr Ivanțoc and Mr Popa (initially Petrov-Popa), were finally released on 2 and 4 June 2007. The Russian authorities, while facilitating contacts between various officials of the Russian Federation, Moldova and the "Moldavian Republic of Transdniestria", consistently adhered to their initial position. From the beginning, the Russian Federation considered the judgment to be biased and political. Furthermore, the Russian authorities claimed that Russia had done everything it could by the payment of just satisfaction because it had no legal means to facilitate the release of the applicants.

81. The Committee of Ministers adopted a fifth Interim Resolution on 12 July 2007,[33] renewing its profound regret that despite the earlier interim resolutions and the support of the European Union and numerous states, the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment. In the light of the applicants' prolonged detention after the Court's judgment, the Committee also underlined the obligation incumbent on respondent states, under Article 46, §1, to erase, as far as possible, the consequences of the violations at issue. It also noted, in this respect, that Mr Ivanțoc and Mr Popa had lodged a new application with the Court against Moldova and the Russian Federation (No. 23687/05) regarding their prolonged arbitrary detention beyond the Court's judgment of 8 July 2004. Thus, the Committee of Ministers decided to suspend its examination of this case until after the Court's final determination of the new application.

9. Turkey

Cyprus v. Turkey (judgment of 10 May 2001)

82. In August 2004, the Committee on Missing Persons in Cyprus (CMP) was reactivated. An exhumation and identification programme was launched on 21 August 2006. Since then the remains of at least 352 missing persons from both sides have been exhumed and analysed in the anthropological laboratory. DNA analyses are being carried out by a bi-communal team of the Cyprus Institute of Neurology and Genetics. At 1 November 2007, the remains of 260 persons has been analysed and 57 of them returned to their relatives. The first funerals took place in July 2007. Despite this positive development, it should be noted that the CMP's task is limited. It will draw up a comprehensive list of missing persons, find out if they are alive or dead and, if necessary, determine the approximate date of death. It must be recalled that, in addition to this, an *effective investigation into the causes and the circumstances* of the disappearances is imperative.

83. As regards the property rights of the displaced persons, the effectiveness of the new compensation and restitution mechanism set up in the north of Cyprus has still to be evaluated. Indeed, although the European Court found in its judgment on the application of Article 41 in the case of *Xenides-Arestis* of 7 December 2006, that this mechanism "in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005", it also pointed out that "the parties failed to reach an agreement on the issue of just satisfaction where … it would have been possible for the Court to address all the relevant issues of the effectiveness of this remedy in detail".

84. Furthermore, it appears that restrictions still subsist on the property rights of Greek Cypriots living in the northern part of Cyprus who decide to leave that territory definitively, as well as on the inheritance rights of persons living in the south in respect of property in the north of deceased Greek Cypriots. Several issues relating to the regulation of these rights and available remedies in this regard still need to be clarified.

[32] See also point 5, under Moldova.
[33] CM/ResDH(2007)106, http://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2007)106&Language=lanEnglish&Ver=original&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.

Loizidou v. Turkey (judgment 18 December 1996)

85. More than ten years after the judgment, the consequences of the continuing violation of the applicants' property rights are still not remedied.

Cases concerning action of members of security forces in Turkey

86. These cases concern violations of various Articles of the ECHR in respect of unjustified destruction of property, disappearances, torture and ill-treatment by the police and killings committed by members of the security forces. The violations found had their cause in a number of structural problems. A central issue highlighted by these cases was the *lack of an effective investigation* that could have led to administrative, civil and criminal liability for such abuses.

87. Since 1996, Turkey has adopted a large number of general measures with a view to complying with these judgments, including comprehensive changes in the Constitution, legislation, regulations and practice. In an earlier Interim Resolution (DH(99)434 and ResDH(2002)98), the Committee of Ministers welcomed these measures and formulated the following main requests:

- improvement of the legal framework concerning police custody;
- establishment of a system of effective accountability of members of security forces who committed abuses;
- the training of judges and prosecutors;
- instituting the possibility to obtain better reparation for the victims of human rights violations.

88. After a third Interim Resolution of 7 June 2005 (ResDH(2005)43), the Committee of Ministers, at its 966th and 982nd meetings (June and December 2006), examined the measures taken by Turkey as well as the outstanding issues (see CM/Inf/DH(2006)24 for further information). At its 1007th meeting, the Committee of Ministers decided to examine these cases at its 1028th meeting in June 2008, in the light of a draft interim resolution taking stock of the measures taken so far with a view to possible closure of some of the issues raised in Interim Resolution ResDH(2005)43 and other outstanding issues (see also the memorandum prepared by the Secretariat CM/Inf/DH(2006)24 revised 2).

