



Declassified*
AS/Jur (2009) 36
31 August 2009
ajdoc36 2009

Committee on Legal Affairs and Human Rights

Implementation of judgments of the European Court of Human Rights

Progress report

Rapporteur: Mr Christos Pourgourides, Cyprus, EPP/CD

Contents:

I. Introduction

- i. *The Rapporteur's mandate*
- ii. *Progress of the 7th report*

II. Issues resolved since presentation of the Introductory Memorandum

III. Reinforcing parliamentary involvement in the implementation of Strasbourg Court judgments

- i. *Need to reinforce parliamentary involvement*
- ii. *Role of national parliaments*
 - a. *Informing national parliaments*
 - b. *Supervising the implementation of Strasbourg Court judgments*
 - c. *Ensuring existence of effective domestic mechanisms for the implementation of Strasbourg Court judgments*
 - d. *Verifying the compliance of draft laws, existing laws and administrative practice with Convention standards*
- iii. *Concluding remarks*

IV. Interim assessment

- i. *Focus on issues which raise prevalent implementation problems*
 - a. *Deaths or ill-treatment which took place under the responsibility of state forces and lack of an effective investigation thereof*
 - b. *Excessive length of judicial proceedings*
 - c. *Non-enforcement of domestic judicial decisions*
- ii. *Further action envisaged*

Appendix: Summary of principal problems encountered in the execution of Strasbourg Court judgments with respect of 11 State Parties to the ECHR

Addendum: List of Strasbourg Court judgments not fully implemented more than five years after final delivery or otherwise raising important implementation issues with respect of 36 State Parties to the ECHR

* Document declassified by the Committee on 11 September 2009.

I. Introduction

i. Mandate of the Rapporteur

1. Expeditious and full execution of judgments of the European Court of Human Rights (hereinafter 'the Court') is an obligation for all State Parties to the European Convention on Human Rights (hereinafter 'the Convention').¹ This undertaking, to abide by the final judgment of the Court, is an indispensable element for the effective functioning of the unique Convention system. The failure of national authorities to implement fully and timeously judgments of the Court undermines the system of human rights protection in Europe and simultaneously erodes the credibility of the Court.

2. The 'subsidiary nature' of the Strasbourg system dictates that ultimate responsibility for ensuring the rights and freedoms guaranteed in the Convention rests with the state parties. Execution of the Court's judgments is a fundamental aspect in the domestic reception of the Convention. The Committee of Ministers exercises primary responsibility for supervising the implementation of Strasbourg judgments, as specified in Article 46(2) of the Convention. This has not, however, prevented the Parliamentary Assembly (hereinafter 'the Assembly') from often exercising an instrumental function in guaranteeing the execution of Court judgments.² Indeed, being composed of national parliamentarians, the Assembly has a unique perspective in facilitating the expeditious progress of this process.

3. The present document is a follow-up to the Introductory Memorandum I presented to the Committee on Legal Affairs and Human Rights (AS/Jur(2008)24) on 26 May 2008, which commenced the process of preparing the Assembly's seventh report on the *Implementation of Judgments of the European Court of Human Rights*.³ The Introductory Memorandum was in effect an interim assessment, updating the situation from that conveyed in the sixth report, provided in September 2006 by my predecessor Mr Erik Jurgens.⁴

4. The judgments of the Court addressed in the Introductory Memorandum were selected in accordance with the standard criteria applied by the 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.⁵

5. In preparing this Progress Report, the objective application of the standard criteria has revealed that the problem of non-implementation and/or delay in the implementation of Strasbourg judgments is far graver and more widespread than previous reports have disclosed.⁶ The situation has evolved significantly since the first report on the *Execution of Judgments of the European Court of Human Rights*, presented in July 2000 by Mr Jurgens.⁷ There has been a continual growth in the number of judgments under the supervision of the

¹ 'The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties' Article 46(1) of the Convention.

² The Parliamentary Assembly has adopted six reports and resolutions and five recommendations concerning the implementation of Strasbourg Court judgments since 2000: Report PACE Doc. 8808 of 12 July 2008, Resolution 1226 (2000) and Recommendation 1477 (2000) adopted on 28 September 2000; Report Doc. 9307 of 21 December 2001, Resolution 1268 (2002) and Resolution 1546 (2002) adopted 22 January 2002; Report Doc. 9537 of 5 September 2002, Resolution 1297 (2002) and Recommendation 1576 (2002) adopted 23 September 2002; Report Doc. 10192 of 1 June 2004, Resolution 1381 (2004) adopted 22 June 2004; Report Doc. 10351 of 21 October 2004, Resolution 1411 (2004) and Recommendation 1684 (2004) adopted 23 November 2004; Report Doc. 11020 of 18 September 2006, Resolution 1516 (2006) and Recommendation 1764 (2006) adopted 2 October 2006. The original report on the *Execution of judgments of the European Court of Human Rights* (Doc. 8808), 12 July 2000, was prepared on the basis of a Motion for a Resolution on the execution of judgments of the Court and the monitoring of the case-law of the European Court and Commission of Human Rights presented by Mr Georges Clerfayt and others, Doc. 7777, 13 March 1997.

³ *Implementation of judgments of the European Court of Human Rights: Introductory Memorandum*, C. Pourgourides, document AS/Jur (2008) 24, of 26 May 2008 (declassified by the Committee on 2 June 2008).

⁴ *Implementation of judgments of the European Court of Human Rights*, E. Jurgens, PACE Doc. 11020, of 18 September 2006.

⁵ *Implementation of judgments of the European Court of Human Rights*, C. Pourgourides, document AS/Jur (2008) 24, of 26 May 2008 (declassified by the Committee on 2 June 2008) paragraph 6. This document can be accessed on the Committee's website.

⁶ See Addendum to this Progress Report (AS/Jur (2009) 36 Addendum); Reference to the terms 'non-implementation' and 'non-execution' do not necessarily infer that no measures, of a general or individual nature, have been implemented by national authorities in response to an adverse judgment of the Court. The terms denote that the judgment has not been fully implemented, indicated by the fact that a final resolution in respect of the judgment has not been adopted by the Committee of Ministers.

⁷ *Execution of Judgments of the European Court of Human Rights*, E. Jurgens, Doc. 8808, of 12 July 2000.

Committee of Ministers, as the Court increases its productivity in response to the ever escalating number of applications. The number of cases pending before the Committee of Ministers on 31 December 2000 was 2,298, while the equivalent figure for 2008 was 6,614.⁸

6. Furthermore, the situation has continued to deteriorate since the standard criteria were applied for the purposes of the sixth report, presented in September 2006. At the final Committee of Ministers (Ministers' Deputies DH) meeting of 2005 there were 4,322 judgments pending supervision before the Committee of Ministers in all sections, while at the final DH meeting of 2008 the figure was 6,258.⁹ Such an increase has inevitably impacted upon the number of judgments falling within the ambit of the standard criteria.

7. To address all the judgments which presently fall within the criteria would not conform with the underlying purpose of my mandate as rapporteur: to address particularly problematic instances of non-execution of the Court's judgments.¹⁰ While application of the standard criteria is no longer sufficient to identify the most problematic instances of non-implementation, this does not detract from the gravity of violations held by the Court in such judgments, nor the urgent need for full and expeditious execution thereof.¹¹ It is a worrying trend that what was recently considered as significantly grave, in respect of the execution of Strasbourg decisions, is now a relatively frequent occurrence.

8. Preserving the rationale of my mandate, namely to address particularly problematic instances of non-execution, is necessary if contributions of the Assembly are to complement the existing system of supervision, which accords primary responsibility to the Committee of Ministers. Continued reference to the existing criteria will result in unnecessary duplication of the work of the Committee of Ministers and the Department for the Execution of Judgments of the European Court of Human Rights. Moreover, it is not within my capacity, as a single rapporteur, to address the vast number of judgments which now fall within the standard criteria.

9. It has therefore become evident that the method for identifying judgments to be addressed in the seventh report needs to be refined. The effectiveness of Mr Jurgens non-discriminatory approach, applying set criteria on a state-by-state basis, compels me to continue this practice. It is therefore essential that an objective criterion is established for the purpose of identifying judgments. Consequently, solely for the purposes of the seventh report, I propose to address:

- judgments which raise important implementation issues as identified, in particular, by an interim resolution of the Committee of Ministers; and
- judgments concerning violations of such a serious nature that I am compelled to address implementation thereof.¹²

⁸ Statistics taken from *Statistical data on execution of judgments of the European Court of Human Rights (July 2007)*, from website for the Execution of judgments of the European Court of Human Rights; and *Table 1.b of Appendix 1: Statistical data of the Committee of Ministers' Supervision of the execution of judgments of the European Court of Human Rights: Second Annual Report (2008)*, of April 2009. If the cases under sections 1 and 6 (whose examination is in principle closed) are added, the figure amounts to 7,328.

⁹ Statistics taken from *Table 1 of Appendix 2: Statistics of the Committee of Ministers' Supervision of the execution of judgments of the European Court of Human Rights: First Annual Report (2007)*, of March 2008; and *Table 1.a of Appendix 1: Statistical data of the Committee of Ministers' Supervision of the execution of judgments of the European Court of Human Rights: Second Annual Report (2008)*, of April 2009. If the cases under sections 1 and 6 (whose examination is in principle closed) are added, the figure amounts to 7,067.

¹⁰ Resolution 1226 (2000), *Execution of Judgments of the European Court of Human Rights, adopted by the Assembly* on 28 September 2000, paragraphs 5 and 11.C.iv; *supra* n.7, paragraph 8.

¹¹ 'Delays of upwards of five years in resolving the most significant breaches of the European Convention are unacceptable unless extremely convincing justification for the delay can be provided', the United Kingdom Parliament's Joint Committee on Human Rights *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008, paragraph 28.

