

Resolution 1787 (2011)¹

Implementation of judgments of the European Court of Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly considers itself duty-bound to contribute to the supervision of the effective implementation of the judgments of the European Court of Human Rights ("the Court"), on which the authority of the Court primarily depends.
2. Although, according to Article 46 of the European Convention on Human Rights ("the Convention"), it is the Committee of Ministers which supervises the execution of Court judgments, the Assembly and national parliaments must now play a much more proactive role in this respect; if this is not done, the key role of the Convention, its supervisory mechanism and the Council of Europe as a whole, in guaranteeing the effective protection of human rights in Europe, is likely to be put in jeopardy.
3. The Assembly has therefore decided to give priority to the examination of major structural problems concerning cases in which extremely worrying delays in implementation have arisen, currently in nine states parties: Bulgaria, Greece, Italy, Moldova, Poland, Romania, the Russian Federation, Turkey and Ukraine. Special *in situ* visits have been carried out by the rapporteur and chairperson of its Committee on Legal Affairs and Human Rights to most of these states in order to examine with national decision makers the reasons for dilatory execution and/or non-compliance and to stress the urgent need to find solutions to these problems.
4. In a number of other states (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia and Serbia, among others), the issue of non-compliance and solutions to outstanding problems should also be made a priority.
5. The Assembly notes with grave concern the continuing existence of major systemic deficiencies which cause large numbers of repetitive findings of violations of the Convention and which seriously undermine the rule of law in the states concerned. These problems relate in particular to:
 - 5.1. excessive length of judicial proceedings leading to ineffective protection of a wide range of substantial rights (endemic notably in Italy);
 - 5.2. chronic non-enforcement of domestic judicial decisions (widespread, in particular, in the Russian Federation and Ukraine);
 - 5.3. ill-treatment by law-enforcement officials – sometimes causing death – and a lack of effective investigations thereof (particularly apparent in the Russian Federation and Moldova);
 - 5.4. unlawful detention and excessive length of detention on remand (in Moldova, Poland, the Russian Federation and Ukraine).
6. The Assembly deplores the above-mentioned implementation problems and intends to do its utmost, in co-operation with national parliaments, to assist States Parties to the Convention and the Committee of Ministers to eradicate the disgraceful situation of non-compliance with Court judgments.

1. Assembly debate on 26 January 2011 (6th Sitting) (see [Doc. 12455](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 26 January 2011 (6th Sitting). See also [Recommendation 1955 \(2011\)](#).



7. The Assembly, in particular, urges the following states to give priority to specific problems:

7.1. Bulgaria must now adopt outstanding measures in order to avoid, in the future, cases similar to those reported in the past with respect to deaths and ill-treatment of persons placed under the responsibility of law-enforcement officials. Progress is also needed to complete the reform aimed at ensuring that procedures for the deportation of foreigners fully comply with the Convention (*inter alia*, the Court's judgment in *Al-Nashif v. Bulgaria* of 20 June 2002). Moreover, Bulgaria must also pursue its efforts to solve the problem of excessive length of court proceedings;

7.2. the excessive length of judicial proceedings, especially before administrative courts, and abusive use of force by police officers remain key issues that Greece must tackle;

7.3. Italy must now take measures to address the excessive length of judicial proceedings. This has been a problem for decades, despite various interim resolutions adopted by the Committee of Ministers. A further issue of concern is the policy of non-respect of Court interim measures in a number of cases concerning foreigners;

7.4. Moldova must promptly take measures to ensure the enforcement of domestic final judgments, in particular in so-called social housing cases (the Court's pilot judgment in *Olaru and Others v. Moldova* of 28 July 2009). Moreover, it should also strengthen its efforts in order to avoid further cases of ill-treatment in police custody and ensure effective investigations into such abuses. Additional measures should also be taken with a view to improving conditions in detention facilities and filling lacunae in procedures concerning arrest and detention on remand, revealed by the Court's judgments. Lastly, it is essential that an effective domestic remedy is introduced in response to the pilot judgment in *Olaru and Others*;

7.5. the excessive length of procedures before courts and administrative authorities, as well as that of detention on remand, are key issues that Poland must tackle;

7.6. the issue of restitution of – or compensation for – nationalised property has to remain a priority for Romania (see the Court's pilot judgment in *Maria Atanasiu and Others v. Romania* of 12 October 2010). The problem of excessive length of judicial proceedings and non-enforcement of final court decisions must now also be tackled. As regards the case of *Rotaru v. Romania* (judgment of 4 May 2000), concerning abuses in holding and making use of private information by the Romanian Intelligence Service, despite the Committee of Ministers' insistence, legislative reform is still outstanding, more than ten years after the Court's judgment;

7.7. the Russian Federation must tackle pressing issues, in particular:

