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## Committee on Legal Affairs and Human Rights

# Implementation of the judgments of the European Court of Human Rights, 10<sup>th</sup> report: Romania

### Information note

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#### 1. Introduction

1. Since the year 2000, the Parliamentary Assembly has taken a close interest in the implementation of the judgments of the European Court of Human Rights (“the Court”).<sup>1</sup> Following its latest resolution on this subject ([Resolution 2178 \(2017\)](#)) it decided “to remain seized of this matter and to continue to give it priority”.<sup>2</sup> Consequently, on 1 October 2019, the Committee on Legal Affairs and Human Rights appointed me its sixth successive rapporteur on this subject after the departure of its previous rapporteur, Mr Evangelos Venizelos (Greece, SOC), so I have the honour to continue his work. When Mr Venizelos was still the rapporteur, the committee held two hearings with experts on 24 April 2018 and 9 October 2018. At its meeting on 9 October, the committee authorised my predecessor to hold exchanges of views with the head of the national delegations to the Assembly of ten countries with the largest number of judgments under examination (at various stages of execution) by the Committee of Ministers: the Russian Federation, Turkey, Ukraine, Romania, Italy, Greece, the Republic of Moldova, Bulgaria, Hungary and Azerbaijan. This classification was drawn up on the basis of the [2017 Committee of Ministers annual report](#) on supervision of the execution of judgments and decisions of the European Court of Human Rights (published in March 2018) relating to the situation as at 31 December 2017. In April 2019, the Committee of Ministers published its [12<sup>th</sup> annual report](#) on this subject. According to the statistics in this latest report, the following countries had the largest number of cases pending before the Committee of Ministers as at 31 December 2018: the Russian Federation (1585), Turkey (1237), Ukraine (923), Romania (309), Hungary (252), Italy (245), Greece (238), Bulgaria (208), Azerbaijan (186) and the Republic of Moldova (173). Accordingly, compared with the end of 2017, the ranking order has changed slightly but not the countries concerned.

2. On 22 January 2019, the committee held an exchange of views on the implementation of judgments against Turkey (with the participation of Mr Mustafa Yeneroğlu, member of the Turkish delegation and experts from the Turkish Ministry of Justice) and a discussion on the implementation of judgments against Ukraine (in the absence of the head of the Ukrainian delegation). On 9 April 2019, the committee also held two exchanges of views on this subject, one with the head of the Hungarian delegation, Mr Zsolt Németh, and the other with

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<sup>1</sup> The first report was approved by our committee on 27 June 2000; [Doc. 8808](#), rapporteur Mr Erik Jurgens. On the basis of this report, the Assembly adopted [Resolution 1226 \(2000\)](#). Since 2000, it has adopted nine reports and resolutions and eight recommendations relating to the implementation of the judgments of the European Court of Human Rights.

<sup>2</sup> [Resolution 2178 \(2017\)](#) adopted by the Assembly on 29 June 2017, paragraph 12. Reference No. 4313 of 30 May 2017.

the head of the Italian delegation, Mr Alvisè Maniero. This document will therefore focus on the implementation of judgments against Romania.

3. According to the [2018 Annual report of the Committee of Ministers on the supervision of judgments and decisions of the European Court of Human Rights](#) (“the 12th annual report”), as at 31 December 2018 there were 309 judgments pending against Romania before the Committee of Ministers (at various stages of execution), which ranked that country fourth among the states with the largest number of unexecuted judgments. According to the latest data from the Department for the Execution of Judgments of the European Court of Human Rights, the Committee of Ministers is looking at 293 cases concerning Romania.<sup>3</sup>

4. In his report on the implementation of judgments of the European Court of Human Rights, our former colleague Mr Pierre Yves Le Borgn’ (France, SOC) highlighted nine principal cases/groups of cases the implementation of which was problematic and which were still subject to the Committee of Ministers’ enhanced supervision procedure.<sup>4</sup> These were cases concerning:

- failure to provide restitution or compensation for nationalised property (the *Străin and Others* group of cases and the *Maria Atanasiu and Others* pilot judgment);
- the excessive length of civil and criminal proceedings and the lack of an effective remedy (the *Vlad and Others* group of cases);
- the non-enforcement of domestic judicial decisions (*Săcăleanu* and other similar cases);
- overcrowding in detention centres (the *Bragadireanu* group of cases);
- the ineffectiveness of investigations into the violent crackdown on anti-government demonstrations (the *Association “21 December 1989” and Others* group of cases
- the lack of appropriate legal protection and medical and social care for vulnerable persons with mental disabilities (*Centre for Legal Resources on behalf of Valentin Câmpeanu*);
- the inadequate management of the psychiatric conditions of detainees (the *Țicu* group) and
- the conviction of a whistle-blower for having disclosed information on the illegal secret surveillance of citizens by the intelligence service and the lack of safeguards in the statutory framework governing secret surveillance (*Bucur and Toma*).

5. In his report, Mr Pierre-Yves Le Borgn’ pointed out that since the 2015 report by his predecessor Mr Klaas de Vries (Netherlands, SOC)<sup>5</sup> the cases concerning police ill-treatment and the lack of effective investigations in this connection had been closed by the Committee of Ministers in 2016 (see *Barbu Anghelescu v. Romania*).<sup>6</sup> This document will therefore examine in detail the cases pending before the Committee of Ministers (under the enhanced supervision procedure) already mentioned in that report.

6. In February 2018, Mr Venizelos sent a letter to the heads of the national delegations to the Assembly to ask them how the recommendations in [Resolution 2178 \(2017\)](#) had been/were being implemented. In particular, he wanted to know how the national parliaments of the Council of Europe member states had reacted to these recommendations. By letter dated 18 April 2018, the Romanian delegation replied that the two chambers of the Romanian parliament had set up bodies to supervise the implementation of human rights obligations arising from international treaties, including the European Convention on Human Rights (“the Convention”). In the Chamber of Deputies, the body concerned is the Sub-Committee on the Supervision and Execution of the Judgments of the European Court of Human Rights and in the Senate it is the Committee on Constitutional Affairs, Civil Liberties and Supervision of the Judgments of the European Court of Human Rights. The latter has held several exchanges of views with the government’s agent at the Court. In addition, it held a hearing in March 2018 on the timetable for implementing measures to solve the problem of prison overcrowding, highlighted by the Court in several of its judgments.

