



**AS/Jur (2013) 13**  
28 March 2013  
ajdoc13 2013

## Committee on Legal Affairs and Human Rights

# Implementation of Judgments of the European Court of Human Rights

**Extracts from the Minutes** of hearings, organised by the Committee, held in Strasbourg in April 2012, in June 2012, in October 2012 and in January 2013\*

**24 April 2012**

### Implementation of Strasbourg Court judgments by Italy

**The Chairperson [Mr Chope]** welcomed Mr Vitali, Head of the Italian delegation, and Ms Paola Accardo, legal advisor of the Italian permanent representation.

**Mr Vitali** stressed that the problem of excessive length of judicial proceedings in Italy was very acute and had to be dealt with. Since Mr Pourgourides' visit in 2009 important steps forward had been made: 1) in March 2011, the Law on mediation was adopted, which stipulated that parties had to refer to a mediator before applying to a court in certain types of cases. Now Italy should be granted time to experiment with these new provisions and to use mediation in other areas of law; 2) the remedy against excessive length of proceedings based on the Pinto Law should be an administrative one, and not judicial. Funds for the payment of compensations had been increased but were not yet enough to cover all claims; 3) civil proceedings had been simplified, specialised sections in courts of appeal were established and several initiatives aimed at accelerating court proceedings had been taken.

**Mr de Vries** asked about: 1) the impact of mediation on appealing to the court and 2) on whether a special mechanism, including a special committee, to follow up the implementation of ECtHR judgments had been introduced in the Italian Parliament. **Mr Vitali** replied that: 1) mediation was a low cost exercise, done by professionals, and that it would cut back the number of cases by 25-30 percent; 2) that no special mechanism had been established, but the implementation of the Court judgments was followed-up through exchanges between the legal and the constitutional committees and the continuous monitoring of the Ministry of Justice and the Council of Ministers. **Mr Díaz Tejera** asked how Italy was going to reduce the enormous workload of its courts and whether mediation, applied in administrative, civil and criminal proceedings without the participation of judges could be efficient in this respect. **Mr Vitali** responded that mediation was a cultural revolution in Italy and that a mediator did not have to be a lawyer. **Lord Anderson** proposed to have a short synopsis of measures taken by the Italian government and a report on the cases every six months. **Mr Vitali** replied that the new measures had been operational from the beginning of December 2011 and agreed to report on this subject-matter every six months. He stressed that mediation was not applicable to administrative proceedings, but could be extended to intellectual property issues. **Mr Cilevičs** noted that, according to the Italian Minister of Justice, the inefficiency of the Italian justice system led to the loss of 1% of GDP, and asked what amount of resources would be needed to reform the system. **Mr Vitali** replied that it was difficult to implement the same guarantees for all citizens, especially considering the high number of immigrants in Italy. **The Chairperson** asked why the Italian delegation had not replied to the Assembly President's letter of 5 April 2011 and the reminder of 7 December 2011 and

\* Declassified by the Committee on 19 March 2013.

requested Mr Vitali to provide such a reply in 3 or 4 weeks. **Mr Vitali** answered that this might be due to shortcomings in communication with the Ministry of Justice and promised to provide, within a month, in writing, information on statistics and the measures taken so far.

## **26 April 2012**

### **Implementation of Strasbourg Court judgments by Ukraine**

The **Chairperson [Mr Chope]** welcomed Mr Ivan Popescu, the Head of the Ukrainian delegation, and Mr Pylypenko. **Mr de Vries** stressed that some countries, like Ukraine, had enormous problems in implementing the Court's judgments. He expressed hope that the hearing would elucidate Ukraine's problems such as non-execution of domestic judicial decisions, excessive length of judicial proceedings and detention on remand, unfair trial and ill-treatment by police.

**Mr Popescu** stressed that the difficulties in implementing ECtHR judgments were due not only to the delays in paying just satisfaction awarded by the Court due to budgetary problems, but also to the overcoming of structural problems. Although legislation was not always easy to pass, on 13 April 2012, the Parliament voted the new Criminal Procedure Code, which in his view was in line with Council of Europe recommendations. It was now to be signed by the President. During the process of its adoption, nearly 4,000 amendments were passed. The main idea behind the new Criminal Procedure Code was to make the criminal procedure an instrument to protect citizens who were the victims of crime and to implement the *Kharchenko v. Ukraine* judgment, bearing in mind that nearly 600 similar complaints were pending before the ECtHR. The Code had been aimed at reducing excessive bureaucracy, introducing judicial control over law enforcement bodies, reducing the length of detention on remand by promoting the use of bail and house arrest. As regards the implementation of the judgment *Yuriy Nikolayevich Ivanov v. Ukraine* and nearly 2,000 similar applications pending before the Court, two draft laws were being prepared: 1) one on compliance with human rights – pending before the Committee on Justice; 2) another one on the state's obligation to implement the Court's judgments – still awaiting a second reading, as it had been blocked by the opposition. Furthermore, draft laws on advocacy and prosecutors, in line with the policy of the new Criminal Procedure Code, would be submitted to the Parliament. **Mr Popescu** explained that Ms Valeria Lutkovska, the government agent of Ukraine before the ECtHR, could not come to the hearing, because she had been elected Ombudsman on 24 April. He invited Committee members to submit questions in writing.