¹² As identified in 'The state of human rights in Europe: the need to eradicate impunity', H. Däubler-Gmelin, Doc. 11934, of 3 June 2009; PACE Resolution 1675 (2009), *The state of human rights in Europe: the need to eradicate impunity*, adopted by the Assembly on 24 June 2009 paragraph 5.1.

ii. *Progress of the 7th Report*

10. Following presentation of the Introductory Memorandum in May 2008, the State Parties identified therein were requested to provide information on the individual and general measures adopted to implement the judgments addressed. The quality of information received from national authorities varied significantly: certain responses reported encouraging progress regarding individual and general measures adopted, while others merely restated the position expressed in the Introductory Memorandum. Replies have not been received from Moldova and the Russian Federation. Non-response from national authorities, or responses which merely contain vague proposals of future measures with no considerable substance, are unacceptable and illustrate a lack of resolve on behalf of the national authorities to ensure that violations of human rights are remedied and prevented. In continuing the pioneering efforts of my predecessor, Mr Erik Jurgens, I have undertaken to visit eight state parties to address reasons for the non-implementation of Strasbourg judgments and discuss the urgent need for measures to remedy the problems raised.¹³

11. In light of the unsatisfactory response from certain national authorities and the scheduled visits to state parties, it is not appropriate at present to provide a specific up-date with respect to the implementation of judgments identified in the Introductory Memorandum. Rather, the primary function of this Progress Report is three-fold: firstly, to provide information as to how I am conducting preparation of the seventh report; secondly, to identify the full extent to which state parties are failing to fully and expeditiously execute judgments of the Court;¹⁴ and thirdly, to initiate a dialogue with national authorities, and particularly national parliaments, aimed at strengthening the involvement of parliamentary actors in the implementation of Strasbourg judgments.

II. **Issues resolved since presentation of the Introductory Memorandum of May 2008**

Germany

*Görgülü v. Germany*¹⁵

12. The Court held a domestic court to have violated the applicant's right to respect for family life in proceedings relating to the custody of, and access to, his child born out of wedlock, living with a foster family (violation of Article 8 of the Convention).

13. The European Court specified that, under Article 46 of the Convention, the execution of the judgment required granting the applicant at least access to his child.¹⁶ As noted in the Introductory Memorandum of May 2008, considerable progress had been made in this respect since the judgment of the European Court.¹⁷ In December 2004 the Constitutional Court granted temporary visiting rights to the applicant. Following significant progress from August 2005, the competent court granted the applicant an extension of his visiting rights in December 2006. From September 2007 onwards, the scheduled visits no longer took place due to certain difficulties between the parties concerned. However, the rapid implementation of an action plan by the German authorities, which included psychological assistance to all parties concerned, facilitated the resumption of regular visits from the end of November 2007.

14. Moreover, in February 2008, following a new request, the *Amtsgericht Wittenberg* granted the applicant sole custody on the grounds that visits took place regularly and there were no objections against integrating the child into the applicant's family. The decision was taken in light of the child's own views and with the approval of the foster family. In August 2008, after a final hearing to assess the development of the father-son relationship, the *Amtsgericht Wittenberg* granted permanent and sole custody to the applicant. According to the court decision, the child was well integrated with his new family and clearly expressed his desire to continue to live with the applicant.

¹³ At the time of presenting this report, visits had been conducted with respect to Bulgaria (27-29 May 2009) and Ukraine (8-9 July 2009), while further visits are scheduled to Greece, Italy, Moldova, Romania, the Russian Federation and Turkey.

¹⁴ See the Addendum to the present report which enumerates problems in 36 State Parties to the Convention.

¹⁵ *Görgülü v. Germany*, No. 74969/01, 26 February 2004 (final on 26 May 2004, rectified 24 May 2005).

¹⁶ *Ibid.* paragraph 64.

¹⁷ *Supra* footnote 7, paragraph 33.

15. In respect of general measures, the judgment of the Strasbourg Court was provided to the domestic courts and authorities directly concerned. It was also published in *Neue Juristische Wochenschrift* (NJW) and in *Europäische Grundrechte Zeitschrift* (EuGRZ). Furthermore, all judgments of the Court against Germany are publicly available via the website of the Federal Ministry of Justice.¹⁸ Here, I wish to make an observation of a broader significance: making judgments of the Strasbourg Court available in the language (or languages) of the state concerned to domestic courts and state authorities is of fundamental importance. All important judgments of the Strasbourg Court against the state concerned must always be publicly available.

16. The Committee of Ministers considered that the measures implemented by the German authorities had remedied the consequences of the violation as far as possible, and would prevent similar violations. Consequently, the Committee of Ministers closed its examination of this case by Final Resolution on 9 January 2009.¹⁹ It should be noted that since the judgment was transmitted to the Committee of Ministers' for the supervision of its execution (July 2004) and until its closure (December 2008), the case was placed on the Committee of Ministers' agenda 21 times and taken 19 times with debate.

Ukraine

Supervisory review procedure

17. The Committee of Ministers elected to address the supervisory review procedure under its supervision of the leading case of *Sovtransavto Holding v Ukraine*.²⁰ The judgments which come within the *Sovtransavto Holding* case group concern the application of the supervisory review procedure, enabling certain judicial and state officials to lodge an objection with respect to the final decision of a domestic court. This power was discretionary, such that final judgments were liable to indefinite review. The Court held that:

“judicial systems characterised by the objection (протест) procedure and, therefore, by the risk of final judgments being set aside repeatedly, as occurred in the instant case, are, as such, incompatible with the principle of legal certainty that is one of the fundamental aspects of the rule of law for the purposes of Article 6 § 1 of the Convention ...”²¹

18. The supervisory review procedure was abolished in June 2001, following a series of amendments to the procedural codes with respect to civil, criminal and commercial proceedings. The Committee of Ministers welcomed the abolishment of the supervisory review procedure, which had been ‘one of the main structural problems at the basis of the violations found’.²²

19. The legislative reform, which abolished the supervisory review procedure, introduced a third level of jurisdiction with respect to civil, criminal and commercial proceedings (first-instance court, court of appeal and cassation court). The Court has since held that the cassation appeal is ‘similar to that found in other member States of the Council of Europe [...] and does not depend on the discretionary power of a State authority’.²³ The Court further noted that the decisions of lower courts following the reform could not be challenged in cassation indefinitely, but only within a specific period prescribed by law. The Court concluded that ‘this procedure does not undermine the principle of legal certainty’.²⁴

¹⁸ For more detailed information about the individual and general measures implemented by the German authorities see Appendix to Resolution CM/ResDH(2009)4, Execution of the judgment of the European Court of Human Rights *Görgülü* against Germany, adopted by the Committee of Ministers on 9 January 2009 at the 1043rd meeting of the Ministers' Deputies.

¹⁹ Resolution CM/ResDH(2009)4, Execution of the judgment of the European Court of Human Rights *Görgülü* against Germany, adopted by the Committee of Ministers on 9 January 2009 at the 1043rd meeting of the Ministers' Deputies.

²⁰ *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002-VII (judgment of 25 July 2002, final on 6 November 2002); see also *Salov v. Ukraine*, no. 65518/01, ECHR 2005-VIII (extracts) (judgment of 6 September 2005, final on 6 December 2005).

²¹ *Sovtransavto Holding v. Ukraine*, No. 48553/99, paragraph 77, ECHR 2002-VII.

²² Interim Resolution ResDH(2004)14 concerning the judgment of the European Court of Human Rights of 25 July 2002 (final on 6 November 2002) in the case of *Sovtransavto Holding* against Ukraine, adopted by the Committee of Ministers on 11 February 2004 at the 871st meeting of the Ministers' Deputies.

²³ *Vorobyeva v. Ukraine* (dec.), No. 27517/02, 17 December 2002.

²⁴ *Vorobyeva v. Ukraine* (dec.), No. 27517/02, 17 December 2002 (which concerns civil proceedings); *MPP Golub v. Ukraine* (dec.), no. 6778/05, ECHR 2005-XI, 18 October 2005 (which concerns commercial proceedings); *Arkhipov v. Ukraine* (dec.), no. 25660/02, 18 May 2004 (which concerns criminal proceedings).

20. The Ministers' Deputies closed examination of this aspect of the *Sovtransavto Holding* judgment on 5 June 2008. The decision recalled that the supervisory review procedure had been abolished, and furthermore acknowledged that 'the European Court has found the new appeal procedure to be in compliance with the Convention, in particular as it did not, unlike the supervisory review procedure, undermine the principle of legal certainty'.²⁵ It should be emphasised however, that the Ministers' Deputies did not close examination of this group of cases with respect to enhancing judicial impartiality and independence.²⁶ And rightly so. The enhancement of judicial impartiality and independence is a *sine qua non*, as without the guarantee of such judicial impartiality and independence one cannot reasonably expect full and speedy implementation of the Strasbourg Court's judgments.

III. Reinforcing parliamentary involvement in the implementation of Strasbourg Court judgments

i. Need to reinforce parliamentary involvement

21. The Court has emphasised that 'the object and purpose underlying the ECHR, as set out in Article 1 [of the Convention], is that the rights and freedoms should be secured by the Contracting State within its jurisdiction'.²⁷ The magnitude of the problem confronting the Court, in respect of the avalanche of applications which it receives, has underlined the need to strengthen domestic mechanisms ensuring compliance with the Convention and the Court's interpretation thereof. A fundamental element of domestic protection of Convention rights and freedoms is full and expeditious execution of Strasbourg judgments, implementing measures which both remedy the individual violation and prevent the future recurrence of similar infringements.