## 2. Failure to provide restitution or compensation for nationalised property

7. The question of the restitution of or compensation for property nationalised during the communist regime is a long-standing problem (the *Străin and Others v. Romania* group of cases).<sup>7</sup> In several judgments, the Court has held that the mechanism introduced for this purpose is ineffective, mainly because of the sale of nationalised property by the state to tenants without granting the legitimate owners any compensation

<sup>3</sup> 71 leading cases, 190 repetitive cases and 32 friendly settlements without undertaking (as at 29 November 2019).

<sup>4</sup> [Doc. 14340](#) of 12 June 2017.

<sup>5</sup> [Doc. 13864](#) of 9 September 2015.

<sup>6</sup> Application No. 46430/99, judgment of 5 October 2004, and 34 similar cases the examination of which was closed by Committee of Ministers Resolution CM/ResDH(2016)150.

<sup>7</sup> See *Străin and Others v. Romania*, Application No. 57001/00, judgment of 21 July 2005.

(violations of Article 1 of Protocol No. 1 to the Convention) or because of the administrative authorities' non-execution or delayed execution of judicial or administrative decisions (violations of Article 1 of Protocol No. 1 and/or of Article 6§1 of the Convention).

8. Given the extent of the problem, the Court delivered a pilot judgment in 2010 in the *Maria Atanasiu and Others v. Romania* case,<sup>8</sup> in which it called on Romania to take appropriate legal and administrative steps to ensure respect for the ownership rights of everyone concerned. On 29 April 2014, the Court delivered a follow-up judgment to its pilot judgment in the *Preda and Others v. Romania* case.<sup>9</sup> The Committee of Ministers last considered the implementation of this group of judgments (currently seven cases) at its 1340<sup>th</sup> (DH) meeting (12-14 March 2019).<sup>10</sup>

9. On the matter of *individual measures*, the Committee of Ministers concluded that the question had been resolved in 174 judgments of this group (including the *Preda and Others* follow-up judgment), which were examined at its 1324<sup>th</sup> (DH) meeting in September 2018.<sup>11</sup> In most of those cases, the applicants had been paid the just satisfaction awarded by the Court and/or the restitution ordered by the Court had been made or compensation had been granted at national level. Outstanding issues are still being examined in four cases.<sup>12</sup>

10. On the matter of *general measures*, on 16 May 2013 the Romanian parliament passed a law to reform the compensation mechanism in response to the pilot judgment. This law, which entered into force on 20 May 2013, provides for the restitution of property but introduces a compensation mechanism for when this proves impossible. It was viewed favourably by the Committee of Ministers at its 1172<sup>nd</sup> (DH) meeting (4 to 6 June 2013)<sup>13</sup> and by the Court in the *Preda and Others* judgment.<sup>14</sup> The authorities have made efforts to put the compensation mechanism in place. In particular, significant progress has been made on processing applications for the restitution of or compensation for farmland and woodland. However, some issues are still outstanding as the administrative processing of applications made before the entry into force of Law No. 165/2013 could not be completed by the statutory deadlines and this problem mainly concerns property other than farmland and woodland. The situation is particularly worrying at Bucharest City Hall and this has had a knock-on effect on the workload of the city's courts.<sup>15</sup>

11. Another outstanding issue, referred to in the *Preda and Others v. Romania* judgment (and more recently in the *Dickmann and Gion v. Romania* judgment)<sup>16</sup> is the lack of an appropriate remedy for two categories of applicant who are former owners of residential properties. These are people 1) whose right to restitution has been recognised by the courts but whose properties were sold by the state and who have filed compensation claims under special legislation and 2) who benefit from similar decisions and have been unable to file compensation claims under special legislation because the circumstances rendering restitution impossible had not become known until after the expiry of the time-limits for lodging such claims.<sup>17</sup>

12. Since the penultimate examination of the cases in this group by the Committee of Ministers in September 2018 (at the 1324<sup>th</sup> DH meeting),<sup>18</sup> the Romanian authorities have provided no information on any progress made in this area. The Committee of Ministers expressed its regret at this at its 1340<sup>th</sup> (DH) meeting in March 2019, despite the excellent co-operation between the Department for the Execution of Judgments of the Court and the Romanian authorities. It pointed out that the delays in the administrative stages of the processing by the Bucharest City Hall and the National Commission for Compensation for Immovable Property of claims for properties other than farmland and woodland gave rise to concerns and that additional measures were required to provide appropriate avenues of redress for the categories of applicants mentioned in the *Preda and Others*

<sup>8</sup> Application No. 30767/05, judgment of 12 October 2010, paragraph 232.

<sup>9</sup> Application No. 9584/02, judgment of 29 April 2014.

<sup>10</sup> [CM/Notes/1340/H46-16](#).

<sup>11</sup> [CM/Del/Dec\(2018\)1324/16](#); see resolutions [CM/ResDH\(2018\)354](#) and [CM/ResDH\(2018\)355](#), adopted on 20 September 2018.

<sup>12</sup> *Maria and Dorel-Dănuț v. Romania*, Application No. 14332/03, judgments of 23 March 2010 and 3 June 2014; *Stomff v. Romania*, Application No. 39312/07, judgment of 2 March 2010; *Paula Constantinescu v. Romania*, Application No. 28976/03, judgments of 23 June 2009 and 17 March 2015, and *Gavrileanu v. Romania*, Application No. 18037/02, judgments of 22 February 2007 and 5 May 2009. The authorities provided new information in July; see [DH-DD\(2019\)824](#) of 23 July 2019.

<sup>13</sup> Decision [Cases No. 17](#).

<sup>14</sup> Op. cit., paragraph 129.

<sup>15</sup> See the description of the *Străin and Others v. Romania* case in [HUDOC-EXEC](#).

<sup>16</sup> *Dickmann and Gion v. Romania*, Application No. 10346/03, judgment of 24 October 2017.

<sup>17</sup> Ibid., paragraph 124.

<sup>18</sup> See decision [CM/Del/Dec\(2018\)1324/16](#).

judgment. It accordingly urged the Romanian authorities to adopt the outstanding measures and inform the Committee of Ministers of the progress made by 31 May 2019 at the latest.<sup>19</sup> Information on the current state of the reparation and compensation process with regard to farmland and woodland was also requested.

