Parliamentary **Assembly**
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Implementation of judgments of the European Court of Human Rights

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr. Erik Jurgens, Netherlands, Socialist Group

Summary

The Parliamentary Assembly stresses that the authority of the European Court of Human Rights depends on the effective execution of its judgments by member states. Although by virtue of Article 46 of the European Convention on Human Rights, the supervision of judgments is the responsibility of the Committee of Ministers, this report confirms that the Assembly and parliaments of member states can, and increasingly do, contribute substantially to the speedy and effective implementation of the Court's judgments.

The Assembly's Committee of Legal Affairs and Human Rights has now taken a more proactive approach by giving priority to the examination of cases which concern major structural problems and in which unacceptable delays of implementation have arisen, especially in five states: Italy, the Russian Federation, Turkey, Ukraine and the United Kingdom. Special *in situ* visits were paid by the Committee's rapporteur to these states to examine, with national decision-makers and parliaments, the urgent need to solve outstanding problems. Reasons for non-compliance and difficulties in execution of the Strasbourg Court's judgments in eight other states (Bulgaria, France, Germany, Greece, Latvia, Moldova, Poland and Romania) were also analysed on the basis of written replies received from parliamentary delegations of these states.

Although recognising positive developments in several states, including special domestic mechanisms put into place in Italy, Ukraine and the United Kingdom, the Committee is gravely concerned with the continuing existence of a number of major structural deficiencies and/or a lack of effective domestic mechanisms in several countries. The need to provide effective domestic mechanisms must, in specific instances, be co-ordinated at the highest political level.

There is an imperative need for member states to accelerate and fully execute judgments of the Strasbourg Court, and the Committee proposes that it continues to monitor the situation closely, especially in states in which major problems have been identified.

If the parliamentary delegations of these states do not show, within six months, concrete results or realistic action plans which have or will solve substantial and often longstanding issues of non-compliance with Strasbourg Court judgments, the Assembly should consider using Rule 8 of its Rules of Procedure (suspension of the right of national delegations to be represented in the Assembly).

The Committee also proposes that the Assembly recommends to the Committee of Ministers a number of measures to improve the effectiveness and visibility of the supervision of the execution of the Court's judgments.

A. Draft resolution

1. The Parliamentary Assembly emphasizes that respect for the European Convention on Human Rights (hereinafter "ECHR"), including the compulsory jurisdiction of the European Court of Human Rights (hereinafter "the Court") and its binding judgments, is the main pillar of European public order which guarantees peace, democracy and good government in Greater Europe. It is therefore essential for the Assembly to maintain a keen interest in different aspects of the ECHR system and not least in the effective implementation of the Court's judgments, on which the authority of the Court depends.

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

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

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

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

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

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

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

8.1. The 2006 Azzolini Law in Italy creating a legislative basis for a special procedure for supervision of the implementation of judgments by the Government and Parliament;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.3. no comprehensive plan has been presented to resolve the systemic problem of overcrowding of detention facilities in Greece (*Dougoz and Peers* judgments, CM Interim Resolution DH(2005)21), which has just been highlighted in yet another judgment (*Kaja v. Greece* of 27 July 2006);

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

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

12. The Assembly reiterates that the initial existence of possible objective difficulties, which may well be understood, does not relieve the states concerned from their obligation to overcome these difficulties and resolve without further delay the aforementioned problems, thus bringing their systems into conformity with the ECHR. The prolongation of such situations of non-compliance puts at stake the effectiveness of the ECHR system and should be seen as a breach of the state's obligations under the Convention and under the Statute of the Council of Europe.

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

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

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

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

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

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

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

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

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

22. In view of the foregoing, the Assembly:

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

22.2. calls upon the member states to set up, either by 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 takes full responsibility for and co-ordinates all aspects of the domestic implementation process;

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

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

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

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

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

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

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

B. Draft recommendation

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

1.1. reserves special treatment to the most important implementation problems, notably those identified in Resolution … (2006) and to report to the Assembly as soon as possible on the results achieved in the resolution of these problems;

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

1.3. improves its communication policy in order to give important Article 46, ECHR, implementation issues the necessary visibility at the European level and within the member states, at the same time ensuring that its work is more transparent and the resulting texts readily accessible;

1.4. induces member states to improve and where necessary to set up domestic mechanisms and procedures – both at the level of governments and of parliaments - to secure timely and effective implementation of the Court's judgments through coordinated action of all national actors concerned and with the necessary support at a highest political level;

1.5. intensifies its pressure and to take more robust measures in case of continuous non-compliance with a judgment by a member state due to either refusal, negligence or incapacity to take appropriate measures.

C. Explanatory memorandum, by Mr Erik Jurgens, Rapporteur

Contents:

I. Introduction: the Assembly's involvement in the implementation of judgments

1. Past experience convincingly shows that the Assembly has contributed, in various ways, to a quicker resolution of often difficult issues of non-compliance with the judgments of the European Court of Human Rights (hereinafter "the Court"). This is essential, as non-compliance by member states undermines the very authority of the Court.

2. This contribution has taken a variety of forms such as the raising the political visibility of outstanding issues, exerting pressure on responsible decision-makers, putting forward constructive proposals for solutions and ensuring adequate parliamentary action at the national level. In so doing the Assembly has adopted a number of reports and issued a series of resolutions notably for the attention of domestic authorities and recommendations to the Committee of Ministers. It has also organized debates and engaged a constructive dialogue with the Committee of Ministers through oral and written questions. The Assembly has also sought to ensure that its national parliamentary delegations involve themselves more actively in the pursuit of solutions to outstanding questions and in enabling, in general, the improvement of member states' domestic capacity to respond to the Court's judgments. Special attention to the implementation of the Court's judgments has also been given in the context of the Assembly's monitoring procedure.

3. Successful examples of such work are plentiful and can be illustrated by the Assembly's contribution to the overcoming of political hostility to execution (e.g. *Stran v*. *Greece, Loizidou v. Turkey*), where necessary by ensuring the adoption of necessary legislation such as that providing for the reopening of domestic proceedings (e.g. *Hakkar v. France, Sadak & Zana v. Turkey*) and the adoption of comprehensive constitutional and legal reforms to prevent new violations similar to those found by the Court (e.g. cases concerning the action of security forces and violations of - the still unresolved issue of - the freedom of expression in Turkey).

4. Since 2000[1], five reports and Resolutions and four Recommendations concerning specifically the implementation of Strasbourg Court judgments have been adopted by the Assembly. The involvement of the Assembly, and in particular of the national delegations of the member states concerned, has been shown to be instrumental in implementing decisions of the Court.

5. In the Rapporteur's opinion, which is widely shared in the Committee on Legal Affairs and Human Rights, the Assembly should continue, and indeed have a more prominent role, in promoting compliance with the Court's judgments. By helping to ensure that member states rapidly comply with judgments, notably judgments requiring parliamentary action, it provides tangible assistance to victims of human rights violations. It also helps the Committee of Ministers to discharge more speedily and effectively its responsibilities in this respect. The Assembly's enhanced action on this matter is totally in line with the 2005 Council of Europe's Warsaw Summit's decision to improve the efficiency and implementation of the European Convention of Human Rights (hereinafter "ECHR") and strengthen its role as the constitutional instrument of European public order which guarantees peace, democracy and good government in a Greater Europe.

II. The 6th report: scope and procedure

6. The preparation of the 6th report started in June 2005 when a number of judgments of the European Court, and decisions under former Article 32 of the Convention, were selected with respect to 13 States Parties in accordance with the standard criteria applied by the Parliamentary Assembly for this exercise:

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

1 Doc 8808; Res 1226(2000) and Rec 1477(2000) of 28/09/2000; Doc 9307; Res 1268(2002) and Rec 1546(2002) of 22/01/2002; Doc 9537; Res 1297(2002) and Rec 1576 (2002) 23/09/2002; Doc 10192; Res 1381(2004) of 22/06/2004; Doc 10351; Res 1411(2004) and Rec 1684(2004) of 23/11/2004.

7. The 13 States Parties concerned appear in Appendix I (for more details see Introductory Memorandum AS/Jur(2005)35 and the Secretariat's working paper Doc AS/Jur (2005) 32 and Addendum thereto). Three States, namely Italy, Turkey and Poland were identified at this stage as raising more substantial concerns.

8. Following the Committee's decisions adopted in June 2005, the President of the Assembly addressed letters to the heads of 13 national delegations (namely Belgium, France, Germany, Greece, Italy, Latvia, Moldova, Poland, Romania, Russian Federation, Turkey, United Kingdom and Ukraine) requesting information and/or specific action to implement certain judgments and decisions finding violations of the ECHR.

9. In December 2005, the Rapporteur presented to the Committee interim results of the exercise in his Supplementary Introductory Memorandum (AS/Jur (2005) 55 rev)[2]. At this stage, a number of new important implementation issues were added to the list in respect of some of the 13 countries concerned, in accordance with the second criterion mentioned above.

10. On 7th November 2005, the Committee endorsed the Rapporteur's suggestion that a number of important outstanding issues might more easily be solved through a more active involvement of the Assembly, notably through *in situ* visits by the Rapporteur to the countries where the most numerous and/or important implementation issues arise. Such visits were notably expected to increase the Assembly's ability to reach directly decision-makers in parliaments, governments and state administrations to discuss possible solutions to outstanding problems.

11. The five countries selected for these visits were Italy, Turkey, the Russian Federation, Ukraine and the United Kingdom. The detailed reasons of this selection appear in Part III below, which also presents a summary overview and assessment of progress achieved by all 13 countries in resolving implementation problems addressed by the Rapporteur since June 2005 and, where appropriate, outlines prospects for future action required.

III. Progress in resolving implementation problems: summary overview and assessment

12. The information presented below has been collected by the Rapporteur from various public sources including the public annotated agendas and other documents of the Committee of Ministers and/or received from several of the national authorities of the 13 countries concerned.

i. Bulgaria

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

13. Although certain recent progress is encouraging, the execution of this case is long overdue.

14. As regards the individual situation of the applicant, a person expelled from Bulgaria in violation of the Convention, there has been recent progress in that earlier this year the Supreme Administrative Court cancelled the impugned expulsion order. The only obstacle to his family's return to Bulgaria remains the ban on Mr Al-Nashif's re-entry to the territory. The authorities are therefore considering possibilities for *ex officio* cancellation of this ban. In view of the time that has now elapsed since the Court's judgment back in mid-2002, an immediate decision to cancel the ban appears called for.

15. Some progress has also been made in the legislative reform required by the judgment: In November 2005 the Ministry of Justice sent to the Bulgarian Council of Ministers a draft law providing for the abolition of Article 46§2 of the 1998 Aliens Act which prevents judicial review of the Executive's decisions to expel foreigners on grounds of national security. The decision of the Council of Ministers on the draft law is still awaited. The Rapporteur notes that the necessity of this reform has been clear ever since 2002, when the *Al-Nashif* judgment was delivered, and that no good explanation has been given for the delay in its adoption. In these circumstances respect for the Convention requires that the highest priority now be given to completion of the reform so that the power to order expulsion in the national interest will eventually be sufficiently circumscribed by law and subject to judicial review.

2 http://assembly.coe.int/CommitteeDocs/2005/20051220_Ejdoc55.pdf

16. It is a cause of considerable concern that it is still not clear whether Bulgarian law has been amended to allow for judicial review also of the lawfulness of detention in specialised centres prior to expulsion on the grounds of national security.

17. Considering the situation in general (see also CM/Del/OJ/DH(2006)966 Volume I, Public, pp. 43-44), the Bulgarian authorities are urged to take, without further delay, all the outstanding execution measures required by the Court's judgment and also to consider what organisational measures might be taken to ensure that situations of delay such as the present one do not repeat themselves.

ii. France

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

18. Remedial measures are still awaited in favour of the applicant who was denied access to a court. The applicant has unsuccessfully brought before the French labour courts his claims relating to the validity of the decision to discharge him from his post at the S.N.C.F. These courts (and most recently the Court of Cassation in a judgment of 30/09/2005) dismissed the applicant's requests, holding themselves not competent to review their position on the situation impugned by the European Court.

19. In the light of these developments, the government has reiterated (most recently in March 2006) that the applicant might still lay his claims before the administration and, if they were rejected, lodge an appeal before the administrative courts, which directly apply the Convention and the Court's case-law.

20. The viability of this avenue is presently being checked (CM/Del/OJ/DH(2006)966 Volume I, Public, p.12). Meanwhile, the administration is strongly encouraged to remedy this overdue issue without further delay, possibly through an *ex officio* action to compensate for the time passed and the lack of clarity in French law as to the correct avenue of redress.

21. The fact that the Rapporteur's request for information addressed to the Chairman of the French PACE delegation remains unanswered contradicts the Council of Europe's spirit, which expects that parliamentary delegations cooperate wholeheartedly with the rapporteur of PACE, certainly if his requests to a delegation have been endorsed by a Committee and the President of the Assembly, (see also PACE Resolution 1411 (2004), § 6).

iii. Germany

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

22. Certain progress has been achieved to restore the applicant's right of visit to his 5 year' old child. Regular visits commenced as of August 2005 and continue presently. This progress is closely supervised by the Committee of Ministers, which seeks regular confirmations that meetings of the applicant with his son continue to take place in a good atmosphere and expects up-dates on the progress of the proceedings before the Naumburg Appeal Court relating to visitation and custody rights.

23. The applicant considers that the suspended adoption proceedings are a major obstacle to the establishment of a relationship with his son as required by the European Court's judgment CM/Del/OJ/DH(2006)966 Volume I, Public, pp.180-182).

24. The authorities have assured the Rapporteur that they will do what is necessary to implement the judgment (letter of 14 September 2005 by the Chairman of the German PACE Delegation).

25. They are encouraged to handle this case with special diligence in order to grant the applicant full redress for the violation of his family life found by the Court.

iv. Greece

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

26. These judgments reveal a systemic problem of poor conditions of detention due to, notably, the overcrowding of Greek prisons or detention centres. In her reply of 1 November 2005, the Chairman of the Greek PACE Delegation to the Assembly recalled the complex situation at the basis of the violations found and stated that the adoption of general measures remedying the structural shortcomings in the overwhelmed Greek penitentiary system was a "Herculean task". The reply did not, however, present any plan to resolve this systemic problem.

27. Admittedly, a number of measures were announced in the Committee of Ministers Interim Resolution (ResDH(2005)21 of 7 April 2005), not least the construction of new detention centres and prisons. On 12/09/2005 Law 3388/2005 entered into force providing, *inter alia*, that present "independent prisons'" reception capacity may not exceed three hundred (300) detainees, while the future, new ones should not exceed four hundred (400) detainees.

28. Yet no fresh progress has been reported to the Assembly as regards the construction of new prisons or detention centres in Greece. The Rapporteur's concerns in this respect have been confirmed by the recent report of the Council of Europe's Human Rights Commissioner to Greece (CommDH(2006)13 of 29/03/06), which states that "*in December 2005, none of the 17 new prisons had been completed".* The report concludes that *"it is disappointing and of increasing concern, given the continuing rise in the prison population, that not a single new prison has been completed in the more than three years since 2002* [year of the Commissioner's first visit to Greece]*".*

29. The prolongation of this situation is regrettable. The systemic problem at issue has just led the Court to find yet another violation of the ECHR in the *Kaja v. Greece* judgment of 27 July 2006. The Rapporteur considers that the Greek authorities and the Greek delegation to the Assembly should make it their priority to resolve this problem which causes repetitive violations of the ECHR and to report progress achieved and, possibly an action plan for further reforms, to the Committee of Ministers and the Assembly.

v. Italy

a. General situation: important problems of non-compliance

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

31. It appears from the present exercise that the problem of Italy's compliance with the Court's judgments remains a serious concern, both as regards the number of cases pending for a long time before the Committee of Ministers (more than a half of all cases are Italian cases) and the number and the extent of structural problems that remain to be solved to comply with the judgments (some 12% of the structural problems concern Italy).

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

33. A number of problematic cases/issues have been selected for this report (see AS/Jur(2005)32[3] It is encouraging that some of them have been solved (e.g. case of *Grand Oriente v. Italy*, where the Region of Marches has amended its legislation impugned by the Court as restricting the freedom of association). Progress in some other areas has been made as showed by the recent public information provided by the Committee of Ministers (see Appendix III, Part V). However, the three following problems remain of major concern:

- Structural deficiencies of the judicial system resulting in excessively lengthy proceedings, especially in civil cases, (CM Interim Resolution DH(2005)114), which also leads to ineffective protection of a wide range of other substantial rights; this causes large numbers of repetitive violations of the ECHR and represents a serious danger to the Rule of Law and efficient government in Italy;

3 http://assembly.coe.int/CommitteeDocs/2005/20050609_Ejdoc32.pdf).

- Italian law still does not allow reopening of domestic criminal proceedings impugned by the Court; Italy has thus not complied up to this day with its obligations in the *Dorigo case*, where the applicant still suffers from serious consequences of unfair criminal proceedings, more than 6 years after the finding of the violation;
- The systemic problem of "indirect expropriation", an abusive practice conducted by local authorities to the detriment of the applicants' property rights under the ECHR.

b. Recent measures to improve Italy's capacity to implement the Court's judgments

34. In order to respond to the Assembly's concerns, the Italian Parliament adopted in January 2006 a Bill submitted the then Chairman of the Italian Delegation to the Assembly, Mr. Azzolini. This Law creates a legislative basis for a special procedure for supervision of the implementation of judgments by the Government and Parliament. In addition the Presidents of the Senate and of the Chamber issued circulars insisting on the importance of systematic verification of the compatibility of draft laws with the Convention with a view to anticipating and more effectively preventing violations.

35. Moreover, a draft Law on reopening of domestic proceedings impugned by the Court, would appear to have recently been transmitted to the newly elected Parliament, although the Rapporteur received conflicting information as to this matter. In parallel, Italian courts appear to be developing a case law ensuring that sanctions imposed in violation of the ECHR cannot be executed. Awaiting the entry into force of the legislative reform, this development has to be strongly supported.

c. Rapporteur's visit to Italy

36. During his visit to Italy on 5-7 July 2006, the Rapporteur welcomed the new constructive attitude of the Italian authorities, not least of the PACE Delegation Chairman, and their understanding that Italy's record of compliance with judgments should be urgently improved. The Rapporteur also noted the positive approaches demonstrated by the Head of Legal and Legislative Affairs Department of the Council of Ministers, the officials of the Ministry of Justice and the members of the Supreme Council of the Judiciary.

37. The Rapporteur notes with interest that the new Government has held a first meeting of a monitoring/co-ordinating group designated to ensure appropriate implementation of the Azzolini law and strongly encourages its speedy implementation of this law which may play a decisive role in resolving unacceptable systemic problems in Italy.

38. The Rapporteur encourages the Ministry of Justice to complete its work aimed at the improvement of the Pinto law and to permit reopening of judicial proceedings subsequent to an adverse finding by the Strasbourg Court.

39. On a more general level, it is encouraging to hear, from a number of sources within the state apparatus, declarations that the resolution of the problem of the excessive length of the proceedings has at long last been given the top priority. It would appear important to start an in-depth analysis of the root causes of this deeply disturbing phenomenon in Italy, including of the attitudes of the key actors (judges, lawyers, citizens). In this respect, the Rapporteur noted with interest the Supreme Council of the Judiciary's awareness of the need to improve judges' and prosecutors' managerial and administrative skills, to change the professional culture and the attitude to their responsibilities.

40. The Rapporteur stresses that the complexity of the underlying problems is such as to require enhanced and concerted efforts of all actors of the Italian legal system. Thorough reform strategies in this respect still remain to be established. The Rapporteur counts on very close involvement of Parliament in this process.

vi. Latvia

Slivenko v. Latvia (judgment of 9 October 2003)

41. This case gave rise to concerns in June 2005, given the lack of progress in restoring the applicants' residence rights in Latvia after their expulsion to Russia found to be in violation of the ECHR by the Court. On 27/07/2005, the Committee of Ministers' Chairman wrote to the Latvian Minister of Foreign Affairs to convey the Committee's concern in this respect. The Chairman recalled that the judgment requires that the applicants be

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

42. By a letter of 2 November 2005, the Latvian Delegation to the Assembly informed its President that an active dialogue was under way between the applicants and the Government to implement the judgment.

43. The Rapporteur notes with satisfaction that decisive progress has now been made in this respect and that the applicants' rights of permanent residence in Latvia have been restored as required by the Court's judgment.

vii. Moldova and the Russian Federation

Ilaşcu and others v. Moldova and Russia (judgment of 8/07/2004)

44. The lack of progress in the implementation of the *Ilascu et al. v. Moldova and Russian Federation* judgment as regards the release of the two applicants still detained in the "Moldovan Republic of Transdnistria" remains of great concern. The President of the Assembly raised this issue in his letters to the Moldovan and Russian PACE delegations. The Rapporteur has also discussed the issue with the Russian authorities during the visit to Moscow on 30-31 May 2006.

45. In her reply, the Chairperson of the Moldovan PACE Delegation referred to a number of initiatives which had already been reported to the Committee of Ministers. With regard to the applicants still in jail, the Chairman of the Russian PACE Delegation reiterated their position that "*Russia does not have any possibilities to influence the authorities of Transdnistria, which is "an integral part of the sovereign Republic of Moldova*". He added that "*together with the mediators from Ukraine and the OSCE the Russian Federation continues efforts aimed at rendering the necessary assistance to the sides of the conflict in order to break the impasse*."

46. However, in early 2006, the Russian authorities appeared to have taken a more flexible and constructive position, when they declared themselves in favour of the search for a solution in the *Ilaşcu* case (Interim Resolution DH(2006)11). It is regrettable that this position has not yielded any result. The Committee of Ministers has thus been led to adopt on 10 May 2006 a fourth Interim Resolution DH(2006)26. In this Resolution the Committee "*regret(s) profoundly that the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment, despite the Committee's successive demands to this effect".*

47. Both respondent States, and especially the Russian Federation which has so far failed to display proper diligence in this case, have to intensify their efforts in order to ensure the full implementation of the Court's judgment. The urgency and importance of this point were again stressed during the Rapporteur's discussions with the authorities in Moscow. The Rapporteur considers that urgent resolution of this problem is of utmost importance for the success of the current Chairmanship of the Russian Federation in the Committee of Ministers.

48. The Rapporteur stresses in addition that the erroneous belief that the judgment has far-reaching implications for state responsibility must be dissipated. It concerns a very special problem hardly likely to be repeated. Besides, the implementation of this decision of the Court just implies the release of the prisoners concerned, which can hardly be regarded as a complicated decision to take.

viii. Poland

49. Poland was initially identified as giving rise to special concerns due to the increasing number of judgments requiring comprehensive general measures (see AS/Jur(2005)35, §§18-20[4])-and AS/Jur (2005) 32-pp. 22-24[5]). However, according to the information provided by the Chairman of the Polish Delegation to the Assembly (letter of 31 August 2005), supplemented by that available on the Committee of Ministers website, substantial progress has been achieved on two major outstanding issues.

4 http://assembly.coe.int/CommitteeDocs/2005/20050620_Ejdoc35.pdf
5 http://assembly.coe.int/CommitteeDocs/2005/20050609_Ejdoc32.pdf,

50. While close supervision by the Assembly of the ongoing reforms and of their results remains appropriate, the Rapporteur's visit to this country was not deemed necessary.

Broniowski v. Poland judgment

51. Shortly after the Committee of Ministers adopted Interim Resolution (ResDH(2005)58 of 5 July 2005) on one of the two outstanding problems – the measures expected in response to the *Broniowski* judgment, which concerns a violation of the applicant's property rights on account of Poland's failure to ensure adequate compensation to persons repatriated from the territories beyond the Bug River in the aftermath of the Second World War. This Interim Resolution showed steady progress in the setting up of a new mechanism for compensation to the Bug river claimants. Three days later, i.e. on 8 July 2005, Polish Parliament passed the relevant legislation, which entered into force on 7 October 2005.