**Mr de Vries** stressed that solving the budgetary problems in paying just satisfaction awarded by the Court would not remedy the structural problem itself. He asked **Mr Popescu** the following questions: 1) considering the momentous task to reform the justice system, does the Parliament itself oversee this problem as a whole or does it leave this to the government?; 2) what is the Ukrainian Parliament doing to solve the problem of unfair trials due to the lack of independence of judges? **Mr Popescu** replied that the Parliament was quite focused on dealing with these problems and that was why it had adopted the new Criminal Procedure Code. Budgetary problems had to be solved and funds would be allocated for paying compensations. As regards the implementation of the ECtHR's judgment in *Yuriy Nikolayevich Ivanov v. Ukraine*, most problems were related to the social benefits scheme. Recently, the Constitutional Court decided that the budgetary law was in line with the Constitution and that social benefits could be changed. Following changes in the budget this year, the Parliament increased budgetary allocations for social programmes, which meant more funds for implementing previously non-enforced domestic judicial decisions. This problem was not always related to the lack of funds, as sometimes plots of land were allocated as compensation. As regards the law on the judiciary, it was now compatible with the European standards – for example, a new mechanism for the election of judges was based on a transparent system and new methods of financing the courts system were introduced.

Concerning non-enforcement of domestic judicial decisions, the **Chairperson**, referring to paragraph 33 of the information memorandum, recalled that at its March 2012 DH meeting the Committee of Ministers considered that this situation created "a serious threat to the effectiveness of the Convention" system. He also recalled that the Court had resumed the examination of *Yuriy Nikolayevich Ivanov* cases and asked how the solutions presented by **Mr Popescu**, and especially the recent decisions of the Constitutional Court, which were prior to these events, were consistent with the CM and the Court findings. **Mr Popescu** promised to forward this question to the Government agent. The **Chairperson** insisted on **Mr Popescu** looking at this issue as an MP and Assembly member. **Mr Popescu** replied that this issue could also be addressed by **Mr Kivalov**, as member of the Committee on Justice of the Ukrainian Parliament. **Mr Kivalov** informed the Committee that the draft law on 'State guarantees concerning execution of judicial decisions' was being examined by the Parliament, but could not be voted on this week and would probably be voted at the next session. The **Chairperson** asked to be provided a letter on this issue within one month. **Mr Kivalov**

promised to provide such a letter and to present the developments concerning this draft law at the next meeting of the Committee. **Mr Díaz Tejera** asked how the Ukrainian authorities were going to ensure the independence of the judiciary. **Mr Pylypenko** replied that the new Criminal Procedure Code was in line with the Council of Europe's recommendations and that the reform of the prosecutor general's office was underway in cooperation with the Council of Europe Directorate General of Human Rights and Rule of Law. **Mr Heald** stated that in its last report on Ukraine, GRECO concluded that only three of its recommendations had been fully implemented by Ukraine and twelve had not been properly implemented; thus, he concluded that there had been no progress in the functioning of the judiciary. **Ms Beck** noted that, according to the Ukrainian Minister of Justice, a detailed study of past convictions had shown that under the new Criminal Procedure Code, 30% of these cases would have resulted in an acquittal. She asked whether there would be an amnesty for those cases which should have resulted in an acquittal if a fair procedure had been applied. **Mr Pylypenko** replied to Mr Heald that a new law would change court procedures, which would also require changing the Constitution, and indicated in reply to Ms Beck that certain types of convictions should fall after the entry into force of the new Criminal Procedure Code.

## 26 June 2012

### **Implementation of Strasbourg Court judgments by Bulgaria**

The **Chairperson [Mr Chope]** welcomed Ms Grozdanova, head of the Bulgarian delegation, Ms Yordanka Stoyanova, governmental agent from the Procedural Representation before the European Court of Human Rights Directorate (Ministry of Justice), and Mr Andrey Tehov, the Bulgarian Permanent Representative to the Council of Europe.

**Ms Grozdanova** informed the Committee about the measures currently taken by the Bulgarian authorities in order to tackle the structural problems of excessive length of judicial proceedings, deaths and ill-treatment by law enforcement officers and deficiencies in deportation procedures (full text of the speech available with the Secretariat).

A discussion ensued with the participation of **Mr de Vries**, who deplored the absence of an answer by the Bulgarian delegation to the letter of the President of PACE and asked about the involvement of the Bulgarian Parliament in the process of execution of ECtHR judgments and about further measures to combat the problem of deaths in custody and ill-treatment by police officers.

**Ms Grozdanova** replied that: 1) she had received the President's letter, but could not answer it because of changes in the Ministry of Justice which took place in 2011; neither could she attend the Assembly's April 2012 part-session 2) she had recently discussed the problem of deaths and ill-treatment with the Ministry of Interior. **Ms Stoyanova** added that a new law, which would enter into force from 1 July 2012, allowed the use of force by police only in cases of absolute necessity, in line with the Convention.

**Mr Kivalov** asked whether: 1) measures to implement the *Finger and Dimitrov and Hamanov* pilot judgments would be taken before the deadline fixed by the ECtHR, i.e. 10 August 2012; 2) whether a special mechanism for the implementation of pilot judgments had been foreseen in the Bulgarian Parliament. **Mr Tehov** explained that after the pilot judgments had been delivered, Bulgaria made the necessary arrangements to implement them by a comprehensive programme aimed at improving the functioning of the judiciary. The first results were seen in late 2011, as, according to the Ministry of Justice, more than 83% of the cases were processed within reasonable time frames (within 2 months on average). A special group within the Ministry of Justice had been set up, which worked on draft amendments to the act on the judiciary (already adopted) and the act on the responsibility of the state, in order to observe the deadline fixed by the ECtHR.

**Mr Kivalov and the Chairperson** asked about the parliamentary supervision of the implementation of ECtHR judgments in Bulgaria. **Ms Grozdanova** replied that this issue was examined by the parliamentary commission on human rights and that every year the Minister of Justice presented a report to the Parliament. **The Chairperson** insisted on the need to reply to the President's letter and **Ms Grozdanova** undertook to provide such an answer without delay.