13. In a communication on this group of cases, sent on 25 February 2019, the *Asociația pentru Proprietate Privată* (Association for Private Property, APP) complained that the reparation mechanism provided for by Law No. 165/2013 did not function as well as planned. According to this NGO, several people have not been properly informed about the possibility of redress/compensation, the property valuation is discriminatory and the authorities do not comply with the time-limits for administrative procedures.<sup>20</sup>

### 3. Excessive length of judicial proceedings and lack of an effective remedy

14. For several years, the Committee of Ministers has been looking at the problem of the excessive length of judicial proceedings and the lack of effective remedies in this connection (violations of Articles 6§1 and 13 of the Convention).<sup>21</sup> These issues are currently being examined in connection with the *Vlad and Others v. Romania* group of cases<sup>22</sup> (they were previously considered in connection with the *Nicolau* group of cases, for civil proceedings and the *Stoianova and Nedelcu* group for criminal proceedings). In the *Vlad and Others* judgment, from the point of view of Article 46 of the Convention the Court called on Romania to amend the existing range of legal remedies or add new ones,<sup>23</sup> since 500 similar cases against Romania were pending before the Court at that time.<sup>24</sup>

15. In March 2016, the Romanian authorities presented their revised action plan.<sup>25</sup> These cases were then considered at the Committee of Ministers' 1259<sup>th</sup> (DH) meeting (7-8 June 2016).

16. With regard to *individual measures*, the authorities informed the national courts of the proceedings in this group that were still pending when the Court's judgments had become final, so that the proceedings in question could be dealt with more quickly. At present, all domestic proceedings have been completed, with the exception of those in the *Crăciun*<sup>26</sup> and *SC Concept LTD SRL and Manole* cases.<sup>27</sup> At its 1259<sup>th</sup> (DH) meeting, the Committee of Ministers called on the authorities to intensify their efforts so that the proceedings at issue in these cases "are completed expeditiously".<sup>28</sup>

17. With regard to *general measures*, the new Code of Civil Procedure and the new Code of Criminal Procedure, which were adopted in July 2010 and entered into force in February 2013 and on 1 February 2014 respectively, introduced a number of measures specifically aimed at reducing the length of proceedings. In civil matters, the reform led to the diversification of the methods by which judicial acts can be served and to simplification of the contentious procedure and improvement of the system of evidence-taking; in criminal matters it led to the broadening of the scope of conciliation, the streamlining of the stages of the ordinary procedure, the introduction of simplified procedures and limitation of the possibility of referring cases back to the public prosecutor's office.<sup>29</sup> According to the authorities, the reform brought about a drop in the backlog of cases and a slight decrease in the average length of civil proceedings between 2013 and 2015. However, the average length of criminal proceedings rose slightly between 2014 and 2015, which could be due to the transitional situation.<sup>30</sup> At its 1259<sup>th</sup> (DH) meeting in June 2016, the Committee of Ministers welcomed the general measures taken by the authorities and urged them to monitor closely the impact of these measures and provide complete statistical data enabling the situation to be fully assessed.<sup>31</sup>

<sup>19</sup> [CM/Del/Dec\(2019\)1340/H46-16](#).

<sup>20</sup> DH-DD(2019)268, 8 March 2019.

<sup>21</sup> See in particular *Nicolau v. Romania*, Application No. [1295/02](#), judgment of 12 January 2006, for the civil cases and *Stoianova and Nedelcu v. Romania*, Application No. [77517/01](#), judgment of 4 August 2005, for the criminal cases.

<sup>22</sup> Application No. [40756/06](#), judgment of 26 November 2013, and 15 other cases (as at 29 November 2019).

<sup>23</sup> *Ibid.*, paragraph 164.

<sup>24</sup> *Ibid.*, paragraph 154.

<sup>25</sup> [DH-DD\(2013\)712 rev](#), 26 June 2013 (French only).

<sup>26</sup> Application No. [5512/02](#), judgment of 26 January 2009.

<sup>27</sup> Application No. 42907/02, judgment of 7 July 2008 (French and Romanian only).

<sup>28</sup> See the decision adopted at the 1259<sup>th</sup> (DH) meeting, [CM/Del/Dec\(2016\)1259/H46-25](#), paragraph 1.

<sup>29</sup> See the description of this case in [HUDOC-EXEC](#).

<sup>30</sup> *Ibid.*

<sup>31</sup> [CM/Del/Dec\(2016\)1259/H46-25](#), paragraph 2.

18. As far as the *lack of an effective remedy* is concerned, the new codes of procedure have introduced a remedy that will enable procedures to be expedited in cases brought after their entry into force.<sup>32</sup> It seems these remedies are working adequately and make it possible to prevent or put an end to delays brought about in both civil and criminal proceedings.<sup>33</sup> It should, however, be noted that in the *Vlad and Others* judgment the Court held that this remedy (in civil matters) was not applicable to proceedings brought before the entry into force of the new Code of Civil Procedure. This judgment also identified another problematic aspect, namely the lack of a compensatory remedy. According to the Court, a liability for tort claim against the state was not an effective remedy. However, the Romanian authorities stated that the Convention was applied directly in domestic law and that the domestic courts' case law had evolved in a way compatible with the requirements of an effective remedy<sup>34</sup> (this issue was also pending before the Court at that time).<sup>35</sup> At its 1259<sup>th</sup> (DH) meeting in June 2016, the Committee of Ministers noted with satisfaction that the interested parties could have proceedings expedited through the new remedies and urged the authorities to assess the advisability of extending the application of these remedies to the proceedings brought before the entry into force of the new codes of procedure.<sup>36</sup> With regard to the question of a compensatory remedy, "without prejudging the assessment that the European Court is called on to make in the cases currently pending before it" the Committee of Ministers noted with interest the development of the domestic courts' case law.<sup>37</sup> Since individual measures have been taken in most of the cases in the *Nicolau* and *Stoianova and Nedelcu* groups and general and wide-ranging measures have been adopted, the Committee of Ministers has decided to close the examination of 80 cases and to continue its examination of the issues outstanding in connection with the *Vlad and Others* case and the remaining cases in these groups.<sup>38</sup> To date, no other information on the state of execution of these cases has become available.