52. The Rapporteur welcomes the swift adoption of the legislation, which appears to conform to the judgment's requirements. What is now at stake is its effective operation in practice. The Rapporteur has been informed that some substantial elements of the payment scheme, such as the electronic data processing system, are not yet operational. The Rapporteur encourages the authorities to complete the reform to allow quick and effective resolution of all similar cases at the domestic level.

Cases concerning excessive length of proceedings

53. A number of general measures have also been adopted in respect of these cases, which appear to highlight an important structural problem in Poland. The authorities have introduced an effective domestic remedy against the excessive length of proceedings (see decisions of 1/03/2005 in *Michalak v. Poland* (24549/03) and *Charzyński v. Poland* (15212/03). A draft Interim Resolution is presently being prepared within the Committee of Ministers to take stock of the measures adopted and possibly identify outstanding questions (see CM/Del/OJ/DH(2006)966 Volume I, Public, pp.113-115).

54. While welcoming the introduction of an effective domestic remedy, the Rapporteur emphasizes the constant position of the Committee of Ministers, according to which *"the setting-up of domestic remedies does not dispense states from their general obligation to solve the structural problems underlying violations"* (Interim Resolution DH(2005)114). The authorities are therefore encouraged to make it their priority to adopt such measures without delay under the supervision of the Committee of Ministers. The Rapporteur also considers that the time has come for the Committee of Ministers to provide a comprehensive assessment of all measures adopted so far and to provide guidance for further reforms.

ix. Russian Federation

a. General situation: important systemic problems revealed

55. After the prompt reactions to the first European Court's judgments, the execution process has slowed down in the adoption of further legislative and other reforms to solve important structural problems revealed in Strasbourg.

56. The Russian Federation is presently confronted with an increasing number of complex issues raised in recent judgments of the Court, including with some important systemic problems. These problems have already been described in the Supplementary Introductory Memorandum (AS/Jur(2005)55 rev[6]) and will only be briefly recalled below (see more details and up-dates in the Appendix III):

- the deficient judicial review over pretrial detention, which results in its excessive length and overcrowding of detention facilities (see CM Interim Resolution DH(2003)123);
- chronic non-enforcement of domestic judicial decisions delivered against the State (CM/Inf(2006)19);
- violations of the requirement of legal certainty by extensive quashing of binding judicial decisions through the *nadzor* procedure (CM Interim Resolution DH(2006)1);

6 http://assembly.coe.int/CommitteeDocs/2005/20051220_Ejdoc55.pdf

- violations found by the Court on account of abuses by the security forces in the Chechen Republic or elsewhere disclose other problems requiring comprehensive measures, including those relating to disappearances (see recent Court judgment of 27/07/2006 in *Bazorkina v Russia*).

57. The solution to these problems should be sought urgently because they affect a very large number of people in the Russian Federation. The influx of numerous clone cases in the Court is also likely to undermine the effectiveness of the ECHR mechanism.

b. Rapporteur's visit to the Russian Federation

58. The Rapporteur welcomes the frank and open position of most of the Russian officials and institutions he met in Moscow as well as their clear understanding that the above problems put at stake the effectiveness of the Russian judicial system, and indeed, of the State as a whole. It is perhaps indicative that especially the presidents of the Constitutional Court and of the Supreme Court showed a very constructive attitude, as both of them recognized the problems and encouraged the Rapporteur in his endeavours to help find a solution for them.

59. The authorities provided assurances that the most important problems would be addressed as a matter of priority and that appropriate steps would be taken to ensure rapid adoption of reforms required by the European Court's judgments.

60. The Russian officials' clear willingness to come to grips with the aforementioned important problems is most welcome. The Rapporteur stresses that the complexity of these issues is such as to require enhanced and concerted efforts of all actors within the Russian legal system.

61. Thorough reform strategies in this respect, however, still remain to be established. In view of the present problems raised in the judgments and others still to come, the Rapporteur has strongly recommended to the authorities to set up a special mechanism of interagency cooperation in the implementation of Strasbourg Court judgments. Constant involvement of Parliament and the Russian delegation to the Assembly in the implementation process is also necessary. The Rapporteur is convinced that his Russian parliamentary colleagues will seriously consider his recommendation to set up a specific mechanism and procedure for parliamentary oversight to implement Strasbourg Court judgments, as well as other relevant proposals made in the draft resolution. The Rapporteur also trusts that the members of the Russian delegation to the Assembly will promote and follow-up the adoption of the specific measures required by certain judgments (for details, see Appendix III, Part III).

x. Romania

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

62. The European Court criticized the Romanian law as it did not lay down with sufficient precision the limits to be respected by the domestic authorities in the exercise of their power to gather, record and archive information concerning national security. Nor did it allow individuals to challenge the holding, by the intelligence services, of information on their private life or to refute the truth of such information.

63. By its Interim Resolution of 5 July 2005 (ResDH(2005)57), the Committee of Ministers noted that Law No. 535/2004 on the prevention and repression of terrorism now provides for a procedure of judicial supervision of all secret surveillance measures, including cases involving threats to national security.

64. The Committee regretted, however, a number of shortcomings which still remain more than five years after the judgment. In particular the procedure to be followed in order to have access to archives taken over by the RIS from the former secret services (others than the Securitate), the absence of specific regulation concerning the age of the information which could be stored by the authorities, or the lack of a possibility to contest the holding of this information and, save for certain specific cases, their truthfulness. Therefore, the Committee called upon the Romanian authorities to remedy these problems.

65. The Rapporteur notes with concern that no new developments have been reported by Romania since last year. While understanding the initial existence of objective difficulties in the adoption of this comprehensive

reform, the delay of six years would appear excessive and unjustified. The Romanian authorities are therefore urged to make the national security reform a priority and to provide a reasonable timetable for its adoption.

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

66. The *Dalban* judgment found a violation of the applicant's right to freedom of expression on account of a prison sanction imposed for defamation by the former Criminal Code. The Romanian authorities postponed to September 2008 the entry into force of the new Criminal Code (adopted on 29/06/2004), which was expected to widen the possibility to use the defense of truth in criminal proceedings concerning defamation.

67. In any event, following the amendment in June 2005 of the 1997 Criminal Code (currently in force), the offence of defamation is no longer punished by imprisonment, which has been replaced by a fine. Moreover, the Government submitted a new bill decriminalising defamation, which was enacted in summer 2006.

xi. Turkey

a. The general situation

68. It is recalled that the main problems of compliance that have warranted the Rapporteur's special attention with respect to Turkey are as follows:

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

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

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

- Application of the current provisions governing freedom of expression and the activity of political parties in accordance with the Convention and the Court's judgments, as prescribes new Article 90 of the Constitution;

- *Doğan v. Turkey* judgment of 29/06/2004 concerning the problem of compensation to internally displaced persons and of their return to villages in the south-east.

b. Rapporteur's visit to Turkey

69. During his visit to Turkey, on 5-7 April 2006, the Rapporteur discussed the above issues with Foreign Minister Abdullah Gül, decision-makers of the Turkish parliament, government administration and the highest judicial bodies. He welcomes the assurances received from the Turkish authorities that all implementation issues were being addressed "as a matter of priority".

70. He noted in particular, with satisfaction, the positive response to the *Doğan* judgment, following which Turkey adopted and implemented a new Compensation Law, thus providing to internally displaced persons an effective domestic remedy to obtain compensation for property destroyed. The effectiveness of this remedy has been confirmed by the Court in its recent decision in the case of *İçyer*. It was noted, however, that the findings of the Court in the case of *İçyer* did not address the problem of whether the applicant(s), or persons in the same situation, can, in fact, return to their villages.

71. As regards judgments concerning the freedom of expression, despite the comprehensive reforms adopted, doubts still remain as to whether the authorities interpret the new provisions in conformity with the ECHR. Similar concerns exist in the field of the implementation of the existing rules governing the activities of the security forces.

72. Of great concern is the lack of any progress in the implementation of the *Hulki Guneç* judgment either through the reopening of impugned proceedings or other *ad hoc* measures granting redress to the applicant.

73. The implementation of judgments concerning the Cyprus issue should no doubt call for the special attention of the Assembly and more generally of the Council of Europe. While important progress has been achieved, more remain to be done, not least on the issue of missing persons. The successful implementation of all judgments concerning Cyprus may constitute a valuable and tangible contribution of the Council of Europe to a comprehensive solution of the Cyprus issue. The Rapporteur tried to convey this message to the Turkish authorities and trusts they will enhance their constructive efforts to fully comply with these judgments.

74. He welcomes the assurances received from the Turkish authorities that all implementation issues were being addressed "as a matter of priority" and looks forward to receiving information about the results so achieved.

xii. United Kingdom

a. General situation

75. The United Kingdom has a relatively big number of old judgments of the Court that have not yet been fully implemented, due principally to delays in adoption of legislation. The Committee of Ministers has been awaiting for years some important legislative or other reforms to be adopted in order, for example, to prohibit the physical punishment of children amounting to ill-treatment, to introduce adequate legal safeguards during detention in mental hospitals, to ensure clarity and precision of 'binding-over' orders and to ensure that no negative conclusion could be drawn from the accused person's silence during interrogation without legal council.

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

b. Progress Report in Parliament on the implementation of judgments

77. On 8 March 2006, the Joint Parliamentary Committee on Human Rights issued its first Progress Report concerning the implementation of the Court's judgments. The Report takes stock of the outstanding implementation problems and of the recent action taken by the authorities to remedy them. The Report also analyses certain general issues, such as the remaining obstacles to the reopening of domestic proceedings, the non-retroactivity of the Human Rights Act, and makes various recommendations in order to improve compliance with judgments (see Appendix III, Part I).

c. Rapporteur's visit to the United Kingdom

78. During his visit to the United Kingdom on 8-10 March 2006, the Rapporteur hailed the first progress report of the Parliamentary Joint Committee on Human Rights as "*a model to be followed by other parliamentary bodies"*. He is grateful to his British colleagues for having positively responded to his previous recommendations to pose parliamentary questions to their Government in relation to the outstanding implementation issues.

79. In his meetings with the competent authorities, the Rapporteur also raised a number of these issues and discussed prospects for their solution. He noted with satisfaction that in most of the cases selected for his report, the United Kingdom swiftly responded to the Court's judgments by adopting interim measures in practice and announced a legal reform to ensure full coherence between the new practice and the legal texts.

80 The Rapporteur has the feeling that the problems of non-implementation in the UK find their basis in the traditional British way of tackling general problems by taking practical measures to solve them. In this case by preventing repetition of the government action which violated the Convention, without at the same time changing formally the legislation or the policy which led to the impugned action in the first place.

81. When legal reforms are announced by a respondent state, the Committee of Ministers tends to wait until their formal (legislative) adoption, considering that the implementation process is not complete until this is done. The authorities are thus encouraged to complete the reforms announced to the Committee of Ministers, unless they conclude that the measures adopted in practice are sufficient so as to obviate the need for further reforms. In so doing, misunderstandings as to why cases remain on the Committee of Ministers agenda for many years – even though in practice the problem has been solved – would be dissipated.

82. The Rapporteur also discussed with the authorities the problematic issue of non-retroactive effect of the Human Rights Act and its consequences for the United Kingdom's capacity to honour its obligation to abide by the Strasbourg Court's judgments, in particular as far as individual measures are concerned. The possibility of using Section 10 (remedial measures) of the Human Rights Act was discussed in this context.

83. A detailed presentation of the situation as concerns the (non-)implementation of the Court's judgments is provided in the Appendix III to the present report (Part I). The Rapporteur notes with regret that some important and overdue implementation issues still remain unsolved and calls upon all authorities concerned to remedy this situation. He insists in particular on the need to make rapid and visible progress in the investigations in *McKerr* and other similar cases and to complete the reforms required to prevent physical ill-treatment of children impugned by the *A.* judgment.

xiii. Ukraine

a. General situation: important problems revealed

84. Notwithstanding comprehensive and thorough reforms initiated by the authorities, the European Court is now confronted with the constantly increasing influx of clone cases in respect of Ukraine providing clear evidence of systemic problems relating notably to:

- chronic non-enforcement of domestic judicial decisions delivered against the State and its entities;
- violations of the requirement of legal certainty by quashing of final judicial decisions through *nadzor* procedure, aggravated by serious interference with judicial independence (CM Interim Resolution DH(2004)14);

85. In addition, the problem of ill-treatment in police custody has been more recently addressed by both the Committee of Ministers and the Rapporteur in the context of the *Afanasyev v. Ukraine* judgment of 5/04/2005 (final on 5/07/2005). This judgment seems to require important individual and general measures.

b. Recent measures to improve Ukraine's capacity to implement the Court's judgments

86. A new Law on the Enforcement of Judgments and the Application of the case-law of European Court entered into force on 3 March 2006 (full text reproduced in the Appendix III to this report). This Law provides for a coordinated approach, under the supervision of the Government's Agent before the Court, to ensure the proper implementation of the Court's judgments.

c. Rapporteur's visit to Ukraine

87. During the visit, which took place on 19-20 June 2006, the Rapporteur raised all these issues in detail with the Ukrainian authorities concerned. He conveyed the Council of Europe's concerns at the existence of structural problems seriously affecting the efficiency of the Ukrainian judicial system which cause a large numbers of repetitive violations of the ECHR. He also stressed the need to improve the current legal and regulatory framework for police activities and domestic remedies, including investigation into alleged ill-treatment and compensation of victims. On the last mentioned point, the Rapporteur suggested the adoption of specific provisions on compensation ensuring the State's objective liability for abuses in police custody by unknown perpetrators.

88. The Rapporteur notes with satisfaction the declared determination of the authorities to solve the structural problems raised by the Strasbourg judgments and welcomes the adoption of the aforementioned Law

on the Enforcement of the Court's Judgments. The authorities are encouraged to implement this Law quickly, which may constitute a good example to follow by other states.

89. The Rapporteur was also provided with a number of draft laws demonstrating various reform strategies established by the authorities (see Appendix III, Part IV), which will no doubt contribute to preventing new similar violations in the future. That said, the Rapporteur strongly urged the authorities to immediately implement interim measures to remedy very specific problems raised by the continuous influx of applications before the Court (at the same time preventing yet further overburdening of the Court). The Rapporteur noted with regret that no progress had yet been reported in this area.

90. Finally, the Rapporteur encouraged closer involvement of Parliament in the implementation process. He invited the authorities to consider appropriate ways and means within Parliament to promote Parliament's intensive cooperation with the commission to be set up under the new Law on the Execution of the Court's judgments, with a view to achieving conclusive and visible results.

IV. Concluding remarks

91. In pursuing his investigation into the problems of implementation of judgments outlined in the present Report, the Rapporteur has noted with considerable surprise and concern the existence of important problems of lack of access to and visibility of various important texts issued by the Committee of Ministers in the course of its execution supervision (interim resolutions, decisions and press releases etc…) For example, important Resolutions concerning major structural problems (e.g. those regarding the length of proceedings in Italy) are virtually inaccessible whether in the HUDOC database or on the Committee of Ministers own internet site, where the inadequacy of the research tools makes searches extremely difficult and time-consuming. This absence of such visibility of the Committee of Ministers execution supervision may well have contributed to a number of cases of delay noted in the present report.

92. It will therefore be interesting to see the extent to which the annual reports of activities carried out by the Committee of Ministers, as envisaged in the Committee's recently revised Rules for the supervision of the execution of judgments and the terms of friendly settlements (adopted on 10 May 2006), and the proposed annual tripartite meetings between the Committee of Ministers, the Parliamentary Assembly and the Commissioner of Human Rights to "promote stronger interaction with regard to the execution of judgments" (Committee of Ministers Declaration of 19 May 2006 on sustained action to ensure the effectiveness of the implementation of the ECHR at national and European levels) will ameliorate the present unsatisfactory situation.

93. This insufficient visibility of 'European supervision' may, to a certain extent, also explain in part why major initiatives for effective national supervision also tend not to be noticed, even by member states' legislative organs and decision-makers in the countries concerned.

94. The Committee of Ministers must therefore ensure that its work is more transparent and that important texts are readily accessible. The above-referred to Committee of Ministers annual reports on the execution of judgments and the proposed tripartite meetings will, it is hoped, considerably help in this respect. Likewise, member states should improve, and where necessary set up at both governmental and parliamentary levels, procedures to secure immediate and effective implementation of the Court's judgments. In so doing, the latter can avail themselves of facilities offered to them by the Council of Europe's Development Bank, as recommended in the 2005 Summit Action Plan and reiterated by the Committee of Ministers in its Declaration of 19 May 2006. It would appear that, in certain circumstances, the Bank will be able to provide financial backing to states facing structural problems at the national level The Rapporteur strongly encourages countries to make use of this facility, especially when such action can ensure the rapid implementation of judgments revealing important systemic problems.

95. As concerns member states, a number of encouraging initiatives have been noted by the Rapporteur. The issuing of the first progress report by the Joint Committee on Human Rights of the British Parliament and its regular supervision of progress made in the execution of cases against the United Kingdom is undoubtedly not only a model to be followed, but also an important contribution presently underway to "bring human rights home" or, put in other terms, to reinforce the national implementation of the Convention (more information on this subject can be found in the Appendix III to this report).

96. The recent Azzolini Law in Italy, providing a legal basis for supervision of execution by Parliament and Government is yet another encouraging development from this perspective. The Assembly will need to follow further developments of this initiative with close attention.

97. The Rapporteur urges parliamentarians from other countries not only to take inspiration from these initiatives, but also to take a much more pro-active approach in their respective legislative bodies to ensure the ECHRs implementation. Further developments along these lines would enhance the efficiency of execution. National parliaments should introduce specific mechanisms for regular parliamentary oversight of Strasbourg Court judgments. Indeed, responsible governmental ministries should be held much more strictly accountable to Parliament for prompt execution of Court judgments.

98. Another conclusion resulting form the Assembly's examination of the problems underlying slow and negligent execution concerns the more technical organization and coordination of execution domestically. Experience suggests the need for a centralizing or coordinating authority. In some countries this is done by the Office of the Government Agent before the Court. Ukraine's innovative initiative to give legal recognition to the role of the Government Agent before the Strasbourg Court, and to lay down the procedures to be followed in different types of cases, deserves consideration (see Appendix III, Part IV, 2, for text) . The Assembly will follow closely the implementation of this law and its effects on the improvement Ukraine's capacity to rapidly respond to the Court's judgments.

99. These positive experiences suggest that member states should be called upon to set up, either by legislation or otherwise, effective domestic mechanisms to secure the rapid implementation of Court judgments. In order to make such mechanisms truly efficient and allow them to overcome or circumvent internal disagreements, notably as to the definition of the responsible authority, they should be managed and supported at the highest political level.

100. The Rapporteur has noted with interest the recent efforts on the part of the Court to intervene more actively to facilitate the execution of judgments by spelling out itself more clearly what type of implementation measures are required, notably in so as far as individual measures and the need to introduce effective remedies are concerned. The Rapporteur notes, however, that the Court's requirements remain, in general vague, as a result of the respondent State's wide discretion in determining what are adequate means to reach the result required by the Convention. The new development of the Court's practice thus in no way diminishes the need for strict supervision of execution by the Committee of Ministers and emphasizes the importance of the advisory role played by the Directorate General of Human Rights Department for the execution of judgments (DG-II).

101. The same is true with the judgments delivered in "pilot procedures" used by the Court to address systemic problems and to order their resolution: the efficiency of the "pilot procedure" can only be safeguarded if the Committee of Ministers diligently exercises its competence to assess the adequacy and sufficiency of the implementation measures taken by respondent states. The Rapporteur considers, in addition, that this procedure should be used only in such cases or groups of cases which reveal all aspects of the systemic problem involved so that the "pilot procedure" may allow for a comprehensive assessment. Otherwise, this procedure would create a risk not to give sufficient guidance to the respondent state, thus delaying the resolution of the systemic problem concerned. An in depth reflection in this respect is necessary to fully safeguard the Court's effectiveness with due respect to the judicial nature of its procedures.

102. Finally, the Rapporteur notes important links which exist between the supervision of the execution of judgments and the more general effort to improve the national implementation of the ECHR, as highlighted by the follow-up of the five Recommendations referred to by the Committee of Ministers at its 114th meeting in May 2004. The two exercises must go hand in hand and mutually reinforce each other.

103. In conclusion, the Rapporteur suggests that the Assembly continues regularly to examine the issue of implementation of judgments and assesses in the context of a future report the follow-up given to the Resolution and Recommendation to be adopted during its 4th part session of 2006.

APPENDIX I

Summary of principal problems encountered in the execution of judgments with respect of 13 Contracting State Parties to the ECHR[7]

Country	Case / Date of Judgment(s) or decision(s)	Violation(s)	Outstanding problem(s) in the execution of the judgment(s)/decision(s)
1. Bulgaria	Al-Nashif and others (20/06/02)	Art.5§4, Art.8, Art13	Domestic proceedings still pending with a view to allowing the applicant's return to the country; Reform of the Alien Act to be completed.
2. France	Lemoine Daniel (17/06/99)	Art.6§1	Adoption of remedial measures vis-à-vis the applicant who was denied access to a court/
3. Germany	Görgülü (26/02/04)	Art.8	A father is still to be granted access to his 5-year old child born out of wedlock.
4. Greece	Dougoz (06/03/01) Peers (29/09/99)	Art.3, Art.5§1 Art5§4 Art.8	Improvement of detention conditions.
5. Italy	**see Part III [in document AS/Jur (2005) 35] and document AS/Jur (2005) 32[8]**		
6. Latvia	Slivenko (09/10/03)	Art.8	Restoring the applicants' residence rights in Latvia.
7. Moldova and Russia	Ilaşcu and others (08/07/2004)	Art.3, Art.34, Art.5§1	Applicants who are still in detention to be released.
8. Poland	**see Part V [in document AS/Jur (2005) 35] and document AS/Jur (2005) 32**		
9. Russia	Kalashnikov (15/07/02)	Art.3,Art.5§3Art.6§1	Improvement of detention conditions.
10. Romania	Rotaru (04/05/00)	Art.8, Art.13, Art.6§1	Reform of the laws regulating the activities of secret services.
	Dalban (28/09/99)	Art.10	Entry into force of the new provisions of the criminal code concerning defamation.
11. Turkey	**see Part IV [in document AS/Jur (2005) 35] and document AS/Jur (2005) 32**		
12. United Kingdom	McKerr (04/05/01) Finucane (01/07/03) and 4 other cases	Art.2	Effective investigations to be carried out in the applicants' cases; Legislative and other reforms to be completed to ensure that adequate procedural safeguards surround such investigations.
	Murray John (08/02/96) and 4 other cases	Art6§1, Art.6§3	Entry into force of Section 36 of the Criminal Evidence (Northern Ireland) Order 999, on non-permissible inferences from suspects' silence prior to their access to a lawyer.
	A. (23/09/98)	Art.3	Legislative or other reforms to prohibit effectively the physical punishment of children in breach of Article 3 in Scotland and Northern Ireland; Possible further measures to ensure effective deterrence of such ill treatment throughout the United Kingdom.
	Hashman and Harrup (25/11/99)	Art.10	Legislative or other reforms to ensure "binding over" orders are sufficiently clear and precise.
	Faulkner Ian (30/11/99)	Art.6§1	Adoption of a statutory scheme for legal aid in civil cases in Guernsey.

7 Text taken from table found in Appendix to Doc. AS/Jur (2005) 35.

8 http://assembly.coe.int/CommitteeDocs/2005/20050620_Ejdoc35.pdf
http://assembly.coe.int/CommitteeDocs/2005/20050609_Ejdoc32.pdf

	Johnson Stanley (24/10/97)	Art.5§1	Adoption of a new Mental Health Bill, currently before Parliament.
13. Ukraine	Sovtransavto Holding (25/07/02)	Art.6§1, Art.1 of Protocol 1	Concrete measures to prevent impermissible interference by the executive with the administration of justice; Further development of training of judges on the ECHR; Reform of the civil procedure to be completed to abolish prosecutors' power to apply for quashing of final judgments.