7.7.1. relating to the functioning of the administration of justice and the prison system: the authorities must ensure that the reform adopted in May 2010 to address the non-enforcement of domestic judicial court decisions (see the Court's pilot judgment in *Burdov v. Russia (No. 2)* of 15 January 2009) is finally implemented and is effective, seven years after the original *Burdov v. Russia* judgment of 7 May 2002. The Assembly notes, in this context, the coming into effect of Federal Law No. 68-FZ of 30 April 2010, which provides for compensation for the violation of the right to trial within a reasonable time or the right to the execution of the decision within a reasonable time. Regarding the quashing of final judgments through the supervisory review procedure (the so-called "nadzor" system, see the judgment in *Ryabykh v. Russia* of 24 July 2003), a third attempt at effective reform to limit the use of this procedure must now be ensured. Continuing efforts to solve the major issues of poor conditions and overcrowding in remand centres, ill-treatment in police custody, excessive length of detention on remand and several procedural deficiencies related to the latter, are insufficient and must be increased in order to bring Russian practice into line with Convention requirements;

7.7.2. related to the action of security forces in the Chechen Republic: the greatest concern relates to repetitive grave human rights violations in this region. Regrettably, the alleged recent structural improvements of domestic investigation procedures have not as yet led to any tangible results; it is understood that the President of the Russian Federation has recently submitted to the Federal Assembly draft legislation on an integrated reform of the Ministry of the Interior. The actual elucidation of at least a significant part of these cases is indispensable in order to end the climate of impunity in this region;

7.7.3. related to the numerous judgments of the Court finding grave and repeated violations of human rights in the North Caucasus region: the Assembly reiterates that the Russian Federation must, just like the other States Parties to the Convention, implement the individual measures required to put an end to the violations found, address their consequences, and take the necessary general measures to effectively prevent similar violations in the future;

7.8. the most prevalent problems in Turkey currently concern, in addition to the urgent need to ensure the proper functioning of the judicial system, the failure to re-open proceedings after a Court judgment that declared the initial proceedings to be in violation of the Convention in the case of *Hulki Güneş v. Turkey* (judgment of 19 June 2003), and the repeated imprisonment of Mr Osman Murat Ülke for conscientious objection to military service (see *Ülke v. Turkey*, judgment of 24 January 2006). Concerning the former, significant pressure from the Committee of Ministers – including three interim resolutions – has still not borne fruit;

7.9. as a matter of urgency, Ukraine must adopt a comprehensive strategy to tackle the situation in which a considerable number of domestic final judgments remain unenforced, despite significant pressure from the Committee of Ministers, and to implement an effective domestic remedy in response to the pilot judgment in *Yuriy Nikolayevich Ivanov v. Ukraine* (15 October 2009). Ukraine must also accelerate domestic judicial proceedings, reform criminal procedure and ensure the full independence and impartiality of judges. In addition, measures are needed to combat the abuse of force by police officers and ensure effective investigation into allegations of such ill-treatment. The continued impunity of the instigators and organisers of the murder of the journalist Georgiy Gongadze (*Gongadze v. Ukraine*, judgment of 8 February 2006) is still a matter of great concern (see the Assembly's Resolution 1466 (2005) on the honouring of obligations and commitments by Ukraine, and Resolution 1645 (2009) and Recommendation 1856 (2009) on the investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine – the Gongadze case as an emblematic example);

7.10. the United Kingdom must put an end to the practice of delaying full implementation of Court judgments with respect to politically sensitive issues, such as prisoners' voting rights (see, on this subject, the Court's judgment in *Greens and M.T. v. the United Kingdom* of 23 November 2010).

8. The Interlaken Declaration and Action Plan of February 2010 specified that priority should be given to full and expeditious compliance with the Court's judgments. In line with the aims of the Interlaken process, the Assembly considers that it too should remain seized of this matter in order to ensure regular and rigorous parliamentary oversight of implementation issues, at the same time as the Committee of Ministers – both at the European and national levels. The role of national parliaments can be crucial in this respect, as has been illustrated by parliamentary scrutiny mechanisms set up in the Netherlands and in the United Kingdom.

9. A major reason for deficient compliance with the Court judgments is the lack of effective domestic mechanisms and procedures to ensure swift implementation of requisite measures, often requiring co-ordinated action by national authorities.

10. In view of the foregoing, the Assembly:

10.1. strongly urges national parliaments which have not yet done so to introduce specific mechanisms and procedures for effective parliamentary oversight of the implementation of the Court's judgments;

10.2. calls upon the member states to set up, either by legislation or otherwise, effective domestic mechanisms as recommended in the Committee of Ministers' Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, and ensure that a decision-making body at the highest political level takes full responsibility for the co-ordination of all aspects of the domestic implementation process;

10.3. urges the authorities of the states referred to in this resolution to take all necessary measures to resolve the outstanding implementation problems identified in the Assembly report;

10.4. calls upon the chairpersons of national parliamentary delegations – together, if need be, with the relevant ministers – of states in which *in situ* visits were undertaken to present the results achieved in solving substantial problems highlighted in this resolution;

10.5. reserves the right to take appropriate action should the state concerned continuously fail to take appropriate measures required by a judgment of the Court, or should the national parliament fail to exert appropriate pressure on the government to implement the judgments of the Court;

10.6. in view of the imperative need for States Parties to the Convention to accelerate the execution of, and fully comply with judgments of the Court, and in the light of major problems encountered in this respect in several states, resolves to remain seized of this matter and to continue to give it priority.