## **28 June 2012**

### **Implementation of Strasbourg Court judgments by the Russian Federation**

**The Chairperson [Mr Chope]** welcomed Mr Dmitry Vyatkin, former member of the Committee, acting in capacity of the Russian State Duma's expert on the execution of ECtHR judgments.

**Mr Vyatkin** stressed that, in 2011, the ECtHR delivered two times fewer judgments against the Russian Federation than before. The main problems relating to the execution of ECtHR judgments concerned non-enforcement of domestic judicial decisions (the *Burdov No 2* group), the supervisory review procedure (the *Ryabikh* group), poor conditions of pre-trial detention and its excessive length (the *Kalashnikov* group), ill-treatment in police custody and actions of the security forces in the Chechen Republic. So far, a number of measures taken by the Russian Federation had been positively evaluated by the Committee of Ministers. Regarding the *Burdov* group, following the adoption of the 2011 federal law on compensation for protracted enforcement proceedings, the percentage of cases concerning this problem dropped to 17 % from 44%. Concerning the *Kalashnikov* group, the relevant judgments of the ECtHR had been sent out to the appropriate authorities and measures were being taken to improve sanitary conditions in detention centres. Since 2007, new penitentiary institutions had been built or refurbished and several cases of abuses by penitentiary officials had been investigated, some leading to convictions. As regards ill treatment in police custody, in 2011, 1,900 employees subordinated to the Ministry of Internal Affairs had been convicted for abuse of functions. Concerning violations of human rights in Chechnya, it was impossible to investigate certain cases due to the lack of witnesses. A Special Investigating Unit had been established and regular consultations on the implementation of ECtHR judgments had been conducted with the Committee of Ministers' Secretariat. As regards payment of just satisfaction awarded by the European Court, it was normally paid within two months.

A discussion ensued with the participation of **Messrs Kivalov** (who stressed that Russia was one of the ten states with the highest number of complaints, asked how the Russian Parliament was involved in implementing ECtHR judgments, and in particular pilot judgments, and why no reply had been provided to the letter of the Assembly's President), **de Vries** (who asked for clarifications about non-observance of interim measures indicated by the ECtHR on the basis of its Rule 39 and wondered whether Article 46 § 3 of the Convention could be applied in case of non-execution of ECtHR judgments concerning the Chechen Republic), **Cilevičs** (who asked about official translations of ECtHR judgments), **Gaudi Nagy** (who stressed the necessity of implementing ECtHR judgments and monitoring the restrictions on the freedom of assembly) and **Ms Reps** (who asked about the implementation of the *Alekseyev* judgment, in view of the recent ban on homosexual propaganda).

**Mr Vyatkin** replied that: 1) to Mr Kivalov - concerning the execution of the judgment *Burdov No. 2*, the Committee of Ministers adopted a decision welcoming the domestic remedies introduced by the Russian Federation and monetary compensation was paid to victims. As regards parliamentary control of the implementation of ECtHR judgments, a draft law to this effect had been introduced to the Douma by the United Russia. The Duma cooperated with the Human Rights Council of the Russian Federation and the Ombudsman. Implementation of ECtHR judgments normally fell within the competence of the Ministry of Justice, which cooperated with the Committee of Ministers and kept all statistical information. Mr Vyatkin was not aware of any follow-up given to the Assembly President's letter; 2) to Mr de Vries – the problem of observing measures indicated under Rule 39 did not only concern Russia. As regards the investigations in "Chechen cases", they produced negative reactions in the Russian society, due to the threats to the tranquility of the individuals having served in special units and their families. The main concern of the Russian authorities was now to maintain peace in the Chechen Republic; 3) to Mr Cilevičs - Russian courts based their rulings on national jurisprudence and the ECtHR case law was only supplementary. Most of the ECHR judgments were translated into Russian, but it was not clear which translations were "official"; 4) to Ms Reps and Mr Gaudi Nagy - the Russian legislation on rallies did not ban public events for any community, except for extremists or terrorists. It was up to municipal bodies to take decisions on conducting rallies, which was governed by regional laws. The Duma and the federal ministries were not competent in this field.

**2 October 2012**

### **Implementation of Strasbourg Court judgments by Poland**

The **Vice-Chairperson [Ms Schuster]** welcomed the head of the Polish delegation, Mr Andrzej Halicki, and the experts – Ms Katarzyna Bralczyk, Ministry of Foreign Affairs, and Mr Piotr Turek, Public Prosecutor's Office. The **rappporteur** asked Mr Halicki how the Polish Parliament was going to implement Resolution 1787 (2011) in the part concerning national parliament's involvement in the implementation of ECtHR judgments.

**Mr Halicki** informed the Committee that on 12 April 2012 the Sejm's Justice and Human Rights Committee had held a meeting on the implementation of ECtHR judgments against Poland, with the participation of the Undersecretary of State at the Ministry of Justice and the Plenipotentiary of the Minister of Foreign Affairs for Proceedings before the ECtHR. During that meeting, government representatives had replied to the questions of MP's and NGOs representatives. It was decided that similar meetings would be held in the future. The Sejm's Research Office prepared a special booklet on "the implementation of ECtHR judgments by the Sejm". In 2007, a special team composed of representatives of different ministries and MPs had held meetings on the state of implementation of judgments in Poland; they had been convened four times in a year. In August 2012, a "Progress Report on the Government Action Programme for the Implementation of ECtHR judgments in respect of the Republic of Poland for the period between July 2008 and July 2012" was prepared and disseminated to all MPs. This report addressed in particular the problems of the "Bug river" properties, rent-control scheme and access to legal assistance, which had already been solved. Furthermore, awareness-raising measures had been taken, such as training sessions for judicial staff organised by the National School of Judiciary and Public Prosecution in Cracow, a publication by the Ministry of Justice of a study "Standards on human rights protection in the legal framework of the European Human Rights Convention, analysis of leading Polish cases" and the organisation of the 6<sup>th</sup> Warsaw seminar on "Application of the Convention for the Protection of Human Rights and Fundamental Freedoms in the national legal order", to be held on 19 October.