APPENDIX II

Texts of press releases issued following the Rapporteur's visits to the United Kingdom, Turkey, the Russian Federation, Ukraine & Italy (in chronological order)

A. Rapporteur's visit to the United Kingdom

Rapporteur hails 'model' parliamentary report on UK's implementation of Court judgments

London, 10.03.2006 - The visit to the United Kingdom by Erik Jurgens (Netherlands, SOC), rapporteur on the implementation of judgments of the European Court of Human Rights, took place from 8 to 10 March. During the visit the rapporteur met with parliamentarians and officials from various ministries to discuss outstanding issues relating to the United Kingdom's implementation of the Court's judgments.

The first progress report of the Parliamentary Joint Committee on Human Rights on the UK's implementation of Strasbourg judgments, issued on 8 March, was hailed by Mr Jurgens as "a model to be followed by other parliamentary bodies".

This was the first of a series of visits that will later take him to Italy, Turkey, the Russian Federation and Ukraine. The visits are in preparation for Mr Jurgens' sixth report for the Parliamentary Assembly on this subject. Priority will be given to thirteen states in which notable delays or difficulties in the implementation of some of the Court's judgments have arisen.
For more information on UK parliamentary report: UK parliamentary report on implementation of Strasbourg judgments

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B. Rapporteur's visit to Turkey

Assembly rapporteur in Turkey: 'It is imperative that Strasbourg Court judgments are complied with'

07.04.2006 – "It is imperative that Strasbourg Court judgments are complied with," said Erik Jurgens (Netherlands, SOC), rapporteur on the implementation of judgments of the European Court of Human Rights, at the end of a visit to Turkey (5-7 April 2006).

Mr Jurgens met with Foreign Minister Abdullah Gül, decision-makers of the Turkish parliament, government administration and the highest judicial bodies in order to discuss possible solutions to outstanding problems.

He discussed implementation of recent constitutional and legal reforms to ensure full compliance with the European Court's judgments concerning, in particular, abuses by members of the security forces, unjustified interference with the freedom of expression and the dissolution of political parties. Progress and outstanding issues in the implementation of the *Cyprus v. Turkey* judgment were also considered.

The rapporteur said he had received assurances from the Turkish authorities that all implementation issues were being addressed "as a matter of priority".

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C. Rapporteur's visit to the Russian Federation

Implementation of judgments of the ECHR: meetings in Moscow 'most constructive'

[31/05/2006] The PACE Rapporteur on the Implementation of judgments of the European Court of Human Rights (ECHR), Erik Jurgens (Netherlands, SOC), qualified discussions he had during his high-level two-day-visit in Moscow as most constructive. The visit to Russia by Erik Jurgens (Netherlands, SOC), Rapporteur on the Implementation of judgments of the European Court of Human Rights, took place this week from the 30-31 May.

During the visit, the Rapporteur met with high Russian officials, including members of Parliament, Presidents of the Constitutional and Supreme Courts, General Prosecutor, the federal service on sentence execution, the legal counsellor to the President of the Russian Federation as well as decision-makers in the presidential administration and government.

Following the discussions, which were most constructive, the Rapporteur has received the assurances of the authorities that the most important implementation problems will be addressed as a matter of priority to ensure rapid adoption of reforms required by the Strasbourg judgments. Among the issues addressed were the improvement of conditions of pretrial detention, the issue of legal certainty and effectiveness of the Russian judiciary, prevention of abuses by the security forces and the implementation of the judgment in the *Ilascu case*. The issue of improving domestic mechanisms for implementation of the Court's judgment was also discussed.

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D. Rapporteur's visit to Ukraine

Visit to Ukraine of the rapporteur on the implementation of judgments of the Court

20/05/2006 Erik Jurgens (Netherlands, SOC), rapporteur on the Implementation of judgments of the European Court of Human Rights, visited Ukraine on 19 and 20 May.

During the visit, the rapporteur met with representatives of the Ukrainian parliament, government, administration and judicial bodies to discuss most urgent implementation problems, including the issue of legal certainty and the independence of the judiciary, the non-enforcement of domestic judicial decisions and the prevention of violence in police custody. The issue of improving domestic mechanisms for implementation of the Court's judgments was also discussed.

The rapporteur welcomed the recent law for the execution of the Court's judgments by Ukraine and encouraged the authorities to resolve the outstanding problems as a matter of priority. The authorities acknowledged problems that give rise to appeals, many of them repetitive, to the European Court of Human Rights, and are diligently trying to find solutions; through new legislation and training judges. The problems are such that no quick solutions will, however, be found.

After the United Kingdom, Turkey and the Russian Federation, the rapporteur's visit to Kiev is the fourth in a series of five visits that will conclude in Italy in July. The visits are in preparation for the Parliamentary Assembly's 6th Report on the Implementation of judgments of the European Court of Human Rights. Priority will be given to 13 Council of Europe member states in which important delays or difficulties in the implementation of the Court's judgments have arisen, in particular in the five countries to be visited.

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E. Rapporteur's visit to Italy

"Italy not yet doing enough" says Jurgens

7/07/2006 The visit to Italy by Erik Jurgens (Netherlands, SOC), Rapporteur of the Parliamentary Assembly's Committee on Legal Affairs on the Implementation of judgments of the European Court of Human Rights, took place this week from the 5 to 7 July.

During the visit, the rapporteur met with representatives of the Italian parliament, government, administration and judicial bodies to discuss most important implementation problems such as unacceptable and excessive length of judicial proceedings, so-called indirect expropriations and the need to re-open judicial proceedings to erase the consequences of trials found to have been unfair by the European Human Rights Court.

The rapporteur welcomed the recent "Azzolini Law", the draft text on re-opening of judicial proceedings, and other reform efforts, stressing the need for "*swift measures to ensure that the Strasbourg Court and Committee of Ministers are not suffocated by Italian cases*". He urged the authorities, and in particular his parliamentary colleagues, to resolve outstanding problems as a matter of top priority.

After the United Kingdom, Turkey, the Russian Federation and Ukraine, the Rapporteur's visit in Rome is the last in a series of five visits. The visits are in preparation for the Parliamentary Assembly's 6th Report on the Implementation of judgments of the European Court of Human Rights. In this report priority will be given to 13 Council of Europe member States in which important delays or difficulties in the implementation of the Court's judgments have arisen, in particular in the five countries visited.

Note : for further information on the rapporteur's work on the implementation of judgments of the European Court of Human Rights: Introductory Memorandum; Supplementary Introductory Memorandum; Working Paper

APPENDIX III

Background information concerning states visited by the Rapporteur[9]

Contents

9 The Rapporteur was accompanied by Mr Andrew Drzemczewski, Head of the Secretariat of the Committee on Legal Affairs and Human Rights, on his visits to the United Kingdom, Turkey and Italy, and Ms Isild Heurtin, Deputy Secretary of the Committee, on his visits to the Russian Federation and Ukraine.

PART I: Rapporteur's visit to the United Kingdom

1) Programme of the visit

Wednesday, 8 March 2006

14 :00 Meeting with officials from the Attorney General's Office :
15:15 Meeting with members of the Parliamentary Joint Committee on Human Rights
18h00 Informal meeting with Lord Lester of Herne Hill and Mr David Anderson, QC

Thursday, 9 March 2006

9:30 Meeting with Mr John Granger, Deputy Legal Adviser and Government Agent before the ECtHR, Foreign and Commonwealth Office (Mr Granger also participated in all meetings held in the morning, as listed below)
10:00 Meeting with Ms Nasrin Khan, Home Office
10:30 Meeting with Ms Emma Brown and Ms Alison Foulds, Home Office
11:30 Meeting with Ms Sandra Walker, Department for Education and Skills
12:30 Meeting with Ms Emma Harrison and Mr Richard Rook, Department of Health

Evening: Working dinner with Mr Tony Lloyd, Chairman of UK PACE Delegation and Mr Tom Goldsmith, Delegation Secretary

Friday, 10 March 2006

9 :00 Meeting with Mr Tim Morris, Head, and Mr Mark Armstrong, International Organisations Department, Foreign and Commonwealth Office

10:15 Meeting with Mr Edward Adams and members of the Human Rights Team, Department for Constitutional Affairs

2) Summary from Parliamentary Joint Human Rights Committee Report : Implementation of Strasbourg Judgments. First Progress Report (8 March 2006)

"Summary : in this Report, the Committee analyses progress in implementing judgments of the European Court of Human Rights which have found the UK to be in breach of the European Convention on Human Rights (ECHR). The Committee has continued the practice of its predecessor Committee in the last Parliament, of monitoring the general implementation measures put in place following such judgments, by writing to the relevant Minister requesting information about the implementation steps proposed. This report publishes the Committee's correspondence with Ministers regarding ECtHR cases, and analyses the progress made towards implementation in each case.

In Chapter 2 of the Report, the Committee considers some of the general legal and procedural issues which have arisen in the implementation of ECtHR judgments. It reiterates the recommendation of the previous committee that the government should make more up-to-date information on implementation available to the public (paragraph 7).

The Committee notes the delay in the implementation of some ECtHR judgments is a matter of concern, and highlights a number of outstanding cases where discussions on the implementation measures required are continuing (paragraphs 8 to 14).

The Committee notes that successful applicants to the ECtHR may have difficulty in finding a remedy in their own case, since general implementation measures may not apply retrospectively to them. The Committee recommends that, in drafting legislation or remedial orders following ECtHR judgments, consideration should be give to addressing the circumstances of the individual applicants in the case which led to the remedial measures, as well as of those in analogous situations (paragraph 15).

A further issue is that, where the Convention violation occurred before the coming into force of the Human Rights Act 1998, there is no domestic law obligation to remedy the violation, following the decision of the House of Lords in *In re McKerr*. The Committee acknowledges the Government's assurance that it would apply the same standard of implementation to pre and post Human Rights Act cases, but notes with concern the delay in implementing *McKerr* and other similar cases (paragraph 18).

The Committee points out that where the ECtHR finds that a conviction has been obtained in breach of Convention rights, it will not always be possible to re-open the case and review the conviction. The Committee recommends that the Government should investigate the possibility of reform of the law to allow for the re-opening of proceedings in appropriate cases following judgments of the ECtHR (paragraph 23).

In Chapter 3, the Committee comments on the implementation measures taken in a number of cases which it has reviewed in the course of this Parliament. It considers in particular:

- *Steel and Morris v UK*, concerning the right to fair trial and freedom of expression of the defendants in the "McLibel" case;
- *Beet v UK and Lloyd v UK* concerning the right to fair trial and right to liberty of persons imprisoned for failure to pay fines or local taxes;
- *Crowther v UK*, concerning the right to fair trial within a reasonable time in proceedings for enforcement of a confiscation order;
- *King v UK*, concerning the right to fair trial within a reasonable time in Inland Revenue investigations and appeals;
- *Hirst v UK*, concerning the right of prisoners to vote, on which the Committee has previously commented in its report on the Electoral Administration Bill;
- *Whitfield v UK*, concerning the right to an independent tribunal and right to legal representation of prisoners charged with disciplinary offences;
- *Blackstock v UK*, concerning the impact on the right to liberty of delays in reviewing the detention of a discretionary lifer prisoner;
- *Hooper v UK*, concerning the right to legal representation and to make representations to the court in proceedings to bind over to keep the peace;
- *Henworth v UK*, concerning the right to trial within a reasonable time in criminal proceedings;
- *Massey v UK*, also concerning delays in criminal proceedings;
- *B and L v UK*, concerning the prohibition on marriage between father-in-law and daughter-in-law, where the Committee is shortly to report separately on a draft remedial order introduced to rectify the incompatibility;
- *Roche v UK*, concerning the right to respect for private life and access to information on tests in which the applicant participated at Porton Down Chemical and Biological Defence Establishment; and
- *Yetkinsekerci v UK*, concerning delays in criminal proceedings".

For full text of the Report see website:
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/133/13303.htm

3) State of execution of selected Court judgments[10]

John Murray v. United Kingdom, 18731/91, judgment of 8/02/96 - Grand Chamber, Interim Resolutions ResDH(2000)26 and ResDH(2002)85

Update of situation: No fresh developments to be reported.

Outstanding measures: The required amendments to the relevant Northern Ireland law, most importantly section 36 of Police and Criminal Evidence Order 1999 (on non-permissible inferences from silence of suspects prior to their access to legal advice), prepared in 1999, have not entered into force as foreseen, i.e. by summer 2006. The government considers that the entry into force of the new provision cannot take place until it has terminated its review of the police and criminal evidence legislation and the codes of practice in Northern Ireland. This

10 Sources: Public Annotated Agendas and other documents of the Committee of Ministers and/or information submitted to the Rapporteur by the state's authorities.

examination is still being carried out. A governmental order proposing amendments to the above mentioned regulations and codes is not likely to be laid before Parliament before Autumn 2006.

In the meantime, the interim measures continue to be effective. The administrative guidance issued in 1998 to the police and prosecutors in Northern Ireland to ensure that police interrogations be preceded by access to legal advice and that prosecutors should not avail themselves of the right to make adverse inferences from the silence of a suspect during any police interrogations carried out in the absence of such advice, continue to be respected in practice, thus preventing new violations.

Johnson Stanley v. United Kingdom, 22520/93, judgment of 24/10/97

Update of situation: After the Rapporteur's visit to the United Kingdom, the Committee of Ministers decided to close its examination of the Johnson case.

The Johnson case concerns the applicant's continued detention (3 ½ years) in a hospital, even though he was no longer suffering from mental illness, pending his placement in a hostel (violation of Article 5§1, ECHR).

It was initially announced that the judgment would be implemented by legislative reform of the Mental Health Act. However, before legislation could be introduced, a House of Lords' decision overruled previous case-law, which was perceived to conflict with the requirements of Article 5, and gave guidance as to how the authorities should give effect to the legislation in order to avoid breaches in the future. Having received assurances that the new legal position would not be adversely affected by proposed legislation, the Committee of Ministers closed its examination of the implementation of the judgment.

A. v. UK, 25599/94, judgment of 23/09/98; Interim Resolution ResDH(2004)39

Update of situation: Positive developments in Northern Ireland as to the adoption of legislation. No new positive developments in Scotland or England and Wales.

It should be recalled that in this case, the following were required: legislative or other reforms to prohibit effectively the physical punishment of children which attains a severity to be in breach of Article 3 ECHR and, given the vulnerability of the victims and their inability to protect themselves, other measures to ensure effective deterrence of such ill-treatment throughout the United Kingdom.

England and Wales: Measures to ensure effective deterrence, for example, awareness-raising about unacceptable physical punishment of children, in particular, through guidance for social services and parents are still outstanding.

Section 58 of the 2004 Children Act makes the defence of reasonable punishment available only where the charge is one of common assault. The Children Act 2004 appears to prohibit the physical punishment of children in breach of Article 3.

Northern Ireland: Like in England and Wales, measures to ensure effective deterrence, for example, awareness-raising, in particular, through guidance for social services and parents, are still outstanding.

The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order was laid before Parliament on 12 June 2006. Once that Order is passed and enters into effect, the situation in Northern Ireland will be the same as that in England and Wales.

Scotland: Information on measures to ensure effective deterrence and examples of case-law are still awaited.

As doubts have been expressed as to whether the Scottish law of "justifiable assault" introduced by Section 51 of the Criminal Justice (Scotland) Act 2003 in October 2003 satisfies the Convention requirements, the Committee of Ministers has asked for examples of case-law to assess how the legislation is applied in practice.

Hashman and Harrup v. United Kingdom , 255494/94, judgment of 25/11/1999, Interim Resolution ResDH(2005)59

Update of situation**:** Some progress has been noted. In early January 2006, the UK authorities furnished information that they would implement the judgment by issuing a Practice Direction, which would ensure that (a) the terms of binding-over orders are more specific; (b) adequate notice is given to allow proper time for preparation and making representations; and (c) the legal representative is heard, as required by Article 6 of the Convention.

It should be recalled that in this case, legislative or other reforms are required to ensure that "binding over" orders are sufficiently clear and precise.

Information is still required as to whether the Practice Direction has been adopted.

Measures taken: Interim measures taken include guidance to prosecutors, which was published in the Crown Prosecution Service Casework Bulletin No. 6 of 2000, to the effect that they should not ask courts to consider binding-over orders unless there is evidence of past conduct which, if repeated, is likely to cause a breach of the peace. The guidance also suggested that courts could be encouraged to ensure that the behaviour to be avoided was made quite clear in the order.

Faulkner Ian v. United Kingdom, 30308/96, judgment of 30/11/99 - Friendly settlement

A permanent civil legal aid scheme, in accordance with the undertakings in the friendly settlement, needs to be set up. Presently, attempts are being made to turn the interim extra-statutory civil legal aid scheme to a permanent statutory one. On 26 May 2005, Guernsey's States of Deliberation approved the propositions in the first States Report on Legal Aid, which aimed at defining the scope of the proposed statutory civil aid legal aid scheme and at obtaining approval for undertaking further negotiations with the Guernsey Bar. The Office of the Legal Administrator of the legal aid scheme has now been turned into a statutory office.

The interim civil legal aid scheme exists since 1st January 2002. The authorities stated that the extra-statutory scheme is operating successfully and that the United Kingdom's international obligations are being fully satisfied. It appears that there have been no complaints in last few years about the availability of legal aid for civil cases.

- McKerr v. United Kingdom, 28883/95, judgment of 04/05/01, final on 04/08/01
- Finucane v. United Kingdom, 29178/95, judgment of 01/07/03, final on 01/10/03, and 4 other cases

The latest public documents related to this group of cases (CM/Inf(2006)4 revised 2 and Addendum revised 3 thereto) show that steady progress is being made with regard to general measures. At their 948th meeting (November 2005) the Committee of Ministers decided to close their examination of several problems raised by the judgments in question. The issues regarding the scope of inquest proceedings, the possible findings that such inquests could result in, the possibility to compel the persons who shot the deceased to attend the inquest in question as witnesses, the disclosure of witness statements prior to the appearance of witnesses at the inquest and the availability of legal aid for the representation of the victim's families are thus all considered to be solved.

The examination of **six other aspects regarding general measures in these cases remains open** however despite the fact that also in these areas some progress has been made. The problem regarding the lack of independence of police officers investigating the incident from those implicated has been improved by the introduction of the Police Ombudsman and the practice of calling in outside police forces when necessary. However, clarifications regarding the powers of the Police Ombudsman with regard to retired police officers are, among other things, still awaited. The United Kingdom authorities are also working on solving the problem concerning length of inquest proceedings. The Coroners Service is being modernised and enlarged. These reforms are currently being implemented and information on their progress and impact is awaited.

With regard to individual measures much remains to be done in the light of the United Kingdom's continuing obligation, which was stressed in the Interim Resolution adopted in this case, to conduct effective investigations in the cases at issue. The case of *McKerr* will be investigated by the Police Ombudsman and the cases *Shanaghan and Kelly and others* fall within the remit of the Historical Enquiries Team. In these cases,

information on the time-frame for the start of the investigations is, among other things, awaited. The cases of *Jordan* and *McShane* are currently still the subject of inquests. In the past year, little progress has been made in the McShane inquest. The Jordan inquest has been suspended, pending the outcome of several judicial review proceedings currently before the House of Lords. On the case of *Finucane*, the United Kingdom authorities have recently indicated that the third enquiry conducted by Sir John Stevens is intended to form the basis of the individual measures relating to this case. The commitment to a public Inquiry under the Inquiries Act 2005 relates to the separate political commitment given by the United Kingdom following talks with the Northern Ireland parties at Weston Park in 2001, and should not be considered as a requirement arising out of the United Kingdom's obligations under Article 46 ECHR, which are instead met by the police re-investigation. Further information regarding this investigation is awaited.

PART II: Rapporteur's visit to Turkey

1) Programme of the visit

Wednesday, 5 April 2006

17:00 Meeting with Mr Nuri Ok, Prosecutor General, Court of Cassation
18:30 Informal meeting with Mr Abdulkadir Kaya, former Ministry of Justice official in charge of training of judges and prosecutors on the ECHR

Thursday, 6 April 2006

09:30 Meeting with Mr Haşim Kiliç, Acting President of the Constitutional Court
11:00 Meeting with Mr Ambassador Hasan Göğüş, Director General for Multilateral Political Affairs, Ministry of Foreign Affairs
11:30 Meeting with Mr Ambassador Haydar Berk – Director General for Bilateral Political Relations, Aviation and Maritime Affairs, Ministry of Foreign Affairs
12:30 Working lunch hosted by Mr Abdülkadir Ateş, member of the Turkish PACE Delegation
14:30 Meeting with Mr Mehmet Elkatmiş, Chairman of the Human Rights Inquiry Committee of the Grand National Assembly of Turkey
15:30 Meeting with Mr Amir Çiçek, President of Strategic Development, Ministry of Interior
16:30 Meeting with Mr Mustafa Taşkesen, President of the Human Rights Presidency
17:30 Meeting with Mr Abdullah Gül, Minister of Foreign Affairs
20:00 Dinner hosted by Mr Murat Merçan, Chairman of the Turkish PACE Delegation

Friday, 7 April 2006

11:30 Meeting with Mr Ergin Ergül, Acting Director General for International Law and External Relations, Ministry of Justice

2) State of execution of selected Court judgments[11]

Loizidou v. Turkey, 15318/89, judgments of 18/12/96 (merits) and 28/07/98 (just satisfaction), Interim Resolutions DH(99)680, DH(200)105 and ResDH(2001)80, Interim Resolutions ResDH(2003)190 and ResDH(2003)191:

In the *Loizidou* case the Committee of Ministers indicated in its Interim resolution ResDH(2003)191 that it will resume consideration of this issue in due time, taking into consideration proposals to do so at the end of 2005. At their 948th meeting (November 2005), the Deputies agreed to include the case on their Agenda, and then decided to resume consideration of it at the 955th meeting (February 2006). Since then the case has been on the agenda at several meetings. The Committee of Ministers will resume consideration of it at its 976th meeting (October 2006).

In the meantime, the Court has delivered its judgment in the case of *Xenides-Arestis*. This is a similar case to that of *Loizidou*. In this judgment of 22 December 2005, the Court held that "*the respondent State must introduce a remedy which secures the effective protection of the rights laid down in Article 8 of the Convention and Article 1 of Protocol No. 1 in relation to the present applicant as well as in respect of all similar applications pending before the Court. Such a remedy should be available within three months from the date on which the present judgment is delivered and redress should be afforded three months thereafter."* The latter period ended on 22 June 2005. In the meantime, the "TRNC authorities" have introduced a new compensation law in December 2005. The Court has reserved its judgment regarding the application of Article 41, ECHR.

11 Sources: Public Annotated Agendas and other documents of the Committee of Ministers and/or information submitted to the Rapporteur by the state's authorities.

Cyprus v. Turkey, 25781/94, judgment of 10/05/01 – Grand Chamber, Interim Resolution ResDH(2005)44:

The issue regarding **military courts** has been closed by the Interim Resolution adopted by the Committee of Ministers in July 2005. The problem had been solved by a judgment of the "TRNC Constitutional Court".

As regards the issue of **living conditions** of Greek Cypriots living in the North, much progress has been made, in particular on education and freedom of religion aspects. As regards ***education***, a decree has been adopted in May 2005 (amended in November 2005) setting out general principles for the functioning of the schools with special status and further legislative work is underway to provide a stable and lasting basis for the functioning of the schools with special status. Since September 2005 the secondary school in Rizokarpasso covers full curriculum for secondary education and, according to the information provided by the Turkish authorities, seems to function in a globally satisfactory manner. In addition, the Turkish authorities have indicated that no censorship of schoolbooks for Greek Cypriots is carried out by the "TRNC authorities" anymore. In the light of these positive developments, the Deputies decided at their 948th meeting (November 2005) to resume consideration of the aspects of the case relating to education at their 982nd meeting (December 2006), with a view to their closure. As regards the ***freedom of religion*** issues, restrictions on freedom of movement affecting access to places of worship and participation in religious events have for the most part been satisfactorily lifted. Nevertheless, the issue of the appointment of a second priest for the region of Karpaz has still not been solved; no new request for such an appointment has been made by the Cypriot authorities since the refusal, in April 2005, of their former request on grounds of security. In the light of these positive developments, the Deputies decided at their 960th meeting (June 2006) to resume consideration of these aspects of the case at their 982nd meeting (December 2006).