#### 4. Non-execution of domestic court decisions

19. For more than a decade, the Committee of Ministers has been examining cases of the failure to execute final decisions delivered by the domestic courts or delays in their execution (violations of Article 6§1 and/or Article 1 of Protocol No. 1). In November 2017, it decided to close the examination of the *Ruianu* group of cases<sup>39</sup> concerning the national authorities' failure to help the applicants in connection with the execution of court decisions imposing various obligations on private parties.<sup>40</sup> As far as general measures in these cases are concerned, it welcomed in particular the new methods enabling the inaction of bailiffs to be challenged and new sanctions to be imposed on debtors who impede the execution of final court decisions. With regard to the cases in the *Strungariu* group<sup>41</sup> (which concern the non-execution of court decisions ordering the applicants' reinstatement in posts in various public establishments), the supervision was closed in September 2019,<sup>42</sup> as the Committee of Ministers had taken the view that in most of these cases, individual measures (payment of just satisfaction and/or execution of domestic court decisions) had been adopted.<sup>43</sup> With regard to general measures, the Committee of Ministers decided to examine them in the *Săcăleanu* group of cases.<sup>44</sup>

20. This group comprises 19 other cases concerning the non-execution or delayed execution of domestic court decisions delivered against the state or legal entities falling under its responsibility. These cases comprise 77 applications. The Committee of Ministers last examined the execution of this group of cases at its 1340<sup>th</sup> (DH) meeting in March 2019. Some applicant companies submitted communications to the Committee of Ministers, complaining about the non-payment of sums due.<sup>45</sup>

21. With regard to *individual measures*, in March 2018 the Committee of Ministers closed 21 cases in which such measures were no longer required.<sup>46</sup> At the moment, in 46 of the cases in the group, the individual

<sup>32</sup> [DH-DD\(2013\)712 rev.](#), 26 June 2013 (in French).

<sup>33</sup> See notes of the 1259<sup>th</sup> (DH) meeting, [CM/Del/OJ/DH\(2013\)1179/13](#)

<sup>34</sup> [DH-DD\(2013\)712 rev.](#), 26 June 2013.

<sup>35</sup> *Brudan v. Romania*, Application No. 75717/14, judgment of 10 April 2018, paragraphs 86 and 88. The Court confirmed that this remedy was effective as from 22 March 2015.

<sup>36</sup> [CM/Del/Dec\(2016\)1259/H46-25](#), paragraph 3.

<sup>37</sup> *Ibid.*, paragraph 4.

<sup>38</sup> Resolution [CM/ResDH\(2016\)151](#), adopted on 8 June 2016.

<sup>39</sup> Application No. 34647/97, judgment of 17 June 2003.

<sup>40</sup> [CM/ResDH\(2017\)392](#).

<sup>41</sup> Application No. 23878/02, judgment of 29 September 2005, and eleven other similar cases.

<sup>42</sup> Resolution [CM/ResDH\(2019\)224](#), adopted on 25 September 2019 at the 1355<sup>th</sup> DH meeting.

<sup>43</sup> See the authorities' action report, [DH-DD\(2019\)187](#), 22 February 2019

<sup>44</sup> Application No. 73970/01, judgment of 6 September 2005.

<sup>45</sup> See in particular [DH-DD\(2019\)281](#), 13 March 2019, and [DH-DD\(2019\)559](#), 20 May 2019.

<sup>46</sup> Resolution [CM/ResDH\(2018\)109](#), 15 March 2018.

measures are no longer necessary as the Court's decisions have been executed and the applicants have been paid the amounts awarded. In 21 other cases, information is awaited on the measures taken to implement the Court's decisions.<sup>47</sup> Moreover, in ten other cases the authorities and/or the applicants have reported difficulties in this process owing to the judicial proceedings brought by debtors (*Elena Popa*<sup>48</sup> and *Chiş*<sup>49</sup> cases) or the liquidation or bankruptcy of the debtor companies (see in particular the *Zlatin and Others*<sup>50</sup> and *S.C. Polyinvest S.R.L. and Others*<sup>51</sup> cases). At its 1340<sup>th</sup> (DH) meeting, the Committee of Ministers expressed its concern regarding the domestic proceedings brought in the *Elena Popa* and *Chiş* cases and decided to join the latter case to the *Săcăleanu* group.<sup>52</sup> In the *Zlatin and Others* and *S.C. Polyinvest S.R.L. and Others* cases, the authorities decided to ask the Court for an interpretation of the judgment to clarify how they should comply with the terms of the operative part.<sup>53</sup> On 17 May 2019, the Court refused the request concerning the *S.C. Polyinvest S.R.L.* case. The Committee of Ministers resumed the examination of these two cases at its 1348<sup>th</sup> and 1355<sup>th</sup> (DH) meetings in June 2019 and September 2019. In its last decision of 25 September, it pointed out that according to the operative provisions of the judgment Romania was required to ensure, by appropriate means, the execution of the aforementioned judgments by 29 June 2018 at the latest and that it was obliged to pay, out of its own funds, all the sums still due to the applicant companies under the arbitral awards at issue, together with late-payment interest up to the payment date. It therefore insisted that the authorities pay the sums still due to the applicant companies without further delay.<sup>54</sup> With regard to the *Zlatin and Others* case, the Committee of Ministers decided at its 1348<sup>th</sup> (DH) meeting on 6 June 2019 to examine it again once the Court had taken a decision on the request for an interpretation.<sup>55</sup>

22. With regard to *general measures*, following the Court's first judgments, the authorities took certain steps, such as modifying part of the enforcement procedures or measures to raise the awareness of public officials, judges and bailiffs.<sup>56</sup> At its 1150<sup>th</sup> (DH) meeting in September 2012,<sup>57</sup> the Committee of Ministers assessed these measures and concluded that crucial issues relating to the mechanisms and the guarantees provided for in domestic law and the remedies available in this regard still had to be resolved to ensure the voluntary and prompt implementation of court decisions by the state. In its *Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania* judgment,<sup>58</sup> the Court concluded that similar violations resulted from the "persistent structural dysfunction". It also endorsed the Committee of Ministers' assessment concerning the general measures still required and added that this should take account of possible situations in which proper execution proved impossible and alternative means were necessary.