**Ms Bralczyk** informed the Committee about the measures taken to solve the problem of excessive length of detention on remand, such as internal supervision by presidents of courts of appeal, followed, if need be, by that of the Ministry of Justice; publication on the website of the Ministry of Justice of a newsletter on the latest ECHR case law (since July 2012) and the reorganization of this website. According to the statistical data of 1 June 2012, the number of detentions on remand had been considerably decreasing. Concerning the issue of effective remedies, on 20 September 2012, an interdepartmental working group had met and decided to submit to the Supreme Court a legal question on the application of the 2004 Act on the complaint against excessive length of proceedings, as this Act was not always applied in compliance with the Convention. As regards poor conditions of detention, cells had been adjusted to disabled persons and conditions in prison hospitals had improved.

**The rapporteur** asked for a written report on the above-mentioned measures and expressed concern that the structural problems in Poland had persisted for so many years. He asked: 1) how the Polish Parliament approached structural problems and whether a concrete action plan and policy had been designed in this respect; 2) how the Parliament was exercising pressure on the government; 3) about statistics concerning the length of proceedings before the ordinary courts and 4) measures being taken to solve problems related to freedom of assembly. **Mr Holovaty** asked: 1) about the establishment of a special sub-committee in the Parliament dealing with the implementation of ECtHR judgments, and 2) what the Parliament was doing to implement the *Bączkowski* judgment, which remained unexecuted for many years. **Mr Montag** elaborated on the issue of excessive length of judicial proceedings, stressing that a similar problem persisted in Germany and that an increase in the number of judges could be a solution. He asked Mr Halicki what concrete measures were envisaged by the Polish authorities to tackle this problem and whether a fixed ceiling of 6 months for the duration of detention on remand could be a remedy against the problem of its excessive length. **Mr Mahoux** asked about « lustration cases » and the restricted access to classified documents: 1) how best to protect the archives and 2) how to reconcile the right to defense with the idea of classifying documents and what should be the scope of the prosecutor's access to such materials?

**Mr Halicki** replied that no permanent structure existed dealing with the implementation of ECtHR judgments in Parliament, but a group of MPs from the Justice and Human Rights, Constitutional Affairs and Foreign Affairs committees dealt with this issue in close cooperation with the Ministries of Foreign Affairs and Justice. The effects of their pressure were already visible. MPs were debating on this subject and would try to establish a permanent committee in the near future. The Parliament was exercising pressure on the government, in particular by obliging the latter to produce a yearly report on the implementation of ECtHR judgments. There was an ongoing public debate in Poland concerning the mentality and authority of the state

institutions; it would allow making progress. Concerning the idea of fixing a ceiling for the duration of pre-trial detention, nothing was in the pipeline, but Mr Halicki promised to reflect on this idea.

**Mr Turek** explained what the General Prosecutor's Office was doing to avoid further violations of the Convention. Concerning excessive length of criminal investigation, out of 1,2 million cases per year, only 450 procedures lasted longer than 2 years, mainly due to strict hierarchical control. Any investigation whose length exceeded one year fell under the supervision of the superior prosecutor; the number of such investigations decreased every year. The said 450 cases were mainly complex ones, such as organised crime cases or cases with an international element. As regards excessive length of detention on remand, there had been a steady improvement; while, in 2005, prosecutors requested the use of pre-trial detention 38,000 times, in 2011 this number amounted only to 25,000. Since 2011, the Prosecutor's office was no longer dependent on the Ministry of Justice, and it was striving to improve the observance of the ECtHR standards. Detentions on remand lasting over 9 months fell under the hierarchical control of the superior prosecutors, while those lasting over a year – under that of the general prosecutor. In November 2012, the general prosecutor would organise a seminar on the structural problems in the use of detention on remand. As regards detention on remand applied at the stage of judicial proceedings, the problem mainly persisted at the level of regional courts acting as first-instance courts in complex cases.

Concerning freedom of assembly, **Ms Bralczyk** added that the presidential draft concerning amendments to the Law on Assemblies had been passed. However, it did not include some of the government's proposals aimed at aligning this law with the *Bączkowski* judgment. Therefore, a new amendment would have to be adopted. As regards lustration proceedings, she stressed that several laws had been passed concerning declassification of documents and she promised to provide information on this in writing.

### **Implementation of Strasbourg Court judgments by the Republic of Moldova**

**The Vice-Chairperson [Ms Schuster]** welcomed Ms Liliana Palihovici, head of the delegation of the Republic of Moldova, and Mr Lilian Apostol, government agent before the ECtHR.

**The rapporteur [Mr de Vries]** stressed that he aimed at helping other MPs to enlarge their parliaments' role in executing ECtHR judgments. He considered that a failure to reply of the head of the delegation to a letter of the president of the Assembly revealed a problem of courtesy. He asked Ms Palihovici: 1) how was the parliament of the Republic of Moldova organised to improve the implementation of judgments? was there a plan in this respect? 2) what was being done concerning the large number of non-enforced domestic judgments?

3) what was being done to stop bad practices concerning unlawful pre-trial detention, its excessive length and poor conditions?