On the issue of **missing persons**, progress has also been made, although less substantive than on the issue of living conditions described above. The reactivation in August 2004 of the Committee on Missing Persons in Cyprus (CMP) is an important contribution to the solution of this problem, but has urgently to achieve concrete results and needs in any event to be supplemented by other measures by the Turkish authorities as a result of CMP's limited powers. Recently the Exhumation and Identification Programme has been launched, after consultations between the two sides. In the framework of this Programme, an anthropological laboratory has been established in the buffer zone. In addition, experts from both sides have been trained in exhumation and identification skills. Several countries, notably Turkey, Cyprus, Greece, the United Kingdom and Germany, have made donations to this programme. The CMP is currently still looking for further funding of the Programme.

The issue of **property rights** in this case had been postponed until after the Court's evaluation of the issue in the case of *Xenides-Arestis*. However, at the 955th meeting (February 2006) the Cypriot authorities expressed their concern as regards transfers of and construction activities undertaken on the properties of displaced persons. They therefore called upon the Committee to ensure the imposition of a moratorium on those transfers and construction activities. In addition, they called for a census to be carried out in northern Cyprus to ascertain the current usage of immovable properties belonging to displaced persons. During the debate at the 966th meeting (June 2006), it appeared that clarifications were needed with regard to the present situation of the property of displaced persons and on the measures taken or envisaged regarding this situation.

Hulki Güneş (28490/95), judgment of 19/06/2003, Interim Resolution ResDH(2005)113

The case concerns the lack of independence and impartiality of the Diyarbakır State Security Court on account of the presence of a military judge (violation of Article 6§1,ECHR) and the unfairness of the proceedings before that court: the applicant was sentenced to death (subsequently commuted to life imprisonment) mainly on the basis of statements made by gendarmes who had never appeared before the court. Furthermore, the applicant's confessions, upon which the trial court had relied, had been obtained when he was being questioned in the absence of a lawyer and in the circumstances which led the European Court to find a violation under Article 3 (and violation of Article 6§§1 and 3d). The case also concerns the ill-treatment inflicted on the applicant while in police custody in 1992 which the European Court found to be inhuman and degrading (violation of Article 3).

Individual measures:

1) Reopening of proceedings requested since 2003: In view of the seriousness of the violation of the applicant's right to a fair trial, the adoption of specific individual measures aimed at erasing it as well as its consequences for the applicant is urgent. In this respect the case is similar to *Sadak, Zana, Dicle* and *Doğan*

(Final Resolution ResDH(2004)86) where the proceedings had been reopened following the coming into force of Law No. 4793 of 23 January 2003, whereby the provisions on the reopening of proceedings in the Code of Criminal Procedure were amended. However, those provisions do not enable the criminal proceedings to be reopened in the present case, inasmuch as the Code only provides for the reopening of proceedings in respect of the Court's judgments which became final before 4 February 2003 or judgments rendered in applications lodged with the Court after 4 February 2003 (same situation as many other cases against Turkey concerning state security courts).

The applicant's petitions challenging the constitutionality of the Code's provisions on account of the discriminatory character of their scope of application were rejected twice on 30 October 2003 and on 19 November 2003 by the Diyarbakır State Security Court. The applicant thus continues serving his life-time sentence.

2) First letter by the Chairman of the Committee of Ministers: The Chairman of the Committee wrote to the Minister of Foreign Affairs of Turkey on 21 February 2005 , indicating that the Court's judgment required the Turkish authorities to grant the applicant adequate redress through either reopening of the proceedings or *ad hoc* measures to erase the consequences of the violations for the applicant. In his reply of 1 June 2005 the Turkish Minister of Foreign Affairs stated that there is an intense ongoing public debate on this issue in Turkey and that he felt confident that an appropriate solution will be found in due time, taking into consideration the public debate as well as Turkey's obligations. However, he did not provide any timetable concerning the measures to be taken.

3) Interim resolution: As no progress in the implementation of the judgment was achieved, at the 948th meeting (November 2005), the Committee adopted Interim Resolution ResDH (2005)113 calling on the Turkish authorities, without further delay, to redress the violations found in respect of the applicant through the reopening of the impugned criminal proceedings or other appropriate ad hoc measures. The Committee further noted with disappointment that the Turkish authorities have so far not responded to the Committee's repeated calls to correct the lacuna in Turkish law which prevents the reopening in the applicant's case.

4) Second letter of the Chairman of the Committee of Ministers: Given that the Turkish authorities have still taken no measure to redress the applicant's situation more than two and a half years after the judgment became final, the Chairman of the Committee addressed a second letter to his Turkish counterpart on 12 April 2006 to convey the Committee's concern at Turkey's continuing failure to comply with the present judgment and to urge for appropriate remedial measures in favour of the applicant. On 8 May 2006, the Turkish Minister of Foreign Affairs replied that the authorities were trying to find an appropriate solution to the problem of inapplicability of the legislation on reopening of proceedings in the applicant’s case.

General measures:

1) independence and impartiality of state security courts: general measures were adopted by the Turkish authorities in the *Çıraklar against Turkey* case (DH99(555). Furthermore, state security courts were abolished following the constitutional amendments of May 2004.

2) ill-treatment inflicted on the applicant: the general measures are under way in cases concerning action of the Turkish security forces pending before the Committee.
Information is still awaited concerning the publication and wide dissemination of the judgment of the European Court to the competent authorities.

Doğan v. Turkey (8803/02), judgment of 10/11/2004

The case concerns the denial to the applicants of access to their property in South-East Turkey since 1994 on security grounds. A detailed description of the facts and a summary of the Court’s reasoning in the case have already been provided in document AS/Jur (2005) 32, at p.36.

There are approximately 1 500 similar cases from South-East of Turkey (in which the applicants complain of their inability to return to their villages) registered before the European Court. This figure constitutes 25% of the total applications filed in respect of Turkey.

Individual measures:

The state's duty to erase the consequences of the violations found has been stressed. The question of just satisfaction for damages under Article 41 has been reserved and is still being examined by the Court. In the meantime, the authorities have been invited to inform the Committee of any measures taken or envisaged regarding a possible return of the applicants to their villages. This information is awaited.

General measures:

The Turkish authorities submitted the following information by letters of 23 February, 4 May and 23 July 2005:

1) Law on Compensation of the Losses Resulting from Terrorism and from the Measures Taken against Terrorism *(Law No. 5233 adopted on 17/07/2004, amended by Law No 5442 of 28/12/2005) and relevant Regulations:*

a) The scope of the Law and Regulation: The law provides an alternative possibility to obtain, directly from the administration, compensation for pecuniary damages caused to natural or legal persons as a result of terrorist activities and operations carried out in combating terrorism during the period 1987 to 2005 with a possibility of judicial review of decisions taken in this respect. The law does not cover the damages settled by the state by other means, damages compensated by the judgments of the European Court, damages resulting from social and economical reasons or damages sustained by those laving their residences voluntarily (reasons not related to concerns of security), damages caused by intentional acts and damages of those who were convicted under Articles 1, 3 and 4 of the Anti-terrorism Law or of aiding and abetting terrorist organisations. On 20 October 2004 the "Regulation on the Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism" entered into force, which lays down the rules governing the functioning of "damage assessment and compensation commissions" and their working methods. The Regulation further lays down the rules relating to methods of determining the amounts of compensation to be awarded.

b) The work carried out by the Damage Assessment and Compensation Commissions: The commissions are composed of 6 experts on finance, public works and settlement, agriculture, sanitation, industry and commerce, as well as a lawyer appointed by the Administrative Board of the Bar Association. There are 76 commissions established in 76 provinces so far. 69,832 applications were filed with the Commissions as of 31 March 2005. 1,595 applications have been finalised and 342 applicants were awarded compensation. An amount of 980,783 YTL (584,495 EUR) have been transferred to the provinces in question as of 27 April 2004 to cover the compensation awarded to those who have signed settlement declarations. The Turkish authorities have also submitted the following documents relevant to the work carried out by the commissions:
- List of applications lodged with the Damage Assessment and Compensation Commissions in 76 provinces;
- List of provinces to which compensation funds were transferred;
- List of applications (not exhaustive) in which compensation was granted;
- Examples of decisions of the Commissions and settlement declarations (The reasoning employed by the Commissions in refusing claims of compensation is based on the facts presented by applicants, namely, the incidents at the origin of the compensation claims took place prior to 19 July 1987 or compensation claims had already been reimbursed by the Social Aid and Solidarity Fund. There are also examples of decisions where additional compensation is paid in cases where the previous reimbursements were found to be insufficient. These decisions also indicate that the amounts of compensation awarded are mainly related to physical harm or death. Assessment on property damages could not yet be completed because of the difficulties encountered in holding onsite visits due to harsh winter conditions.)
- Information relevant to the working methods of the Commissions and the application procedure before the Commissions (Article 6 of Law No. 5233 lays down the rules to be observed for those wishing to lodge an application with the Commission. The proceedings begin with an application to be lodged by a victim or his/her heir or his/her representative with the competent Commission or to the Deputy Governor. Applications lodged with offices of Governors in other provinces or any other offices or with the Turkish Consulates or Embassies are referred to the competent Commissions).

c) Updated information on the work carried out by the Commissions: The Turkish authorities informed the Secretariat on 27 April 2006 of the updated figures (as at February 2006) in relation to the 181,147 applications lodged with the Compensation Commissions by virtue of Law No. 5233 (details available on the Committee of Ministers website).

2) Project carried out concerning the situation of displaced persons:

The Turkish authorities submitted an outline of a project carried out by the Institute of Population Studies at the University of Hacettepe in Ankara. The project concerns issues related to the internally displaced persons (IDP) from south and south-east of Turkey who left their villages after 1980s. The aim of the project is to determine the following points, which will assist the Turkish Government to improve the situation of IDPs in Turkey:
- Population movements in the region and its demographic structure
- Regions where IDPs choose to settle
- Demographic, social and economic structure of the IDPs
- Socio-economic structure of the regions from where the IDPs migrate
- Socio-economic structure of the regions to where the IDPs migrate
- Reasons of internal displacement
- Problems IDPs face at their new settlement
- Expectations and the degree of satisfaction of those who return

The research project started in December 2004 and should have been completed by February 2006.

3) The decision of the European Court in the case of İçyer against Turkey *(Application No. 18888/02)*:

In this case the applicant complained of the authorities' refusal to allow him to return to his home and land in the south-east of Turkey. The European Court observed that:
- the compensation commissions established with the entry into force of the Law on Compensation seemed to be operational in seventy-six provinces in Turkey;
- there were already 170,000 persons seeking a remedy before these commissions;
- it appears from a substantial number of sample decisions furnished by the government that persons who have sustained damage in cases of denial of access to property, damage to their property or death or injury can successfully claim compensation by using the remedy offered by the Compensation Law.

Referring to its findings in the case of *Doğan and others*, the Court noted that where it points to structural or general deficiencies in national law or practice it is incumbent on the respondent government to review, and where necessary, set up effective remedies to avoid repetitive cases being brought before it. Once such a defect has been identified, it falls to the national authorities, under the supervision of the Committee of Ministers to take, retroactively if appropriate, the necessary remedial measures. Noting that in the case of *Doğan and others* it has already identified the presence of a structural problem with regard to internally displaced persons and indicated possible measures to be taken to put an end to this systematic situation in Turkey, the Court concluded that the Turkish government have taken several measures, including enacting the Compensation Law, and may therefore be deemed to have fulfilled the duty to review the systemic situation at issue and to introduce an effective remedy. Accordingly, the Court rejected the applicant's complaints on the ground of non-exhaustion of domestic remedies.

Cases concerning dissolution of political parties

25141/94 Dicle for the Democratic Party (DEP), judgment of 10/12/02, final on 21/05/03
23885/94 Freedom and Democracy Party (ÖZDEP), judgment of 08/12/99 - Grand Chamber
19392/92 United Communist party of Turkey and others, judgment of 30/01/98
21237/93 Socialist Party and others, judgment of 25/05/98, Interim Resolution DH(99)245
22723/93 Yazar, Karataş, Aksoy and the People's Labour Party (HEP), judgment of 09/04/02
26482/95 Socialist Party of Turkey (STP) and others, judgment of 12/11/03, final on 12/02/04
39434/98 Emek Partisi and Şenol, judgment of 31/05/2005, final on 31/08/2005
39210/98 Democracy and Change Party (DDP) and others, judgment of 26/04/2005, final on 26/07/2005

These cases concern the dissolution of the political parties listed above by the Constitutional Court in 1991, 1992 and 1993. The United Communist Party and the ÖZDEP party were dissolved shortly after their creation, on the mere basis of their programmes. The Socialist Party was dissolved on account of certain statements made by its chairman, Mr Perinçek. The reasons advanced by the Constitutional Court covered the undermining of the territorial integrity and the unity of the nation by references to the Kurdish people or to Kurdish self-determination (breaches of the Constitution and of various Articles of the Law on Political Parties (LPP). Among those cited by the prosecutor, mention may be made of Articles 78, 81 and 101 b) of the LPP. HEP was dissolved in similar circumstances. In the United Communist Party case, an additional ground was the title

"communist", banned in Article 96(3) of the LPP. In the ÖZDEP case an additional ground was a perceived aim to abolish the secular nature of the state in violation of Article 89 of the LPP.
The cases also concern the ensuing life-ban of the leaders of the parties from holding similar offices in any other political party.

In all cases, the European Court found violations of the right to freedom of association (Article 11).

The Socialist Party case also concerns the criminal conviction of Mr Perinçek, subsequent to the Court's judgment, on account of the same statements as led to the party's dissolution.

General measures:

Requirements of the judgments: The necessity of constitutional and legislative reforms to prevent new, similar violations has been pointed out since the first of these judgments was considered by the Committee in May 1998. It was deemed necessary in particular to remove the constitutional provision imposing an automatic ban of a party on the mere ground that its title contains the word "communist" (Article 96§3) and abrogate the possibility of dissolving parties solely on the basis of non-violent political speech or programmes which respect the rules of democracy. The necessity of changing the domestic case-law to ensure its compatibility with the Convention was also noted (see CM/Inf(98)48 for details).

Measures reported by Turkey to the Committee of Ministers:

1) Constitutional reforms

a) The constitutional reform of 1995 changed the permanent ban on political activities for members of dissolved parties to a 5-year ban and made it applicable only to party leaders.
b) Further amendments to the Constitution entered into force on 17 October 2001 and introduced a general principle of proportionality and the possibility to resort to less severe sanctions than dissolution of the party in case of violations of the authorised limits of political action.
c) The new text of Article 90 of the Constitution, as amended in 2004, gives international human rights treaties precedence over the national legislation in case of conflict.

2) Legislative reforms

The following amendments were introduced to the LPP on 11 January 2003:
a) The conditions for being a member of a political party have been eased (being convicted under Article 312 of the Criminal Code is no longer ground for restriction regarding membership of a political party);
b) The provisions of the LPP (Articles 98, 100, 102 and 104) were amended so as to conform to the Constitutional amendments;
c) Political parties were granted the right to appeal against applications by the Chief Public Prosecutor before the Constitutional Court.
d) The voting majority required to decide to dissolve a political party has been raised.

3) Change of practice

a) The Communist Party was allowed to participate in the general elections in 2003 despite the remaining prohibition provided in Article 96/3 of the Constitution, which was at the origin of the violation found by the Court in the *United Communist Party v. Turkey* case.
b) The government expect all domestic courts, including the Constitutional Court, to grant direct effect to the Convention and the European Court's judgments, notably when deciding on issues relating to the dissolution of political parties and on sanctions imposed on their members.

4) Publication and dissemination of the judgments

All judgments of the European Court have been published in Turkish in the Official Bulletin of the Ministry of Justice.

Assessment of the measures taken and the outstanding questions: The comprehensive measures adopted have been welcomed by the Committee as they bring domestic law closer to the Convention's requirements. It was stressed, however, that the effective prevention of new, similar violations is contingent on the interpretation that will be given by Turkish courts to the new provisions in the Constitution and the legislation and in particular to the direct effect which will be given the Convention in these respects. It was also noted that Article 96§3 of the Constitution, which was a clear ground for the impugned ban on the United Communist Party, remained in force and this party's resuming its political activities were allowed merely through a change of practice.

The Deputies have therefore agreed to wait for development of the Constitutional Court's case-law to assess whether Turkish law is compatible with the Convention as interpreted by the European Court in the present judgments, especially after the amendment made to Article 90 of the Constitution. Information about these developments is therefore awaited.
It may be noted that one of the cases presently pending before the European Court (Application No. 28003/03) concerns the Constitutional Court's dissolving the HADEP (Democratic Party of the People) in March 2003 on the grounds that it became a centre of activities violating the unity and indivisibility of the state and that it had been involved in terrorist activities including aiding and abetting members of the PKK. This case should provide an important indication as regards the effectiveness of the general measures so far taken by the Turkish authorities.

Individual measures:

The bans on political activities imposed on the applicants following the dissolution of the Parties have all been lifted. *As regards the Socialist Party case in particular*, the Committee of Ministers found that under former Article 53 (present Article 46§1) of the Convention, Turkey was also under an obligation to erase the consequences of Mr Perinçek's criminal conviction imposed in October 1996 on account of the statements that the European Court had found to be a legitimate exercise of his rights under the Convention (see Interim Resolutions DH(99)245 and 529). After these Resolutions, Mr Perinçek was conditionally released in August 1998 after having served ¾ of his 14-month prison sentence. In accordance with amnesty law, his civil and political rights have been restored on the condition that he does not "commit a further crime". In line with the Committee's resolutions mentioned above, the European Court recently found that Mr Perinçek's criminal conviction was contrary to the Convention (*Perinçek v. Turkey*, judgment of 21 June 2005 violation of Article 10) and afforded additional just satisfaction for the unjust conviction. This new judgment notes in particular that the Turkish Court of Cassation had not properly taken into account the *Socialist Party v. Turkey* judgment when upholding the impugned conviction of Mr Perinçek in July 1998. The Committee will examine this issue separately in the context of this new judgment.

Cases concerning freedom of expression
Interim resolutions ResDH(2001)106 and ResDH(2004)38, CM/Inf/DH(2003)43

These cases all relate to, *inter alia,* unjustified interferences with the applicants' freedom of expression, in particular on account of their conviction by State Security Courts following the publication of articles and books or the preparation of messages addressed to a public hearing (convictions under Articles 159 and 312 of the Criminal Code and Articles 6, 7 and former Article 8 of Anti-terrorism Law).

A detailed description of the facts and a summary of the Court's reasoning in these cases have already been provided in document AS/Jur (2005) 32, at pp. 29-31.

Additional information: In some examples of case-law submitted by the Turkish authorities to the Committee of Ministers in May 2005, first-instance courts have held that any expression of thought made with the intention to criticise is not as such a crime, in particular in the interpretation of Articles 159 and 312 of the Criminal Code, as amended. The courts specifically made reference to Article 10 of the Convention and the Court's case-law and found that any expression of thought made with no intention to incitement to violence should be considered within the permissible limits of criticism. More examples of case-law giving direct effect to the Convention, in particular examples of decisions from the Court of Cassation, are awaited.

In this connection, the Rapporteur wishes to emphasise that it is also important to monitor the manner in which prosecutors deal with freedom of expression cases, especially in the light of Circular 99 on Freedom of

Expression, issued by the Ministry of Justice on 20 January 2006. This circular indicates that already at the initial stage of determining whether to prosecute, officials should take the Strasbourg Court's case-law into account.

Cases concerning torture, ill-treatment, homicides and destruction of property by the Turkish security forces
Interim Resolution ResDH(2005)43

These cases concern violations of Articles 2, 3, 5, 6, 8 of the Convention and of Article 1 of Protocol No. 1, notably in respect of unjustified destruction of property, disappearances, infliction of torture and ill-treatment during police custody and killings committed by members of the security forces. All the cases more specifically highlighted the general problem of the lack of effective domestic remedies capable of redressing violations of the Convention (violations of Article 13).

Here again, background information concerning these cases can be found in document AS/Jur (2005) 32, at pp. 26-27. As explained in the said document, and following a series of substantial reforms adopted in particular since 2002, the Committee of Ministers undertook an evaluation of Turkey's compliance with these judgments and adopted a third Interim Resolution on 7 June 2005 (Interim Resolution ResDH(2005)43; text in document AS/Jur (2005) 32, p.27*)*.

A new memorandum taking stock of the measures taken since the adoption of the Interim Resolution as well as the outstanding issues was prepared for the Committee of Ministers' 966th meeting (6-7 June 2006) (CM/Inf/DH(2006)24).

PART III: Rapporteur's visit to the Russian Federation

1) Programme of the visit

Tuesday 30 May 2006

9:00 Meeting with Mr V. Lebedev, President of the Supreme Court of the Russian Federation
10:30 Meeting with Mrs Zakharova, Ministry of Finance (Legal Department)
12:00 Meeting with Mr V. Zorkin, President of the Constitutional Court
13:30 Working lunch with members of the Russian PACE Delegation
14:45 Meeting with Council of Federation and State Duma
14:30 Meeting with State Duma Legal Affairs Committee
15:45 Meeting with the relevant Committees of the Federation Council and State Duma
17:00 Meeting with Mr Zvyagintsev, Prosecutor General

Wednesday 31 May 2006

9:00 Meeting with officials at the Ministry for Foreign Affairs
10:30 Meeting with Mr O. Filimonov, Head of the Legal Department of the Federal Service
12:30 Meeting with Mr V. Yakovlev, Councellor to the President of the Russian Federation
14:00 Meeting with Mr Laptev, Government Agent of the Russian Federation before the European Court of Human Rights
15:00 Meeting with Mrs L. Brycheva, Head of the State Legal Directorate

1) State of execution of selected Court judgments[12]

Kalashnikov v. Russia, judgment of 15 July 2002,
Interim Resolution ResDH(2003)123

Since the Interim Resolution and the measures reported in response to its adoption (mentioned in the previous report), the number of persons detained on remand has considerably increased: on 1 June 2006 an average overcrowding in pre-trial detention was of 13,9% above the facilities' normal capacity compared to only 1% in September 2004 (last information provided to the Committee of Ministers before the Rapporteur's visit to Russia).

This increase took place notwithstanding the execution of the Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006 which resulted in the creation of new detention facilities (10,988 places already created and 4,688 places planned before the end of the year). The programme for 2007-2016, which provides for the construction of 26 new detention facilities and for the modernization of 97 already existing ones, has been recently adopted.

It appears that this alarming situation is mostly due to the failure of judges and prosecutors to comply with the requirements of the new Code of Criminal Procedure, in force since 2002, regarding the reasons and the procedure to order or to prolong detention. The recent statistics show that 36% of the detainees are prosecuted for offences of minor and average importance and 20-25% are released after the verdict.

2) Cases concerning the non-execution of domestic judicial decisions
Memorandum CM/Inf/DH(2006)19 revised

All these cases concern violations of the applicants' right to effective judicial protection due to the administration's failure to comply with final judicial decisions in the applicants' favour (violations of Article 6§1 and of Article 1 of Protocol No. 1, ECHR). See also, in this connection, the Rapporteur's supplementary

12 Sources: Public Annotated Agendas and other documents of the Committee of Ministers and/or information submitted to the Rapporteur by the state's authorities.

introductory memorandum, document AS/Jur (2005) 55 rev, §§ 63 and 64 concerning "new important implementation issues".

General measures:

The European Commission for the Efficiency of Justice (CEPEJ) issued a document on 9 December 2005 (CEPEJ(2005)8) in which it summarised the problems at the basis of non-enforcement of judicial decisions and made a number of proposals in this field. Another report to be prepared in cooperation with the Russian authorities is expected in the latter part of 2006.