Cases concerning freedom of expression

89. This group of cases concerns violations of the right to freedom of expression (Article 10, ECHR), called the *Inçal group* by the Committee of Ministers following the *Inçal* judgment of 9 June 1998. The group includes several other judgments which were adopted even before 2000. All these cases relate to unjustified interferences with the applicants' freedom of expression, in particular on account of their conviction by state security courts following the publication of articles and books or the preparation of messages addressed to a public audience.

90. The Turkish authorities have taken some measures to erase the applicants' convictions and their consequences. Moreover, re-opening of domestic proceedings is possible in those cases which had already been decided by the Court before 4 February 2003 and those cases which were brought before the Court after that date. Thus, re-opening is not possible in cases pending before the Court on 4 February 2003 and in cases that have been settled by means of a friendly settlement.

91. A number of constitutional amendments were adopted on 3 October 2001. They relate *inter alia* to the provisions on freedom of expression and information and are directly applicable. In addition, on 7 April 2004, an amendment to Article 90 of the Constitution was adopted, declaring that international human rights conventions would prevail over conflicting domestic law. This new provision should help the direct application of both the Convention and the Court's case-law by Turkish courts. As far as other legislative measures are concerned, the situation is not very clear. A number of laws were adopted in 2002 and 2003 which were aimed at improving the situation in respect of freedom of expression. However, they did not solve all the problems referenced by the Court.

92. Following new legislative changes to the Criminal Code in 2005 and the anti-terrorism law in 2006, the Turkish authorities submitted some new examples of judicial decisions from the public prosecutors of Ankara and Istanbul not to prosecute persons accused under various provisions of Turkish law. These decisions sometimes referred to the Convention. The reasons given by public prosecutors for dropping charges in these cases were that the acts in question did not constitute a crime under the domestic law and were within the permissible limits of freedom of expression under Article 10 of the Convention.

93. In October 2007, the Committee decided to examine these cases at its 1028th Human Rights meeting (3-5 June 2008) in the light of a draft interim resolution, if necessary taking stock of measures taken so far (see also the memorandum prepared by the Secretariat CM/Inf/DH(2007)20 revised).

Hulki Güneş v. Turkey (judgment of 19 June 2003)

94. Since February 2003, Turkish law allows the reopening of domestic proceedings following a violation found by the European Court. However, the provisions of the Code of Criminal Procedure do not enable the criminal proceedings to be reopened in cases which were pending before the European Court as of 4 February 2003. This situation poses a serious problem for the execution of the Court's judgment in the *Hulki Güneş* case where the applicant did not have a fair trial. Despite the Committee's repeated calls on the Turkish authorities (two letters from the Chair of the Committee of Ministers and three Interim Resolutions ResDH(2005)113, CM/ResDH(2007)26 and CM/ResDH(2007)150), no measures have been taken so far to redress the situation of the applicant, who is still serving his life sentence.

Ülke v. Turkey (judgment of 24 January 2006)

95. This case concerns the degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service (violation of Article 3, ECHR). The applicant had refused to do his military service referring to his firm pacifist convictions and had burned his call-up papers in public. In January 1997, the applicant was sentenced to six months' imprisonment and a fine. Throughout the following two years he was convicted on eight occasions of "persistent disobedience" on account of his refusal to wear military uniform. He was also convicted of desertion twice. In sum, the applicant served nearly two years of imprisonment.

96. In its judgment, the Court pointed out that the legal framework in Turkey was not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. The Court concluded that the numerous prosecutions brought against the applicant and the possibility that he would be liable to prosecution for the rest of his life amounted almost to "civil death" which was incompatible with the punishment regime of a democratic society.

97. The applicant is currently in hiding. As long as he persists in refusing to perform military service he has to live with the risk of being sent to prison. After a clear decision of the Ministers' Deputies in February 2007, the Turkish authorities finally prepared a draft law aiming at the prevention of new similar violations of the Convention. Thus, the Ministers' Deputies invited the Turkish authorities to submit a copy of the draft law and to take the necessary steps to ensure its rapid adoption by Parliament. Despite the Government's undertaking concerning the draft law (which was also designed to redress the violation found with respect to the applicant), the applicant was summoned to appear in July 2007 to present himself in order to serve his outstanding sentence resulting from a previous conviction. Given the urgency of the matter, the Committee decided to adopt an Interim Resolution CM/ResDH(2007)109 urging the Turkish authorities to take, without further delay, all necessary measures to put an end to the violation of the applicant's rights under the Convention and to rapidly adopt the legislative reform necessary to prevent similar violations of the Convention. No information has been provided so far in this respect. In its Interim Resolution CM/ResDH(2007)109, the Committee decided to examine the implementation of this judgment at each human rights meeting until the necessary urgent measures are adopted.