**Ms Pavlihovici** said that there had been a problem with communication in providing, on time, an answer to the Assembly President's letter and promised to provide information in written form. She informed the Committee that a reform of the judiciary had been voted in spring 2012 in the context of "a national strategy for the reform of the justice system". It aimed at securing human rights, enhancing enforcement of judicial decisions, prison conditions, dealing with the problem of abuses by police officers and excessive length of detention on remand. Concerning non-execution of domestic judgments, following PACE resolution 1787 (2011), the implementation of Law no. 87 on compensation of damages was being implemented. There had been a change in the system of private license for bailiffs to avoid further delays and the social-oriented legislation had been amended or abolished, although some domestic judgments remained unenforced. Two months ago, around 50 families received houses from local authorities in Chisinau. As municipalities did not have sufficient funds to pay damages, the remaining families would receive their houses. An effective remedy in this respect was introduced in July 2011; it allowed granting compensation for delays and damages resulting from non-execution of domestic judgments. This remedy had been positively judged by the ECtHR and the CM. Another remedy had been introduced in respect of illegal pre-trial detention (Law No 1545). The Supreme Court had developed case law on compensation for ill-treatment (see *Ciorap* case). Concerning poor conditions of detention, a remedy would be introduced, on the basis of a project supported by the Human Rights Trust Fund. Legislative improvements concerning detention on remand were in the pipeline, the general prosecutor's office issued instructions on templates for judgments in order to align them with the ECtHR case law and the Ministry of Justice was working on the issue of compensation for unlawful detention. Concerning impunity of police officers, the criminal procedure provisions had been amended in order to allow severe punishments for ill-treatment and a special division in the general prosecutor's office had been established. As regards parliamentary supervision, there was no special committee on the implementation of ECtHR judgments, but the Legal Committee was working on this subject and had made a

recommendation to organise a debate on the evaluation of the implementation of ECtHR judgments. It was also working on draft laws with a view to avoiding human rights violations.

A discussion ensued with the participation of **the rapporteur** (who stressed the high number of complaints before the Court and structural problems and asked whether the government had a plan to deal with issues, whether the Legal Committee was working on the issue of implementation of ECtHR judgments on a constant basis and whether expertise from other Council of Europe member states, such as Germany or the UK, was used for police training), **Mr Kalashnikov** (who asked why the Parliament of the Republic of Moldova had criminalised the use of the symbol of the communist party), the **Vice-Chairperson** (who stressed the necessity of training police and asked whether the text on the national strategy for the reform of the judiciary system was available, what measures were taken following CPT reports and who was investigating the use of torture) and **Mr Panțiru** (who wondered whether there was a special department monitoring the implementation of ECtHR judgments in the Ministry of Justice).

**Ms Pavlihovici** indicated that the Parliament was monitoring the implementation of Law No. 1545 and 87 and the national strategy for the reform of the justice system. Although no additional committee to monitor the implementation of ECtHR judgments had been created, the Parliament was focused on monitoring this issue. She replied to Mr Kalashnikov – that the ban on the use of the communist party symbol would be examined by the Constitutional Court, to Mr Panțiru – that recently, the government decided to create within the Ministry of Justice a department which would monitor the implementation of ECtHR judgments, to Ms Schuster – that the national strategy for the reform of the justice system had been elaborated within the last year, with the support of the European Commission, discussed with civil society and adopted in the spring of 2012; its implementation was now underway and recently an anti-discrimination law had been voted. It was a comprehensive strategy with a timetable and funds allocated and it could be found on the web pages of the parliament, the Ministry of Justice and the government. **Mr Apostol** added that, after 7 April 2011, a “zero tolerance” policy towards torture by police officers was being implemented, which required a change of mentality. In order to improve poor conditions of detention, more financial resources were needed; the government was negotiating reconstruction and/or building of new detention facilities. An agreement with banks had been reached in order to build a new penitentiary centre in Chisinau and a house arrest had been refurbished thanks to EU funding. Moreover, the government was reconsidering its plans concerning the construction of arrest houses and the division of shared responsibility between the Ministry of Justice and the Ministry of Interior. Both ministries and the National institute of Justice also regularly organised trainings for judges and prosecutors. Training was conducted by NGOs and government representatives, also with the help of the Council of Europe Office in Chisinau and its experts. Moreover, amendments to the Criminal Procedure Code and Criminal Code had been adopted in order to avoid police officers’ impunity in the future. The General Prosecutor’s Office had a special division responsible for enquiring about cases of abuse. The system of investigation had changed recently and nowadays criminal investigation fell within the remit of the prosecutor, while the Minister of Justice could enquire about general causes of ill-treatment.

#### **4 October 2012**

##### **Implementation of Strasbourg Court judgments by Romania**

The **Chairperson [Mr Chope]** and the **rapporteur [Mr de Vries]** welcomed the representative of the Romanian delegation, Mr Tudor Panțiru, and Ms Irina Cambrea from the Romanian Ministry of Foreign Affairs.

**Mr Panțiru** explained what the Romanian Parliament was doing to overcome structural problems. In 2009, a special sub-committee, composed of seven MPs, had been established within the Legal Affairs Committee. The sub-committee established good cooperation with the Government Agent’s department in the Ministry of Foreign Affairs and focused on non-executed ECtHR judgments and the general measures to be taken. The sub-committee prevented some new violations of the Convention, in particular through the drafting of amendments to the existing legislation and elaborating a draft law on the study on the compatibility of national legal provisions with human rights standards. In the Law on legislative techniques, a new provision obliging the government to seize the Parliament for this purpose was voted. Although it was difficult to convince the government to implement this provision, some progress had been achieved. However, other problems remained: there was no similar sub-committee within the Senate and both chambers needed more qualified staff. As regards the working methods of the sub-committee, it organised several hearings with the Government Agent. This was, for example, the case of the judgment *Maria Atanasiu and others*, whose implementation caused many controversies. In December 2010, an interministerial committee on its implementation was established. The authorities were trying to introduce a general compensation mechanism - as it was impossible to provide *restitutio in integrum* to all potential applicants, limits on

compensation were needed. The proposed legislation included a ceiling for compensation of 15% of the value of the lost property, to be paid in installments over a period of 10 years, which provoked a public outcry, as the choice of this solution had not been properly explained by the government. The draft law was still pending and had to be adopted before the prolonged deadline fixed by the European Court, i.e. April 2013. As regards the implementation of the judgment *Rotaru*, a package of laws on security services was still pending before the Senate.