In order to assist the Committee of Ministers in the examination of the present set of cases, the Secretariat issued, for the Deputies' 960th meeting in March 2006, a memorandum **(CM/Inf/DH(2006)19 revised)** which examines the special procedure set up in 2006 to improve the enforcement of judicial decisions delivered against the State and its entities and raises a number of questions about its capacity to ensure that Russia meets its obligations under the Convention as established by the Court's judgments. It takes into account the experience of other member states in resolving similar problems in response to the Court's judgments and the conclusions reached by the CEPEJ on these issues.

Following this examination, the memorandum points at a number of outstanding problems and proposes a number of avenues that the Russian authorities may consider in their ongoing search for a comprehensive resolution of this problem. The main avenues proposed are:

- Improvement of budgetary procedures within the Russian Federation;
- Establishment of a subsidiary mechanism of compulsory enforcement including seizure of state assets;
- Ensuring effective state liability for the non-enforcement of judgments through judicial remedies;
- Introducing adequate default interest in case of non-enforcement;
- Ensuring effective liability of civil servants for non-enforcement;
- Possible reconsideration of the bailiffs' role and increasing their efficiency.

The Memorandum has been well received by the Russian authorities and considered to be a positive contribution to the identification of the general measures to be taken. In view of the extent of the problem, the authorities suggested that certain areas be identified where the non-enforcement problems should be solved as a matter of priority taking into account specific circumstances involved.

8 cases concerning respect for the "legal certainty" requirement – a problem of supervisory review procedure, Interim Resolution ResDH(2006)1

The Russian Federation's action plan to the Committee of Ministers' Interim Resolution of 8 March 2006 is awaited, to see how best structural problem concerning the judicial procedure of supervisory review (*"nadzor"*) should be handled. (Additional background information in document AS/Jur (2005) 55 rev, §§ 65-69).

By this Interim Resolution the Committee called for further reform of Russian civil procedure to comply with European Court's judgments finding violations of the requirement of legal certainty. The violations of the ECHR were due to the "*nadzor*" procedure which extensively allowed quashing of judicial decisions that had become binding and enforceable (notably *Ryabykh v. Russia*, judgment of 24 July 2003).

The Interim Resolution welcomed some limitations put on the application of supervisory review since 2003 but expressed doubts that these will prevent new violations similar to those found. The Committee emphasized that in an efficient judicial system errors and shortcomings should primarily be remedied before judicial decisions become binding and enforceable so as to avoid frustrating parties' right to rely on such decisions.

The Committee accordingly called upon Russia to give priority to the reform of civil procedure which must go hand-in-hand with an improvement of the court structure and of the quality of justice. The Russian authorities have undertaken to keep the Committee informed of the results of the ongoing reflection in this respect and to provide, within one year, a plan of action for further reform.

Doc. 11020

Cases concerning the action of security forces in the Chechen Republic and the lack of effective investigations into abuses

At the outset it has been acknowledged that these cases would appear to require important individual and general measures (see AS/Jur (2005) 55 rev. §§ 69-71).

As regards **individual measures**, the investigations in these cases were re-opened pursuant Article 46 of the Convention and put under the supervision of the Chief Military Prosecutor and the General Prosecutor. The progress achieved so far is positive in view of the procedural steps taken, notably involving of victims in the investigating process. Information on further progress is awaited for the forthcoming meeting of the Committee of Ministers (17-18 October 2006).

Information is expected on further progress achieved in the investigation of the circumstances and responsibilities in all three cases, in particular on the procedural steps taken within the re-opened investigations (e.g. operational tactical expert examinations).

The Russian authorities have also reported a number of **general measures** taken or envisaged to comply with the judgments and the outstanding issues have been identified. Some progress has been achieved in the area of awareness raising, dissemination of the judgments and training of members of the security forces. The authorities were invited to continue their efforts in this respect. Finally, as regards the improvement of domestic remedies in case of abuses, the setting up of local authorities and institutions which were lacking at the time of the events, was noted as well as the existence of a draft law on compensation for the ineffectiveness of investigations.

Information regarding the legal framework of the security forces activities' recently provided by the authorities is under assessment. The educational measures taken seem to be encouraging. However, much remains to be done. As regards the improvement of domestic remedies in case of abuses, the authorities are at the very beginning of a long process ensuring an appropriate redress to the victims of abuses. The authorities' attention has been drawn to the experience of other countries confronted with the same problem.

3) Written information provided by the Russian authorities following the Rapporteur's visit to the Russian Federation (extracts)[13]

Extracts from the information provided in writing by the Russian authorities in response to different implementation issues raised by the Rapporteur during his visit to Russia

1) Information related to the cases concerning non-enforcement of domestic judicial decisions (*notably in response to the questions raised by the Rapporteur, see CM/Inf/19 revised*)

(…)

3. In the event of Federal Treasury authorities failing to exercise the duties stipulated in chapter 24.1 of the Russian Federation Budget Code as regards the freezing of account transactions of an organ funded by the State budget spending unit upon the latter's non-compliance with the requirements laid down in a writ of execution, a complaint over the Federal Treasury authority's actions may be lodged with the Federal Treasury or a court.

The reference in the given question to the practice of the European Court, particularly to the case of Shilyayev vs. Russia, is unjustified in that the court decision in that case includes a ruling on a compensation levy in favour of the applicant and the funds were recovered from the Russian Federation Ministry of Finance.

Consequently, the judicial decision in question could not be executed in compliance with the Regulations on implementation of the requirements of writs of execution and court orders issued by judicial authorities concerning the recovery of funds in compliance with the financial obligations of organs funded by the federal budget , laid down by Russian Federation Government Decree no. 143 of 22 February 2002, as those Regulations do not establish a procedure for executing judicial decisions on the recovery of funds from the public treasury of the Russian Federation.

13 Unofficial translation of extracts – available only in English – of 22 pages text sent to the Rapporteur, in Russian, in July 2006 (pending receipt of the full text in one of the official languages of the Council of Europe).

4. At present the procedure for freezing transactions on the accounts of a debtor funded by the budget is established by chapter 24.1 of the Russian Federation Budget Code (Articles 242-3 §3, 242-4 §3 and 242-5 §3).

That procedure is exhaustive and contains no blanket norms. The flow of documents relating to the procedure is determined by the Procedure for accounting and record-keeping by Federal Treasury authorities in execution of judicial acts providing for the recovery of federal budget funds in compliance with the financial obligations of federal budget institutions, laid down by Federal Treasury Order no. 3n of 22 February 2006.

According to information received from the Federal Treasury Administrations for the constituent entities of the Russian Federation, 4,109 compulsory measures to freeze accounts were applied in 2005, and 806 in the first quarter of 2006.

5. In the event of the debtor's non-execution of the requirements of a writ of execution within three months, the Federal Treasury authority notifies the recovering creditor, who may then bring subsidiary responsibility proceedings with a court against the chief budget administrator on grounds of full or partial non-execution of a writ of execution. In that case, under Articles 242-3 §10, 242-4 §9 and 242-5 §9 of the Russian Federation Budget Code, if the court rules in favour of the creditor's application for the recovery of funds from the chief administrator of the corresponding budget within the Russian Federation budget system under a procedure of subsidiary responsibility for the financial obligations of an organs funded by the budget under its authority, the writ of execution for the recovery of funds from the said chief budget administrator is sent to the Federal Treasury authority (if it concerns the federal budget) or the authorised agency (if it concerns the budget of a Russian Federation constituent entity or the budget of a municipality) in the place where the named account was opened for the chief budget administrator as the budget organ, for execution under the procedure established by the Russian Federation Budget Code.

6. In regulating execution by authorities holding an account in the capacity of an organ funded by the budget within the Russian Federation budget system, the Russian Federation Budget Code does not provide for an extrajudicial procedure for levying a percentage in the event of failure to execute a judicial decision in time.

7. It should be pointed out that, at present, virtually no such situations arise. In fact, this cannot happen in the event of recovery of federal budget funds, since federal budget institutions are prohibited from holding accounts with credit organisations.

At the same time, if a budget institution of a Russian Federation constituent entity or municipality holds an account in its name within a Federal treasury authority or another authorised agency and additionally holds an account in a credit organisation, the recovering creditor is entitled to lodge a writ of execution with the body administering the debtor's account or with the credit organisation concerned. For the lodging of a writ of execution with a credit organisation, the creditor may seek the assistance of a bailiff, who acts in accordance with the Federal Law "On execution proceedings".

In this way, there is no conflict of "jurisdiction between the Treasury office and the bailiff service" arising in the cases considered.

8. As regards the execution of judicial decisions delivered against the Russian Federation, such a fund is already provided for in the federal budget in the form of a separate special article.

In addition, it should be noted that Federal Law no. 197-FZ of 27 December 2005, legislating for a universal mechanism for executing judicial decisions for all the budgets within the Russian Federation budget system, only entered into force on 1 January 2006.

To establish additional measures to improve this mechanism will require something like two years of experience in applying that federal law in order to assess which of its norms and provisions do not work and what additional measures are required for its effective application.

(…)

2) Information related to the cases concerning the overcrowding of pre-trial detention facilities (*Kalashnikov v. Russia* judgment)

New statistics provided

As of 1 June 2006 the penitentiary system's 211 pre-trial detention centres (SIZOs) held 159,900 detainees, an over-capacity of 13.9%. Compared with the same period last year, the actual occupancy level of SIZOs has increased by 6,000 people or 4%. Since the beginning of this year the number of individuals held in SIZOs has increased by 7,300 or 4.8%.

The increase in numbers has now tailed off, and a fall of 1.5% was recorded for May 2006. This included a drop in the number of individuals under investigation (by 3%), defendants on trial placed in custody by

courts of first instance (by 2%), convicted persons awaiting claim for the entry into legal force of their sentence (by 4%). There has been a reduction of 3,700 in the number of persons re-arrested, including those prosecuted for minor and moderate offences, down by 1,100 or 0.5%. The latter category is a substantial factor in the rising number of detainees held in SIZOs. 135,900 individuals falling into this category entered SIZOs in 2005, an increase of more than 31,400 (30%) on 2004. For the first five months of this year, the number of detainees in this category totalled 63,100. Individuals prosecuted for minor and moderate offences make up nearly 36% of the total number of SIZO detainees, whereas two years ago the figure was less than 24%.

Every month, following changes in preventive measures, acquittals and non-custodial sentencing, between 5,000 and 6,000 people (roughly 20-25% of persons re-arrested) are released from SIZOs. Since the beginning of this year alone over 23,400 have been released.

Information on occupancy of Federal Service for execution of sentences pre-trial detention centres (SIZOs) in 2005 and 2006 is presented in the table (appendix 1). For the first six months of 2006 there has been a substantial increase in the number of detainees (by 5% or more) in 41 territorial entities. On 1 June 2006 the Directorate for Khabarovsk *kray* (territory) of the Federal Service for execution of sentences held 2,627 people in SIZOs, which is 250 or 11% more than on 1 January 2006. In the Republic of Altay the increase in the number of detainees held in SIZOs for the first six months of this year was 76 or 31%; in Magadan *oblast* (province) it was 84 or 29%; in Kostroma *oblast* it was 150 or 28%; in Samara *oblast* it was 763 or 28%; in Kaluga *oblast* it was 244 or 23%; in Astrakhan *oblast* it was 343 or 20%; in Chita *oblast* it was 337 or 20%; in Amur *oblast* it was 203 or 16%; and in Kirov *oblast* it was 212 or 13%.

Comparing the figures for the first six months of 2006 with the same period for the previous year shows that the upward trend has continued in 38 regions. The Directorate for the Republic of Altay of the Federal Service for execution of sentences held 321 detainees in SIZOs on 1 June 2006, 33% more than the previous year. In Astrakhan *oblast* the increase was 43%; in the Republic of Khakasiya it was 40%; in the Tyva Republic it was 33%; in Kostroma *oblast* it was 29%; in Kaluga and Samara *oblasti* it was 26%; in Sakhalin *oblast* it was 23%; in Amur, Tomsk and Chita *oblasti* it was 22%, in the Republic of Sakha (Yakutiya) it was 21%; in Khanty-Mansiysk autonomous *okrug* (autonomous district) it was 19%; in the Republic of Dagestan it was 18%; in Kirov *oblast* it was 17%; in Altay and Primorye *krayi* it was 15%; and in Sverdlovsk *oblast* it was 10%.

At the same time a number of regions maintained a steady downward trend in the number of detainees in their penitentiary system's pre-trial detention centres for the period 2005-06.

For the first six months of 2006 a fall in detention numbers was recorded in 19 regions, including in: the Chuvash Republic - 17%; the Republic of Kalmykhia - 14%; the Republic of Mariy El - 10%; the Kabardino-Balkarsk Republic - 9%; Murmansk *oblast* - 8%; the Republic of Kareliya and Volgodsk and Tula *oblasti* - 7%; the Republic of Adygeya - 6%; Irkutsk *oblast* - 5%; Bryansk *oblast* - 4%; the Karachevo-Cherkess Republic and Voronezh, Novgorod, Nizhegorod and Tver *oblasti* - 3%; the city of Saint Petersburg and Leningrad *oblast* - 1%; and the Republic of North Ossetiya-Alaniya and Pskov *oblast* - 0.4%.

Despite the steps taken by the Federal Service for execution of sentences to build new SIZOs and expand the existing ones, it has not been possible to date to guarantee the legally prescribed norm of cell sanitary space. In the SIZOs of 56 constituent entities of the Russian Federation the actual surface area per individual suspected or accused of an offence is less than 4 square metres. The mean cell space for an individual held in custody was 3.5 square metres on 1 June 2006 (compared with 3.3 square metres for the previous year).

(…)

Measures taken or underway to improve the situation

The Strategic framework for the federal targeted programme "Development of the penitentiary system (2007-2016)" was laid down by Russian Federation Government Decree no. 839-r of 7 June 2006.

The programme provides for the completion, within the first three years, of the building of 39 sites begun under the federal targeted programme "Reform of the penitentiary system for 2002-2006". There are plans, from 2010 onwards, to bring 97 existing pre-trial detention centres (SIZOs) into line with Russian Federation legislation and build 26 new-style pre-trial detention centres meeting European standards for detention conditions (health-oriented standard of 7 square metres per person) in problem regions where the situation remains most critical in terms of overcrowding for individuals suspected or accused of offences in SIZOs.

Funding for the 10 years amounts to 42,300,530,000 roubles (at prices for the years in question). It is planned to allocate 10,282,374,000 roubles (at 2006 prices) to the building of the new SIZOs. An additional 33,276 places are planned.

Under the federal targeted programmes "Reform of the penitentiary system for 2002-2006", "Prevention and combating of socially transmissible diseases (2002-2006)" and "Restoration of the economy and social fabric of the Chechen Republic for 2002 and the following years", work is ongoing to reinforce the material and technical basis of the penitentiary system and improve conditions of detention of individuals held in custody and convicted persons.

(…)

At present work is ongoing on the draft federal law "On the entry into force of the provisions of the Russian Federation Criminal Code and Russian Federation Code of Criminal Procedure on punishment in the form of restrictions on freedom and the amendment of legislative acts of the Russian Federation".

The draft law provides for the introduction of punishment in the form of restrictions on freedom entailing the fulfilment by sentenced persons of obligations fixed by the court (conditions, prohibitions) under the supervision of the sentence enforcement inspectorate - so-called "controlled liberty". The use of this form of punishment will make it possible, in our view, to limit recourse to custodial sentences.

The Russian Federation government adopted a decision on 28 April 2006 to approve the draft federal law in question and lay it before the State Duma following the established procedure.

(…)

Publication and dissemination of the European Court's case-law

…

1. Instruction no. 18/4-YuK of the Russian Federation Deputy Minister of Justice, Yu.I. Kalinin, of 5 January 2004 to the deputy heads of the chief penitentiary directorates of the Russian Ministry of Justice for the federal districts, the heads of territorial authorities and educational establishments of the Russian Ministry of Justice penitentiary system and the heads of federal directorates of the Russian Ministry of Justice on the implementation of decree no. 5 of the Plenum of the Russian Federation Supreme Court of 10 October 2003 "On the application by general courts of the universally recognised principles and standards of international law and the international treaties of the Russian Federation" with the aim of bringing the number of detainees suspected or accused of offences into line with the capacity of pre-trial detention centres;
2. Instruction no. 18/13-29 of the Chief Penitentiary Directorate of the Russian Ministry of Justice of 15 January 2004 to the heads of territorial authorities of the penitentiary system on use in their work of materials of the European Court of Human Rights, including forms for applications to the European Court of Human Rights and an explanatory note on the procedure for applications to the European Court of Human Rights.
3. Instruction no. 18/13-97 of the Chief Penitentiary Directorate of the Russian Ministry of Justice of 30 January 2004 to the heads of territorial authorities of the penitentiary system on the requisitioning in internal affairs agencies of passports of individuals detained in SIZOs and their attachment to personal files for participation in Russian Federation presidential elections, as well as their return to the holders following release from a SIZO or the serving of a sentence, pursuant to the European Court of Human Rights ruling on application nos. 46133/99 "Yelena Pavlovna Smirnova vs. the Russian Federation" and 48183/99 "Irina Pavlovna Smirnova vs. the Russian Federation";
4. Instruction no. 18/13-430 of the Chief Penitentiary Directorate of the Russian Ministry of Justice of 18 May 2004 to the heads of territorial authorities of the penitentiary system enclosing a manual on laws and regulations governing human rights within the penitentiary system of the Russian Ministry of Justice;
5. Instruction no. 18/6/2-691T of the Russian Federation Deputy Minister of Justice, Yu.I. Kalinin, of 26 August 2004 on extending the period for conserving individual documents required for submission to the European Court of Human Rights in correctional institutions and pre-trial detention centres;
6. Instruction no. 18/13-1058 of the Chief Penitentiary Directorate of the Russian Ministry of Justice of 9 December 2004 to the heads of territorial authorities of the penitentiary system on supervision of the dispatch of complaints to the European Court of Human Rights.
7. Instruction no. 18/13/4-33 of the Federal Service for execution of sentences of 14 February 2005 to the heads of territorial authorities of the penitentiary system and educational establishments of the penitentiary system on the unhindered sending of applications to the European Court of Human Rights in connection with the entry into force of the ECHR judgment in case no. 60776/00 "Poleshchuk vs. the Russian Federation";
8. Instruction no. 10/15/3-92T of the Federal Service for execution of sentences of 8 August 2005 to the heads of territorial authorities of the penitentiary system in connection with the entry into force of the ECHR judgment in case no. 46082/99 "Klyakhin vs. the Russian Federation";

9. Instruction no. 10/1-3378 of the Federal Service for execution of sentences of 9 November 2005 on eliminating shortcomings in the activities of penitentiary system observed during the examination of case no. 66460/01 "Novoselov vs. the Russian Federation";

10. Instruction no. 10/1-3332 of the Federal Penitentiary Service of 3 November 2005 to the heads of federal penitentiary service directorates for federal districts and the heads of territorial authorities of the penitentiary system on the organisation of dispatches of complaints to the European Court of Human Rights;

11. Instruction no. 10/1-54 of the Federal Service for execution of sentences of 17 January 2006 to the heads of territorial authorities of Russia's Federal Penitentiary Service on bringing the conditions of detention in special units into line with European standards in connection with the entry into force of the ECHR judgment in case no. 62208/00 "Labzov vs. the Russian Federation";

12. Instruction no. 10/1-770 of the Federal Service for execution of sentences of 31 March 2006 to the heads of territorial authorities and educational establishments of the penitentiary system on the application of European standards in the activities of the Federal Service for execution of sentences (book on the European Court of Human Rights and brochures on the European Convention on Human Rights);

13. Instruction no. 10/1-1046 of the Federal Service for execution of sentences of 21 April 2006 to the heads of territorial authorities on eliminating shortcomings in connection with the entry into force of the ECHR judgment in case no. 63993/00 "Ilya Eduardovich Romanov vs. the Russian Federation".

PART IV: Rapporteur's visit to Ukraine

1) Programme of the visit

Monday 19 June 2006

9.00 Meeting with Mr Vasyl Onopenko, People's Deputy
10.40 Meeting with Mr Dmytro Kotliar, Deputy Minister of Justice and Mr Yuriy Zaitsev, Government Agent of the Ukrainian before the European Court of Human Rights
11:45 Meeting with Mr Hennadii Stadnyk , Acting Director of the Department of the State Bailiff Service of the Ministry of Justice of Ukraine
16:15 Meeting with Mr Victor Kudriavtsev Deputy Prosecutor General, Mr Oleh Kucher Head of Department for representation in court, protection of citizens and the state in the execution of judicial decisions and Mr Yevhen Burdol, Head of Legal Department

Tuesday 20 June 2006

9.00 Meeting with Mr Vasyl Maliarenko, Chairman of the Supreme Court of Ukraine
10:20 Meeting with Mr Vitaliy Lisovenko, Deputy Finance Minister and Mr Volodymyr Tkachuk, Deputy Director of the Department for International Relations and European Integration
11.45 Meeting with Mr Herman Halushchenko, Deputy Head of Division on International Legal Affairs of the Foreign Policy Service and Mr Oleksiy Perevezentsev, Chief Adviser, Foreign Policy Directorate, Department of Bilateral and Regional Cooperation

2) Text of 2006 Law on the Enforcement of Judgments and the Application of the Case-Law of the European Court of Human Rights[14]

This Law regulates relations emanating from: the State's obligation to enforce judgments of the European Court of Human Rights in cases against Ukraine; the necessity to eliminate reasons of violation by Ukraine of the Convention for the Protection of Human Rights and Fundamental Freedoms and protocols thereto; the need to implement European human rights standards into legal and administrative practice of Ukraine; and the necessity to create conditions to reduce the number of applications before the European Court of Human Rights against Ukraine.

SECTION 1. GENERAL PROVISIONS

Article 1. Definitions

1.1 For the purposes of this Law the following terms shall be used in the following meaning:

the Convention – the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto agreed to be binding by the Verkhovna Rada of Ukraine;

the Court – the European Court of Human Rights;

the Commission – the European Commission of Human Rights;

the Court's case-law – the case-law of the European Court of Human Rights and the European Commission of Human Rights;

14 Law No.3477-IV of 23 February 2006. This is an unofficial English-language translation provided to the Rapporteur during his visit to Kyiv. During his visit to Ukraine, the Rapporteur was also provided with a number of other relevant texts, namely Presidential Decree No.361/2006 of 10 March 2006 "About the Concept for the Improvement of the Judiciary and Ensuring Fair Trial in Ukraine in Line with European Standards" and Presidential Decree No.242/2006 of 20 March 2006 on an "Action Plan" thereon; draft presidential decree on the adoption of the National Action Plan for ensuring enforcement of court decisions; and Resolution of the Cabinet of Ministers of Ukraine, No.784, of 31 May 2006, entitled "Government Agent before the European Court of Human Rights Regulations" (English language translations). These documents are on file with the Committee's Secretariat.

Judgment – a) a final judgment of the European Court of Human Rights in a case against Ukraine, declaring a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms; b) a final judgment of the European Court of Human Rights on just satisfaction in cases against Ukraine; c) judgments (decisions) of the European Court of Human Rights on a friendly settlement in cases against Ukraine;

Creditor – a) an applicant (his/her representative or successor) before the European Court of Human Rights in a case against Ukraine in whose favour the Court rendered its judgment or with whom a friendly settlement was effected; b) a person (a group of persons) in whose favour the Court found in its judgment an obligation of Ukraine upon an inter-State case;

Compensation – a) an amount of just satisfaction, defined in the Court's judgment in accordance with Article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms; b) an amount of payment referred to in the Court's judgment (decision) on a friendly settlement to be paid in favour of Creditor;

Enforcement of judgment – a) payment of compensation to Creditor and taking of additional individual measures; b) taking of general measures;

The Office of the Government's Agent – a body in charge of representation of Ukraine before the European Court of Human Rights and of the enforcement of a judgment rendered by the latter;

Original text – an official text compiled in an official language of the Council of Europe of: a) the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto; b) judgments and decisions of the European Court of Human Rights; c) decisions of the European Commission of Human Rights.