10. Ukraine

Chronic non-enforcement of domestic judicial decisions delivered against the state

98. 238 cases against Ukraine concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments reveal an important structural problem. In all these cases the Strasbourg Court found a violation of Article 6 § 1 of the Convention. In several cases there was also a violation of the applicants' right to the peaceful enjoyment of their possessions (Article 1 of Protocol No. 1) and/or violations of the right to an effective remedy (Article 13, ECHR).

99. The Court has highlighted the failure to ensure the payment by state-owned companies of applicants' salary arrears, disability benefits or work-related benefits and of default interest for delay in payment, as well as the failure to ensure the payment by the State Treasury of applicants' compensation ordered by domestic courts. Different reasons for the lack of enforcement of domestic judgments can be identified. Generally speaking, there is a lack of appropriate enforcement procedures. Other more specific shortcomings relate to the lack of funds in the debtors' accounts, the impossibility of seizing any property of the state or of bankrupt

companies owned by the state according to the 2001 Moratorium on the forced sale of property and the impossibility of seizing any property located in the Chernobyl area without the special authorisation of the state.

100. The Council of Europe's Department for the Execution of the Judgments of the European Court prepared a memorandum on general measures in this matter, dated 13 June 2007.[34] The memorandum points at several outstanding problems and focuses on a number of avenues that appear to be of particular interest in the ongoing search for a comprehensive resolution of the problem. It stresses particularly the improvement of the regulatory framework of budgetary procedures and practical implementation of budget decisions, the safeguarding of effective compensation for delay, the improvement of domestic remedies, the setting up of effective liability of civil servants and other actors for non-enforcement and the removing of obstacles for compulsory execution against state assets.

101. In 2006, the President of Ukraine approved a number of policy papers with a view to eliminating the problems revealed by the Court's judgments. Various legislative changes are underway, but there is hardly any information on the implementation process. The draft Law on pre-trial and trial proceedings as well as enforcement of court decisions within reasonable time was returned by the Government to the Ministry of Justice for further amendment. The modified law envisages amendments to the Code of Administrative Procedure and the Law on the status of judges and introduces a new remedy for claims about violations of the right to particular proceedings within reasonable time. The draft law was submitted to the Parliament on 7 June 2007. Due to the parliamentary elections, the draft law was sent back to the drafters to be re-submitted to the new Parliament according to the established procedure.

102. In its recent Interim Resolution adopted at the 1020th Human Rights meeting[35], the Committee of Ministers noted with satisfaction a number of initiatives taken by the Ukrainian authorities, both in the form of draft laws and concrete action in certain problematic sectors, in order to find a solution to the important structural problem of non-execution of domestic judicial decisions by the State. The Committee, however, expressed particular concern that little progress had been made so far in resolving this structural problem. In particular, the Committee called upon the Ukrainian authorities to set up an effective national policy, co-ordinated at the highest governmental level, to tackle it. In this context, the Ukrainian authorities were urged to adopt the announced draft laws, to improve budgetary planning and to ensure the effectiveness of the execution procedure in cases against the state.

Violations of the requirement of legal certainty by extensive quashing of binding judicial decisions through the nadzor *procedure*

103. The supervisory-review procedure was abolished in June 2001. The European Court has already found that the review of final judgments through the new cassation procedure did not undermine the principle of legal certainty, both in civil and commercial proceedings, as well as in criminal ones. In doing so, the Strasbourg Court found that this procedure was similar to that existing in other member states, that it was available to each party in a civil case and did not depend on the discretionary power of a state authority. The Court also pointed out that the judgments could not be challenged in cassation indefinitely, but only within a specific period of time prescribed by law. Consequently, the Committee of Ministers is currently envisaging the closure of this particular aspect of the *Sovtransavto* case.

104. The second important problem, raised in particular in the *Sovtransavto* and *Salov* judgments, is the independency of the judiciary in Ukraine. To enhance judicial independence in various aspects, draft amendments to the Law on the status of judges and a draft Law on the judiciary were approved by Parliament at its first reading on 3 April 2007. On 20 March 2007, the Venice Commission issued Opinion No. 401/2006 on these draft laws (www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=401). This Opinion states that the fundamental provisions of both drafts are in line with European standards and that they are a clear improvement compared with both the present situation and previous drafts. Following the recommendation of the Venice Commission, the Parliament merged these two draft laws into one. The Parliament is expected to rapidly adopt this draft law in a second reading.

[34] CM/Inf/DH(2007)30, available at http://wcd.coe.int/ViewDoc.jsp?id=1150185&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75.

[35] https://wcd.coe.int/ViewDoc.jsp?id=1259451&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75

Ill-treatment in police custody

105. There is hardly any information available in this respect at this stage. The implementation of the *Afanasyev* judgment[36] needs to be followed closely.