23. The Romanian authorities then provided updated information,<sup>59</sup> which the Committee of Ministers assessed at its 1280<sup>th</sup> (7-8 March 2017), 1310<sup>th</sup> (13-15 March 2018) and 1340<sup>th</sup> (DH) meetings. In 2014, the government set up an inter-ministerial working group to look at the issue of the non-execution of court decisions against public debtors. This working group decided to review the legal framework and determine the measures necessary to implement the Court's judgment and set a timetable for this purpose. In September 2018, it presented its proposals to the government for amending the law to guarantee the execution of judicial decisions against public debtors requiring them to make a payment and to establish a new supervision mechanism. The authorities indicated that the reform would also include measures to provide effective remedies in cases of non-execution of final court decisions or delayed execution. The working group also intends to propose legislative or administrative measures to enable the state to take on the debts of state enterprises that are either bankrupt or have been liquidated.

24. At its 1340<sup>th</sup> (DH) meeting, the Committee of Ministers reiterated that the violations established by the Court in these cases revealed "the existence of structural dysfunctions related to the non-implementation or delayed implementation of final court decisions by the state or legal entities under its responsibility".<sup>60</sup> It

<sup>47</sup> See decision adopted at the 1340<sup>th</sup> (DH) meeting, CM/Del/Dec(2019)1340/H46-15, paragraph 5.

<sup>48</sup> Application No. 67634/11.

<sup>49</sup> Application No. [3360/03](#), judgment of 14 September 2010.

<sup>50</sup> Application No. 24693/07+, judgment of 29 March 2018.

<sup>51</sup> Application No. 20752/07+, judgment of 29 March 2018.

<sup>52</sup> CM/Del/Dec(2019)1340/H46-15, paragraph 3.

<sup>53</sup> See the description of the case in [HUDOC-EXEC](#).

<sup>54</sup> [CM/Del/Dec\(2019\)1355/H46-15](#), paragraphs 2-4.

<sup>55</sup> CM/Del/Dec(2019)1348/H46-22, paragraph 5.

<sup>56</sup> See [DH-DD\(2012\)63](#), 23 January 2012 and [DH-DD\(2012\)779](#), 10 September 2012.

<sup>57</sup> Decision [Cases No. 15](#) of 26 September 2012, paragraphs 2 and 3.

<sup>58</sup> Application No. 2699/03, judgment of 7 January 2014, paragraph 83.

<sup>59</sup> [DH-DD\(2015\)14](#), 7 January 2015; [DH-DD\(2017\)38](#), 13 January 2017; [DH-DD\(2018\)55](#), 16 January 2018 and [DH-DD\(2019\)32](#), 6 February 2019.

<sup>60</sup> [CM/Del/Dec\(2019\)1340/H46-15](#), paragraph 2.

expressed regret at “the absence of tangible progress”, called on the authorities to step up their efforts to ensure that the legislative process was rapidly completed and stressed the importance of “a strong commitment at a high political level”.<sup>61</sup> In addition, the Committee of Ministers urged the authorities “to indicate how they will ensure that the domestic legal system is adequately equipped to respond to situations in which strict compliance is objectively impossible and that the statutory limitation rules in this area are in conformity with [the Court’s] case law.”<sup>62</sup> It also emphasised the need to provide effective remedies and considered that “the questions related to the implementation of pecuniary awards when the debtor is a state-controlled company subject to bankruptcy or liquidation call for further consideration, in the light of the information to be provided by the authorities”.<sup>63</sup> The authorities were consequently called upon to provide information no later than 31 May 2019 on the outstanding individual and general measures, together with details of the substance of the planned reforms.

## 5. Poor detention conditions

25. In the cases in the *Bragadireanu v. Romania* group,<sup>64</sup> the Court concluded that the applicants’ detention constituted inhuman and/or degrading treatment due to overcrowding and the poor living conditions in the arrest and detention centres attached to police stations, and the lack of an effective remedy available to the detainees (violations of Articles 3 and 13 of the Convention). In this group, the Committee of Ministers is currently examining 81 cases.<sup>65</sup> In April 2017, the Court delivered a pilot judgment in *Rezmiveş and Others*,<sup>66</sup> providing support for the Committee of Ministers’ previous assessments and calling for additional general measures (legislative, administrative and budgetary) to halt prison overcrowding and improve the conditions of detention and to put in place a specific compensatory remedy in addition to the preventive remedy introduced in 2014. It urged the authorities to provide a detailed timetable for the adoption of the appropriate general measures by 25 January 2018.

26. At its 1310<sup>th</sup> (DH) meeting in March 2018, the Committee of Ministers decided to close the examination of 121 cases in this group after having noted that no individual measure was required in respect of violations of Article 3 of the Convention concerning 202 applicants who were no longer serving the sentences which had led to the Court’s judgments.<sup>67</sup> The Committee of Ministers is therefore examining the question of general measures since individual measures are closely linked to the adoption of general measures in cases where applicants are still serving their prison sentences. Before the *Rezmiveş and Others* pilot judgment, the authorities adopted a number of measures, including a wide-ranging reform of the criminal justice policy, which entered into force on 1 February 2014 with a new Code of Criminal Procedure and new laws on the execution of sentences and custodial measures. This new legislation was welcomed by the Committee of Ministers at its 1222<sup>nd</sup> (DH) meeting<sup>68</sup> on 12 March 2015. However, the Committee called on the authorities to define and rapidly implement appropriate additional measures to bring about a lasting solution and ensure the provision of adequate and effective remedies. It also underlined the extreme urgency for the authorities to put an end to detention on remand in police detention facilities, which, it said, were unsuitable for this purpose. The authorities put forward several action plans, in April 2016 and January, February, March and November 2018,<sup>69</sup> which were assessed in turn by the Committee of Ministers. When it last examined these cases, at its 1348<sup>th</sup> (DH) meeting in June 2019, it assessed the latest information provided in April 2019.<sup>70</sup>

27. As far as the *issues of overcrowding and inadequate detention conditions* are concerned, the legislative measures adopted in 2014 and 2017 have resulted in a considerable decline in the prison population in Romania, and this trend seems well-established for the moment. The authorities are closely following the situation and have undertaken to reconsider if necessary the extension of the use of electronic surveillance. However, during its last visit to the country in February 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) noted that overcrowding did not affect all prison establishments or all sections in the prison establishments visited to the same extent and found that the most worrying rates were in closed prisons and in the admission and pre-trial detention facilities (in which the

<sup>61</sup> *Ibid.*, paragraph 7.