Article 2. Enforcement of Judgments

2.1. Judgments are binding and subject to enforcement throughout the whole territory of Ukraine pursuant to Article 46 of the Convention.

2.2. Procedure for the enforcement of Judgments is determined by the present Law, the Law of Ukraine "On Enforcement Proceedings", and other legislative acts subject to peculiarities provided for by the present Law.

Article 3. Financing of expenses for the enforcement of Judgments

3.1. Judgments shall be enforced at the expense of the State Budget of Ukraine.

SECTION 2. ACCESS TO JUDGMENTS

Article 4. Summary of a Judgment

4.1. The Office of the Government's Agent within three days from receipt of a notification that a Judgment has become final shall prepare and submit for the publication in the "Government's Currier" [*Uriadovyi Kurier*] and the "Voice of Ukraine" [*Golos Ukrayiny*] newspapers a summary of the Judgment in Ukrainian (hereinafter referred to as "a summary of a Judgment") which shall contain:

a) an official title of the Judgment in original and in Ukrainian translation;

b) number of the application before the Court;

c) the date of the Judgment;

d) brief statement of facts in the case;
e) brief statement of law in the case;

f) translation of the resolving part of the Judgment.

4.2. The newspapers mentioned in Article 4.1. shall publish the summary of the Judgment within seven days from its receipt.

Article 5. Notification of the Judgment

5.1. The Office of the Government's Agent shall send the summary and a copy of the authentic text of the Judgment to the Creditor, the Ombudsperson, all state bodies, officials, and other persons directly affected by the Judgment.

Article 6. Translation and publication of the Judgment

6.1. With the aim of taking general measures the State ensures the translation into Ukrainian and the publication of full texts of Judgments in a publication specialized in the Court's case-law and disseminated in the legal community.

6.2. Authenticity of translations of full texts of Judgments shall be certified by the Office of the Government's Agent.

6.3. The Office of the Government's Agent shall select on a competitive basis an edition, which will translate and publish the full texts of Judgments, as well as order the necessary quantity of copies of that edition to provide courts, prosecutor's offices and justice, law-enforcement and security services bodies, penitentiaries and other interested agencies with it.

6.4. The state body in charge of courts' material-organizational support shall provide judges with the translation of full texts of Judgments.

SECTION 3. ENFORCEMENT OF JUDGMENTS

Article 7. Enforcement of a Judgment with regard to the payment of compensation

7.1. The Office of the Government's Agent within three days from receipt of the Court's notification that a Judgment has become final shall:

a) notify Creditor and explain his/her right to file an application with the State Bailiff's Office on the payment of compensation; the application shall contain the data of the Creditor's bank account for the transfer of funds;

b) send to the State Bailiff's Office the authentic text of the Judgment and the translation of the resolving part thereof. The authenticity of the translation is certified by the Office of the Government's Agent;

The State Bailiff's Office within three days from receipt of documents specified in Article 7.1.(b) shall open enforcement proceedings.

7.2. Failure of the Creditor to submit an application on the payment of compensation shall not halt the enforcement of the Judgment.

Article 8. Payment of a compensation

8.1. Payment of compensation to the Creditor shall be effected within three months from the date when the Judgment has become final.

8.2. In case of failure to pay compensation within the time-limits set forth in Article 4.1. a simple interest shall be payable on the above amount in accordance with the Judgment.

8.3. Within one month after the opening of the enforcement proceedings the State Bailiff's Office shall send the ruling on the opening of the enforcement proceedings and documents specified in Article 7.1.(b) of this Law to the State Treasury of Ukraine.

8.4. The State Treasury of Ukraine within 10 days from the date of receipt of the documents mentioned in Article 8.3. of this Law shall transfer the money from the relevant budgetary program of the State Budget of Ukraine to the bank account specified by the Creditor; in case of absence of the latter money shall be transferred to the deposit account of the State Bailiff's Office.

8.5. Te confirmation of the transfer received from the State Treasury of Ukraine is a ground for the State Bailiff's Office to close the enforcement proceedings.

8.6. The State Bailiff's Office within three days shall send to the Office of the Government's Agent the ruling on closure of the enforcement proceedings as well as the confirmation of the transfer of money.

Article 9. Certain aspects of the payment of compensation

9.1. In cases when it is impossible to identify the place of residence (location) of the Creditor - natural person as well as in case of death of the Creditor - natural person or reorganisation/liquidation of the Creditor - legal entity, the amount of compensation shall be transferred to the deposit account of the State Bailiff's Office. The same procedure shall be used in the case specified in Article 7.2 .of this Law.

9.2. The amount of compensation deposited in the account of the State Bailiff's Office shall be transferred to:

a) the Creditor's account after his/her submission of the required application;

b) accounts of heirs of the Creditor - natural person after they have presented duly certified documents entitle them to obtain the heritage;

c) account of successor of the reorganised Creditor - legal entity after it have presented duly certified documents proving the succession;

d) accounts of the founders (participants, shareholders) of the liquidated Creditor - legal entity after the have submitted court decisions confirming their status of founders (participants, shareholders) of the liquidated Creditor - legal entity at the moment of liquidation and determining the share of compensation to be paid to each of the founders (participants, shareholders).

9.3. Information on the availability of funds on the deposit account of the State Bailiff's Office the State Bailiff's Office shall send to the Office of the Government's Agent for the further notification of the Committee of Ministers of the Council of Europe.

9.5. The Office of the Government's Agent shall act as the claimant in cases concerning indemnification of losses inflicted on the State Budget of Ukraine as a result of payment of compensation and shall be obliged to lodge such a claim with a court within three months from the moment specified in Article 8.4. of this Law.

Article 10. Additional individual measures

10.1. Additional individual measures shall be taken in addition to the payment of compensation and are aimed at restoring the infringed rights of the Creditor.

10.2. Additional individual measures include:

a) restoring, as far as possible, the previous status which the Creditor has had before his/her Conventional rights were breached (*restitutio in integrum*);

b) measures, except for compensation, envisaged in the Court's judgment (decision) on a friendly settlement.

10.3. The previous status of the Creditor shall be restored, *inter alia*, by means of:

a) repeat consideration of the case by the court, including the reopening of proceedings in the case;

b) repeat consideration of the case by the administrative body.

Article 11. Actions which the Office of the Government's Agent shall take with regard to additional individual measures

11.1. The Office of the Government's Agent within three days from receipt of the Court's notification that the Judgment has become final shall:

a) send the Creditor a notification explaining his/her right to initiate proceedings on the review of his/her case and/or to reopen the proceedings in compliance with current legislation;

b) notify the bodies in charge of the execution of additional individual measures specified in the Court's judgment (decision) on a friendly settlement about the contents, manner and terms of these measures' execution. This notification shall be appended with translation of the judgment (decision) on a friendly settlement the authenticity of which is certified by the Office of the Government's Agent.

11.2 Control over the execution of additional individual measures specified in the Court's judgment on a friendly settlement is exercised by the Office of the Government's Agent.

11.3 The Office of the Government's Agent – while exercising the control as provided for in Article 11.2. of this Law – shall be entitled to request from the bodies in charge of the execution of additional individual measures specified in the Court's judgment on a friendly settlement information on the course and results of these measures' execution as well as to present a motion to the Prime Minister of Ukraine to secure the execution of additional individual measures.

Article 12. Actions which the bodies in charge of the execution of additional individual measures shall take

12.1. The bodies in charge of the execution of additional individual measures shall:

a) immediately and within the time-limit set forth in the Judgment and/or current legislation execute additional individual measures;

b) provide information about the course and results of additional individual measures' execution upon requests of the Office of the Government's Agent;

c) effectively and without undue delays reply to submissions by the Office of the Government's Agent;

d) inform the Office of the Government's Agent about the completion of additional individual measures' execution.

Article 13. General measures

13.1. General measures shall be taken by the State in order to secure the respect of Convention's provisions the violation of which has been found in Judgment, to eliminate underlying systemic problems which are at the heart of violation found by the Court as well as to eliminate the reasons for submission to the Court of applications against Ukraine caused by the problem which has been already considered by the Court.

13.2. General measures are aimed at eliminating underlying systemic problem indicated in Judgment as well as its origin through:

a) amendments to the current legislation and changes in the practice of its application;

b) changes in administrative practice;

c) legal review of the draft legislation;

d) professional training on the Convention and the Court's case-law of prosecutors, lawyers, law-enforcement bodies' officers, immigration service employees, other persons whose professional activity is connected with law enforcement and restriction of person's liberty;

e) other measures, which shall be determined under the supervision of the Committee of Ministers of the Council of Europe by the respondent State in accordance with Judgment. These measures shall be aimed at eliminating underlying systemic problems, ceasing violations of the Convention caused by these shortcomings and securing the maximum redress for these violations.

Article 14. Actions which the Office of the Government's Agent shall take with regard to general measures

14.1. The Office of the Government's Agent within one month from receipt of the Court's notification that Judgment has become final shall prepare and send to the Cabinet of Ministers of Ukraine a motion on general measures (hereinafter referred to as "the Motion").

14.2. The Motion shall contain proposals on settlement of an underlying systemic problem indicated in the Judgment as well as its origin, namely:

a) analysis of circumstances which caused the breach of the Convention;

b) proposals as to the amendments to the current legislation;

c) proposals as to the changes in administrative practice;

d) proposals to be taken into account during the drafting of laws;

e) proposals as to the professional training on the Convention and the Court's case-law of judges, prosecutors, lawyers, law-enforcement officers, immigration service employees, and other persons whose professional activity is connected with law enforcement and restriction person's liberty;

f) proposals as to other general measures aimed at eliminating the underlying systemic problems, ceasing violations of the Convention caused by these shortcomings and securing the maximum redress for these violations.

g) list of central executive bodies in charge of execution of measures proposed in the Motion.

14.3. The Office of the Government's Agent, at the same time, shall prepare an analytical review for the Supreme Court of Ukraine which shall include:

a) analysis of circumstances which caused the breach of the Convention;

b) proposals on the bringing of national courts' case-law in line with requirements of the Convention.

14.4. The Office of the Government's Agent, at the same time, shall prepare and send to the secretariat of the Verkhovna Rada of Ukraine proposals to be taken into account during the drafting of laws.

Article 15. Actions which the Cabinet of Ministers of Ukraine shall take with regard to general measures

15.1. The Prime Minister of Ukraine, following the Motion provided in Article 14 of this Law, shall determine central executive bodies in charge of the execution of general measures and immediately provide them with relevant instructions.

15.2. The central executive body determined in the Prime Minister's instruction, within the term set in the instruction, shall:

a) ensure, within his/her competence, the adoption of acts to execute general measures and control the enforcement thereof;

b) make a submission to the Cabinet of Ministers of Ukraine on the adopting of new, abolishing or amending active acts of national legislation.

15.3. The Cabinet of Ministers of Ukraine shall:

a) adopt, within its competence, acts to execute general measures;

b) submit to the Verkhovna Rada of Ukraine according to the legislative initiative procedure draft laws proposals on the adopting of new, abolishing or amending of active laws.

15.4. These acts shall be adopted and relevant draft laws shall be submitted by the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine within three months from the date when the Prime Minister of Ukraine has issued the instruction specified in Article 15.1. of this Law.

Article 16. Responsibility for the non-execution or improper execution of Judgments

16.1 Those officials who are in charge of the execution of Judgments and failed to execute it or did it improperly shall bear administrative, civil, or criminal responsibility as provided for by laws of Ukraine.

SECTION 4. APPLICATION OF THE CONVENTION AND THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS IN UKRAINE

Article 17. Application by courts

17.1. While adjudicating cases courts shall apply the Convention and the case-law of the Court as a source of law.

Article 18. Order reference

18.1. In order to make a reference to the text of the Convention courts shall use the official translation of the Convention into Ukrainian (hereinafter referred to as "the translation").

18.2. In order to make a reference to judgments and decisions of the Court and decisions of the Commission courts shall use translations published in the outlet specified in Article 6 of this Law.

18.3. In case of the absence of the translation of Judgment or decision of the Court or decision of the Commission, courts shall use their original texts.

18.4. If a linguistic discrepancy between the translation and the original text is found, courts shall use the original text.

18.5. If a linguistic discrepancy between the original texts is found and/or if need be to carry out a linguistic interpretation of the original text courts shall use the relevant case-law of the Court.

Article 19. Application in the legislative sphere and administrative practice

19.1. The Office of the Government's Agent shall carry out a legal review of all draft laws, as well as by-laws subject to state registration, as to their compliance with the Convention and shall prepare an opinion thereon.

19.2. If the review specified in part 1 of this Article was not carried out or an opinion on the inconsistency of the by-law was issued, its state registration refused.

19.3. The Office of the Government's Agent shall provide regular and reasonably periodic examination of current legislation on its consistency with the Convention and the Court's case-law, especially in the spheres relating to the activity of law-enforcement bodies, criminal proceedings, and restriction of liberty.

19.4. Following the examination set forth in Article 19.3. of this Law, the Office of the Government's Agent shall submit proposals to the Cabinet of Ministers of Ukraine on amendments to the current legislation in order to bring it in conformity with requirements of the Convention and the relevant Court's case-law.

19.5. The ministries and departments shall provide within their competence a systematic control over the adherence of administrative practice to the Convention and the Court's case-law.

SECTION 5. FINAL PROVISIONS

1. This Law shall enter into force on the date of its publication.

2. The Cabinet of Ministers of Ukraine shall:

1) within one month from the entrance into force of this law:

bring its acts in line with this Law;

ensure that acts of the central executive bodies are brought in line with this Law;

2) take action and, if necessary, submit proposals to the Verkhovna Rada of Ukraine on the incorporation of questions of the study of the Convention and the Court's case-law in:

qualifying requirements for some categories of judges, prosecutors, advocates, and notaries;

programmes of initial training and further raising of qualification of judges, prosecutors, advocates, law-enforcement officers, immigration service employees, and other persons whose professional activity is connected with law enforcement and restriction of person's liberty.

3) annually envisage in a separate budgetary program of the draft State Budget of Ukraine the funds for the enforcement of Judgments of the European Court of Human Rights.

President of Ukraine **V.Yushchenko**
Kyiv, 23 February 2006
No. 3477-IV

3) State of execution of selected Court judgments[15]

122 cases concerning the non-execution of domestic judicial decisions

All these cases – see document AS/Jur (2005) 55 rev, §§ 16, 97-103 - concern violations of the applicant's right to effective judicial protection due to the administration's failure to comply with final judicial decisions relating to the payments of salary arrears and other benefits (violations of Article 6§1 and Article 1 of Protocol 1, ECHR). In some of these cases the European Court also found violations of Article 13 due to the lack of an effective remedy allowing redress for damage created by delays in enforcement.

Many problems are at the basis of violations found, the repetitive ones are due to the bankruptcy proceedings, which interfered with the enforcement of judgments ordering the payment of salary arrears, to the impossibility of attaching any property of the State or its entities according to the Moratorium on the forced sale of property, to the inefficiency of bailiffs which are still civil servants and subject to legislation dating back to 1950. The Government is currently taking legislative measures to set up an appropriate legal framework in all these areas so as to prevent new similar violations.

The authorities are also making efforts to settle these problems at the domestic level pending reforms through the interim measures. However, no visible progress has been made so far as regards the implementation of these measures and the number of applications lodged against Ukraine is constantly growing up. Therefore, the authorities are strongly encouraged to achieve visible results.

Case concerning violations of the requirement of legal certainty and judicial independence
Sovtransavto Holding, judgment of 25/07/02, final on 06/11/02 and judgment of 02/10/03, final on 24/03/04 (Article 41), Interim Resolution ResDH(2004)14

The case concerns violation of Article 6§1 of the Convention due to the authorities' failure to respect the applicant company's right to a fair trial before an impartial and independent tribunal. Background information concerning this case, as well as measurs proposed in Committee of Ministers Interim Resolution ResDH (2004) 14, can be found in document AS/Jur (2005) 32, at pp.41-42.

In response to the Interim Resolution the Ukrainian authorities stated that the independence of the judiciary is guaranteed by the current legislation (new Code of Civil Procedure) and will be enhanced by certain draft laws (draft Codes of criminal, commercial and administrative procedures; amendments to the Law on the judiciary).

Information was also provided on the abolition of the supervisory review procedure in June 2001 and on the training of judges and prosecutors organised by the Judges' Academy and also carried out in the framework of the Council of Europe/European Commission Joint Programme. The authorities were invited to continue their efforts as regards training of judges and prosecutors and in particular to consider a possibility of future transformation of the Judges' Academy into a school for magistrates.

However, concrete legislative measures, as well as other effective measures apart from the legislative reform, are still needed to secure the independence of the judiciary. These measures have been announced by an action plan for the Honouring by Ukraine of its Obligations and Commitments to the Council of Europe adopted by the Decree of the President of Ukraine in January 2006.

It would appear that according to the provisions of the Code of Commercial Procedure, public prosecutors had still the power to ask for the annulment of final judgments in civil proceedings in order to protect individuals' or state interests, without having had been party to the proceedings. This information remains to be confirmed by the authorities.

Finally, it should be noted that the applicant company's individual situation remains uncertain, as the decision delivered following the reopening of the domestic proceedings and granting Sovtransavto Holding's claims is still not final.

15 Sources: Public Annotated Agendas and other documents of the Committee of Ministers and/or information submitted to the Rapporteur by the state's authorities.

Doc. 11020

Afanasyev, judgment of 05/04/2005, final on 05/07/2005

The case concerns the inhuman and degrading treatment inflicted on the applicant while in custody in March 2000 at a district police station in Kharkiv, where he was allegedly beaten by police officers in order to obtain a confession. A subsequent medical examination confirmed that the injuries had been sustained during the period of the applicant's detention (violation of Article 3, ECHR).

The case also concerns a violation of the right to an effective remedy following the serious shortcomings of the investigation, such as the one-year delay before opening it, the late interrogation of witnesses, and the fact that certain witnesses were not called. The Court also found that any claim for compensation would have been futile without criminal proceedings to establish the facts and identify the perpetrators (violation of Article 13).

Individual measures:

The domestic courts have twice remitted the case for re-examination. Criminal proceedings against the police officers identified by the applicant were once again discontinued on 30 March 2004. Another investigation into bodily harm is still pending because the perpetrators have not yet been found. Information on measures taken in response to the judgment to remedy the shortcomings in the domestic investigations is awaited.

General measures:

The problem of the authorities' failure to conduct an effective investigation into alleged ill-treatment in prison has been raised before the Committee of Ministers in the context of *Poltoratskiy and Kuznetsov* cases, in which the general measures were examined by the Committee of Ministers at its 966th meeting in June 2006. The *Afanasyev* case concerns a problem in the context of police custody. The authorities were invited to provide information about measures taken or envisaged to remedy these problems and to establish effective civil, disciplinary and criminal remedies in cases of abuse, as required by the Convention.

Changes in the legal and regulatory framework governing police activities may also be appropriate to prevent new, similar violations. Training and awareness-raising measures for law-enforcement officers would also appear necessary.

Given the nature and complexity of the issues involved, the Secretariat is preparing a letter to the Ukrainian delegation summarising the experience of the other countries in this field in order to allow the Ukrainian authorities to deal in greater depth with the issues raised by this judgment.

PART V: Rapporteur's visit to Italy

1) Programme of the visit

Wednesday 5 July 2006

15:00 Meeting with Mr Filippo Patroni Griffi, Head of the Legal and Legislative Affairs Deparment of the Presidency of the Council of Ministers

Thursday 6 July 2006

9:00 Meeting with the Executive Committee of the High Council of the Judiciary
10:30 Meeting with the President of the Council of State
12:00 Meeting with members of the Italian Delegation to PACE, followed by a working lunch hosted by Mr Claudio Azzolini, Chairman of the Delegation
15:00 Meeting with the Chairpersons and Deputy Chairpersons of the Committees on Constitutional Affairs, Justice, Foreigh Affairs and Environment of the Chamber of Deputies and the Committees on Constitutional Affairs, Justice, Foreign Affairs and Environment and the Land of the Senate. Also present: Ms Carla Ciuffetti, of the Italian Parliament's "Standing Observatory"

Friday 7 July 2006

11:00 Meeting with the representatives of the Department for Justice Affairs of the Ministry of Justice

2) State of execution of selected Court Judgments[16]

2183 cases concerning the length of judicial proceedings
(see also for more detailed information, CM/Inf/DH(2005)31 and addenda 1 and 2, CM/Inf/DH(2005)33, CM/Inf/DH(2005)39, Interim Resolutions DH(97)336, DH(99)436, DH(99)437 and ResDH(2000)135).

In very many judgments against Italy, the European Court has found violations of Article 6§1,ECHR, on account of the excessive length of proceedings: in effect 2183 cases, including 1571 civil cases, 364 employment cases, 7 enforcement proceedings, one civil case requiring exceptional diligence, 122 criminal cases and 118 administrative cases. The Committee of Ministers has also examined approximately 180 other cases settled by friendly settlement. Details concerning these and other cases can be found in document AS/Jur (2005) 55 rev, at pages 8-11.

Individual measures:

In 707 cases, proceedings are still pending, including 531 civil cases, 109 employment cases, 1 set of enforcement proceedings, 23 criminal and 43 administrative cases. The Italian authorities have reported that the finding of violations due to the excessive length of proceedings have been brought to the attention of the national courts concerned with a view to accelerating these proceedings. The latest list of such cases was sent to the Italian authorities on 27 May 2005 and information is awaited concerning the progress of the proceedings.

General measures:

1) Requirements of the judgments - Interim Resolution ResDH(2000)135

The special monitoring procedure set up under Interim Resolution ResDH(2000)135 provides that the Committee of Ministers examines this question on the basis of annual reports by the Italian authorities presenting measures taken or envisaged 1) to improve the efficiency of the judicial system; 2) to deal with the longest-standing cases; and 3) to compensate the victims of excessively long proceedings.

16 Sources: Public Annotated Agendas and other documents of the Committee of Ministers and/or information submitted to the Rapporteur by the state's authorities.

2) The Italian authorities' annual reports

The Committee examined the annual reports for 2001 (CM/Inf(2001)37) and 2002 (CM/Inf(2002)47. Following its examination of the 2003 report (CM/Inf(2003)20), the Committee, noting a dearth of satisfactory results (see Press Communique No. 466 (2004) and document CM/Inf/DH(2004)23rev.), decided to resume consideration of the cases by April 2005 at the latest on the bass of the 2004 annual report and an additional action plan with a view to ensuring fulfilment of the expected execution objectives.

Examination of the fourth report, for 2004 (CM/Inf/DH(2005)31 and Addendum), scheduled for April 2005, was postponed until the initial information became available, i.e. the 928th meeting (June 2005 - see Press Communique No. 190 (2005)) of 8/04/2005) and continued at the 933rd meeting (July 2005) when the action plan was presented (CM/Inf/DH(2005)39).
At that meeting the Deputies: (i) invited the Italian authorities also to submit an action plan for administrative justice; (ii) took note that it was difficult to arrive at a correct evaluation of the progress achieved on account of certain inconsistencies in the statistical data presented, and (iii) encouraged the Italian authorities, in co-operation with the Council of Europe, to develop reliable means of assessing the efficiency of justice with a view to identifying areas giving rise to structural problems and measures to resolve them.