22. The majority of judgments delivered by the Court concern 'repetitive' or 'clone' cases, highlighting the urgent need to reinforce domestic procedures to ensure that the Court's judgments are effectively implemented. When national authorities fail to implement effective general measures, similar infringements regularly arise from systemic problems which have not been adequately addressed. The importance of strengthening domestic mechanisms to ensure the execution of Court judgments is all the more crucial given the apparent difficulties and obstacles that can be encountered by the Committee of Ministers in supervising this process:

"[T]here is very little the Council of Europe can do with a state persistently in violation, short of suspending its voting rights on the Committee of Ministers or expelling it from the Council altogether, each of which is likely in all but the most extreme circumstances to prove counterproductive."²⁸

23. There is a collective obligation upon all state organs to ensure the effective implementation of an adverse judgment of the Court.²⁹ The execution of a Strasbourg judgment is often a complex legal and political process, requiring cumulative and complementary measures implemented by several state organs.³⁰ In fulfilling the obligation to implement judgments of the Court, it is essential that State Parties do so *effectively*, so as to prevent the recurrence of similar infringements. While measures may be introduced which *prima facie* execute the Court's judgment, difficulties may persist as a result of a failure to address underlying legal, social or political problems. To ensure the effective execution of judgments, adequate

²⁵ Ministers' Deputies Decisions, 1028th (DH) meeting (3-5 June 2008), Section 4.3, 5 June 2008 (CM/Del/Dec(2008)1028immediatE).

²⁶ Judicial independence and impartiality is addressed by the Committee of Ministers under its supervision of *Sovtransavto Holding v. Ukraine* and *Salov v. Ukraine*; Interim Resolution ResDH(2004)14 'ENCOURAGES the Ukrainian authorities rapidly to ensure that the necessary measures are taken to guarantee that each and every state authority fully respects the independence of the judiciary'.

²⁷ *Z and Others v. the United Kingdom* [GC], no. 29392/95, paragraph 103, ECHR 2001-V.

²⁸ Greer, S., *The European Convention on Human Rights: achievements, problems and prospects*, Cambridge University Press (2006), pp. 155-156; The United Kingdom's Joint Committee on Human Rights has expressed 'concerns about the speed, effectiveness and transparency of the Committee of Ministers process', *Monitoring the Government's response to court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraph 6.

²⁹ 'It is thus at national level that the most effective and direct protection of the rights and freedoms guaranteed in the Convention should be ensured. This requirement concerns all state authorities, in particular the courts, the administration and the legislature', Appendix to Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, paragraph 2; *Execution of Judgments of the European Court of Human Rights*, E. Jurgens, Doc. 8808, of 12 July 2000, paragraph 18.

³⁰ Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights*, adopted by the Assembly on 2 October 2006, paragraph 2; *Implementation of judgments of the European Court of Human Rights: Introductory Memorandum*, E. Jurgens, document AS/Jur (2005) 35, of 20 June 2005 (declassified by the Committee on 21 June 2005).

mechanisms must exist, demonstrating adherence to the rule of law and effective parliamentary and judicial supervision. Indeed, the Assembly may – in the future – seriously need to consider suspending the voting rights of a national delegation where its national parliament does not seriously exercise parliamentary control over the executive in cases of non-implementation of Strasbourg Court judgments.

24. A recent comparative report disclosed that state parties with strong implementation records are regularly characterised by active involvement of parliamentary actors in the execution process.³¹ Organs of the Council of Europe have acknowledged that the implementation of Strasbourg judgments greatly benefits from enhanced involvement of national parliaments.³² Despite such observations, an analysis presented by the Parliamentary Assembly's Committee on Legal Affairs and Human Rights (hereinafter 'the CLAHR') in May 2008, revealed that not only do 'very few parliamentary mechanisms exist with a specific mandate to verify compliance [of draft legislation] with ECHR requirements', but furthermore 'parliaments in very few states exercise regular control over the effective implementation of Strasbourg Court judgments'.³³

25. Being composed of national parliamentarians, the Assembly is uniquely placed in seeking to strengthen the role of national parliaments in the implementation of Strasbourg Court judgments. Indeed, there is an implicit responsibility upon the Assembly's national delegates to ensure that they contribute to this process in their capacity as national parliamentarians.³⁴ Consequently, in performing my mandate as rapporteur, I intend to pursue a proactive approach, engaging national authorities on the need to implement a strong system of active parliamentary involvement in execution of the Court's judgments, and supervision thereof.³⁵

ii. Role of national parliaments

26. National parliaments should exercise a prominent role in supervising the execution of the Court's judgments, and systematically verify the compatibility of draft laws, existing laws and administrative practice with Convention standards. Moreover, national parliaments should contribute to guaranteeing the existence of appropriate procedures to systematically facilitate the full and expeditious implementation of Strasbourg judgments. These functions are not necessarily exercised mutually independent of one another: comprehensive supervision facilitates the identification of the legislative provisions from which the violation derived, consequently initiating legislative reform. Although the execution of Court judgments generally involves a limited contribution from parliamentary actors, there are examples of effective procedures exercised in the legislative organ of certain state parties. The remainder of this section will address the role which national parliaments should exercise in implementing judgments of the Court, with examples of 'best practice' from individual state parties.

³¹ JURISTRAS Project, *Why do states implement differently the European Court of Human Rights judgments? The case law on civil liberties and the rights of minorities*, April 2009, p. 23, available at: <http://www.juristras.eliamep.gr/wp-content/uploads/2009/05/why-do-states-implement-differently-the-european-court-of-human.pdf>.

³² Ministers' Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers' Deputies, paragraph 1; Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights, adopted by the Assembly on 2 October 2006*, paragraph 2.

³³ *Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraphs 6 and 11.

³⁴ *Execution of Judgments of the European Court of Human Rights*, E. Jurgens, Doc. 8808, of 12 July 2000, paragraph 21.

³⁵ The basis for conducting such dialogue is established in Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights*, adopted by the Assembly on 2 October 2006, paragraph 22.3: 'the Assembly decides to verify on a regular basis if [mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments] have indeed been instituted by member states and if they are effective'.

27. Prior to commencing the analysis two matters have to be highlighted. Firstly, this progress report addresses the role of national parliaments in ensuring the effective implementation of the Court's judgments. This is a sub-component of, but not synonymous to, the obligation upon national parliaments to ensure adherence of domestic law and practice to Convention standards. There is evidently a degree of overlap between the two obligations: parliamentary verification of draft legislation should occur not only with respect to laws introduced in response to adverse judgments of the Court, but systematically exercised for all legislative reform. Secondly, the obligation of state parties to execute Strasbourg judgments, in this context, refers to the duty to implement adverse decisions to which the state was the respondent party. A minority of implementation mechanisms in state parties consider not only judgments delivered against themselves, but also adverse judgments against other state parties which may have an effect on the legal system of the state.³⁶ Such procedures facilitate adherence to a broader obligation to observe the Convention and the Court's interpretation thereof, rather than strictly falling within the execution of Strasbourg Court judgments.

a. Informing national parliaments

28. To enable national parliaments to exercise an effective supervisory role, procedures must be established to ensure that they are systematically and promptly informed of adverse decisions delivered by the Court and the measures implemented domestically in their execution. I share the disappointment previously expressed by Mr Jurgens³⁷ and Mrs Bemelmans-Videc,³⁸ with respect to the Committee of Ministers' recommendation that state parties '*as appropriate*, keep their parliaments informed of the situation concerning execution of judgments and the measures taken in this regard' (emphasis added).³⁹ I reiterate the concern expressed by Mr Jurgens, that this approach is not in accordance with the objective of ensuring effective implementation of the Court's judgments.⁴⁰ The Committee of Ministers has recognised that the implementation of Strasbourg judgments has 'greatly benefited' from increased involvement of national parliaments and, moreover, has encouraged 'parliamentary oversight' of this process.⁴¹ To effectively supervise execution of the Court's judgments in practice, it is essential that national parliaments are systematically notified of developments in this respect: it is not sufficient that parliaments are informed merely when the state executive organs/administration deem it *appropriate* to do so. Governments must be prompted to explain how they implement this aspect of Recommendation (2008) 2.

29. Despite the practical importance of informing national parliaments about adverse judgments of the Court and measures taken in their execution, the assessment conducted by the CLAHR disclosed that few state parties possess such a procedure.⁴² The Netherlands provides a model mechanism for informing national parliament about relevant decisions of the Strasbourg Court and measures taken in their

³⁶ See example from the Netherlands described below, paragraph 29.

³⁷ *Implementation of judgments of the European Court of Human Rights – Issues currently under consideration* (working document), Mr E. Jurgens, document AS/Jur (2007) 49 rev, of 26 November 2007 (declassified by the Committee on 11 September 2007), paragraphs 12-18.

³⁸ *Speech by Mrs Marie-Louise Bemelmans-Videc: The effectiveness of the European Convention on Human Rights at national level: the parliamentary dimension*, presented on 9 June 2008, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008* (AS/Jur (2008) 32 rev), 23 June 2008, p. 6.

³⁹ Recommendation CM/Rec(2008)2 of the Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies, paragraph 9.

⁴⁰ *Implementation of judgments of the European Court of Human Rights – Issues currently under consideration* (working document), Mr E. Jurgens, document AS/Jur (2007) 49 rev, of 26 November 2007 (declassified by the Committee on 11 September 2007), paragraph 13.

⁴¹ Ministers' Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers' Deputies, paragraph 1.