11. United Kingdom

McKerr v. United Kingdom (4 May 2001) and five similar cases[37]

106. As indicated in the first annual report of the Committee of Ministers on its supervision of the execution of judgments of the European Court, the state of execution of these cases can be summarised as follows: as regards the individual measures, the Committee of Ministers' consistent position is that the respondent state has an obligation under the ECHR to conduct an investigation that is effective "*in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible*", and that there is a continuing obligation to conduct effective investigations inasmuch as procedural violations of Article 2 were found by the Court in these cases (see *inter alia* the first Interim Resolution (2005)20 in these cases, and the most recent Resolution (2007)73). The Committee of Ministers, in its most recent resolution, regretted that in this field, as opposed to that of general measures, progress had been limited and that in none of the cases had an effective investigation been completed; it urged the authorities to take all necessary investigative steps in these cases in order to achieve concrete and visible progress without further delay. The United Kingdom authorities have indicated that investigations into the deaths at issue are ongoing, other than in the case of *Finucane*, in which the United Kingdom considers that the investigation has been concluded. Assessment of this position is presently under way by the Committee of Ministers.

107. As regards general measures, information submitted to date by the United Kingdom authorities and other interested parties concerning the measures adopted and outstanding questions appear in Interim Resolution (2005)20, in document CM/Inf/DH(2006)4 revised 2 and, most recently in Interim Resolution (2007)73.

108. In particular, reforms adopted have allowed the Committee of Ministers to close its examination of a number of issues, namely:

- the role of the inquest procedure in securing a prosecution for any criminal offence,
- the scope of examination of inquests,
- the possibility of compelling witnesses to testify at inquests,
- the disclosure of witness statements prior to the appearance of a witness at the inquest,
- the legal aid for the representation of the victim's family,
- the efficiency of inquests,
- the failure of the public prosecutor to give reasons for non-prosecution,
- the use of public interest immunity certificates and
- the application of the package of measures to the armed forces.

109. Outstanding general measures relate to the defects in the police investigation; the steps taken to ensure that inquest proceedings are commenced promptly and pursued with reasonable expedition and the independence of police investigators.

[36] *Afanasyev v. Ukraine* (No. 38722/02), 05.04.2005.
[37] *Jordan* (No. 24746/94), *Kelly and others* (No. 30054/96), *Shanaghan* (No. 37715/97), *McShane* (No. 43290/98) and *Finucane* (No. 29178/95).

A. v. United Kingdom (judgment of 23 September 1998)

110. According to information available in the 'thematic overview' of the Committee of Ministers' first annual report on its supervision of the execution of Strasbourg Court's judgments, legislation on corporal punishment of children was amended as follows: in Scotland (Criminal Justice [Scotland] Act 2003, entered into force on 27 October 2003), in England and Wales (Children Act 2004, entered into force on 15 January 2005) and in Northern Ireland (The Law Reform (Miscellaneous Provisions)(Northern Ireland) Order 2006, entered into force on 20 September 2006). These texts limit the defence of reasonable punishment in England, Wales and Northern Ireland to cases where the charge is one of common assault (thus excluding from the defence wounding, occasioning of actual bodily harm, grievous bodily harm or cruelty) and limit the defence to a charge of assault in Scotland to certain limited circumstances (circumscribed by reference specifically to the factors the ECtHR considered in this case).The government provided information on case-law arising under the new provisions, which is currently under assessment. The compatibility with the ECHR of the new provisions has been challenged in judicial review proceedings in Northern Ireland and a judgment was handed down on 21 December 2007, ruling in favour of the respondent government ministers. An appeal against the judgment is still pending and the Committee of Ministers is awaiting its outcome.

111. Details have been received of new charging standards in England and Wales, guidance for prosecutors in Northern Ireland which take into account the vulnerability of children as victims, and a Crown Office Circular to Prosecutors in Scotland explaining the new legal provisions. The government has underlined that already following the entry into force in 2000 of the Human Rights Act 1998 (HRA), domestic courts or tribunals must take into account any judgment of the ECtHR, notably as far as the criteria developed by the ECtHR in the *A. case* were concerned; see the Court of Appeal judgment of *R. v. H* [2001]. Information has been provided on a number of general awareness-raising measures aiming at creating a positive attitude to parenting among parents and practitioners working with children. Further information has been received on research carried out by the Crown Prosecution Service on case-law in England and Wales where the defence of reasonable punishment has been used, as well as on a review carried out by the Government on the practical consequences of the new legislation in England and Wales.

112. The Committee of Ministers is still debating whether the measures enacted satisfy the requirements of the ECHR and, in particular, whether the measures taken so far ensure sufficiently the effective deterrence required by the ECHR in view of the vulnerability of children.