3) Evaluation of the measures taken

The following measures are set out in the 2004 annual report and the plan of action (CM/Inf/DH(2005)31 and addenda 1 and 2, CM/Inf/DH(2005)39):

a. *General measures for civil and criminal justice*
- a considerable budgetary commitment (e.g. 11,439,245 euros just for compensation granted under the Pinto Act to victims of excessively lengthy proceedings);
- reform of the judicial order with a view to improving the professionalism of judges through more severe selection procedures, merit-based career development, an independent magistrates' school and temporary appointment to directorial posts;
- increase of appeal court staff by 158 posts;
- improved management of summonses (agreement between the Justice Ministry and the Post Office);
- promotion of good court practice.

b. *Measures for civil justice*

With the “Competition Law” (Law No. 80 of 14/05/2005), the Italian Parliament intervened in various ways in the judicial system (some with immediate effect, some by powers delegated to the government to introduce general reforms by 15 November 2005):
- reform of arbitration to encourage the use of this form of conflict resolution;
- modification of civil procedures governing hearings and the adduction of evidence;
- modification of enforcement procedures, so that judges may be assisted by professionals during proceedings;
- increased use of information technology in judicial communications;
- reform of bankruptcy procedures;
- reform of procedures before the Court of Cassation.

c. *Measures for criminal justice*

Two commissions have been set up to prepare reforms of the Criminal Code and the Code of Criminal Procedure. The Italian authorities expect to be able to evaluate the benefits of these measures in the mid to long term.

d. *Measures for administrative justice*

The Italian authorities have submitted no action plan for this area. However, they have indicated that:
(i) a new computer system is to be installed by mid-2006;
(ii) the recruitment of 32 legal assistants is under way;
(iii) a programme is being considered to permit young people on civic service to be brought in to contribute to reducing the backlog.

Measures announced in earlier annual reports have been completed: in particular, judicial staff has been reinforced by 77 new judges and 39 administrative posts, and before the abolition of compulsory military service in Italy as of 1 January 2005, conscientious objectors were seconded to administrative tribunals as temporary reinforcements. The administrative tribunals' computer network has been consolidated and an internet site created featuring more than 400 000 documents available to the public.

Situation to date. *According to the statistical data*: evaluation problems persist because of the inconsistencies found by the Deputies (see recommendations made at the 993rd meeting, July 2005) and clarification is necessary concerning how to calculate the average length of proceedings in a reliable and durable way. Nonetheless, some evaluation is possible on the basis of the information provided by the Italian authorities, particularly with regard to the level of the backlogs:

- *In civil justice*, before first-instance courts the general backlog has been reduced between the beginning of 2001 and the end of 2004 by some 18%, largely due to the help of the "*sezioni stralcio*": exceptional, specific magistrates responsible for getting rid of the oldest cases. However, this degree of reduction did not apply to "ordinary" civil proceedings, in respect of which the backlog was reduced only by less than 1%. During the same period, the backlog before justices of the peace, representing 21% of all first-instance proceedings, actually rose by 64%. Even more disturbing is the backlog in appeal courts, which has grown by 122%. The backlog of the Court of Cassation has grown by 33%.

- *In criminal justice* the backlog has grown by 16% for the investigatory stages, by 60% before a judge sitting alone at first instance, 24% at appeal and 4% before the Court of Cassation.

- *For administrative justice*, no figure has been provided for the average length of proceedings. The Italian authorities have underlined that in 40% of cases, interim measures adopted within 35-40 days have made it possible to limit the damage due to excessive duration. Law No. 205 of 2000 helped speed up proceedings and entitled appellants to ask for priority treatment for their cases. The backlog remains extensive, even though a gradual reduction may be discerned before first-instance administrative tribunals: from 850,567 in 2002 to 777, 285 in 2004.

Evaluation: The measures taken, although many and varied, have not up to now brought about a significant improvement in the efficiency of Italian civil or criminal justice. Despite considerable investments, the implementation of structural reforms announced to date has been partial and tardy: for example, the programme to recruit new judges has not been completed; the "*Sezioni stralcio*" which were supposed to mop up the backlog of civil cases by the end of 2004, did not complete their task on schedule. The "Pinto Act", which came into force in 2001, has provided the possibility of compensation for excessively long proceedings, and in January 2004 the Italian Court of Cassation aligned certain admissibility criteria with those of the Strasbourg Court. But the Act has not led to the acceleration of pending proceedings which have already lasted too long. Finally, the fourth annual report makes a tangential reference to certain structural causes, i.e., the obligatory character of criminal action, the lack of adequate means of filtering access to civil justice or mechanisms able to prevent or effectively sanction delaying tactics; the weight of the backlog already accrued and the failure of extra-judicial conciliation procedures.

On 30 November 2005, the Ministers' Deputies adopted a new Interim Resolution ResDH(2005)114, in which it recalled "*that the important structural problems at the basis of [very many] violations have been examined by the Committee for almost 20 years with a view to ensuring that the Italian judicial system is brought into conformity with the requirements of the Convention ..[and] that, in the 1990s, the efforts already deployed by the Italian authorities to solve these problems had led the Committee to close its supervision on the assumption that the comprehensive measures adopted would achieve satisfactory results (see e.g. as regards civil proceedings, Resolution DH(95)82 in the case of Zanghì)".* It then went on to note that "*the problem of the excessive length of judicial proceedings in Italy persisted and that it was necessary to reopen its supervision of the question of the general and individual measures required to remedy the violations found and to prevent similar violation..[and] CALL[ED] UPON the competent authorities to set up an effective national policy, coordinated at the highest governmental level, with a view to achieving a comprehensive solution to the problem and to present by the end of 2006 at the latest a new plan of action based on a stocktaking of results achieved so far and embodying an efficient approach to its implementation" (full text on Committee of Ministers web site).*

The Rapporteur now strongly urges both the executive and parliamentary bodies directly implicated in the implementation of the Azzolini Law (No. 12 of 9 Januarry 2006) to ensure that the issue of “excessive length of procedure cases” be given priority at the highest political level, as indeed had been promised to him during his visit to Rome on 5-7 July 2006.

Dorigo Paolo, judgment of 28/01/1999
Interim Resolutions DH(99)258 of 15/04/99 (finding of a violation), ResDH(2002)30, ResDH(2004)13 and ResDH(2005)85 (adoption of individual measures) CM/Inf/DH(2005)13.

The case concerns the unfairness of certain criminal proceedings as a result of which the applicant was sentenced in 1994 to more than thirteen years' imprisonment for, among other things, his alleged involvement in a terrorist bomb attack on a NATO military base in 1993. His conviction was based exclusively on statements made before the trial by three “repented” co-accused, without the applicant having been allowed to examine these statements or to have them examined, in conformity with the law in force at the relevant time (violation of Article 6§1 taken together with Article 6§3d, ECHR).

Individual and general measures:

1) *The applicant's situation*: The applicant has applied for revision of his conviction before the Bologna Appeal Court. On 13 March 2006, this court raised the question of the constitutional legitimacy of national law in that it does not authorise reopening of proceedings on the basis of the finding of a violation by the European Court. Pending a decision a decision by the Constitutional Court, enforcement of Mr Dorigo's sentence has been suspended and he has been set free.

2) *Measures have been required for some time*: The Committee of Ministers has been insisting on Italy's obligation to take individual measures since 1999. The Committee has in particular taken account of the serious negative consequences of the violation for the applicant, consequences which could not have been erased by the payment of just satisfaction which covered the damage sustained up until 1999. Furthermore the violation found of the defence rights throws serious doubt on the safety of the applicant's conviction.

3) *Action by the Committee of Ministers and the Parliamentary Assembly*:

● *The Committee of Ministers* has adopted several interim resolutions (ResDH(2002)30 of 19 February 2002, ResDH(2004)13 of 10 February 2004 and ResDH(2005)85 of 12 October 2005). The Committee firmly recalled the obligation of all authorities concerned to ensure the adoption of appropriate measures in the applicant's favour and called for legislation enabling the reopening o the case.
● *The Chairman* wrote on 18 January 2005 to the Italian Ministry for Foreign Affairs, asking for prompt, concrete measures to be taken in favour of the applicant.
● *The Parliamentary Assembly* also urged Italy to erase the consequences of the violation: see Recommendation 1684(2004) and Resolution 1411 (2004) of 23 November 2004 and oral questions No 14 by Mr Jurgens (Rapporteur of present Report), of 5 October 2004, No 15 by Ms Bemelmans-Videc of 26 January 2005 and No 13 by Mr Lloyd of 22 June 2005.

4) *Solutions considered by the Committee of Ministers*:

The Committee of Ministers has considered the following solutions:

a) *Presidential pardon*: was raised before the Committee in July 2004. The Italian delegation subsequently indicated, however, that there appeared little chance that the applicant might rapidly obtain a pardon. It thus appeared to be a pointless remedy, even if coupled with adequate complementary measures. This option has not been re-considered by the Deputies.

b) *Reopening the unfair proceedings*: Italian law still does not permit reopening of proceedings to conform with judgments of the Court. Interim resolutions ResDH(2002)30 of 19 February 2002, ResDH(2004)13 of 10 February 2004 and ResDH(2005)85 of 12 October 2005 all stress that reopening the impugned proceedings remains the best means of ensuring *restitution in integrum* in this case.

c) More recently, the judicial authorities have tried to reopen the criminal proceedings at issue so as to meet the Convention's requirements: both the Bologna Appeal Court (see above) and the Udine Assize Court have raised the question of constitutional legitimacy. Information is awaited concerning the outcome of these proceedings.

5) ***The Committee's latest decisions and future action***: The Deputies have taken the view that the recent attempts by the judicial authorities to reopen the criminal proceedings at issue had not yet produced the expected results and expressed the wish that all these efforts should bring about a situation in conformity with the Convention's requirements. In particular at the 960th meeting (March 2006) they encouraged the Italian authorities to find the means, be they jurisprudential or legislative, to erase the consequences of the violations for the applicant and to avoid similar problems in the future.

6) ***Other general measures***: Besides the persistent problems caused by the absence of adequate legislation providing for reopening of proceedings (see above), the problems raised by the present case appear to have been resolved. Constitutional and legislative amendments were introduced in 1999, 2000 and 2001 to ensure respect of the adversarial principle and thus prevent new violations of the right to fair criminal proceedings similar to that found in this case. See for details Resolution ResDH(2005)28, adopted in the case of *Craxi No. 2 against Italy*.

F.C.B., judgment of 28/08/91.
Resolution DH(93)6 and Interim Resolution ResDH(2002)30

This case concerns the unfairness of certain criminal proceedings: the applicant was sentenced, *in absentia*, in 1984, to twenty-four years' imprisonment without the domestic court having ascertained whether he had effectively intended to waive his rights to appear and defend himself (violation of Articles 6§1 and 6§3.c, ECHR).

In March 1993, the Deputies adopted Resolution DH(93)6, closing the examination of this case on the basis of the information given by the Government of Italy on the general measures adopted.

Individual and general measures:

1) The question of reopening: In 1999, the Committee decided to resume consideration of the case as regards individual measures, when the applicant complained that, contrary to the information available in 1993, the consequences for him of the violation found had not been remedied: indeed, the Italian authorities had requested his extradition from Greece in order to enforce the sentence imposed on him as a result of the unfair proceedings.

This raises the question of reopening these proceedings. As from September 2000, the Italian authorities dropped their requests for extradition and indicated that a law authorising the reopening of criminal proceedings found to be in violation of the Convention was under consideration. However, despite repeated representations by the Committee of Ministers over many years and a number of unsuccessful attempts to adopt the necessary legislation, Italian law does not yet permit reopening of proceedings following a violation of the Convention, but there have been some recent attempts to bring about such reopening by jurisprudential means (see the Dorigo case, cited above). Accordingly, following the applicant's arrest in Italy for other offences, an enforcement order was issued in respect of the conviction which had found to be unfair by the European Court, which means that the applicant still runs the risk of serving a prison sentence to which he was condemned in violation of the Convention. Nonetheless, the Appeal Court has not changed the enforcement order and the matter has been brought before the Court of Cassation. That said, the Committee of Ministers has taken note of the recent initiatives aiming at resolving the problem by jurisprudential means. Information is awaited on the development of these judicial proceedings in order to define the follow-up to be given to this case by the Committee of Ministers.

2) ***Other general measures***: dealt with during the adoption of the initial interim resolution.

On 4-5 July 2006, at the 970th DH meeting, the Ministers' Deputies adopted a decision regarding the problem of reopening the impugned proceedings. This problem concerns also the *Dorigo* and *F.C.B.* cases. The decision' text reads:

Doc. 11020

The Deputies,

1. recalling that the judgments of the Court imply, under Article 46 of the Convention, the legal obligation to erase as far as possible the consequences of the violations found for the applicant and to prevent similar further violations;

2. noted that in several similar cases submitted to the supervision of the Committee of Ministers the best appropriate way to erase the consequences of the violations of the right to a fair trial is the reopening of the domestic proceedings impugned (cases of Dorigo, F.C.B., R.R., Bracci, Sedjovic);

3. noted with great interest the recent jurisprudential efforts in the cases of Dorigo and F.C.B. to reopen the proceedings impugned but regretting that despite these efforts the applicants are still suffering the consequences of the violations after many years;

4. invited the Italian authorities to complete their efforts with a view to ensuring, either by case-law or legislative reform, that the consequences of proceedings found to be in violation with the Convention in all the cases concerned, may be rapidly erased in accordance with Italy's legal obligations;

5. decided to resume consideration of the progress in the implementation of the judgments and decisions concerned at the their 976th meeting (17-18 October 2006), on the basis of further information to be provided by the authorities regarding the individual and general measures envisaged".

Cases relating to the failure to enforce judicial eviction orders against tenants
Interim Resolution ResDH(2004)72

These cases mainly concern the sustained impossibility for the applicants to obtain the assistance of the police to enforce judicial decisions ordering their tenants' eviction, principally on account of the implementation of legislation providing for the suspension or staggering of evictions (see doc. AS/Jur (2005) 32 pp. 10-11). The European Court concluded that a fair balance had not been struck between the protection of the applicants' right to property and the requirements of the general interest (violations of Article 1 of Protocol No. 1, ECHR). In most of these cases, the Court also concluded that, as a result of the legislation at issue, rendering eviction orders nugatory, the applicants had been deprived of their right to have their disputes decided by a court, contrary to the principle of the rule of law (violations of Article 6§1).

Individual measures:

In Interim Resolution DH(2004)72, the Committee deplored the fact that, even in cases where the European Court of Human Rights has found violations, a number of applicants have still not been able to recover their property and that the failure to enforce court orders issued in their favour has persisted for many years. In the majority of cases, the applicants recovered their apartments between 4 and 17 years after the eviction decisions had been issued.

Outstanding issues: The following applicants have still not recovered possession of their flats since the date indicated: Esposito Paola (judgment of 19 December 2002, since 1992), M.P. (judgment of 19 December 2002, since 1987), Marini (judgment of 9 January 2003, since 1989), C.T. II (judgment of 9 January 2003, since 1994), Carbone Anna (judgment of 22 May 2003, since 1996), Indelicato Antonio (judgment of 6 November 2003, since 1992) and Antonio Siena (judgment of 11 March 2004, since 1986). Up-to-date information on these individual situations is needed.

General measures:

Evaluation of the situation:

The problem of the sustained impossibility for these applicants to recuperate their apartments is reducing progressively. Statistical data published by the Ministry of the Interior for 1994 - 2004 show both improved efficiency in enforcement, evictions having increased by 27,53%, and reduced recourse to eviction, with a 35,19% reduction in applications to evict tenants and a 35,93% reduction in eviction orders by courts (source: <HTTP://pers.mininterno;it/dcds/index.htm>). The data for 2005 are awaited.

The same positive tendency is revealed with regard to the case-load of the European Court: new applications are tailing off and the last of them concern situations having their origin some time ago.

Amongst the main causes of the violations found by the European Court, the staggering of evictions is no longer a factor: prefects may no longer hold back the assistance of the forces of order. Another case of delay, the legal suspension of evictions, is now applied much less widely. In its judgment No. 155 of 2004, the Constitutional Court held that such legislative suspensions could only be justified if applied for limited duration, and are henceforth applied under the supervision of the Constitutional Court.

A recent law of this kind, No 148/2005, seems to have had no practical effect in terms of suspending evictions, while another, No 86/2006, limited suspension to just three cities: Milan, Rome and Naples. Its application is moreover further limited by the fact that only a small number of very restricted categories of persons may benefit from suspension of eviction: persons over 65, severely handicapped persons and those who do not have the means to pay the rent. It should be noted that the most recent legislation of this kind has also provided economic help for tenants or tax advantages for landlords. As a consequence it may be stated that since 2005 the suspension of evictions has had a negligible effect.

Domestic remedies: present situation:

1) As regards action against tenants: Article 1591 of the Civil Code obliges a tenant to compensate for any damage sustained as a result of delays in restoring the property to the landlord. Compensation is limited to a sum equivalent to the amount of the rent paid at the time of expiry of the lease, indexed to the cost of living and increased by 20% for each rental period during which the landlord could not enjoy his property (Law No. 61/1989). The Court of Cassation has established that such a tort may be proved simply by demanding a higher rent, fixed on the basis of the market rate (judgment No. 1032/1996) and that the notice to quit remains valid from the date of expiry of the lease at issue, independently of the judge's decision on enforced eviction (judgment No. 10560/2002). Regarding Article 1591 of the Civil Code, the Strasbourg Court noted that (see judgment in *Lo Tufo*, 21 April 2005, §69) national law makes it possible to erase the material consequences of violations and consequently rejected applications for just satisfaction in respect of pecuniary damage.

2) As regards action against the state in respect of violations of Article 1 of Protocol No. 1: According to the case-law of the Court of Cassation, the state's obligation to guarantee the enforcement of judicial decisions must be discharged most rigorously; to compensate the citizen is the essential basic value of such redress. In its judgment No. 3873/2004 the Court of Cassation established that it was for the administration, not the landlord, to demonstrate the impossibility of bringing in the forces of order to enforce eviction orders. Such impossibility does not exclude the administration's responsibility in exceptional or unpredictable circumstances. Possible “permanent crisis” situations, such as those which may affect the judiciary or the administration, do not cancel out their responsibility for prejudice sustained, but on the contrary reinforce its presumption.

3) As regards action against the state in respect of violations of Article 6§1: The state's liability for prejudice sustained as a result of the excessive length of court proceedings is provided by the “Pinto Act” (Law No 89/2001). The case-law of the Court of Cassation confirms that this Act is applicable to delays or shortcomings in the enforcement of judicial eviction orders. In its inadmissibility decision in *Proveddi against Italy*, the European Court found that applicants in cases of this kind must have recourse to the Pinto Act to satisfy Article 35§1 of the Convention, in respect not only of Article 6§1 but also of Article 1 of Protocol No. 1.

Information is awaited concerning the applicability of this means of redress to cases in which eviction is temporarily barred by legislative suspension.

The European Court's judgment in the *Immobiliare Saffi* case has been published, not least in the academic legal journal *Rivista internazionale dei diritti dell'uomo,* No 1/2000, pp. 252 - 265.

Cases concerning “indirect expropriation”

All these cases concern the *de facto* expropriation of land belonging to the applicants following their emergency occupation, subsequently prolonged, by the public authorities. The lawfulness of such expropriation could not be tested because there was no formal need of transfer of the property and on account of the slowness of

subsequent court proceedings. The European Court found this situation to be incompatible with the exercise of the applicants' right to the peaceful enjoyment of their property (violations of Article 1 of Protocol No. 1, ECHR).

Since the 1970s, Italian local authorities have been occupying land on an emergency basis without issuing expropriation orders. Courts confronted with this situation have developed the case-law rule of "indirect expropriation", according to which public authorities may acquire title to the land at issue without formal expropriation if, following the expropriation and irrespective of the lawfulness of same, public works have been carried out on the property. This jurisprudence was acknowledged and modified by a number of laws of which the most recent was the "Compendium on public utility expropriation".

In its earliest judgments in 2000 (see *Belvedere Alberghiera* and *Carbonara and Ventura*) the Strasbourg Court found that the doctrine of "indirect expropriation" failed to offer sufficient legal certainty. In this respect it noted certain contradictory applications of the doctrine in Italian case-law. The Court further noted that indirect expropriation enabled the administration to set aside the ordinary rules of expropriation with the attendant risk of unpredictable or arbitrary results for the citizen. Indirect expropriation makes it possible to occupy land and bring about irreversible changes to it without a deed of transfer. Consequently, the only possible measure of legalisation is a finding of illegality by a court in the absence of a formal declaration by the public authority. Such a finding required proceedings, which must be brought by the victim and which will probably last a very long time.

The European Court also found that "indirect expropriation" made it possible for the public authority to occupy and transform property without paying compensation at the time. Such compensation must be claimed by the victim, within five years. But the right to such compensation may be declared time-barred as the court fixes the starting point for the five-year period retroactively, thus making any hope of compensation pointless (see judgment in *Carbonara and Ventura*, §71).

Individual measures:

Pending the proceedings on the issue of just satisfaction (so far reserved by the European Court in most of these cases), the Italian authorities have been invited urgently to find adequate means to erase the continuing effects of the violations found.

Identification of individual measures may be part of the solution of the general problem (see below) as it requires the setting up of an effective domestic system to secure the return of property expropriated *de facto* and/or to pay adequate compensation in respect of expropriation or damages.

General measures:

Presidential decree No 327 of 8/06/2001, in force since July 2003, adopted a compendium of measures reforming expropriation practice. In particular, Article 43 provides that, following illegal occupation of land, the administration may issue a deed of expropriation in order to regularise the situation if justified by reasons of public interest.

The Court of Cassation, in plenary decisions adopted after the entry into force of the compendium (5902/2003 and 11096/2004) stated that the norms in domestic law concerning "indirect expropriation" were sufficiently accessible, precise and predictable and excluded any risk of conflict with the Convention.

The Council of State (plenary decision 2/2005) emphasised that following the adoption of the Compendium, expropriation in Italy could no longer be the simple consequence of a *de facto* situation: but rather the effect of a formal act, motivated by the administration, even if *ex post facto*. It also underlined that in the absence of such an act, the citizen has a primary right to the return of the property which the administration cannot refute on the sole ground that public works have been carried out.

The efficacy of the measures contested by the European Court:
In its judgment in *Prenna v Italy* of 9 February 2006 (§§64-65) the Strasbourg Court noted that:

- the existence of a legal framework as such is not enough to satisfy the principle of legality and that attention needs to be paid to the *quality* of law;
- historically, relevant Italian case-law is contradictory;

- there are also contradictions between case-law and statute law;

a. constructive expropriation is a means of legitimating illegalities committed by the administration in such a way as it can benefit from its illegal acts.

The Court found that, whether it resulted from a case-law doctrine or a statutory text such as Article 43 of the Compendium, "indirect expropriation" cannot be considered a valid alternative to proper expropriation carried out according to law.

Information still required: In the light of the Strasbourg Court's recent judgment:

It would appear that new legislation is the best way of resolving the situations at the origin of the present violations and ensuring that the administration is at least strongly deterred from resorting to this kind of expropriation. Information is awaited in this respect. Information is in particular necessary about the measures envisaged to set up an effective domestic mechanism providing adequate compensation to all persons in the applicants' positions (see **Individual measures** above*).*

On 4 July 2006, 970th (DH) meeting, the Ministers' Deputies adopted the following decision:

"*The Deputies,*

1. noted with concern the increasing number of cases subject to the supervision of the Committee of Ministers concerning violations of the Convention through constructive expropriations in Italy, and the fact that the complex problem at the origin of the violations is still not resolved, as illustrated by recent judgments of the European Court;

2 invited the Italian authorities to undertake all necessary efforts for the adoption of the individual and general measures required and to ensure rapidly an efficient redress at national level in respect of the violations already found for the applicants;

3. decided to resume consideration of all the necessary measures for the implementation of these judgments at the 976th meeting (17-18 October 2006) on the basis of the draft Interim Resolution distributed by the Secretariat and possible comments from the Italian authorities".

Cases mainly concerning various prison issues

Labita, judgment of 06/04/00
Indelicato Rosario, judgment of 18/10/01, final on 18/01/02

These cases concern the **absence of a thorough and effective investigation into the applicants' allegations of ill-treatment during their detention** in the Pianosa prison in 1992 (violations of Article 3,ECHR); the *Labita* case also concerns various aspects of the detention on remand and the conditions of release of the applicant.

Background information concerning both cases can be found in document AS/Jur (2005) 32, at pp 12-13.