<sup>62</sup> *Ibid.*, paragraph 8.

<sup>63</sup> *Ibid.*, paragraphs 9-10.

<sup>64</sup> Application No. [22088/04](#), judgment of 6 December 2007, and 58 other cases

<sup>65</sup> As at 25 November 2019. See also [CM/Notes/1348/H46-21](#).

<sup>66</sup> Application No. [61467/12](#), judgment of 25 April 2017.

<sup>67</sup> [CM/ResDH\(2018\)108](#).

<sup>68</sup> 1222<sup>nd</sup> (DH) meeting of the Committee of Ministers, Case No. 12, decision adopted on 12 March 2015.

<sup>69</sup> See in particular [DH-DD\(2018\)90](#), 25 January 2018, [DH-DD\(2018\)132](#), 6 February 2018, [DH-DD\(2018\)330](#), 22 March 2018 and [DH-DD\(2018\)1069](#), 6 November 2018.

<sup>70</sup> [DH-DD\(2019\)440](#), 23 April 2019.

vast majority of detainees spent 21 hours or more in cells that often have less than 2m<sup>2</sup> of individual living space).<sup>71</sup> In view of the poor state of the prison infrastructure, the CPT also recommended the renovation of five of the prisons visited and even the closure of one.<sup>72</sup> At its 1348<sup>th</sup> (DH) meeting in June 2019, the Committee of Ministers welcomed the fall in the prison population and encouraged the authorities to achieve a balanced distribution of prisoners across the prison system and within prisons.<sup>73</sup> However, it expressed its concern at the prolonged staff shortage faced by the probation service.<sup>74</sup> It also called for clarifications concerning the improvement to the prison infrastructure and information on the impact of the steps taken to ensure suitable accommodation and transport conditions for prisoners with locomotory disabilities and on the financial arrangements being made to improve the collective and personal hygiene conditions and the food provided to prisoners. The authorities were also encouraged to continue their efforts to ensure that prisoners had sufficient access to purposeful out-of-cell activities.<sup>75</sup>

28. With regard to *arrest detention centres and police detention facilities*, the Committee of Ministers stated that the present system of holding individuals on remand in prisons during pre-trial proceedings had given rise to concern due to the structural unsuitability of the existing facilities to accommodate prisoners for more than a few days. It called on the authorities to review and adapt their current modernisation and renewal plans to ensure that all facilities intended for holding remand prisoners before trial offered Convention-compliant conditions, adapted to the length of their stay.<sup>76</sup>

29. As far as *domestic remedies* are concerned, while Romania established a preventive remedy in 2014 and a mechanism providing for sentence reductions for individuals detained in inhuman or degrading conditions in 2017, the authorities still need to enact legislation allowing financial compensation claims to be made by people who have not benefited or will not benefit from a sentence reduction or who have lodged or could lodge complaints with the Court about their conditions of detention. Accordingly, the Committee of Ministers expressed its “deep concern” at the delay in establishing the financial compensatory remedy and called on the authorities to “step up their efforts with a view to finalising draft legislative proposals and engaging the necessary procedures for their adoption”, failing which an interim resolution on the subject could be adopted.<sup>77</sup> One month before the 1362<sup>nd</sup> (DH) meeting (December 2019), the authorities provided new information on the general measures taken.<sup>78</sup>

30. Under its enhanced supervision procedure, the Committee of Ministers is also examining the issue of the de facto solitary confinement and the systematic handcuffing of prisoners classified as “dangerous” because they have been handed down a life sentence (*Enache v. Romania*),<sup>79</sup> and the *Domeanu v. Romania* case concerning the problematic issues surrounding the release of a detainee on humanitarian grounds.<sup>80</sup> In this case, the Court held that the continuing detention of the applicant (who was suffering from terminal stage prostate cancer) from March to December 2013 (when he died) while he was in an end-of-life situation and was experiencing the effects of serious medical treatment in difficult prison conditions had subjected him to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (violation of Article 3).

## 6. Other cases

31. The Committee of Ministers is also examining a group of 13 cases concerning the ineffectiveness of the investigations carried out in the 1990s on the violent crackdown on the anti-government demonstrations in December 1989 following the fall of the communist regime in Romania<sup>81</sup> (procedural violations of Articles 2 and 3 of the Convention). In the *Association “21 December 1989” and Others v. Romania* judgment, the Court stated in respect of Article 46 of the Convention that Romania should “put an end to the situation (...) found by it to have been in breach of the Convention, concerning the right of the many persons affected, such as the individual applicants, to an effective investigation which is not terminated by application of the statutory

<sup>71</sup> [CPT/Inf \(2019\) 7](#), published at Romania’s request on 19 March 2019, paragraph 82.

<sup>72</sup> *Ibid.*, paragraphs 88-95.

<sup>73</sup> See its decision adopted on 6 June 2019, [CM/Del/Dec\(2019\)1348/H46-21](#), paragraph 2.

<sup>74</sup> *Ibid.*, paragraph 3.

<sup>75</sup> *Ibid.*, paragraphs 4 and 5.

<sup>76</sup> *Ibid.*, paragraphs 6 and 7.

<sup>77</sup> *Ibid.*, paragraph 10.

<sup>78</sup> [DH-DD\(2019\)1273](#), 4 November 2019.

<sup>79</sup> Application No. 10662/06, judgment of 1 July 2014.

<sup>80</sup> Application No. 55089/13, judgment of 28 November 2017.