Keenan v. United Kingdom (judgment of 3 April 2001)

113. More than six years after this important judgment by the Court finding violations of Articles 3 and 13 of the Convention, the Committee of Ministers has still not adopted a resolution on this matter. In the view of the United Kingdom authorities, a revision of the Segregation Policy (Prison Service Order 1700) and a revision of the Prison Rules by Statutory Instrument 2005 No. 3437 have solved the problem in respect of Article 3 of the Convention. Some improvements also have been achieved in relation to the guarantee of effective remedies. Recently, the authorities provided further information in this respect and the Secretariat is currently assessing it in the view of a possible closure of this case.

IV. Conclusions

114. The overview of the situation in 14 Contracting States Parties to the ECHR indicates that problems have been solved in a number of cases, but that outstanding problems – in certain instances serious problems – remain in 11 States Parties. Hence the need for us, the Assembly, to see how best we can contribute to the speedy and effective implementation of the Court's judgments. Indeed, the Assembly must, in my view, give top priority to the examination of cases which concern major structural problems and where delays have now become totally unacceptable. From the above overview, it appears that such problems are most pressing in at least four of the eleven states, namely Italy, the Russian Federation, Turkey and the Ukraine.

115. However, before I ask the Committee its authorisation to visit these (and perhaps other) countries, I propose that the national PACE delegations of all eleven states concerned are first given an opportunity to provide comments on the information provided in this memorandum. This they could transmit to the Secretariat by 5 September 2008. Upon the receipt of the replies, and depending on the information provided therein I, as Rapporteur, will then make specific proposals to the Committee to determine how best to proceed. I will then also be in a better position to assess whether, and if so with respect to which states, *in situ* visits should be envisaged. I also intend to seek meetings and discuss my mandate with the Heads of the National Delegations and the Permanent Representatives to the Council of Europe of the eleven member states. These meetings may be held in Strasbourg and or Paris during part-sessions and/ or Committee meetings.

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116. My predecessor, Erik Jurgens, rightly emphasised the privileged relations which we parliamentarians have in our dual capacity as members of the Assembly and national legislators, and the fact we can often facilitate the implementation of judgments of the Strasbourg Court. I fully endorse what Erik Jurgens wrote back in June 2005:

> *"the Assembly should continue, and indeed have a more prominent role, in promoting compliance with the Court's judgments. By helping to ensure that member states rapidly comply with judgments, it provides tangible assistance to victims of human rights violations. It also helps the Committee of Ministers to discharge more speedily and effectively its responsibilities in this respect ... rapid compliance with judgments, especially those requiring legislative action, to which the Assembly is best placed to contribute, helps the Strasbourg Court cope with the avalanche of applications by attacking the root causes for repetitive applications".*[38]

That said, we now need to move ahead and consolidate what has been achieved. In particular, we must establish better and closer working relations with the Committee of Ministers. Here, I have in mind the need to put into effect, for example, what was decided three years ago by the Committee of Ministers in its Declaration "on sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels".[39] In this Declaration, the Ministers instructed their Deputies to initiate annual tripartite meetings between the Committee of Ministers, the Parliamentary Assembly and the Commissioner for Human Rights in order to promote stronger interaction between these bodies with regard to the execution of Strasbourg Court judgments. I intend to request a joint meeting with the Chairperson-in-office of the Committee of Ministers and the Commissioner for Human Rights, and, every six months, to have an exchange of views with them on the most effective means to promote compliance with the Court's judgments.

[38] Document AS/Jur (2005) 35, "Implementation of judgments of the European Court of Human Rights – Introductory memorandum, § 6. See also analysis by P. Leach "The effectiveness of the Committee of Ministers in supervising the enforcement of judgments of the European Court of Human Rights" in Public Law (2006), pp. 443-456, at pp. 449-451.

[39] Declaration adopted by the Committee of Ministers on 19.05.2006. https://wcd.coe.int/ViewDoc.jsp?id=1008811&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75. See also, in this connection, the idea – mooted by the Ministers' Deputies back in 2002 – to establish "an ongoing dialogue" between the Committee's Rapporteur Group on Human Rights (GR-H) and the Assembly's Committee on Legal Affairs and Human Rights - see Committee of Ministers reply to Assembly Recommendation 1477 (2000), final paragraph, PACE Doc 9311, 14.01.2002 http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc02/EDOC9311.htm

APPENDIX

Resolution 1516 (2006)[1]

Implementation of judgments of the European Court of Human Rights

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1. The Parliamentary Assembly emphasises that respect for the European Convention on Human Rights (ECHR – ETS No. 5), including the compulsory jurisdiction of the European Court of Human Rights (the Court) and its binding judgments, is the main pillar of European public order which guarantees peace, democracy and good government in greater Europe. It is therefore essential for the Assembly to maintain a keen interest in different aspects of the ECHR system and not least in the effective implementation of the Court's judgments, on which the authority of the Court depends.