⁴² Twelve state parties indicated that they possess procedures to ensure parliament is informed about adverse findings of the Strasbourg Court, to which the state was the respondent party: Austria, Bosnia and Herzegovina, Croatia, Cyprus, Germany, Hungary, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. Furthermore, it is unclear whether such a mechanism exists in the Russian Federation, and two state parties indicated that the introduction of such a procedure judgments is under consideration, namely Liechtenstein and "the former Yugoslav Republic of Macedonia". *Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraph 10 and note 33. When recently in Ukraine, in July 2009, I received assurances that the Verkhovna Rada (Parliament) will now also regularly supervise Strasbourg Court judgments.

implementation.⁴³ The Government representative (Government Agent before the Court) in Strasbourg drafts a yearly report on Strasbourg judgments delivered against the Netherlands, which is provided by the Government to both Houses of Parliament. The parliamentary justice committees examine this report, pose questions to the Government concerning the information contained therein, and provide recommendations if the Government's actions are considered unsatisfactory. In 2006, the Senate requested that the annual report also contain an overview of the implementation of judgments emanating from Strasbourg. Consequently, the report now contains information concerning the measures adopted to implement adverse Court judgments against the Netherlands.⁴⁴ In addition, the annual report contains not only judgments against the Netherlands, but also those against any other state party which could have a direct or indirect effect on the Dutch legal system. While the latter aspect does not strictly fall within execution of Strasbourg judgments, but rather a broader obligation to observe the Convention and the Court's interpretation thereof, it is nevertheless a valuable preventative procedure, demonstrating a strong commitment to adhere to Convention standards.⁴⁵

30. Italy also possesses a procedure for informing parliament about adverse judgments of the Court, and measures adopted in implementation thereof. Under the Italian mechanism, the Government representative in Strasbourg (Agent before the Court) systematically informs the Presidency of the Council of Ministers regarding Strasbourg judgments delivered against Italy. The Presidency of the Council of Ministers, in accordance with the Azzolini Law (No.12 of 2006), must, in its role of coordinating and supervising the execution of the Court's judgments, promptly inform the Chambers of Parliament about the adverse judgments of the Court. This allows the relevant Parliamentary committees to examine judgments of the Court delivered against Italy. Moreover, the Presidency of the Council of Ministers provides Parliament with an annual report on the execution of the Court's judgments against Italy.⁴⁶ The report both identifies new judgments deriving from Strasbourg, and summarises the state of execution of all Italian judgments under the supervision of the Committee of Ministers. In addition to this procedure, the legal counsel to the Chamber of Deputies produces an annual report analysing adverse judgments of the Strasbourg Court with respect to Italy.⁴⁷ The fact that this report is in Italian facilitates greater knowledge of relevant Strasbourg case law among parliamentarians, and provides a valuable reference in parliamentary debates which concern issues previously addressed by the Court.⁴⁸ The mechanisms exercised in Italy raise awareness regarding adverse judgments of the Court and increase political transparency concerning the implementation thereof. When I visit Italy, in the coming months, I will be able to assess the effectiveness of this procedure.

⁴³ *Speech by Mrs Marie-Louise Bemelmans-Videc: The effectiveness of the European Convention on Human Rights at national level: the parliamentary dimension*, presented on 9 June 2008, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008* (AS/Jur (2008)32rev), 23 June 2008, p. 6.

⁴⁴ For example, *Kamerstukken II, 2008-2009, 30 481, No. 4.*

⁴⁵ '[T]he Court's judgments in fact serve not only to decide those cases brought before the EctHR but, more generally, to elucidate, safeguard and develop the rules instituted by the ECHR, thereby contributing to the observance by the states of the engagements undertaken by them as Contracting Parties (Article 19)', *Ireland v. the United Kingdom*, 18 January 1978, paragraph 154, Series A no. 25.

⁴⁶ *L'esecuzione delle pronunce della Corte europea dei diritti dell'uomo nei confronti dello Stato italiano, Legge No 12/2006.*

⁴⁷ The Chamber of Deputies is also the relevant parliamentary actor to verify the compatibility of draft legislation with Convention standards.

⁴⁸ The website of the Italian Court of Cassation contains a database on all the Court's judgments with respect to Italy and contains links to relevant domestic legislative provisions. This provides another valuable tool to national parliamentarians in addressing issues which concern the Convention.

b. Supervising the implementation of Strasbourg Court judgments

31. The Assembly has encouraged national parliaments to engage in proactive supervision with respect to the execution of Court judgments:

“[the Assembly] 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”.⁴⁹

In my final report, I intend to revert to this matter. Too few parliaments have, to date, set-up appropriate oversight mechanisms to ensure the rapid and effective implementation of Strasbourg Court judgments. The Assembly has not received (satisfactory) responses from many parliaments. In this situation, members of the Assembly’s parliamentary delegations from the countries concerned are strongly encouraged to pursue this important initiative in their respective national parliaments.

32. Being composed of democratically elected representatives, it is essential that national parliaments hold governments to account concerning adherence to commitments under the Convention, including implementation of the Court’s judgments.⁵⁰ A mechanism of parliamentary oversight implies more than the verification of legislation drafted in response to an adverse judgment from Strasbourg, it requires active supervision, ensuring that effective measures are implemented which prevent the future recurrence of similar infringements. Where the response of national authorities to a violation of the Convention is inadequate or unreasonably delayed, parliament should exert pressure by posing written or oral questions to the responsible authority, requesting it to account for its actions, or lack thereof. During such dialogue parliament may propose measures to be implemented, strengthening the domestic mechanisms ensuring execution of the Court’s judgments. Such supervision not only exerts political pressure on national authorities to execute fully and expeditiously judgments of the Court, it also promotes a culture of human rights dialogue, increasing political transparency of the implementation process.

33. The United Kingdom’s Joint Committee on Human Rights (hereinafter ‘the JCHR’) provides a good example for parliamentary supervision of the execution of Strasbourg judgments. The JCHR has acknowledged that ‘Parliament has an important role to play in scrutinising, at national level, the Government’s performance of the obligations which arise following a judgment in which the ECtHR has found the UK to be in breach of the ECHR’.⁵¹ To this extent, the JCHR has recognised that ‘Parliament, more effectively than the Committee of Ministers, can scrutinise the Government’s response to ensure that it acts swiftly to fulfil the [obligation to abide by the Court’s judgments], and that it does so adequately’.⁵²

⁴⁹ Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights*, adopted by the Assembly on 2 October 2006, paragraph 22.1.

⁵⁰ ‘[Parliaments should] exercise parliamentary oversight of the implementation process conducted by other national authorities’, Ministers’ Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers’ Deputies, paragraph 1.

⁵¹ Joint Committee on Human Rights, *Monitoring the Government’s response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraph 7.

⁵² Joint Committee on Human Rights, *Monitoring the Government’s response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraph 7.

34. The JCHR produces an annual report monitoring the Government's response to adverse Strasbourg Court judgments (hereinafter 'the monitoring report').⁵³ This report synthesises the supervisory work conducted by the JCHR with respect to the Government's response to both adverse Strasbourg judgments and declarations of incompatibility by domestic courts.⁵⁴ It is not merely a summary of the measures taken by the government in response to adverse Strasbourg judgments: it is the product of continual dialogue between the JCHR and national authorities on the matter. The monitoring report assesses the adequacy of measures adopted in executing the Court's judgments and, where action has been insufficient, exerts pressure on the Government to expeditiously implement effective measures. In addressing the adequacy of the Government's response, the JCHR provides recommendations as to measures which will effectively execute the Court's judgment, thus providing a medium for increased cooperation between the Parliament and the Government in the execution process. The observations and recommendations of the JCHR then facilitate wider parliamentary debate regarding the implementation of Strasbourg Court judgments delivered against the United Kingdom.⁵⁵

35. In its recent monitoring report, the JCHR identified systemic problems which have produced repetitive violations before the Court.⁵⁶ Ascertaining a trend of repetitive infringements, which is the amalgamated product of supervising the execution of individual judgments, identifies persisting systemic deficiencies in existing law or administrative practice, and highlights the urgent need to implement effective general measures to prevent the recurrence of similar violations. In its most recent monitoring report the JCHR recommended that 'the Government's approach to clone cases should be more proactive', and depart from its policy that the existence of an admissible application to the Court is a prerequisite for settlement.⁵⁷

c. Ensuring the existence of effective domestic mechanisms for the implementation of Strasbourg Court judgments

36. The Committee of Ministers has identified that there is a responsibility on national parliaments to 'establish appropriate procedures to ensure rapid adoption of legislative changes required by judgments'.⁵⁸ However, the influence of national parliaments in establishing effective mechanisms for the implementation of the Court's judgments need not be restricted to legislative procedures. In Resolution 1516, the Assembly called upon state parties 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'.⁵⁹ Parliamentary oversight concerning the existence of effective domestic mechanisms facilitating the execution of Strasbourg judgments constitutes an important aspect of parliaments' supervisory function.

⁵³ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008; Joint Committee on Human Rights, *Monitoring the Government's response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007; Joint Committee on Human Rights, *Implementation of Strasbourg judgments: First progress report*, Thirteenth Report of Session 2005-06 (HL Paper 133, HC 954), published on 8 March 2006.

⁵⁴ Human Rights Act 1998 ch. 42, Section 4.

⁵⁵ Hansard, House of Lords, 24 November 2008: Column GC123.

⁵⁶ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008, paragraphs 111-124.

⁵⁷ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008 paragraph 119.

⁵⁸ Ministers' Deputies, *Implementation of judgments of the European Court of Human Rights*, Parliamentary Assembly Recommendation 1764 (2006), document CM/AS(2007)Rec1764 final 30 March 2007, Reply adopted by the Committee of Ministers on 28 March 2007 at the 991st meeting of the Ministers' Deputies, paragraph 1.

⁵⁹ Resolution 1516 (2006), *Implementation of judgments of the European Court of Human Rights*, adopted by the Assembly on 2 October 2006, paragraph 22.2.