**The rapporteur** asked Mr Panțiru: 1) how he perceived in his personal capacity of former ECtHR judge, the discrepancies between ECtHR judgments and the government struggle to implement them; 2) what was being done to tackle the problem of excessive length of judicial procedures and non-implementation of final domestic decisions; 3) whether the government had enough funding to improve the conditions of detention, in particular by constructing new buildings. **Mr Panțiru** replied that: ad 1) the ECtHR was too often perceived as a 4<sup>th</sup> instance court; and 2) concerning excessive length of proceedings, a package of new Codes was adopted and a remedy in respect of length of civil of proceedings would be operational as of 2013.

**Ms Cambrea** added that the new Code of Civil Procedure, which would enter into force on 1 February 2013, provided for a possibility to request the judge to accelerate pending judicial proceedings. National courts had developed a case law which allowed applicants to obtain compensation for the damage caused by protracted proceedings, either pending or finalised. Statistics concerning length of proceedings had improved and nowadays first-instance courts were completing cases within six months. The government would send a new action plan to the Committee of Ministers; and 3) as it was difficult to build new detention centres, the government was trying to convert the existing facilities and improve living conditions in prisons, in particular by prolonging the time for outdoor activities and enlarging the number of social and cultural ones. The new criminal codes also contained measures aimed at eliminating prison overcrowding. **The Chairperson** asked why it took the Romanian authorities so long to allow the new Criminal Procedure Code to enter into force. **Ms Cambrea** replied that this code would enter into force probably in 2014; as this was a complex legislative reform, the authorities needed more time and staff to implement it. **Mr Panțiru** added that it would also imply radical changes in the whole legal system and judiciary, including the employment of 400 new judges.

**Mr Diaz Tejera** was of the opinion that it would be better to focus on a speedy solution of pending cases than on employing new judges and **Ms Backman** asked about the level of salaries of judges compared to private lawyers. **Mr Panțiru** replied that Romanian judges' salaries were not sufficiently high and there were numerous vacant posts which for this reason could not be filled for years. He also encouraged the rapporteur to visit Romania, as his predecessor Mr Pourgourides had done, whose visit had been generally considered as very useful.

## 22 January 2013

### **Implementation of Strasbourg Court judgments by Greece**

The **Chairperson [Mr Chope]** welcomed Ms Theodora Bakoyannis (head of the Greek delegation) as well as Mr Ioannis Bakopoulos and Ms Kyriaki Paraskevopoulou (both associate judges of the State Legal Council of Greece) and Ms Archontoula Tourlouloussi (representative of the Ministry of Citizens' Protection). The **rapporteur** welcomed the Greek delegation and asked them to focus on what the Greek Parliament was doing to implement ECHR judgments.

**Ms Bakoyannis** expressed support for the idea of rapid execution of ECHR judgments, as stressed in Mr Pourgourides' report. She pointed out that there was a parliamentary mechanism to monitor implementation of these judgments. The main areas of concern with the implementation of ECHR judgments were: excessive length of judicial proceedings and lack of effective remedy in this respect, ill-treatment by law enforcement officers and lack of effective investigation into such ill-treatment. As regards excessive length of proceedings, considerable progress had been achieved through legislative measures on acceleration proceedings before administrative courts. As regards preventing police violence, a new legislation had been adopted and an independent body dealing with cases of abuse by security forces had been established. **Mr Bakopoulos** explained that the monitoring mechanism in the Parliament was based on its cooperation with the Scientific Service and the Government Agent office. In order to accelerate proceedings before civil courts, single judge tribunals had been established and restrictions on adjournments of cases had been introduced. Following the *Athanasiou and Others* judgment, an effective remedy against delays before administrative courts had been introduced; this positive experience was going to be used as a model to provide similar remedies against excessive length of proceedings before civil and criminal courts. Concerning police violence, there were 11 non-implemented ECHR judgments, dating from 2003 or earlier. There had been no new similar applications before the ECHR since then. Although, according to the CPT



and Amnesty International, the problem persisted, after the incidents in Athens in 2007 and 2008 and in Thessaloniki in 2006, some policemen had been dismissed, fined or imprisoned. Criminal or administrative investigations were still pending in some cases. As regards combating racial discrimination, there had been some improvement. The Ministry of Justice was closely following this issue by collecting data. The Directorate of Internal Affairs (within the headquarters of the police), which was supervised by 2<sup>nd</sup> instance prosecutor and the parliamentary Committee on Institution and Transparency, was giving priority to cases of ill-treatment and racial discrimination. On the basis of a law of 2011 a three-member committee had been established to inquire into abuses by police. Human rights issues were included in the curriculum of the training of all police staff members and the ECHR judgments were disseminated to them. To sum up, many measures to improve the situation had been taken.