<sup>81</sup> *Association “21 December 1989” and Others v. Romania*, Application No. 33810/07, judgment of 28 November 2011, and twelve other cases.



limitation of criminal liability, and in view also of the importance to Romanian society of knowing the truth about the events of December 1989".<sup>82</sup> The Committee of Ministers is examining the question of individual measures (the progress made in the investigations underway), as the examination of general measures was closed at the 1288<sup>th</sup> (DH) meeting in June 2017.<sup>83</sup> In the most recent examination of the case during the 1318<sup>th</sup> (DH) meeting in June 2018,<sup>84</sup> the progress achieved in the investigation was welcomed and the supervision of the execution of the judgment in one of the cases in this group was closed.<sup>85</sup>

32. In the *Bucur and Toma v. Romania* case,<sup>86</sup> the Court found a violation of Articles 6§1 and 10 of the Convention in connection with the criminal conviction of a whistle-blower (Mr Bucur), a military staff member who had revealed that the Romanian Intelligence Service (RIS) had been secretly and illegally monitoring Romanian citizens. It also found a violation of Article 8 in conjunction with Article 13 as there were no safeguards in Romanian legislation concerning the secret gathering of personal data of the two other applicants Mr and Mrs Toma and no remedy available to challenge the retention of these data. This case was considered by the Committee of Ministers at its 1273<sup>rd</sup> (DH) meeting<sup>87</sup> in December 2016. No individual measure was required by the Committee of Ministers at this stage: the proceedings against the first applicant were reopened, Mr Bucur was acquitted and the RIS erased the recordings of the telephone calls between Mr and Mrs Toma. With regard to general measures to prevent new, similar violations of Articles 6§1 and 10 of the Convention, the Committee of Ministers was satisfied with the conclusions of the High Court of Cassation and Justice in its judgment of 11 February 2016 and with the decisions taken following the re-examination of the case, recognising the possibility for the domestic courts to balance the two competing interests of national security and freedom of expression. No other measure was therefore required in this regard. As far as the violation of Articles 8 and 13 was concerned, the Committee of Ministers noted the amendments made by Law No. 255/13 to the legal framework on secret surveillance measures justified by considerations of national security but considered that additional measures were required to ensure that the legislation complied with the Court's case law, and underlined, in this connection, the vital importance of independent and effective supervision of the activities of the intelligence services. Referring to a memorandum of the Department for the Execution of Judgments of the Court<sup>88</sup> identifying the persistent shortcomings in the legal framework, it encouraged the authorities to provide clarifications on the outstanding issues.

33. The Committee of Ministers is also examining the *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* case,<sup>89</sup> in which the Court ruled against Romania for failing to protect the right to private life of the applicant, a young man of Roma origin, an orphan who was HIV-positive and had a severe mental disability. The Court held that there had been serious shortcomings in the social and medical care provided before the applicant's death (substantive violation of Article 2 of the Convention). It also concluded that there had been a procedural violation of Article 2 owing to the ineffectiveness of the criminal investigation preceding the decease, mainly because of the failure to carry out an autopsy. A violation of Article 13 was also found due to the lack of a domestic remedy responding to the specific needs of people with disabilities. With reference to Article 46 of the Convention, the Court called on Romania to adopt measures to ensure that persons in a situation comparable to that of the applicant "are afforded independent representation, enabling them to have Convention complaints relating to their health and treatment examined before a court or other independent body".<sup>90</sup> The matter of individual measures was closed as it was no longer possible to reopen the criminal investigation into the applicant's death owing to the statute of limitations.<sup>91</sup> A working group consisting of representatives of the authorities concerned was tasked with identifying the measures required to correct the shortcomings giving rise to the violations established. The Committee of Ministers has regularly assessed the progress made in adopting these measures and has also called for the adoption of additional measures. NGOs have also sent communications emphasising concerns about the new representation mechanism being considered by the authorities, which, according to the NGOs, will retain and function according to the rules

<sup>82</sup> Ibid., paragraph 194.

<sup>83</sup> [CM/Del/Dec\(2017\)1288/H46-22](#), 1288th meeting (DH), 7 June 2017

<sup>84</sup> [CM/Del/Dec\(2018\)1318/H46-17](#), 1318th meeting (DH), 7 June 2018

<sup>85</sup> Final resolution [CM/ResDH\(2018\)229](#) adopted in the *Mocanu and Others v. Romania* case.

<sup>86</sup> *Bucur and Toma v. Romania*, Application No. 40238/02, judgment of 8 April 2013

<sup>87</sup> [CM/Del/Dec\(2016\)1273/H46-21](#), 1273<sup>rd</sup> (DH) meeting.

<sup>88</sup> Memorandum [H/Exec\(2016\)6](#) of 20 October 2016

<sup>89</sup> *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, Application No. 47848/08, judgment of 17 July 2014

<sup>90</sup> Ibid., paragraph 161.

<sup>91</sup> [CM/Del/Dec\(2017\)1280/H46-20](#), 1280<sup>th</sup> (DH) meeting, 10 March 2017.

governing guardianship.<sup>92</sup> Following a further communication by the authorities dated 23 April 2019,<sup>93</sup> the case was last re-examined at the 1348<sup>th</sup> (DH) meeting in June 2019. With regard to the *legal protection of vulnerable adults*, the Committee of Ministers took note of the legislative proposals concerning the new representation mechanism, in the setting up of which the Council for the Monitoring of the Implementation of the UN Convention on the Rights of Persons with Disabilities would have a central role to play. However, the Committee of Ministers noted that parliament was in the process of examining an alternative bill introduced by MPs with provisions aimed at dissolving the aforementioned Council. It then called on the authorities to clarify the outstanding issues.<sup>94</sup> As regards the *effectiveness of criminal investigations*, the Committee of Ministers noted with concern the continuing problems in this area and called on the authorities to inform it of the additional measures taken or envisaged to ensure that the investigating authorities were systematically notified of the death of a person placed in a social care facility. It also emphasised the need for effective co-operation with civil society.<sup>95</sup> Furthermore, it called on the authorities to identify, in close co-operation with the Secretariat, the appropriate measures to ensure that the decision-making process on the placement in residential social care facilities of persons unable to give valid consent was attended by appropriate safeguards and that such persons as well as those placed in psychiatric hospitals had access to effective legal remedies.<sup>96</sup>