37. The JCHR regularly initiates consultations with relevant Government ministries concerning the effectiveness of domestic mechanisms for the implementation of the Court's judgments. This dialogue is presented in the JCHR's annual monitoring reports, which also provide recommendations aimed at ensuring 'an improved and systematic mechanism for responding promptly and appropriately to court judgments finding a breach of human rights'.⁶⁰ In January 2007, in light of recommendations of the Assembly, the JCHR requested that the Lord Chancellor provide information as to the steps taken within the Department for Constitutional Affairs to improve or enhance domestic mechanisms for rapid and effective implementation of Strasbourg judgments. Following a response of the Lord Chancellor, the JCHR recommended that the Ministry of Justice adopt a central coordinating role in Government to ensure the effective and efficient implementation of judgments of the Court.⁶¹ The recommendation of the JCHR consequently facilitated parliamentary debate on the mechanisms for implementing Strasbourg judgments, increasing transparency of the execution of Court judgments, and raising awareness as to the adequacy of the procedures established for implementation.⁶²

38. In the monitoring reports presented to date, the JCHR has addressed judgments where there have been particular problems with respect of delays in implementation, and systemic problems which have produced repetitive violations.⁶³ Acknowledging delays and repetitive infringements identifies deficiencies in existing domestic mechanisms for the execution of the Court's judgments. This constitutes an important aspect of national parliaments' wider supervisory function, which should produce enhanced implementation procedures.

d. Verifying the compliance of draft laws, existing laws and administrative practice with Convention standards

39. National parliaments can – and, in effect, should – can verify the compatibility of draft laws, existing legislation and administrative practice with Convention standards, following an adverse judgment of the Court.⁶⁴ The Committee of Ministers has recommended that state parties:

- i. ensure that there are appropriate and effective mechanisms for systematically verifying the compatibility of draft laws with the Convention in the light of the case-law of the Court;
- ii. ensure that there are such mechanisms for verifying, whenever necessary, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars.⁶⁵

40. In addressing verification procedures there is an obvious overlap between scrutiny which has been induced by an adverse decision of the Court, and alternatively that which has been performed as a matter of procedure, in the absence of such a judgment. The former contributes to the execution of Strasbourg Court judgments, while the latter constitutes an essential function within the more general obligation to ensure adherence of domestic law and practice to Convention standards. In either instance, the verification procedure will frequently be identical, and indeed systematic verification should be ensured for all proposed legislative reform. Nevertheless, in the current context, discussion concerns verification which has been induced by an adverse Court judgment.

Verification of existing laws and administrative practice

⁶⁰ Joint Committee on Human Rights, *Monitoring the Government's response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraph 153.

⁶¹ Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008, paragraph 18.

⁶² Hansard, House of Lords, 24 November 2008: Column GC124.

⁶³ Joint Committee on Human Rights, *Monitoring the Government's response to human rights judgments: Annual report 2008*, Thirty-first Report of Session 2007-08 (HL Paper 173, HC 1078), published on 31 October 2008 paragraphs 64-80, 111-124; Joint Committee on Human Rights, *Monitoring the Government's response to Court judgments finding breaches of human rights*, Sixteenth Report of Session 2006-07 (HL Paper 128, HC 728), published on 28 June 2007, paragraphs 94-108, 141-143; Joint Committee on Human Rights, *Implementation of Strasbourg judgments: First progress report*, Thirteenth Report of Session 2005-06 (HL Paper 133, HC 954), published on 8 March 2006, paragraphs 8-14.

⁶⁴ '[The Committee of Ministers] arguably does not review legality, neither does it substantively examine the conformity, appropriateness or adequacy of remedial legislation with Convention rights as interpreted by the Court'. JURISTRAS Project, *Why do states implement differently the European Court of Human Rights judgments? The case law on civil liberties and the rights of minorities*, April 2009, p. 8.

⁶⁵ Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

41. Judgments of the Court do not always explicitly identify the offending legislative provisions or practice, and moreover do not prescribe the necessary measures to implement the decision effectively. Consequently, following an adverse decision of the Court, it is essential that state organs identify, where applicable, any existing legislation or administrative practice from which the violation derives. Upon identifying the relevant legal provisions and practice, their compatibility with Convention standards should be verified, enabling recognition of the remedial measures required to ensure effective implementation of the judgment.⁶⁶

42. National parliaments, as the legislative organ, are well placed not only to identify legislation and administrative practice from which the infringement may have derived, but also proceed to verify their compliance with the Court's judgment and, more generally, Convention standards. While the former function may be considered as part of parliaments' supervisory function, the latter constitutes proactive involvement on behalf of parliament in the execution of the Court's judgments, strengthening the implementation process.

Verification of draft laws

43. Verification of draft laws, introduced in response to an adverse Strasbourg judgment, is a principal measure to prevent the future recurrence of similar infringements. There is no reason why such draft laws cannot be initiated by the Legislature itself. During the legislative process considerable influence can be profitably exerted to ensure compliance with Convention standards. As former Judge Martens has identified, 'what is at stake is ... not only whether remedial legislation is passed at all, but also whether, if passed, it is adequate and meets the requirements implied in the relevant judgments'.⁶⁷ In scrutinising draft laws introduced in response to an adverse finding by the Court, parliamentary actors must ensure not only compliance with Convention standards but, more specifically, that the draft law will implement effectively the Strasbourg judgment so as to prevent the recurrence of similar violations. Such work can, if need be, be carried out in liaison with the Council of Europe.

44. The assessment conducted by the CLAHR disclosed that 'very few parliamentary mechanisms exist with a specific mandate to verify compliance [of draft legislation] with ECHR requirements'.⁶⁸ Verification of draft laws with Convention standards is often performed by the relevant parliamentary committee, depending on the subject of the draft law, within ordinary parliamentary procedure.⁶⁹ In other state parties, Convention compliance of draft law is addressed under a more general review as to compatibility with the national Constitution.⁷⁰

⁶⁶ Committee of Ministers Recommendation Rec(2004)5 recommends that state parties: 'ensure that there are such mechanisms for verifying, whenever *necessary*, the compatibility of existing laws and administrative practice, including as expressed in regulations, orders and circulars' (emphasis added). The event of an adverse judgment of the Court would constitute *necessary* circumstances in which to verify the compatibility of relevant existing laws and administrative practice.

⁶⁷ S.K. Martens, Commentary, M.K. Bulterman & M. Kuijer (eds.), *Compliance with judgments of international courts: Proceedings of the symposium organized in honour of Professor Henry G. Schermers by Mordenate College and the Department of International Public Law of Leiden University* (1996).

⁶⁸ *Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008, paragraph 6.

⁶⁹ See replies from Albania, Andorra, France, Poland, Portugal, Serbia and Slovakia, Appendix II *Overview of replies, Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008.

⁷⁰ See reply from Austria, Appendix II, *Overview of replies, Background document: The role of national parliaments in verifying state obligations to comply with the European Convention on Human Rights, including Strasbourg Court judgments: an overview*, issued on 23 May 2008 by Secretariat of the Committee on Legal Affairs and Human Rights, contained in *Stockholm Colloquy: 'Towards stronger implementation of the European Convention on Human Rights at national level', 9-10 June 2008*, document AS/Jur (2008) 32 rev, of 23 June 2008.

45. The United Kingdom provides a mechanism for parliamentary verification of draft legislation, including that introduced in response to an adverse judgment of the Court. The Minister in charge of a draft law is required to make one of two statements to Parliament prior to the second reading of the bill: either that the provisions of the bill are, in his or her view, compatible with the Convention rights, or that no such statement of compatibility can be made but the government, nevertheless, intends to proceed with the bill.⁷¹ While this initial 'Strasbourg vetting' procedure is performed by the minister in his executive role, it nevertheless provokes parliamentary scrutiny, by providing a basis for verifying the compliance of the bill with Convention standards, especially when reasons provided are terse and/or considered insufficient. In addition, the requirement of a compatibility statement focuses the attention of the drafters, from the outset of the bill's development, as to Convention compliance. Where 'a proposed policy or legislative measure raises human rights concerns' the JCHR will undertake pre-legislative scrutiny of compliance with international human rights standards.⁷² The observations of the JCHR, presented in a report, subsequently contribute to parliamentary debate during the legislative process.

46. Implementation of the Court's judgment in *A v the United Kingdom*,⁷³ illustrates the instrumental role of parliament in verifying the Convention compatibility of draft legislation introduced in response to an adverse Strasbourg judgment. In this case the Court held that the defence of reasonable chastisement, which provided parents a legal defence against physical punishment of a child, was in breach of the right to be free from inhuman or degrading treatment and punishment, as guaranteed by Article 3 of the Convention.⁷⁴ A subsequent Children Bill, introduced by the Government, failed to replace or repeal the defence of reasonable chastisement. In its initial scrutiny of the Bill the JCHR expressed concern that 'the failure to remove the reasonable chastisement defence is in breach of the UK's obligation under Article 46 ECHR to abide by final judgments of the European Court of Human Rights. The decision in *A v UK* gives rise to an obligation on the UK to adopt general measures to prevent a repetition of the violation found in that case'.⁷⁵

47. During debate in both Houses of Parliament the observations of the JCHR were referred to in support of an amendment to the reasonable chastisement provision. Indeed, the amendment ultimately adopted, which significantly restricted the scope of the defence, was proposed by Lord Lester, a member of the JCHR. In substantiating his proposed revision Lord Lester asserted 'My amendment seeks to give effect to that important government undertaking to the Strasbourg Court'.⁷⁶ In its subsequent principal report on the Children Bill, the JCHR concluded that the amendment 'may well be considered sufficient to satisfy the UK's obligation to comply with the judgment of the European Court of Human Rights in *A v United Kingdom*'.⁷⁷ The Committee of Ministers has closed its examination of *A v the United Kingdom* and has mandated its Secretariat to prepare a final draft resolution⁷⁸. The Committee of Ministers' Deputies have noted 'with satisfaction the changes in the legislative framework made following this judgment'⁷⁹.

⁷¹ Human Rights Act 1998 ch. 42, Section 19. That said, a simple statement of compatibility in itself does not provide a basis for verification. The accompanying reasons (Explanatory Notes attached to the Bill) are often not as clear as they should be, necessitating follow-up correspondence with the JCHR.

⁷² Joint Committee on Human Rights, *The Work of the Committee in 2007-08*, Second Report of Session 2008-09 (HL Paper 10, HC 92), published on 26 January 2009, paragraph 35.

⁷³ *A. v. the United Kingdom*, 23 September 1998, Reports of Judgments and Decisions 1998-VI.