2. It notes that the implementation of the Court's judgments is a complex legal and political process whose aim is to remedy violations found and to prevent new or similar ones. Such implementation, carried out under the supervision of the Committee of Ministers (CM), can benefit from close co-operation between domestic and other institutions, including the Assembly and the parliaments of member states.

3. Although, according to Article 46 (Binding force and execution of judgments) of the ECHR, it is the Committee of Ministers which supervises the execution of judgments, the Assembly has increasingly contributed to the process of implementation of the Court's judgments. Five reports and resolutions and four recommendations specifically concerning the implementation of judgments have been adopted by the Assembly since 2000. In addition, various implementation problems have been regularly raised by other means, notably through oral and written parliamentary questions. A number of complex implementation issues have been solved with the assistance of the Assembly and of the national parliaments and their delegations to the Assembly.

4. In line with the May 2005 Council of Europe Summit decision that all member states should accelerate the full execution of the Court's judgments, and the Committee of Ministers Declaration of 19 May 2006 indicating that the Parliamentary Assembly will be associated with the drawing up of a recommendation on the efficient domestic capacity for rapid implementation of the Court's judgments, the Assembly feels duty-bound to further its involvement in the need to resolve the most important problems of compliance with the Court's judgments.

5. The Assembly's Committee on Legal Affairs and Human Rights has now adopted a more proactive approach and given priority to the examination of major structural problems concerning cases in which unacceptable delays of implementation have arisen, at this moment in five member states: Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom. Special *in situ* visits were thus paid by the rapporteur to these states in order to examine with national decision makers the reasons for non-compliance and to stress the urgent need to find solutions to these problems. The issue of improving domestic mechanisms which can stimulate correct implementation of the Court's judgments was given particular attention.

6. In eight other members states – namely Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania – reasons for non-compliance and possible solutions to outstanding problems have been considered, making use of written contacts with these countries' delegations to the Assembly.

7. The Assembly welcomes the serious attitude and the efforts made by the majority of the 13 member states concerned and their national parliamentary delegations in assisting the Committee on Legal Affairs and Human Rights, yet at the same time it regrets the insufficiency of the response of certain parliamentary delegations (for example, France and Ukraine) to written requests for information.

8. Three member states, in particular, deserve praise for attempts to solve specific implementation problems by improving domestic mechanisms:

8.1. *Italy* adopted the Azzolini law in 2006, which has created a legislative basis for a special procedure for the supervision of the implementation of judgments by the government and parliament;

8.2. *Ukraine* adopted a law in 2006 providing for a co-ordinated approach, under the supervision of the government agent before the Court, to ensure the proper implementation of the Court's judgments;

8.3. The *United Kingdom* introduced a new practice in March 2006 consisting of progress reports on the implementation of Court judgments presented by the Joint Human Rights Committee of the British Parliament.

9. With regard to specific implementation problems raised by the Assembly, it welcomes in particular decisive progress achieved in:

9.1. *Slivenko v. Latvia*, where the applicants' rights of permanent residence in Latvia has recently been restored, in line with the Committee of Ministers requests. Latvia has thus erased the effects of the applicants' expulsion to Russia found by the Court to be in violation of the ECHR;

9.2. *Broniowski v. Poland*, a first "pilot" judgment of the Court, in response to which the Polish Parliament passed a new law (in force since 7 October 2005) regulating the issue of the Bug River claimants' entitlements to compensation, in accordance with the Court's guidance and an interim resolution of the Committee of Ministers;

9.3. *Doğan v. Turkey*, a judgment also raising an important systemic problem: in response, Turkey adopted and implemented a new compensation law, thus providing to all internally displaced persons an effective domestic remedy to obtain compensation for property destroyed (without prejudice to their right to return).

10. At the same time, the Assembly notes with grave concern the continuing existence of major structural deficiencies which cause large numbers of repetitive findings of violations of the ECHR and represent a serious danger to the rule of law in the states concerned. These problems are:

10.1. the excessive length of judicial proceedings in *Italy* (CM Interim Resolution DH(2005)114), which also leads to ineffective protection of a wide range of other substantial rights;

10.2. major shortcomings in the judicial organisation and procedures in the *Russian Federation*, most importantly:

10.2.1. deficient judicial review of pre-trial detention, which results in its excessive length and overcrowding of detention facilities (CM Interim Resolution DH(2003)123);

10.2.2. chronic non-enforcement of domestic judicial decisions delivered against the state (CM/Inf(2006)19);

10.2.3. violations of the requirement of legal certainty by extensive quashing of binding judicial decisions through the *nadzor*[2] procedure (CM Interim Resolution DH(2006)1);

10.3. a number of similar systemic problems in *Ukraine*, aggravated by serious interferences with judicial independence (CM Interim Resolution DH(2004)14).