A discussion ensued with the participation of **the rapporteur [Mr de Vries]** (who wondered what the Greek Parliament was doing to overcome the above-mentioned significant problems and whether a parliamentary body had been established for that purpose), **Mr Cavosoğlu** (who wondered about the existence of the political will to implement several judgments on Turkish minorities' associations), the **Chairperson** (who asked about changes in asylum procedures and the establishment of reception centres for asylum seekers following the *M.S.S. judgment*) and **Ms Beck** (who expressed concern about the scale of the drama of Greek migrants, stressing that it was a European problem). **Mr Bakopolous** replied to the rapporteur that the parliamentary scientific service, the Committee on Public Order and the Committee on Institution and Transparency were checking the compatibility of legislation with the European Convention on Human Rights. The existing mechanism was based on co-operation with other bodies such as the National Committee for Human Rights institution and the Government Agent, who were providing reports and data. **Ms Bakoyannis** added that the Parliament was always in a position to pose questions to the relevant ministers, including the Minister of Public Order. To Mr Cavosoğlu, she replied that all ECHR judgments, including those concerning Turkish minority, were going to be fully executed, but some more time was needed in order to allow domestic courts of all levels to change their case law. She referred to the Lausanne agreement, stressing that not all Muslim populations, as referred to in the Greek law, were Turkish. Concerning migrants' situation, progress had been made and more than 2,000 people were working in Evros at the border. Ms Bakoyannis stressed that more than 90 per cent of EU migrants were coming to Greece and recently Greece had been confronted with a massive influx of migrants from Syria. Ms Bakoyannis called for a European strategy to tackle the problem, in view of the critical situation in Greece. She also informed the Committee that some of the problematic detention centres for asylum seekers were going to be closed. **Ms Turloumissi** added that a new law, which would allow to free women and children seeking asylum, would be adopted in the first half of February 2013.

### Implementation of Strasbourg Court judgments by Turkey

The **Chairperson [Mr Chope]** welcomed the head of the delegation, Ms Nursuna Memecan, as well as Mr Nurullah Yamali, Counsellor, Permanent Representation of Turkey and Ms Sülen Karabacak, Legal Advisor, Office of the President of the TRNC.

The **rapporteur [Mr de Vries]** welcomed the delegation and recalled that they had responded neither to the letter of the Assembly's President of 5 April 2011 nor the reminder of 7 December 2011.

**Ms Memecan** promised to send all the necessary documentation from Ankara. She stressed that Turkey was fully adhering to the principles of the rule of law and impartiality and independence of the judiciary. She expressed her gratitude to the current Minister of Justice, who was carrying out a reform in cooperation with the EU and the Council of Europe. She also pointed out that since 2009 Turkey had been consulting with the EU with respect to its strategy on strengthening independence and impartiality of judges and their effectiveness. Some important projects were underway: one on the training of judges in cooperation with the ECHR and another one with the Council of Europe on freedom of expression (in the framework of which 300 judges and prosecutors were being trained and handbooks and studies were provided). Two other joint projects (in cooperation with the EU and the Council of Europe) were being carried out in order to enhance the effectiveness of the case law of superior judiciary and reform the criminal justice system. Three pilot court houses had been chosen to conduct assessment studies and field study visits to European countries had been undertaken. A road map setting up further measures was being prepared in cooperation with the Council of Europe's Department for the Execution of Judgments. The 2012 reform package contained proposed amendments aimed at guaranteeing the freedom of expression, in particular by reducing the use of the seizure of publications, suspending sentences for offences committed through media and limiting the number of investigations concerning journalists. Thanks to recent constitutional changes, it was now possible to lodge complaints to the Constitutional Court by invoking the European Convention on Human Rights. An Ombudsman institution had been established in 2012. The number of judges in the Court of Cassation and

the Court of State had been increased and more than 2 million cases had been struck out in relevant courts following the decriminalization of certain offences. Concerning excessive length of detention on remand, the percentage of detained persons was reduced from 49% to 23 % and this measure was being used only in 1% of criminal cases. In only 4 % of cases detention on remand lasted over 3 years. As regards conscientious objectors, Turkey was a country with a deeply-rooted military culture; therefore a shift in the collective mentality was needed. A new law would be welcome. Concerning the case of *Ülke*, the arrest warrant against the applicant had been lifted and the applicant had been removed from the list of persons wanted by the police and could exercise civil rights. Many measures had been taken to end impunity by police officers, including sending out circulars on how to avoid ill-treatment. Concerning the case of *Cyprus v. Turkey*, the issue of property rights had been closed by the Committee of Ministers. Concerning property rights in the Karpas region, some options to retain property and a remedy were available. The issue of missing persons also concerned Turkish missing persons. The process of identification of missing persons had two phases: one conducted by the CMP and another one by the Turkish Northern Cypriot police. Ms Memecan concluded by stressing that Turkey was taking the obligations stemming from its membership in the Council of Europe seriously.

A discussion ensued with the participation of the **rappporteur** (who wondered why Ms Memecan mentioned so many figures in her presentation and how the Parliament was involved in the implementation of the ECHR judgments, and in particular as regards freedom of expression), **Ms Hägg** (who welcomed the reforms, called for a change of attitudes, constitutional changes and a political debate), **Mr Nicolaidis** (who pointed out the high number of non-executed ECHR judgments against Turkey and that, concerning the case of *Cyprus v. Turkey*, no progress had been made since the decision of the Committee of Ministers of June 2012, and that the government of Cyprus had fully cooperated on this issue with the Council of Europe, unlike the Turkish authorities; he also stressed that in the case of *Varnava v. Turkey*, concerning missing persons, the Turkish authorities had not yet paid just satisfaction, despite the fact that 22 years elapsed after the application had been lodged with the ECHR; he recalled that recently the Council of the European Union had reaffirmed its wish to have good relations with Turkey, but called to improve observance of human rights, especially freedom of expression, and to implement ECHR judgments; he asked whether the Turkish Parliament had a political will to execute ECHR judgments) and the **Chairperson** (who wondered why just satisfaction had not been paid to the applicant in the case of *Xenidis Arestis*, a judgment from 2006, and whether the Parliament could do something in this respect).