⁷⁴ *A. v. the United Kingdom*, 23 September 1998, paragraphs 23-24, Reports of Judgments and Decisions 1998-VI.

⁷⁵ Joint Committee on Human Rights, *Scrutiny of Bills: Fifth Progress Report*, Twelfth Report of Session 2003-04 (HL Paper 93, HC 603), published on 20 May 2004, paragraph 1.33.

⁷⁶ 5 Jul 2004 : Column 524

⁷⁷ Joint Committee on Human Rights, *Children Bill*, Nineteenth Report of Session 2003-04, (HL Paper 161, HC 537), published on 21 September 2004, paragraph 137.

⁷⁸ Ministers' Deputies, *A. against the United Kingdom, Judgment of 23 September 1998*, document CM/Inf/DH(2008)34, of 28 August 2008 (declassified at the 1035th meeting of the Ministers' Deputies, 18 September 2008) paragraph 76.

⁷⁹ Ministers' Deputies, *Decisions adopted at the 1035th (DH) meeting, 17-18 September 2008*, document CM/Del/Dec(2008)1035, of 22 September 2008.

iii. Concluding remarks

48. The high percentage of repetitive or 'clone' judgments delivered by the Court underlines the urgent need to reinforce domestic procedures to ensure the effective implementation of Strasbourg judgments. The obligation to abide by a final judgment of the Court is a collective duty upon all state organs, and state parties with strong implementation records are regularly characterised by active involvement of parliamentary actors. National parliaments have a prominent role to fulfil in not only strengthening domestic mechanisms for the execution of the Court's judgments, but in actively contributing to the implementation process. Parliaments, more effectively than the Committee of Ministers, can identify the social or political problems underlying an infringement held by the Court, and initiate effective remedial measures to prevent the recurrence of similar infringements.

49. This progress report has primarily addressed the role which national parliaments should exercise in supervising the execution of Strasbourg judgments, and systematically verify the compatibility of draft laws, existing laws and administrative practices with Convention standards. Nevertheless, the functions identified herein are not exhaustive, and parliaments may make significant contributions to the implementation process through alternative means. For example, where the Court has repeatedly held violations concerning the excessive length of judicial proceedings, the parliament, in considering the proposed Government budget, could exert pressure to increase funding allocated to the judiciary. Excessive length of judicial proceedings is primarily a 'procedural' problem. Civil and criminal procedures in most member states are complicated. Parliaments can either themselves ensure the establishment of modern codes of procedure or put pressure on state authorities that have been designated to carry out such reforms.

50. In addition to actively strengthening the domestic implementation of Court judgments, national parliaments may also strengthen this process through promoting a political human rights culture.⁸⁰ At present, it cannot be asserted that the governmental, legislative and judicial organ of all state parties are committed to adherence to human rights norms, despite having ratified the Convention. Nevertheless, as Lord Woolf identified: 'If the Court's long-term viability is to be ensured, it is essential that Member States take appropriate measures to implement the Court's judgments and prevent repeat violations'.⁸¹ Creating a political human rights culture cannot be realised on the adoption of a single piece of legislation, it is a long-term aspiration in which national parliaments have a prominent role to fulfil. Parliamentary oversight of the execution of Strasbourg decisions increases the transparency of the implementation process, raises awareness regarding the sufficiency of measures adopted, and creates an expectation that governments be held accountable for failure or delay in executing judgments of the Court. Furthermore, proactive parliamentary supervision strengthens the execution process by facilitating a human rights dialogue between the legislature and the executive.

51. Scepticism may be expressed concerning the impact of supervision in parliamentary systems characterised by a dominant role of the executive in parliament. Parliamentary committees can exercise a significant role in ensuring that governments are not immune to scrutiny regarding the implementation of Strasbourg judgments. Despite the dominant role of the executive in Westminster, the JCHR has provided reports primarily motivated by principle, independent of governmental influence, rather than partisan deliberations. Implementing an independent and non-partisan approach is necessary if the observations and opinions of a committee are to exert any credible influence on the national parliamentarians. The composition of the JCHR, jointly constituted from both houses of parliament preventing domination by government, has been cited as a significant factor in allowing the committee to rise above party divisions.⁸² While it is difficult to assess the full measure of the JCHR's impact on human rights standards in the United Kingdom, the committee has certainly encouraged a political human rights culture.⁸³

⁸⁰ Janet L. Hiebert, *Parliament and the Human Rights Act: can the JCHR help facilitate a culture of rights?*, International Journal of Constitutional Law (2006) 1.

⁸¹ Lord Woolf, *Review of the Working Methods of the European Court of Human Rights*, December 2005, p.66.

⁸² Janet L. Hiebert, *Parliament and the Human Rights Act: can the JCHR help facilitate a culture of rights?*, International Journal of Constitutional Law (2006) 1, p. 16.

⁸³ Janet L. Hiebert, *Parliament and the Human Rights Act: can the JCHR help facilitate a culture of rights?*, International Journal of Constitutional Law (2006) 1; F. Klug & H. Wildbore, *Breaking new ground: the Joint Committee on Human Rights and the role of Parliament in human rights compliance*, European Human Rights Law Review (2007) 231.

IV. Interim assessment

i. Focus on issues which raise prevalent implementation problems

52. As noted above, it is not appropriate at present to provide a specific update with respect to the implementation of judgments addressed in the Introductory Memorandum.⁸⁴ Nevertheless, in conducting the research which revealed the full extent of judgments currently coming within the standard criteria, certain issues which raise prevalent implementation problems have been identified:

- i. deaths or ill-treatment which took place under the responsibility of state forces and lack of an effective investigation thereof;
- ii. excessive length of judicial proceedings; and
- iii. non-enforcement of domestic judicial decisions.

53. The purpose of this section is to highlight the particularly grave and widespread problem of non-implementation with respect to the specific issues identified. For the purposes of this section, the analysis has been confined to those cases which will, at present, be addressed in the seventh report: judgments with respect to which the Committee of Ministers has adopted an interim resolution and judgments concerning violations of such a serious nature that I am compelled to address implementation thereof.⁸⁵

a. Deaths or ill-treatment which took place under the responsibility of state forces and lack of an effective investigation thereof

54. Articles 2 and 3 embody the most fundamental guarantees under the Convention: the rights to life and the prohibition of ill-treatment. Such infringements are frequently accompanied by a violation of the procedural guarantee to an effective investigation of a death or alleged ill-treatment.⁸⁶ The Court has held that the state's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention', requires by implication that there should be an effective official investigation into arguable claims that there has been a violation of Article 2 or Article 3 of the Convention.⁸⁷

55. Mrs Däubler-Gmelin in her recent report highlighted that 'Impunity must ... be eradicated both as a matter of justice for the victims, of prevention of new violations by deterrence, and of upholding the rule of law'.⁸⁸ The corresponding Resolution of the Parliamentary Assembly highlighted that "The most serious cases involve wide-spread abuses committed by the security forces in conflict situations. The cases of the Court concerning the conflicts and/or the fight against terrorism ..., south-eastern Turkey and the Chechen Republic of the Russian Federation".⁸⁹ These instances, amongst others, will be provided high priority in the seventh report on the implementation of the Court's judgments. In expanding as to how impunity is to be eradicated Mrs Däubler-Gmelin stated:

⁸⁴ See paragraph 11.

⁸⁵ See Appendix for a comprehensive list.

⁸⁶ See Appendix

⁸⁷ *Assenov and Others v. Bulgaria*, 28 October 1998, paragraph 102, *Reports of Judgments and Decisions* 1998-VIII; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, paragraph 110, ECHR 2005-VII.

⁸⁸ The state of human rights in Europe: the need to eradicate impunity, H. Däubler-Gmelin, PACE Doc. 11934, of 3 June 2009, paragraph 8.

⁸⁹ Resolution 1675 (2009), The state of human rights in Europe: the need to eradicate impunity, adopted by the Assembly on 24 June 2009, paragraph 5.1.

“The key to developing a strategy to eradicate impunity is therefore the full implementation of the Court’s judgments in this field. This will be an important issue that the Assembly’s Rapporteur on execution of the Court’s judgments, Mr Christos Pourgourides (Cyprus, EPP/CD) will address in his ongoing work. It would seem obvious, for example, that in a case in which the Court has found a violation of the right to life (Article 2 ECHR) in the form of a failure to investigate an extra-judicial killing or an enforced disappearance, the execution of the judgment cannot be limited to the payment of the pecuniary compensation the Court has fixed. A proper investigation must still be carried out and the perpetrators held to account; and general measures must be taken in order to avoid that similar violations occur in the future because of the same structural defects that had caused the violation at issue. I am convinced that, if all the Court’s judgments on impunity cases were properly executed in this spirit, we would come close to eradicating impunity for good.”⁹⁰

b. Excessive length of judicial proceedings

56. The vast number of repetitive violations concerning the excessive length of domestic judicial proceedings illustrates the failure on behalf of many state parties to implement effectively judgments of the Strasbourg Court in this respect. With regard to those judgments which have been identified for analysis in the seventh report, the Committee of Ministers has adopted interim resolutions with respect of Greece, Italy and Poland.⁹¹ There are currently 2,582 judgments being supervised under leading cases with respect to the state parties identified, illustrating the grave systemic problems confronting those national authorities.⁹² However, the problem is far from restricted to the state parties identified.

57. The difficulties encountered by Italy concerning the excessive length of judicial proceedings has been specifically identified in the reports of my predecessor, Mr Jurgens.⁹³ At the last meeting of the Ministers’ Deputies in 2008, over thirty per-cent of all judgments pending supervision before the Committee of Ministers concerned excessive judicial proceedings in Italy.⁹⁴ Mr Jurgens identified that ‘This worrying situation, which represents a serious danger for the credibility of the ECHR system as a whole, obviously calls for the Assembly’s very special attention’.⁹⁵

c. Non-enforcement of domestic judicial decisions

58. Interim resolutions have been adopted with respect to the implementation of three leading cases concerning the failure or substantial delay by the administration or state companies in abiding by final domestic judgments: *Zhovner v Ukraine*,⁹⁶ *Timofeyev v the Russian Federation*,⁹⁷ and *Okuyay and Others v*

⁹⁰ H. Däubler-Gmelin, PACE Doc. 11934, paragraph 68.