11. Furthermore the Assembly deplores that the following important and overdue implementation problems, stressed by both the Committee of Ministers and the Assembly, still remain without solution, thus prolonging the situation of non-compliance with the Strasbourg Court's judgments:

11.1. in *Italy* and, to a certain extent in *Turkey*, the law still does not allow the reopening of domestic criminal proceedings impugned by the Court, while these governments have taken no other measures to restore the applicants' right to a fair trial despite repeated demands to that effect by the Committee of Ministers and the Assembly (among many other cases, *Dorigo v. Italy* and *Hulki Güneş v. Turkey*);

11.2. no progress has been achieved as regards the release of two applicants still detained in the "Moldovan Republic of Transnistria" (the case of *Ilaşcu and Others v. Moldova and Russia*; CM last Interim Resolution DH(2006)26), Russia in this case claiming that it has no influence in Transnistria, a contention which cannot be taken seriously;

11.3. in *Greece*, no comprehensive plan has been presented to resolve the systemic problem of overcrowding of detention facilities (Dougoz and Peers judgments, CM Interim Resolution DH(2005)2), which has just been highlighted in yet another judgment *(Kaja v. Greece)* of 27 July 2006;

11.4. the lack of progress towards the solution to the systemic problem of "indirect expropriation" in *Italy*, an abusive practice – which is in fact illegal confiscation – conducted by local authorities to the detriment of applicants' property rights under the ECHR;

11.5. *Romania* has reported no progress concerning the ongoing reform of the law on national security or of other related acts in response to the Rotaru judgment (CM Interim Resolution DH(2005)57).

12. The Assembly reiterates that the initial existence of possible objective difficulties, which may well be understood, does not relieve the states concerned from their obligation to overcome these difficulties and resolve without further delay the aforementioned problems, thus bringing their systems into conformity with the ECHR. The prolongation of such situations of non-compliance puts at stake the effectiveness of the ECHR system and should be seen as a breach of the state's obligations under the ECHR and under the Statute of the Council of Europe (ETS No. 1).

13. The Assembly pays special attention to the implementation by the *Russian Federation*, *Turkey* and the *United Kingdom* of judgments relating to abuses by security forces and/or the lack of effective investigation into such abuses. It welcomes progress being made by Turkey and the United Kingdom in remedying underlying structural problems as well as the Russian authorities' willingness to do the same, as demonstrated by the first part of their action plan presented to the Committee of Ministers. The Assembly encourages the Russian authorities to fully exploit the experience of other states and to implement as rapidly as possible judgments concerning action of the security forces, notably in relation to the Chechen Republic.

14. Furthermore the Assembly stresses the continuing obligation of all respondents in the cases referred to in paragraph 13 to remedy specific shortcomings in domestic investigations impugned by the Court in order to provide effective redress to applicants. Conclusive results in this respect remain to be demonstrated by all three respondent states concerned.

15. The issue of *Turkey*'s compliance with the Court's judgments in various fields has in the past called for the Assembly's special attention (see Resolutions 1297 (2002) and 1381 (2004), and Recommendation 1576 (2002)) and the overall progress achieved to date in this respect is most encouraging. Many problems revealed by the Court have been successfully tackled, while others require further efforts. Additional progress is, however, notably awaited to prevent new violations of the right to freedom of expression in Turkey, as doubts still remain as to whether the authorities interpret the new provisions in conformity with the ECHR.

16. In addition, *Turkey* has still to fully implement the Court's judgments regarding the long overdue issue of missing persons in Cyprus as well as that relating to a series of violations of the rights of enclaved Greek Cypriots. The issue of missing persons' property is also a source of concern. The Assembly attaches particular importance to measures adopted or yet to be taken following the Strasbourg Court's judgments, as they should constitute a tangible contribution to a comprehensive solution of the Cyprus issue.

17. The overall assessment of this new exercise by the Assembly indicates that respondent states' lengthy or negligent implementation of the Court's judgments must be given greater political visibility both within the Council of Europe and in the member states concerned. The Assembly therefore considers that it should remain seized of this matter to ensure regular and rigorous parliamentary oversight of implementation issues both at European and national level. The first initiatives taken to this effect by certain national parliaments are encouraging but much still remains to be done.

18. A major reason for difficulties in the execution of the Strasbourg Court's judgments is the lack of effective domestic mechanisms and procedures to ensure the swift implementation of required measures, often needing co-ordinated action of various national authorities. The responsible decision makers in member states often ignore implementation requirements, as set out by the Committee of Ministers, or lack the appropriate domestic procedures to permit effective co-ordinated action.