34. The issue of the ill-treatment by prison staff of detainees suffering from serious mental disorders is being examined in connection with the group of *Ticu v. Romania* cases<sup>97</sup> (violations of Article 3 of the Convention). The Court also found a procedural violation of Article 3 in the *Ticu* case insofar as the Public Prosecutor's Office had taken no further action on any of the complaints made by the applicant, a victim of repeated violence by his fellow detainees. At its 1273<sup>rd</sup> (DH) meeting<sup>98</sup> in December 2016, the Committee of Ministers concluded that no further individual measures were necessary in view of the information provided by the authorities on the applicants' state of health. With regard to general measures, it noted with interest the measures to put in place separate medical sections in prisons for inmates with severe mental health problems and strongly encouraged the authorities to ensure that these sections were provided with the necessary resources, including qualified medical and nursing staff. It is worth repeating that during its last visit to Romania in February 2018 the CPT concluded there was no unit of this type in the prisons visited.<sup>99</sup> The Committee of Ministers examined these cases most recently at its 1355<sup>th</sup> (DH) meeting in September 2019 after having received new information from the authorities<sup>100</sup> and communications from an NGO.<sup>101</sup> It considered that more comprehensive and sustained efforts were required to resolve the serious, long-lasting problems highlighted in the Court's judgments and called on the Ministries of Justice and Health to finalise and adopt promptly the regulations on medical assistance for inmates, including those with mental health problems.<sup>102</sup> Furthermore, it noted with concern the persistent shortage of psychiatrists and nursing staff with mental health qualifications and urged the authorities to take the additional steps required to ensure that inmates with mental health problems received appropriate psychiatric assistance, in line with the relevant Council of Europe standards.<sup>103</sup> Accordingly, the authorities were requested to provide information on the implementation of the recommendations of the CPT and the Committee of Ministers by the end of March 2020 at the latest.<sup>104</sup>

35. Under the Committee of Ministers' enhanced supervision procedure, similar issues are also being examined in the *Cristian Teodorescu* group of cases<sup>105</sup> concerning the shortcomings of the legislative framework governing involuntary placement in psychiatric hospitals and the failure by psychiatrists to apply the procedures laid down in law in this regard; in the *N. v. Romania* case,<sup>106</sup> concerning the illegality of prolonged psychiatric internment as a safety measure, and deficiencies in the judicial supervision procedures

<sup>92</sup> Communications from the Centre for Legal Resources (CLR) – [DH-DD\(2017\)237](#) of 1 March 2017, [DH-DD\(2017\)1358](#) of 5 December 2017, and [DH-DD\(2018\)1242](#) of 14 December 2018, and from the “Dr Katz” Association for the Support of Children with Special Needs – [DH-DD\(2019\)541rev](#) of 20 May 2019.

<sup>93</sup> [DH-DD\(2019\)452](#) of 23 April 2019.

<sup>94</sup> [CM/Del/Dec\(2019\)1348/H46-20](#), 1348<sup>th</sup> (DH) meeting, 6 June 2019, paragraphs 3 and 4.

<sup>95</sup> *Ibid.*, paragraphs 5 and 7.

<sup>96</sup> *Ibid.*, paragraph 8.

<sup>97</sup> *Ticu v. Romania*, Application No. 24575/10, judgment of 1 January 2014, and *Gheorghe Predescu v. Romania*, Application No. 19696/10, judgment of 25 February 2014.

<sup>98</sup> [CM/Del/Dec\(2016\)1273](#), 1273<sup>rd</sup> (DH) meeting.

<sup>99</sup> [CPT/Inf\(2019\)7](#), *op. cit.*, paragraphs 119-120.

<sup>100</sup> [DH-DD\(2019\)821](#) of 23 July 2019.

<sup>101</sup> Association for the Defence of Human Rights in Romania - Helsinki Committee (APADOR-CH), [DH-DD\(2019\)891](#) of 21 August 2019 and [DH-DD\(2019\)891-add](#) of 4 September 2019.

<sup>102</sup> [CM/Del/Dec\(2019\)1355/H46-16](#), 1355<sup>th</sup> (DH) meeting, 25 September 2019, paragraphs 2 and 3.

<sup>103</sup> *Ibid.*, paragraphs 4 and 5.

<sup>104</sup> *Ibid.*, paragraph 7.

<sup>105</sup> Application No. 22883/05, judgment of 19 June 2012.

<sup>106</sup> Application No. 59152/08, judgment of 28 November 2017.

relating to the continuation of this measure, and in the *Parascineti v. Romania* case,<sup>107</sup> concerning prison overcrowding, staff shortages and the poor conditions of detention in psychiatric facilities.

36. The following issues are also subject to the Committee of Ministers' enhanced supervision procedure:<sup>108</sup>
- the failure to develop a settled and consistent judicial practice as to the concept of consent in order to clearly differentiate between cases of rape and those of consensual sexual intercourse with a minor (*M.G.C. v. Romania*);<sup>109</sup>
  - excessive emphasis on the lack of proof of physical resistance by the victim and deficiencies in the protection of the rights of the victim in the investigations into allegations of rape (*E.B. v. Romania*);<sup>110</sup>
  - the disproportionate use of firearms by the police or special intervention forces in incidents in 2000, 2005 and 2006 (*Soare and Others v. Romania* group of cases);<sup>111</sup>
  - failure to take appropriate action to address the issue of domestic violence (*Bălsan v. Romania*);<sup>112</sup>
  - the authorities' failure to carry out their obligation to conduct an effective investigation into an allegedly homophobic attack that took place in 2006 (*M.C. and A.C. v. Romania*);<sup>113</sup>
  - a police operation organised following ethnic profiling of a Roma community and the failure to conduct an effective investigation into the discriminatory reasons for the raid (*Lingurar v. Romania*);<sup>114</sup>
  - the continuing impossibility for applicants to recover their frozen embryos seized by the public prosecutor's office in 2009 in the course of a criminal investigation (*Nedescu v. Romania*)<sup>115</sup> and several serious violations of the Convention relating to the "extraordinary rendition" operation conducted by the CIA (*Al Nashiri v. Romania*).<sup>116</sup>

<sup>107</sup> Application No. 32060/05, judgment of 13 March 2012.

<sup>108</sup> Department for the Execution of Judgments of the European Court of Human Rights, [Country Factsheet: Romania](#), pp. 1–3.

<sup>109</sup> Application No. 61495/11, judgment of 15 March 2015.

<sup>110</sup> Application No. 49089/10, judgment of 19 March 2019.

<sup>111</sup> Application No. 24329/02, judgment of 22 February 2011.

<sup>112</sup> Application No. 49645/09, judgment of 23 May 2017.

<sup>113</sup> Application No. 12060/12, judgment of 12 April 2016.

<sup>114</sup> Application No. 48474/14, judgment of 16 April 2019.

<sup>115</sup> Application No. 70035/10, judgment of 16 January 2018.

<sup>116</sup> Application No. 33234/12, judgment of 31 May 2018.