⁹¹ Interim Resolution CM/ResDH(2007)74, on excessively lengthy proceedings in Greek administrative courts and the lack of an effective domestic remedy (Adopted by the Committee of Ministers on 6 June 2007, at the 997th meeting of the Ministers’ Deputies); Interim Resolution CM/ResDH(2007)28 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 and the right to an effective remedy (Adopted by the Committee of Ministers on 4 April 2007 at the 992nd meeting of the Ministers’ Deputies); Interim Resolution CM/ResDH(2009)42, Execution of the judgments of the European Court of Human Rights concerning the excessive length of judicial proceedings in Italy (Adopted by the Committee of Ministers on 19 March 2009 at the 1051st meeting of the Ministers’ Deputies); In relation to Italy also see Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135 and CM/ResDH(2007)2, and ResDH(2007)27.

⁹² *Ceteroni v. Italy*, 15 November 1996, Reports of Judgments and Decisions 1996-V (No. 22461/93, judgement of 15 November 1996, final on 15 November 1996); *Manios v. Greece*, no. 70626/01, 11 March 2004 (no. 70626/01, judgment of 11 March 2004, final on 11 June 2004); *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI (no. 30210/96, judgment of 26 October 2000; final on 26 October 2000); *Podbielski v. Poland*, no. 27916/95, Reports 1998-VIII (no. 27916/95, judgment of 30 October 1998, final on 30 October 1998).

⁹³ Implementation of judgments of the European Court of Human Rights: Introductory Memorandum, E. Jurgens, document AS/Jur (2005) 35, of 20 June 2005, paragraphs 10-13.

⁹⁴ Statistics taken from *Table 1.a of Appendix 1: Statistical data of the Committee of Ministers’ Supervision of the execution of judgments of the European Court of Human Rights: Second Annual Report (2008)*, of April 2009; and the *State of Execution: Italy* from the website for the Execution of judgments of the European Court of Human Rights: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Italy_en.pdf

⁹⁵ E. Jurgens, document AS/Jur (2005) 35, paragraph 13.

⁹⁶ *Zhovner v. Ukraine*, no. 56848/00, 29 June 2004 (no. 56848/00, judgment of 29 June 2004, final on 29 September 2004); Interim Resolution CM/ResDH(2008)1 on the execution of the judgements of the European Court of Human Rights in 232 cases against Ukraine relative to the failure or serious delay in abiding by final domestic judicial decisions delivered against the state and its entities as well as the absence of an effective remedy (Adopted by the Committee of Ministers on 6 March 2008, at the 1020th meeting of the Ministers’ Deputies).

⁹⁷ *Timofeyev v. Russia*, no. 58263/00, 23 October 2003 (no. 58263/00; judgment of 23 October 2003; final on 23 January 2004); Interim Resolution CM/ResDH(2009)43 Execution of the judgements of the European Court of Human Rights in 145 cases against the Russian Federation relative to the failure or serious delay in abiding by final domestic judicial

Turkey.⁹⁸ The combined total of 445 judgments falling under the leading cases against Ukraine and the Russian Federation illustrates the grave systemic problems which need to be addressed in the state parties concerned.⁹⁹ The Court's case law has reiterated that ensuring enforcement of domestic judicial decisions is essential if the rights enshrined in Article 6 are to be effectively protected in practice:

"[The 'right to a court'] would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention [...] Execution of a judgment given by any court must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6 ..."¹⁰⁰

ii. Further action envisaged

59. Given its 'subsidiary nature', the undertaking of State Parties to abide by the final judgment of the Court is the principal pillar on which the effectiveness of the ECHR system is based. Where national authorities fail to effectively remedy violations of the Convention, individual justice is denied and further violations regularly result from systemic problems which have not been addressed. Such systemic violations produce repetitive cases in Strasbourg, placing an 'unnecessary burden' on the Court, and distracting it from its essential function.¹⁰¹ Given the primary importance of ensuring that Court judgments are effectively executed, I consider that the Assembly must continue promoting the expeditious and full implementation of Court judgments. In contributing to this process the Assembly must be aware of its role within the supervisory mechanism of the ECHR system. The Assembly, being composed of national parliamentarians, should utilise its unique relationship with national legislatures in addressing issues of non-implementation. Consequently, in performing my role as rapporteur, I am committed to promoting the reinforcement of parliamentary involvement in the domestic execution of Court judgments, and supervision thereof.

60. In preparing the seventh report on the *Implementation of Judgments of the European Court of Human Rights*, I have inherited several important practices implemented by my predecessor, Mr Jurgens, the effectiveness of which compels me to continue his approach in many respects. Two practices are particularly worthy of mention. Firstly, in preparing his sixth report, issued in September 2006, Mr Jurgens conducted a state-by-state assessment, applying set criteria, so as to ensure a non-discriminatory approach.¹⁰² Indeed, it has been my determination to adhere to a non-discriminatory approach which has necessitated that the method for identifying judgments be altered, rather than continuing on an arbitrary basis. Secondly, Mr Jurgens adopted a proactive approach in preparing his sixth report conducting a dialogue with thirteen State Parties with regard to which there were outstanding issues concerning the implementation of Court judgments. The Committee on Legal Affairs and Human Rights advanced this proactive approach by agreeing that the rapporteur visit five of the most problematic State Parties in this respect. This important and effective innovation was based on the conviction that crucial issues could be resolved through the increasingly active involvement of the Assembly in close collaboration with national parliaments, facilitated by cooperation with national PACE delegations.

decisions delivered against the state and its entities as well as the absence of an effective remedy (*Adopted by the Committee of Ministers on 19 March 2009 at the 1051st meeting of the Ministers' Deputies*).

⁹⁸ *Okyay and Others v. Turkey*, no. 36220/97, ECHR 2005-VII (Application No. 36220/97, judgment of 12 July 2005, final on 12 October 2005); Interim Resolution CM/ResDH(2007)4 Execution of the judgment of the European Court of Human Rights in the case of Ahmet Okyay and others against Turkey (Adopted by the Committee of Ministers on 14 February 2007 at the 987th meeting of the Ministers' Deputies); see leading case *Taşkın and Others v. Turkey*, no. 49517/99, 4 December 2003 (no 46117/99, judgment of 10 November 2004, final on 30 March 2005).

⁹⁹ The national authorities of the Russian Federation and Ukrainian should consider the Information documents provided by the Secretariat to the Committee of Ministers (Ukraine: CM/Inf/DH(2007)30 revised and CM/Inf/DH(2007)33; the Russian Federation: CM/Inf/DH(2006)19 revised 2, CM/Inf/DH(2006)45 and CM/Inf/DH(2006)19 revised 3). In addition, when determining general measures to be implemented, national authorities are encouraged to consider the action taken by state parties which have been held by the Committee of Ministers to have implemented judgments finding a similar infringement (Resolution ResDH(2004)81, concerning the judgments of the European Court of Human Rights relating to non-execution of domestic judicial decisions in Greece (case of Hornsby against Greece and other cases), adopted by the Committee of Ministers on 9 December 2004 at the 906th meeting of the Ministers' Deputies).

¹⁰⁰ *Hornsby v. Greece*, 19 March 1997, paragraph 40, *Reports of Judgments and Decisions* 1997-II.

¹⁰¹ *Report of the Group of Wise Persons to the Committee of Ministers*, CM documents CM(2006)203, 979bis Meeting, 15 November 2006.

¹⁰² *Implementation of judgments of the European Court of Human Rights*, E. Jurgens, Doc. 11020, of 18 September 2006.

61. I intend to continue the pioneering efforts of Mr Jurgens, and indeed I have commenced a dialogue with eleven member states, following presentation of my Introductory Memorandum back in May 2008. As mentioned above, the quality of information received varied greatly, and replies are still awaited from two state parties (see paragraph 10 above). Furthermore, I have undertaken to visit eight State Parties to address the reasons for non-implementation of the Court's judgments. Visits have been concluded to Bulgaria and Ukraine, while further visits are scheduled to Greece, Italy, Moldova, Romania, Russian Federation and Turkey. I envisage that the final seventh report will be presented in June 2010, and consequently state parties will be asked to provide information on the current status of execution of the judgments which fall within the ambit of the judgments identified in the appendix to the present Progress Report. To ensure that the final report is up-to-date, national authorities engaged in dialogue will be asked to present information in April or May of next year. Such information will be amalgamated with the findings of my state visits and other sources of information, such as the Committee of Ministers' annual reports on the execution of Court judgments.

62. If there is one key message that needs to be conveyed in this progress report, it is this: without speedy and full execution of the Strasbourg Court's judgments there can be no justice.