Ms **Memecan** replied to the rapporteur that the Parliament was involved in most reforms and discussions and had good cooperation with the Ministry of Justice on these issues. She stressed the importance of the implementation of laws, exchange programmes with European institutions and training of judges and prosecutors. She also promised to provide a copy of her speech in writing. Concerning the issue of missing persons, **Ms Karabacak** added that in the case of *Varnava v. Turkey* investigations were being rigorously conducted under the authority of the Northern Cyprus attorney general. The CMP was in charge of finding the whereabouts and exhuming the bodies, but it was not mandated to establish the causes of death. The Northern Cypriot police was conducting criminal investigations with respect to all missing persons, including the Greek Cypriots. A special unit within the general attorney's office was dealing with this issue; it was composed of 15 persons, including experts and interpreters. She assured the Committee that the Turkish authorities were acting in good faith. Concerning the case of *Xenidis-Arestis*, she explained that this issue should be examined in the context of individual and general measures. The Committee of Ministers had analysed the impact of the ECHR decision in the case of *Demopoulos*, in which the Court found that there was an effective remedy. The applicant could therefore bring claims to the Immovable Property Committee and that was why the Secretariat of the Committee of Ministers promised to close this aspect of the case. The Turkish authorities were not refraining from paying the just satisfaction, but were waiting for the assessment of the Committee of Ministers.

## 24 January 2013

### **Implementation of Strasbourg Court judgments by the United Kingdom**

The **Chairperson [Mr Chope]** welcomed the head of the United Kingdom's delegation, Mr Robert Walter, as well as the Permanent Representative, Mr Matthew Johnson, and Mr Rob Linham, Head of Council of Europe Human Rights Policy, Ministry of Justice.

The **rappporteur [Mr de Vries]** expressed concern about the lack of written communication between the head of delegation and the Committee, due to the lack of response to the Assembly's President's letter of 5 April 2011 and the reminder of 7 December 2011. He pointed out that parliaments should hold their

government colleagues accountable and that the UK had a good reputation concerning observance of human rights standards, despite some bad examples.

**Mr Walter** stressed that there were only a couple of issues in the implementation of ECHR judgments against the UK. Three key ministers in the UK Lord Chancellor Chris Grayling, Attorney General Dominic Grieve and Solicitor General Oliver Heald, former member of the Committee, were involved in discussions on these issues. He explained the general procedure for implementing judgments in the UK and the parliamentary involvement in this procedure (full text of the speech is available with the Secretariat), stressing that it was inconceivable for the UK authorities not to implement all Strasbourg Court judgments.

A discussion ensued with the participation of the **rapporteur** (who praised the UK for its model parliamentary involvement in the implementation of ECHR judgments, but was concerned about the 3<sup>rd</sup> option from the draft legislative proposal concerning prisoners' rights, which he considered as unacceptable from the point of view of the ECHR, and about the British enthusiasm to criticise ECHR and European integration; he also asked about the timeline for the adoption of the said legislative proposal), **Messrs Neil** (who stressed that there was little sympathy in the UK population for prisoners' right to vote and that setting a timeline was not appropriate; he judged that all the three proposals introduced by the Government were good), **Michel** (who was disappointed that the UK was not giving a good example to other member states as regards the implementation of ECHR judgments), **Kennedy** (who wondered about the outcome of the UK referendum on its membership in the EU), the **Chairperson** (who asked about the state of implementation of the *S. and Marper* judgment - the timeline for the adoption of the new legislation in Northern Ireland and the implementation of the new regulations in the UK, to what extent the government was taking responsibility for implementing ECHR judgments and about the impact of the accession of the EU to the European Convention on Human Rights on the implementation of judgments against the EU) and **Mr Sasi** (who asked about the observance by the UK of ECHR judgments concerning deportation cases).

Concerning the implementation of the *Hirst No 2* judgment, **Mr Walter** replied that there was a general feeling in the UK that when somebody had been sentenced, he/she had been deprived of a number of civic rights. The right to vote had been traditionally denied to prisoners. Subsequent to the *Scoppola v. Italy (No. 3)* case, the UK intervened in the procedure before the ECHR. A blanket ban was not acceptable, but the judge should be able to decide case by case. A year ago the Parliament had overwhelmingly expressed the view that prisoners should have no right to vote. In November 2012, the Government proposed options, out of which option No. 3 was probably not acceptable. A parliamentary joint committee would assess this draft legislative proposal and would probably recommend option No 1 or No 2. In general the UK had a very good record in implementing ECHR judgments, but this issue was very sensitive. Concerning the timeline, Mr Walter replied that the UK had a year to report back to the Committee of Ministers. Discussions were underway in both houses of the Parliament. The **Chairperson** added that the joint committee had not yet been set up.

Concerning the implementation of the judgment *S. and Marper*, **Mr Walter** replied that draft legislation was now pending in the Parliament of Northern Ireland. **Mr Linham** added that other laws implementing this judgment in the UK had been in force since 1 May 2012. Concerning the Government's responsibility for implementing ECHR judgments, the lead Government department liaised with devolved country administration and coordinated their work with them. Most of the issues fell within the remit of the devolved administration, but, in theory, the UK Parliament could override devolved legislature if it was unreasonably incompliant with international obligations. Concerning EU accession to the European Convention on Human Rights, discussions had been held in the CDDH on 21-23 January 2013 in a positive tone and would be resumed in the first week of April 2013. Some issues still remained sensitive, e.g. how the Committee of Ministers would supervise the execution of judgments against the EU and whether EU member states would vote as a block.

**Mr Walter** replied to Mr Kennedy that the referendum on the UK's membership in the EU would have no impact on its membership in the Council of Europe and to Mr Sasi – that all ECHR judgments should be executed in light of Article 46 of the Convention, but there had been a domestic case, in which a criminal court refused to apply the ECHR case law. There should be a dialogue between the ECHR and domestic courts, like, for example, in the case of *Al-Khawaja and Tahery v. the UK*, where the ECHR took into consideration the UK domestic case law.