19. The Committee of Ministers' and the member states' methods and procedures should therefore be changed to ensure immediate transmission of information and involvement of all domestic decision makers concerned in the implementation process, if necessary with the assistance of the Council of Europe.

20. The Assembly notes with interest the recommendation in the 2005 Summit's Action Plan addressed to the Council of Europe's Development Bank to facilitate, through the bank's own means of action, the implementation of policies in areas covered by the ECHR. The Assembly strongly encourages the bank and interested states to avail themselves of this possibility when such action can ensure the rapid implementation of judgments revealing important systemic problems.

21. The Assembly also notes with interest the recent development of the pilot procedure before the Court to address systemic problems. It notes, however, with some concern that this procedure has been conducted in respect of certain complex systemic problems on the basis of a single case which may not reveal the different aspects of the systemic problem involved. Under these circumstances, the pilot procedure may not allow a global assessment of the problem and, since all other related cases are "frozen", the risk emerges that this procedure will delay rather than speed up the full implementation of the ECHR. The Assembly also notes that the efficacy of the pilot procedure can only be safeguarded if the Committee of Ministers diligently exercises its competence to assess the adequacy and sufficiency of the implementation measures taken by respondent states.

22. In view of the foregoing, the Assembly:

22.1. invites all national parliaments to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments on the basis of regular reports by the responsible ministries;

22.2. calls upon the member states to set up, either through legislation or otherwise, domestic mechanisms for the rapid implementation of the Court's judgments, and that a decision-making body at the highest political level within the government take full responsibility for and co-ordinate all aspects of the domestic implementation process;

22.3. decides to verify on a regular basis if such mechanisms have indeed been instituted by member states and if they are effective;

22.4. urges the authorities of the 13 states concerned to resolve without delay the outstanding implementation problems identified in the report of the Committee on Legal Affairs and Human Rights;

22.5. urges in particular the authorities of Greece, Italy, Romania, the Russian Federation, Turkey, the United Kingdom and Ukraine to resolve implementation issues of particular importance mentioned in the present resolution and to give this top political priority;

22.6. invites parliamentary delegations of states in which *in situ* visits were undertaken to present to the Assembly via the Committee on Legal Affairs and Human Rights, within six months, the results achieved in solving substantial problems that have been highlighted in the report or to show the existence of realistic action plans for the adoption of the measures required;

22.7. reserves the right to take appropriate action, notably by making use of Rule 8 of its Rules of Procedure (namely, challenging the credentials of a national delegation), should the state concerned continuously fail to take all the measures required by a judgment of the Court, or should the national parliament fail to exert the necessary pressure on the government to implement judgments of the Court;

22.8. decides to remain seized of the matter and welcomes the Committee of Minister's recent proposals to increase information sharing with the Assembly and to associate the Assembly with the ongoing preparation of a recommendation to member states on efficient domestic capacity for rapid execution of the Court's judgments;

22.9. in view of the imperative need for member states to accelerate the full execution of judgments of the Court, decides to continue the regular monitoring of the situation and invites its Committee on Legal Affairs and Human Rights to report back to the Assembly when it considers appropriate.

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1. *Assembly debate* on 2 October 2006 (24th Sitting) (see Doc. 11020, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).
Text adopted by the Assembly on 2 October 2006 (24th Sitting).
2. Supervisory review procedure.

Recommendation 1764 (2006)[1]

Implementation of judgments of the European Court of Human Rights

1. The Parliamentary Assembly, referring to its Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights, urges the Committee of Ministers to increase by all available means its effectiveness as the statutory guarantor of the implementation of the Court's judgments and to that effect recommends that it:

1.1. reserve special treatment for the most important problems in the implementation of judgments, notably those identified in Resolution 1516 (2006) and to report to the Assembly as soon as possible on the results achieved towards resolving these problems;

1.2. improve co-ordination both between the Council of Europe's bodies and with the European Union and international institutions to ensure that the requirements of the Court's judgments are adequately reflected in – and supported by – their respective activities;

1.3. improve its communication policy in order to give important issues relating to the implementation of Article 46 (Binding force and execution of judgments) of the European Convention on Human Rights (ETS No. 5) the necessary visibility at European level and within the member states, at the same time ensuring that its work is more transparent and the resulting texts readily accessible;

1.4. induce member states to improve and 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;

1.5. increase pressure and take firmer measures in cases of continuous non-compliance with a judgment by a member state due to either refusal, negligence or incapacity to take appropriate measures.

1. *Assembly debate* on 2 October 2006 (24th Sitting) (see Doc. 11020, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).
Text adopted by the Assembly on 2 October 2006 (24th Sitting).