Appendix

Summary of principal problems encountered in the execution of Strasbourg Court judgments with respect of 11 State Parties to the ECHR

STATE PARTY	LEADING CASE	CASE DESCRIPTION
1. Bulgaria	Velikova v. Bulgaria (Application No. 41488/98, judgment of 18/05/00, final on 04/10/00), and 9 other judgments; Interim Resolution CM/Res/DH(2007)107	Cases principally concerning deaths or ill-treatment which took place under the responsibility of the forces of order.
2. Greece	Papastavrou and others v. Greece (Application No. 46372/99, judgments of 10/04/03, final on 10/07/03 and of 18/11/04, final on 18/02/05), and 2 other judgments; Interim Resolution ResDH(2006)27	Interference with the right to peaceful enjoyment of possessions due to reforestation orders.
	Manios v. Greece, (Application No. 70626/01, judgment of 11/03/04, final on 11/06/04), and 169 other judgments; Interim Resolution CM/ResDH(2007)74	Excessive length of judicial proceedings.
	Peers v. Greece (Application No. 28524/95, judgment of 19/04/01), and Dougoz v. Greece (Application No. 40907/98, judgment of 06/03/01, final on 06/06/01); Interim Resolution ResDH(2005)21	Poor conditions of the applicant's detention found to amount to degrading treatment.
3. Italy	Ganci v. Italy (Application No. 1576/98, judgment of 30/10/03, final on 30/01/04), and 8 other judgments; Interim Resolutions ResDH(2005)56 and ResDH(2001)178	Monitoring of prisoners' correspondence and lack of access to effective judicial supervision of the lawfulness of such restrictions imposed on the applicants under a special detention regime.
	F.C.B. v. Italy (Application No. 12151/86, judgment of 28/08/91), and 6 other judgments; Interim Resolution ResDH(2002)30	Unfairness of certain judicial proceedings in absentia and absence of a means to re-open criminal proceedings.
	Belvedere Alberghiera S.R.L v. Italy (Application No. 31524/96, judgments of 30/05/00, final on 30/08/00 and of 30/10/03 final on 30/01/04), and 84 other judgments; Interim Resolution CM/ResDH(2007)3	Unlawful deprivation of land by local authorities because of a judge-made rule, the "constructive-expropriation rule", which precludes restitution if works commenced in the public interest have been completed.
	Abenavoli v. Italy (Application No. 25587/94, judgment of 02/09/97), and 2138 other judgments; Interim Resolutions DH(97)336, DH(99)436, DH(99)437, ResDH(2000)135 and CM/ResDH(2007)2	Excessive length of judicial proceedings.
	Luordo v. Italy (Application No. 32190/96, judgment of 17/07/03, final on 17/10/03), and 13 other judgments; Interim Resolutions CM/ResDH(2007)27 and CM/ResDH(2009)42	Restriction of the applicants' individual rights following bankruptcy proceedings.
4. Moldova	Metropolitan Church of Bessarabia and others v. Moldova (Application No. 45701/99, judgment of 13/12/01, final on 27/03/02); Interim Resolution ResDH(2006)12	Refusal to recognize the applicant church and the lack of an effective remedy in this respect.
	Ilaşcu and others v. Moldova and the Russian Federation (Application No. 48787/99, judgment of 08/07/04 – Grand Chamber); Interim Resolutions CM/ResDH(2007)106, ResDH(2006)26, ResDH(2006)11, ResDH(2005)84 and ResDH(2005)42	Torture inflicted by state forces, and poor conditions of the applicants' detention found to amount to degrading treatment.

5. Poland	Podbielski v. Poland (Application No. 27916/95, judgment of 30/10/98), and 190 other judgments; Interim Resolution CM/ResDH(2007)28	Excessive length of civil proceedings.
	Kudła v. Poland (Application No. 30210/96, judgment of 26/10/00 - Grand Chamber), and 41 other judgments; Interim Resolution CM/ResDH(2007)28	Excessive length of criminal proceedings and lack of an effective remedy in this respect.
	Trzaska v. Poland (Application No. 25792/94, judgment of 11/07/00), and 109 other judgments; Interim Resolution CM/ResDH(2007)75	Excessive length of detention on remand.
6. Portugal	Oliveira Modesto and others v. Portugal (Application No. 34422/97, judgment of 08/06/00, final on 08/09/00), and 24 other judgments; Interim Resolution CM/ResDH(2007)108	Excessive length of judicial proceedings.
7. Romania	Rotaru v. Romania (Application No. 28341/95, judgment of 04/05/00 - Grand Chamber); Interim Resolution ResDH(2005)57	Lack of sufficient safeguards in national legislation against abuse as regards the way in which the Romanian Intelligence Service gathers, keeps and uses information.
	Dalban v. Romania (Application No. 28114/95, judgment of 28/09/99 - Grand Chamber), and 2 other judgments; Interim Resolution ResDH(2005)2	Disproportionate interference with the freedom of expression because the Romanian courts had not allowed the applicant to prove the truth of his allegations or sentence of imprisonment imposed was manifestly disproportionate in nature and severity to the legitimate aim pursued.
8. Russian Federation	Kalashnikov v. the Russian Federation (Application No. 47095/99, judgment of 15/07/02, final on 15/10/02), and 6 other judgments; Interim Resolution ResDH(2003)123	Poor conditions of the applicant's pre-trial detention found to amount to degrading treatment, due in particular to severe prison overcrowding and an unsanitary environment.
	Ryabykh v. the Russian Federation (Application No. 52854/99, judgment of 24/07/03, final on 03/12/03), and 43 other judgments; Interim Resolution ResDH(2006)1	Quashing of final domestic judgments through the supervisory review procedure.
	Khashiyev and Akayeva v. the Russian Federation (Application No. 57942/00, judgment of 24/02/05, final on 06/07/05, rectified on 01/09/05), and 24 other judgments	Number of violations resulting from and/or relating to the Russian authorities' actions during anti-terrorist operations in Chechnya (mainly unjustified use of force by members of the security forces, disappearances, unacknowledged detentions, torture and ill-treatment, unlawful search and seizure and destruction of property, lack of effective investigations into the alleged abuses and the continuous shortcomings in domestic remedies in this respect).
	Timofeyev v. the Russian Federation (Application No. 58263/00, judgment of 23/10/03, final on 23/01/04), and 145 other judgments; Interim Resolution CM/ResDH(2009)43	Failure or substantial delay by the administration or state companies in abiding by final domestic judgment.
	Ilaşcu and others v. Moldova and the Russian Federation (Application No. 48787/99, judgment of 08/07/04 – Grand Chamber); Interim Resolutions CM/ResDH(2007)106, ResDH(2006)26, ResDH(2006)11, ResDH(2005)84 and ResDH(2005)42	Torture inflicted by state forces, and poor conditions of the applicants' detention found to amount to degrading treatment.

9. Turkey	Institut de Prêtres français and others v. Turkey (Application No. 26308/95, judgment of 14/12/00 - Friendly settlement); Interim Resolution ResDH(2003)173	Judicial decision annulling property entitlement.
	Ülke v. Turkey (Application No. 39437/98, judgment of 24/01/06, final on 24/04/06); Interim Resolutions CM/ResDH(2007)109 and CM/ResDH(2009)45	Degrading treatment of the applicant as a result of his repeated convictions and imprisonment for having refused to perform military service.
	Taşkın and others v. Turkey (Application No. 46117/99, judgment of 10/11/04, final on 30/03/05, rectified on 01/02/05), and 3 other judgments; Interim Resolution CM/ResDH(2007)4	Non-enforcement of domestic court decisions in cases of environmental protection.
	Inçal v. Turkey (Application No. 22678/93, judgment of 09/06/98), and 91 other judgments; Interim Resolutions ResDH(2001)106 and ResDH(2004)38	Unjustified interferences 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.
	Cyprus v. Turkey (Application No. 25781/94, judgment of 10/05/01 - Grand Chamber); Interim Resolutions ResDH(2005)44 and CM/ResDH(2007)25	Violations of the Convention concerning: missing persons, living conditions of Greek Cypriots in northern Cyprus, the rights of Turkish Cypriots living in northern Cyprus, and homes and property of displaced persons.
	Hulki Güneş v. Turkey (Application No. 28490/95, judgment of 19/06/03, final on 19/09/03); Interim Resolutions ResDH(2005)113, CM/ResDH(2007)26 and CM/ResDH(2007)150	Lack of judicial independence and impartiality, unfairness of judicial proceedings, ill-treatment inflicted in police custody.
	Loizidou v. Turkey (Application No. 15318/89, judgment of 18/12/96); Interim Resolutions DH(99)680, DH(2000)105 and ResDH(2001)80	Continuous denial of access to the applicant's property in the northern part of Cyprus and consequent loss of control thereof.
	Xenides-Arestis v. Turkey (Application No. 46347/99, judgments of 22/12/05, final on 22/03/06 and of 07/12/06, final on 23/05/07); Interim Resolution CM/ResDH(2008)99	Violation of the right to respect for private life due to continuous denial of access to her property in the northern part of Cyprus and consequent loss of control thereof.
	Aksoy v. Turkey (Application No. 21987/93, judgment of 18/12/96), and 244 other judgments; Interim Resolution ResDH(2005)43	Various violations resulting from actions of the security forces, in particular in the southeast of Turkey (unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of security forces, subsequent lack of effective investigations into the alleged abuses).
10. Ukraine	Zhovner v. Ukraine (Application No. 56848/00, judgment of 29/06/04, final on 29/09/04), and 300 other judgments; Interim Resolution CM/ResDH(2008)1	Failure or substantial delay by the administration or state companies in abiding by final domestic judgments.
	Sovtransavto Holding v. Ukraine (Application No. 48553/99, judgment of 25/07/02, final on 06/11/02 and judgment of 02/10/03, final on 24/03/04 - Article 41), and 7 other judgments; Interim Resolution ResDH(2004)14	Lack of judicial independence and impartiality.
	Gongadze v. Ukraine (Application No. 34056/02, judgment of 08/11/05, final on 08/02/06); Interim Resolution CM/ResDH(2008)35	Failure to protect life, failure to carry out an effective investigation into a death, lack of an effective remedy in this respect, attitude of the investigation authorities towards applicant and her family amounting to degrading treatment.
11. United Kingdom	McKerr v. the United Kingdom (Application No. 28883/95, judgment of 04/05/01, final on 04/08/01), and 5 other judgments; Interim Resolutions ResDH(2005)20, CM/ResDH(2007)73 and CM/ResDH(2009)44	Action of the security forces during operations in Northern Ireland.
	A. v. the United Kingdom (Application No. 25599/94, judgment of 23/09/98); Interim Resolution ResDH(2004)39	Failure of to protect child from ill-treatment due to the availability of the defence of reasonable chastisement.