Additional information: The effectiveness of the measures adopted is currently being examined. As concerns the violation of Article 8, ECHR: see Resolution ResDH(2005)55 adopted in the *Calogero Diana* case, detailing the measures taken to prevent new, similar violations. See also Resolution ResDH(2005)90, adopted in the *Vaccaro* case, detailing measures taken to prevent new, or similar violations with respect to the violation of Article 5§3, ECHR.

41576/98 Ganci, judgment of 30/10/03, final on 30/01/04
56317/00 Argenti, judgment of 10/11/2005, final on 10/02/2006
60915/00 Bifulco, judgment of 08/02/2005, final on 08/05/2005, Interim Resolution ResDH(2005)56
53723/00 Gallico, judgment of 28/06/2005, final on 28/09/2005
25498/94 Messina Antonio No. 2, judgment of 28/09/00, final on 28/12/00, Interim Resolution

ResDH(2001)178
42285/98 Salvatore, judgment of 06/12/2005, final on 06/03/2006

The cases concern the **failure to take, or delays in taking, judicial decisions on the merits of prisoners' complaints concerning ministerial decisions imposing the special prison regime** provided by Article 41*bis* of the Prisons Act (violations of Article 6§1). The Messina case also concerns the absence of an effective remedy in this respect (violation of Article 13).

The *Argenti, Salvatore* and *Messina No. 2* cases also concern the lack of clarity of the Italian law on the monitoring of prisoners' correspondence in force at the material time, Law No. 354/75. This law left too much leeway to the public authorities, particularly in respect of the duration of monitoring and the reasons justifying it (violations of Article 8).

Individual measures: No individual measure is required as none of the applicants is subject to the special regime any longer.

General measures:

1) Violations of Article 8: Italy has adopted a series of general measures designed to remedy the structural problems at the origin of these violations (see in particular the final Resolution adopted on 5 July 2005 in the *Calogero Diana* case, Resolution ResDH(2005)55).

2) Violations of Articles 6§1 and 13: On the same day the Committee of Ministers adopted an Interim Resolution, ResDH(2005)56 concerning the right to an effective remedy against monitoring of prisoners' correspondence and other restrictions imposed on prisoners' rights - general measures, in the cases of *Messina No 2*, *Ganci* and *Bifulco*. In this resolution, the Committee of Ministers took note of a number of legislative and jurisprudential measures which have gone some way to resolving the problems highlighted by the European Court. It noted nonetheless with concern that the problem of slowness of this judicial review remains and that the statutory ten-day time limit is systematically not respected by domestic courts.

The problems which remain outstanding - in particular the violations of Article 6 - constitute a specific facet of the persistent and much broader problem of the length of judicial procedures in Italy.

12 cases revealing various problems in bankruptcy proceedings
P.G. II case
Interim resolutions DH(97)18 of 28/01/97 (finding of a violation) and ResDH(2002)58 of 16/04/02 (questions concerning general measures)

The case concerns the impossibility in Italian law to rehabilitate a person declared bankrupt before a minimum 5-year term has expired (Article 143 of the law on bankruptcy). The applicant was thus refused an earlier rehabilitation, in spite of the fact that he had been declared bankrupt while he was a minor and *de facto* had no appointed guardian or legal representative. Thus until the lifting of the bankruptcy (i.e. from the age of 16 until he was 22), the applicant was subjected to supervision of his correspondence and could not leave his house without the authorisation of the Commissioner in Bankruptcy. Moreover until his rehabilitation at the age of 27, he was barred from voting or from standing for election, from exercising judicial functions, from acting as a guardian, as manager, administrator, liquidator or auditor of a joint-stock company and from belonging to a professional body (violation of Article 8).

Individual measures: No measure has been requested in particular as the applicant's bankruptcy has been lifted, the 5-year term having expired before the violation was found.

General measures:

Legislative Decree No. 5/2006 has brought about a fundamental reform of bankruptcy law. The Italian authorities underline that a number of modifications had been made to remedy the violations found in the cases under consideration by the Committee of Ministers. In particular, the Bankruptcy Register and the rehabilitation procedure have been abolished (Article 50.143 of the Law on Bankruptcy). There are changes to the administration of bankrupts' correspondence (Article 48): the bankrupt or the legal representative of a bankrupt company or organisation is obliged to submit any post addressed to them in the context of the bankruptcy proceedings to the liquidator, whereas beforehand all letters were diverted directly to the liquidator. With regard to freedom of movement (Article 49) the obligation of residence has become an obligation for the bankrupt to

inform the competent authorities of any change of residence. The judge may authorise a bankrupt to be represented in cases of legitimate inability to appear or on presentation of a motivated request. Finally, remedy against judges' decisions in relation to correspondence, free circulation and disposal of property have been modified to provide better protection for the bankrupt (Articles 26 and 36).

Cases concerning violations of the right to a court

Nordica Leasing S.p.a
S.B.F. S.p.a. Interim Resolution DH(97)599

The Committee of Ministers has decided to close its supervision of the present judgments.

These cases concern the violation of the right of access to a court. The applicant companies were unable to recover sums due to them in proceedings they had brought to obtain adjudications of bankruptcy against their debtors. The applicable law (Article 10 of Royal Decree No. 267 of 1942) provided that a declaration of bankruptcy could be made within a year of the debtor's ceasing activity.

In both these cases, the financial police took so long to check the actual date of the cessation of activity that by the time the courts gave their verdict, the deadline had already expired. To be exact, in the S.B.F. case, the deadline expired on 11/01/93 and the court gave judgment on 12/05/93, and in the Nordica Leasing case the deadline expired on 1/07/98, the court giving judgment on 10/03/99 (violations of Article 6§1).

Individual measures: None, as the applicant companies could have recovered the sums through other remedies at their disposal, in particular individual enforcement proceedings (see §35 of the *Nordica Leasing* judgment explaining why the European Court granted no compensation for pecuniary damages).

General measures:

The European Court's judgment in the **Nordica Leasing** case has been translated and sent out with an explanatory note on the violations found to domestic courts including the Court of Cassation. Although the violation was not the result of any shortcoming in the law, the Constitutional Court, in its decision No. 319 of 2000, struck down Article 10 of the abovementioned Decree because it provided that the deadline should run from the date of cessation of activities rather than the date at which the enterprise concerned was struck out of the commercial register. This decision provides a formal starting point which is much more easily verifiable by computer search.

Bottaro and others cases concerning bankruptcy proceedings

7503/02	Neroni, judgment of 20/04/2004, final on 10/11/2004
52985/99	S.C., V.P., F.C. and E.C., judgment of 6/11/03, final on 6/02/04
56298/00	Bottaro, judgment of 17/07/03, final on 17/10/03
32190/96	Luordo, judgment of 17/07/03, final on 17/10/03
44521/98	Peroni, judgment of 06/11/03, final on 06/02/04
47778/99	Bassani, judgment of 11/12/03, final on 11/03/04
51703/99	Vadalà, judgment of 20/04/2004, final on 20/07/2004
55984/00	Goffi, judgment of 24/03/2005, final on 06/07/2005

These cases concern disproportionate restrictions of the applicants' rights in excessively long bankruptcy proceedings. In order to protect the rights of creditors, Royal Decree No. 267 of 16/03/1942 provides that bankrupts are, *inter alia*, deprived of their right to administer and dispose of their possessions, that their correspondence should be monitored, that they are prohibited from bringing judicial proceedings and prevented from leaving their place of residence without judicial permission. Such restrictions are not open to criticism in themselves. However, when the length of the bankruptcy proceedings is excessive, as in these cases (between 12 and 24 years) they upset the balance between the general interest in payment of a bankrupt's creditors and the interest of the individual. The European Court accordingly found violations of the applicants' right to the peaceful enjoyment of their possessions (violations of Article 1 of Protocol No. 1), their right of access to a court (violation of Article 6§1), their freedom of movement (violation of Article 2 of Protocol No. 4) and their right to respect for their correspondence (violations of Article 8). Furthermore, no effective remedy was available as regards the last of these rights (violation of Article 13 in *Bottaro* and *Neroni* cases).

Individual measures: The need to accelerate bankruptcy proceedings and to lift the restrictions still imposed on the applicants has repeatedly been stressed before the Committee of Ministers. The latest reply from the Italian delegation indicates that the proceedings in the case of *S.C., V.P., F.C. and E.C*. are still pending, having lasted more than 14 years; the same applies to the restrictions on the applicants. Information is awaited concerning the *Vadalà* case.

General measures:

Legislative Decree No. 5/2006 has brought about a fundamental reform of bankruptcy law. The Italian authorities underline that a number of modifications had been made to remedy the violations found in the cases under consideration by the Committee of Ministers. In particular, the Bankruptcy Register and the rehabilitation procedure have been abolished (Article 50.143 of the Law on Bankruptcy). There are changes to the administration of bankrupts' correspondence (Article 48): the bankrupt or the legal representative of a bankrupt company or organisation is obliged to submit any post addressed to them in the context of the bankruptcy proceedings to the liquidator, whereas beforehand all letters were diverted directly to the liquidator. With regard to freedom of movement (Article 49) the obligation of residence has become an obligation for the bankrupt to inform the competent authorities of any change of residence. The judge may authorise a bankrupt to be represented in cases of legitimate inability to appear or on presentation of a motivated request. Finally, remedy against judges' decisions in relation to correspondence, free circulation and disposal of property have been modified to provide better protection for the bankrupt (Articles 26 and 36).
The *Luordo* and *Bottaro* judgments have been published in Italian in the Ministry of Justice's Bulletin, No. 1 of 15/01/2004 and have been brought to the attention of the competent authorities.

Saggio case, judgment of 25/10/01, final on 25/01/02

The Committee of Ministers has decided to close its supervision of the present judgment.

The case concerns the lack of an effective remedy to claim against a company under extraordinary administration, specifically in order to obtain payment of salary arrears due to the applicant, a senior employee, and to challenge the acts of the liquidators. A remedy was only possible, according to the applicable legislation which was later amended, after the final liquidation balance sheet and the scheme for distribution had been established (violations of Article 13).

Individual measures:

The applicant was deprived of an effective remedy for a part of the administrative liquidation procedure. According to the information provided by the Italian delegation on 07/02/2005, the applicant had been in a position to make a claim after the deposition of the final liquidation balance sheet and the scheme for distribution, on 13/10/1999, but had not done so. As the applicant lodged no complaint, the final liquidation balance sheet and the scheme for distribution became incontestable as far as he was concerned, in accordance with national law.

General measures:

Law No. 95 of 1979 on extraordinary administration, which was at the basis of the violation, has been amended by legislative decree No. 270, in force since August 1999. This law introduced a new regulation in extraordinary administration proceedings and in particular allows any creditor to challenge the action of a liquidator before domestic courts (Article 17).
The *Saggio* judgment was published in the *Bollettino Ufficiale* of the Ministry of Justice, No. 13 of 17/07/2002 and brought to the attention of the Italian judicial authorities.

F.L., judgment of 20/12/01, final on 20/03/02

The case concerns the lack of effective remedy in administrative proceedings to liquidate a company unable to pay its debts, and in particular the lack of an effective remedy to claim payment of privileged debts or to challenge the acts of the liquidators. Under the applicable legislation (Royal Decree No. 267 of 1942), judicial

claims were only possible after the final liquidation balance sheet and the scheme for distribution had been established, which in the present case had been going on for more than 16 years (violations of Article 13).

Individual measures:

The applicant did not have an effective remedy for a part of the administrative liquidation procedure. According to the information provided by the Italian delegation on 7/02/2005, after the final liquidation balance sheet and the scheme for distribution had been lodged in 1991, the applicant had made no claim although he was entitled to do so. As a consequence, the final liquidation balance sheet and the scheme for distribution became incontestable as far as he was concerned, in accordance with national law.

General measures:

The impugned provisions of the Royal Decree No. 267 of 1942 at the origin of the violation have not been amended. The Italian authorities were invited to solve this problem and to prevent new, similar violations. Exchanges of information are currently under way.

Grande Oriente d'Italia di Palazzo Giustiniani, judgment of 02/08/01, final on 12/12/01, Interim Resolution ResDH(2004)71

The Committee of Ministers has decided to close its supervision of the present judgment.

The case concerns in particular a disproportionate interference with the freedom of association of the applicant, an Italian Masonic association affiliated to the Universal Freemasons, on account of the obligation for candidates to public office in the Marches region to declare that they are not members of the Freemasons. The European Court concluded that this restriction, established by Article 5 of Marches Regional Law No. 34 of 1996, was not necessary in a democratic society nor was it justified by the character of the public office concerned by the law (violation of Article 11).

Individual measures:

The applicant association complained, by letters of 29/01/2003 and 17/05/2004 that it would continue to suffer from the restrictions contrary to the Convention as long as the law at the origin of the violation found was not modified, and accordingly solicited the adoption of the appropriate general measures (see below). This problem was resolved with the adoption of the new law on 01/12/2005.

General measures:

The abrogation or modification of Article 5§2, paragraph (a) of Marches Regional Law No. 34/1996 has been expected since December 2001 and on 8/12/2004 the Committee of Ministers adopted Interim Resolution ResDH(2004)71 "*urging the competent Italian authorities to take the necessary measures to guarantee the rights enshrined in Article 11 of the Convention concerning appointment to certain posts in the Marches Region".*
As a result, on 1/12/2005 the Marches Regional Council approved Law No. 27/2005 which abolished, in paragraph (a) of Article 5§2 the obligation for candidates for public office in the Region to declare that they were not freemasons. The new law excluded from public office in the Region any person belonging to a secret society banned under Article 18 of the Constitution, if such membership was established by a decision having the force of *res iudicata.*

The Italian delegation has furthermore indicated that the pertinent laws of other regions do not seem to raise the same problems found by the Court in this case.

Scozzari and others, judgment of 13/07/00 - Grand Chamber
Interim Resolutions ResDH(2001)65 and ResDH(2001)151

The case concerns two violations of Article 8, the first concerning the placement of two minor children in a community, *Il Forteto*, after they had been taken into public care and the second concerning the authorities' failure to maintain opportunities to re-establish family bonds between the children and their mother (the first

applicant) in particular through the organisation of regular visits. Details concerning this case can be found in document AS/Jur (2005) 32, at pp.17-18.

The children's present situation: The elder son attained his majority in 2005 but the younger was only born in 1994 and will thus not reach majority until 2012. He is currently directly entrusted to the same married couple who looked after him at the time of the facts of the case, and continues to live in *Il Forteto*.

The information provided by the authorities concerning the various questions related to the execution of this case (see in particular ResDH(2001)65 and ResDH(2001)151) and in reply to the demarches by the Belgian authorities, are summarised below.

Individual measures:

- *As regards the child's placement Il Forteto*: In July 2001, the Florence court, invoking the European Court's judgment, changed its decision regarding the placement of the children so that they were no longer entrusted to *Il Forteto* as such but directly to the couple who had looked after them, within *Il Forteto*, at the material time. The absence of a term was also remedied, the placement being ordered for three years. The Florence Appeal Court, seised in 2002, fixed the term for the children's placement at June 2003. The Italian authorities to not agree to proposals to place the children in Belgium (the mother has double Italian / Belgian nationality). Recently, in September 2005, the Florence Court, finding the conditions of the younger son's placement to be satisfactory, extended the term until September 2007. In its decision the court emphasised that even though the foster couple live in the community, their custody of the child was “exclusive and direct” their responsibility was individually linked to the child, over whom the community as such exercised no such custody or guardianship. According to the information available, this decision has been appealed.

- *As regards the continuing influence of certain personalities at Il Forteto following the European Court's judgment*: The 2001-2002 reports of the Tuscany regional authorities indicate that the former leading members of *Il Forteto* who had been found guilty of criminal acts were no longer part of the management of the co-operative and took no further part in bringing up children. This was confirmed by the delegation in September 2002. In addition the Supreme Judicial Council noted that the persons concerned had no further contact with children.

- *As regards the meetings between mother and children*: Programmes of psychological assistance were set up to help the applicant restore good relations with her children. Regular visits were organised from December 2001 onwards, initially once a month, then (following the Youth Court judgment of October 2002) three times a month and ultimately, following the court judgment of 2004, every week, with the additional possibility of meeting outside *Il Forteto*.

In January 2005 following an alleged kidnapping attempt, visits were suspended pending the outcome of a criminal investigation. In September 2005, the court authorised resumption of meetings between the mother and her younger son in a secure environment and with appropriate psychological support.
- *As regards supervision of the correct implementation of the court decisions authorising visits*: Shortly after the European Court's judgment, the social service officials called into question in the case were replaced. In a decision of September 2005, the Florence Court assessed the evolution of relations between the mother and children in relation to Italy's obligation under the judgment. It found that the supervision of the implementation of the decisions concerning visits had been effective. In this context the court highlighted the changes in the social service personnel and the fact that the case was also in the hands of new magistrates.

At the 960th meeting (March 2006) the Deputies took note of the ongoing efforts of the Italian authorities to resolve this case. The Secretariat was instructed to clarify certain outstanding questions with the Italian authorities and to evaluate the possibility of closing the case.

General measures:

In 2001 a new law, No. 149/2001, changed the rules concerning custody of minors on account of family problems requiring their removal. Whilst it is true that the present case concerns different type of custody, linked to the parents' opposition to placement despite their harmful behaviour towards the children, the principles laid down in the new law may be helpful for a general interpretation. Thus it may be noted that the new law

reinforces the principle of the minor's “right to have his own family”, a right which must be guaranteed without distinction as to sex, ethnic origin, age, language or religion, whilst respecting the minor's cultural identity. Foster-care orders must clearly indicate at what times and in what way the foster-carers are to exercise the powers given them, as well as how members of the nuclear family are to maintain their relationships with the minor. It must also indicate the probable duration of the placement, which must be determined in relation to all measures destined to promote the reunification of the family. The social service responsible for assistance and supervision during placement must inform the judge of any significant events and must also submit half-yearly reports on the evolution of the assistance programme, its probable duration and any progress in resolving the difficulties in the family of origin. The social service facilitates the minors contacts with, and ultimate return to, his or her natural family.

A 2003 Opinion by the Supreme Judicial Board (CSM) noted that the reinforced supervisory system instigated by Law 149/2003 is generally satisfactory. The CSM also requires that where children are placed with carers who have criminal records, youth magistrates must (a) exercise special attentiveness and vigilance, (b) duly justify their placement decisions, (c) examine carefully the advisability of making such placements continuous and (d) take due account of the legitimate preoccupations of those concerned.

The Italian authorities indicate that seminars have been organised to raise the awareness of youth magistrates and social workers of the requirements of the Convention as interpreted by the Strasbourg case-law in respect of family law.

C.A.R. srl, Interim resolution DH(98)154

The Committee of Ministers has decided to close its supervision of the present judgment.

The case concerns a violation of the applicant company's right of peaceful enjoyment of its possessions, related to the fact that, in order to preserve public order, the Prefect of Latina refused, from 1991 until 1994, to provide police assistance to evict a number of Somali refugees who occupied its buildings without title, in spite of the existence of a judicial eviction order. The European Commission of Human Rights (Report of 10 September 1997) noted that the absence of any compensation for the material damage that the applicant company had suffered broke the necessary balance between the protection of the applicant company's right to property and the requirements of public order (violation of Article 1 of Protocol No 1, affirmed by the Committee of Ministers' Interim Resolution DH(98)154).

Individual measures:

The pecuniary and non-pecuniary damage sustained by the applicant company was compensated by the Committee of Ministers' decision to award just satisfaction on the basis of a friendly settlement concluded between the parties through the good offices of the Chairman of the Ministers' Deputies.

General measures:

Since the events at the origin of this case, there have been developments in legislation and case-law making it possible to obtain compensation for the consequences of failures by the forces of order to enforce judicial eviction orders. These include the following:

(a) the Court of Cassation, in its judgments Nos. 2478 of 18/03/1988, 5233 of 26/05/1998 and 3873 of 26/02/2004, in application the general rules of the Civil Code (Article 2043) progressively established the principle that compensation represents the obligatory minimum guarantee for the protection of any individual right violated pursuant to a public interest protected by the Constitution. Such is the case, among others, for the enforcement of a judicial act (Article 24 of the Constitution, concerning resort to justice for the upholding of rights), as the possibility of litigation extends to the implementation of final, binding judicial decisions (in line with the case-law of the European Court).

Once the principle was accepted in 1988, the Court of Cassation progressively refined and applied it, defining the obligations of the administration with regard to compensation. In particular it reversed the burden of proof, so that it is for the public administration and no longer the appellant land-owner, to demonstrate the impossibility of invoking the forces of order to secure enforcement of judicial decisions. Such impossibility must be evaluated

with particular rigour. The Court of Cassation also specified that the administration's liability cannot be set aside unless the circumstances are exceptional or unforeseen.

(b) the “Pinto Law” (Law No. 89 of 2001) provides a right to compensation in cases of unreasonable length of judicial proceedings in violation of Article 6§1 of the Convention. The Court of Cassation underlined in its judgments Nos.11046 and 14885 of 2002, that the “Pinto Law” is applicable to cases of delays or failures of execution of judicial eviction orders. Lower Italian courts have effectively applied the “Pinto Law” in cases of failure to enforce judicial eviction orders (see e.g. the European Court's decision of inadmissibility in the case of *Provvedi vt Italy*, 02/12/04).

Doc. 11020

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Resolution 1268 (2002) and Doc 10327, Reference No 3048 of 24 January 2005

Draft resolution and draft recommendation adopted unanimously by the Committee on 15 September 2006.

Members of the Committee: Mr Dick **Marty** (Chairperson), Mr Erik **Jurgens**, Mr Adrien Severin, Mr György **Frunda** (Vice-Chairpersons), Mrs Birgitta Ahlqvist, Mr Athanasios **Alevras**, Mr Rafis Aliti, Mr Alexander **Arabadjiev**, Mr Miguel Arias, Mr Birgir Ármannsson, Mr José Luis Arnaut, Mr Abdülkadir **Ateş**, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise **Bemelmans-Videc**, Mr Giorgi Bokeria, Mrs Olena Bondarenko (alternate: Mr Vitaliy **Shybko**), Mr Erol Aslan **Cebeci**, Mrs Pia **Christmas-Møller**, Mr Boriss **Cilevičs**, Mr Domenico Contestabile, Mrs Herta Däubler-Gmelin, Mr Marcello Dell'Utri, Mrs Lydie Err, Mr Jan Ertsborn, Mr Václav Exner, Mr Valeriy Fedorov (alternate: Mr Alexey **Alexandrov**), Mr Jean-Charles **Gardetto**, Mr Józef Gedei, Mr Stef Goris, Mr Valery **Grebennikov**, Mr Holger Haibach, Mrs Gultakin Hajiyeva, Mrs Karin Hakl, Mr Nick Harvey (alternate: Mr Christopher **Chope**), Mr Michel Hunault (alternate: Mr Yves **Pozzo di Borgo**), Mr Rafael **Huseynov**, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Željko **Ivanji**, Mr Sergei Ivanov, Mr Tomáš Jirsa, Mr Antti Kaikkonen, Mr Yuriy Karmazin, Mr Karol Karski, Mr Hans Kaufmann, Mr András **Kelemen**, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Jean-Pierre Kucheida, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Tony **Lloyd**, Mr Humfrey Malins, Mr Andrea **Manzella**, Mr Alberto Martins, Mr Tito Masi, Mr Andrew **McIntosh**, Mr Murat **Mercan**, Mr Philippe Monfils (alternate: Mr Luc **Van den Brande**), Mr Philippe Nachbar, Mr Tomislav Nikolić, Ms Ann Ormonde (alternate: Mr Paschal **Mooney**), Mr Rino Piscitello, Mrs Maria Postoico, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen Rustamyan, Mr Michael Spindelegger, Mrs Rodica Mihaela **Stănoiu**, Mr Christoph Strasser (alternate: Mr Johannes **Pflug**), Mr Petro Symonenko, Mr Vojtech Tkáč, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mrs Renate Wohlwend, Mr Krysztof **Zaremba**, Mr Vladimir Zhirinovsky, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the Committee: Mr Drzemczewski, Mr Schirmer, Ms Heurtin